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THE MINORITY PARTNER PARADOX

Law Professor Claims Lower Hiring Standards Lead to Exodus of African-Americans at Law Firms

BY STEPHANIE FRANCIS WARD

Theories abound as to why minorities are woefully underrepresented within partnership ranks at large law firms. Recently, a UCLA law professor has advanced a controversial new hypothesis to explain the disparity.

In "[The Racial Paradox of the Corporate Law Firm](#)," Richard Sander contends that large law firms appreciably lower their academic standards to bring in more African-American associates (and to a lesser degree, Hispanic associates) in the interest of achieving diversity.

This grade gap ultimately hinders the minority associates, writes Sander, and whether they are less able than their white colleagues or merely perceived as such, they find themselves "marginalized and superfluous, and their predictions that they will not be long with the firm are fully borne out." This attrition, in turn, perpetuates the white-male-partner status quo.

He cites studies suggesting that minorities are not receiving the same kinds of assignments and challenges as whites in large law firms. "The assignment volume suggests a pattern of 'benign neglect' for many minorities, especially blacks," he writes.

The piece, which appears in the July 2006 issue of the *North Carolina Law Review*, follows a 2004 article Sander wrote for the *Stanford Law Review* in which he criticized affirmative action in law school admissions.

"Several people have told me that this is true, but no one's said it before," Sander says. "I think there is a great failure in the legal profession to talk honestly about what's going on with race and preferences."

In the article, Sander says blacks and Hispanics each account for little more than 1 percent of partners at large law firms. Attrition for these groups at corporate firms is "devastatingly high, with blacks from their first year onwards leaving firms at two or three times the rate of whites."

Sander concludes that the use of aggressive racial hiring preferences at large law firms is not working to achieve meaningful and lasting diversity. He notes that no large cross-sectional databases on lawyers study the correlation between grades and success at large law firms, but says smaller studies suggest that lawyers with higher grade point averages are more likely to survive the competition for partnerships. Minority associates hired due to preferences, he writes, "enter the big firms with much lower credentials and at a great disadvantage."

He goes on to set forth ways that firms can work toward breaking what he calls a "self-defeating cycle." They include more mentoring and training, and better monitoring of job

assignments.

Sander relies on data from a variety of studies involving minority lawyers to support his conclusion that firms lower standards for minority students. They include a bar passage rate study by the Law School Admission Council in the 1990s, a 1998 alumni survey done by the University of Michigan Law School, and a longitudinal study that Sanders was involved in, titled *After the JD*, which was begun in 1999 to follow thousands of newly graduated minority lawyers.

None of the studies used by Sander specifically addresses his hypothesis, and he did not directly ask law firms about their minority hiring standards. And that's why critics say Sander's conclusions are problematic.

"The notion that grades and academic performance is the key to success in a law firm is something that's very hard to take from any study that has been done at any time," says Bryant G. Garth, a former executive director of the American Bar Foundation who was also involved in the *After the JD* study used by Sander. "Even if you accept some of his correlations, you really need to explain why it's happening. You could still use his correlations, but it's a little bit presumptuous and dangerous without having done the other work to imply that the fault is on the basis of grades," says Garth, who now is the dean of Los Angeles' Southwestern Law School.

Another critic, Richard O. Lempert, a University of Michigan Law School professor who was involved in the school's study that was cited in the article, says Sander "constructs a model that ignores the variable—time since graduation—that we found most important, and he ignores gender effects as well."

Because of this, says Lempert, "he mistakenly concludes that grades are the strongest predictor of future earnings. He compounds this mistake by never saying how strong a predictor grades are."

From a statistical standpoint, "the data [Sander used] doesn't tell us very much about how the students' careers develop after they join a law firm," says Hal Stern, chair of the statistics department at the University of California at Irvine. "This makes it impossible to know whether Sander's conclusions are correct."

And William Notz, an Ohio State University statistics professor, says Sander is using the data to make conclusions when it "at best shows an association."

"Of course in any study using observational data, it is easy to be critical about conclusions involving causality," Notz says. "The hard work is to do a more thorough analysis or to collect better data."

If that were done, some critics contend, it would likely show that rather than lowering standards, large law firms actually apply higher standards when judging black associates.

Arin Reeves, a Chicago-based attorney and diversity consultant, recently surveyed women of color at large law firms for a study on bias conducted by the ABA Commission on Women in the Profession. Her research found that law firms scrutinize minority candidates more, regardless of the applicants' grades. The study concluded that these minority women lawyers are leaving large law firms in droves because they are victims of institutional discrimination. (See "Early Exits," page 32, August *ABA Journal*.)

"Across the board, [law firms] told me that minority candidates have more hoops they have to jump through to ensure that they won't be a failure or a flight risk," she says.

In Reeves' work, she has not come across a law firm that lowered hiring standards for

black applicants, but she does say that she has seen firms recruit top graduates of color from lesser-known law schools to increase diversity.

Steve Y. Koh, who until recently chaired the hiring committee at a large Seattle law firm, also says his firm does not lower academic standards to hire minority candidates, nor has he heard of other law firms doing so.

"Think of some of the best law firms in this country, who [are good] with diversity," he says. "You don't notice a drop-off in their performance."

Sander defends his conclusions and says his article should help combat bias rather than perpetuate it. "Every senior attorney in a big firm I've talked to about this is aware of the varying of black and white credentials," he says. "I think that presenting real-world facts always helps reduce stereotypes. One assumption people might have is that black associates aren't working as hard as white associates, and data in the article shows that's not the case."

University of Virginia School of Law professor Stephen F. Smith, a black lawyer who was in private practice for five years before leaving to go into academics, says Sander's hypothesis is plausible.

"Law firms want to have a certain representation of minorities, and in order to do that they may be more flexible with hiring on merit-based criteria," says Smith, a former law clerk for U.S. Supreme Court Justice Clarence Thomas.

"I also think it's plausible that even though they're much more willing to be flexible with hiring a few minority attorneys, they're not necessarily that willing to do that at the back end, when they're making partnership decisions," Smith says. He adds that if white lawyers think black lawyers were hired for diversity, it's likely that black associates, regardless of their academic accomplishments, will have to work harder to prove themselves.

"It's not enough to bring minority associates in the door and say we have X number of minorities. They also need to devote the resources to make sure they get the same kind of treatment the other associates get," Smith says. "If they do that, they'll find it easier to retain people."

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