

RACE, DIVERSITY, AND OPPORTUNITY: OPENING THE PIPELINE

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Abstract: This essay outlines a pipeline program designed to increase minority interest and enrollment in graduate school programs, which was implemented at Texas Tech University School of Law. The goal of this essay is to share my experiences with the program and to encourage other schools to adopt similar programs. The practice exercises included in this essay were successful in creating interest in the legal profession among the high school students involved in the program. These exercises also introduce the students to legal concepts and give the students an opportunity to see first-hand the training of lawyers. The last section of this essay discusses future goals and other necessary programs required to achieve the ultimate goal of increasing the number of minorities in both higher education and the legal profession.

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“The legal profession faces no greater challenge in the 21st Century than the critical need to diversify its ranks.”¹

I. INTRODUCTION

This essay outlines a pipeline program designed to increase minority enrollment, implemented at Texas Tech University School of Law (TTU). The goal of this essay is to share my experiences with the program and to encourage other schools to adopt similar programs. Part one of this essay discusses the need for community-based interaction and mentoring of high school students who may be interested in attending college and graduate school. Part two of this essay details two practice exercises that may be implemented by other schools. The practice exercises were successful in creating interest among the high school students involved in the program at TTU. These exercises will introduce students to legal

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1. Carl G. Cooper, *Increasing Pipeline Opportunities in the Legal Profession for Minorities*, THE METROPOLITAN CORPORATE COUNSEL, March 2007, <http://www.metrocorpcounsel.com/pdf/2007/March/49.pdf>

concepts and give them an opportunity to see the training of lawyers firsthand. One exercise involves legal research and the other teaches students about oral advocacy.¹

In addition to the content presented, at the TTU program we also give the students a chance to interact with faculty and students. This provides meaningful mentoring for the students, some who have never been encouraged to attend institutions of higher learning. The long-term impact of the program on the community surrounding TTU is yet to be seen. The goal here is to create more programs to assist students with the desire and aptitude to attend institutions of higher learning. The third section of this essay discusses future goals and other necessary programs required to achieve the ultimate goal of increasing the number of minorities in higher education and the legal profession. Included at the end of this essay are the written resources used to create each exercise.

II. PROGRAM OUTLINE

Take a moment and think back to how you first came up with the idea to become a lawyer. Your inspiration probably came from someone you knew personally. Now, imagine that you had never crossed paths with the person who inspired you. This is the reality of many young people who come from economically disadvantaged backgrounds. They essentially never consider a career in the legal profession because they rarely encounter such professionals in positive situations.

The abovementioned reality is why the burden is on law schools to be creative when it comes to increasing diversity among their student population. "Student body diversity is a compelling state interest"² and is important to the legitimacy of a legal education and the legal community. The rate of minority enrollment in institutions of higher learning is decreasing,³ and as a result, so are the number of minority students entering law school.⁴ One way to increase minority

2. *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003). *See also* *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S.Ct. 2738, 2835 (2007).

3. Statistics provided by the Scholastic Aptitude Test ("SAT") show that African-Americans, as well as other traditional minority groups such as hispanic students, score much lower on the SAT than Asian or white students. College Board SAT 2006 College-Bound Seniors, Total Group Profile Report, available at <http://nces.ed.gov/index.asp>. Institute of Education Sciences, United States. Department of Education, National Center for Educational Statistics.

4. LSACnet.org, Volume Summary Admitted Applicants by Ethnic and Gender Group, <http://www.lsacnet.org/data/Volume-Summary-Ethnic-Gender-Admits.htm> (last visited January 24, 2008) (Reporting enrollment is down for at least one minority applicant groups. (Black/African American enrollment is up since 1997 and is only down .07% since 2006), Hispanic/Latino down 4.2% (Hispanic/Latino enrollment has increased significantly since 1997 and is up 7.8% since 2006) and Chicano/Mexican American enrollment is down roughly 34% since 1997. *See also* ABA Committee on Ethnic and Racial Diversity, 2007 Goals IX Report: the Status of Racial and Ethnic Diversity in the American Bar Association, <http://www.abanet.org/minorities/publications/g9/0607goalreport.pdf> (last visited January 24, 2008)(reporting that while non-whites make up 31.1% of the country's minorities, they are severely under represented in the legal profession)

Minority Demographics

enrollment in institutions of higher education is to invest time and resources in the
2008)unding communities of those institutions. PIPELINE 3

In February of 2005, the Dean of Admissions at TTU, where I teach, asked me to help create a program for high school students in Lubbock, Texas and other areas surrounding TTU. TTU regularly participates in the “Groundhog Day Shadow Program” which aims to invite students from the predominately minority high schools surrounding TTU to the law school and introduce them to the opportunities available for enrollment in higher education institutions. The purpose of the program is to prepare the students for the rigors of higher education by immersing them in the law school environment. The day includes: a mock classroom presentation, a discussion of preparing for law school academically and financially, lunch with professors, and a this moot court problem. My challenge, more or less, was to introduce these students to the world of law school while not intimidating (or boring) them. The students who ultimately participated were chosen from local high schools and magnet programs.

I created two different assignments for the students who participated in the program. The first was a mock-research path that required the students to search print sources in the library for answers to legal questions. The second assignment required the students to create a mock-appellate argument and to choose a role as a judge, defense attorney, or prosecutor. The program was a success in that students became excited about law school! The students overwhelmingly expressed that the courtroom experience was their favorite part of the day. And each year, our admissions staff asks me to recreate the experience. The students found it interesting that lawyers are required to perform a substantial amount of research to prepare for court. Many of the students realized that they enjoyed the feeling of the judicial robe; and they liked putting counsel on the “hot seat.” Other students found they enjoyed oral arguments; or that they had a real talent for speaking in front of groups.

A. *The Research Path Exercise*

The first exercise involved a mock-research project. The purpose of the research path was to illustrate what being a “real” lawyer was like, to show that

General Population Lawyers and Judges

African American 12.90% 4.20%

Asian American 4.20% 2.29%

Hispanic 12.50% 3.70%

Native American 1.50% 0.24%

Even in 1971, seventeen years after *Brown v. Board of Education*, total minority enrollment in ABA law schools was approximately 5%. Brief of Amicus Curiae Mass. Sch. of Law at 7, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), available at <http://msl.edu/MichiganBrief%20Amicus.htm>.

5. See Daniel Golden, *Case Study: Schools Find Ways to Achieve Diversity Without Key Tool: State Affirmative-Action Bans Bring Creative Solutions At UCLA, Elsewhere*, WALL ST. J., June 20, 2003, at A1; Robert Tomsho, *Texas's Race-Neutral Diversity Plan May Face Overhaul*, WALL ST. J., June 20, 2003, at B1.

lawyers solve problems and provide a service to others, and to show that being in the courtroom as an advocate is not all the students would be required to do as lawyers.¹ In an effort to properly prepare the students for the assignment, I first, paired the high school students up with current first-year law students and had the law students guide the high school students through a modified research path. Then, I presented the students with a scenario a first-year law clerk might face. The issue was one that was current and perhaps interesting to the high school students - the military draft. I explained that many women take it for granted that women do not have to register for the draft, thus the question that the students needed to answer by the end of the hour and a half was “why do women not have to register for the draft?”

The ultimate goal in this exercise was to show the students that legal research, while difficult, could be a relevant and rewarding experience. The students and I also discussed a lawyer’s role as a counselor, and demonstrated the manner in which a lawyer must answer the client’s questions.⁶ Thus, after discussing the issue that the client wanted answered, the students then brainstormed about different issues that could arise as a result of the question. Eventually, there were specific questions the students needed to answer at the conclusion of their research.⁷

The next task was to explore some of the different sources for conducting legal research, including statutes, case law, updating sources, and legal encyclopedias. Additionally, the first-year law students were instructed to use this time as an opportunity to answer the students’ questions concerning what it means to be a law student, how much time and effort it takes, and how rewarding this experience truly is.

I prepared a grid for the law student helpers to use in assisting the high school students find the necessary information.⁸ Each group started with a different resource, for example, either the United States Code or a legal encyclopedia. The law students explained how each resource worked and what kinds of questions each individual resource could answer. During the hour-long exercise, I circulated among the students in the library to answer questions. In the future, I would like to incorporate using Westlaw or LexisNexis, or even search engines like Google, to show the students the wealth of information available on the Internet.

The students had varied reactions to the exercise. Some said that they would like to be lawyers but did not like the “boring research stuff.” Other students were excited that they learned about tasks that lawyers really perform and that being a lawyer is not all about courtroom theatrics. Also, I heard good feedback about the tours of the law school and library, the trips to the study carrels, meeting different people, and seeing all the books and resources that the law school had available. This exercise gave me the opportunity to show these students how a lawyer goes about answering legal questions. I also emphasized that practicing law is not only about what you know, but also, and, more importantly, about being able to find what you do not know. One benefit that I did not anticipate was the educational benefit

6. See Appendix A.

7. See Appendix A.

8. See “Guide for Researchers” in Appendix A.

this exercise gave the volunteering law students. It reinforced the research skills that the students acquired during their classes. The APB in teaching the method to others, the law students began to appreciate the research process and make the method their own.

B. The Advocacy Exercise

On the second occasion I met with high school students, I again conducted an “active” exercise, but this time kept the students in the courtroom and focused on oral advocacy skills. In preparing for this exercise, I enlisted the help of two other colleagues and gathered a collection of black robes, highlighters, pens, and pads of paper. I adapted an exercise written by Lisa T. McElroy, Associate Professor of Law, Drexel University.⁹ I subsequently created my own scenario for future programs.¹⁰ I changed the McElroy legal practice exercise in some significant ways in order to tailor it to the level of high school students. First, I wanted to make the scenario more fact-intensive, providing more detailed information about the underlying situation, so that it would be more understandable to the younger audience. Also, I eliminated the references to different jurisdictions and levels of the court.

During the exercise, students were separated into three groups: prosecutors, defense attorneys, and judges. The students were allowed to self-select and the groups were evenly disbursed, with each group facilitated by an individual professor. During their time with each group, the professor would give the students a quick overview of how the court system works, how appellate arguments work, and the value of case law in decision-making. Each professor explained the role of the respective party, explained the cause of action, and helped the students create a short oral argument for the court.

I prepared the students for the role of a judge by first telling them that a judge must decide on the “right” result. I explained that even though judges have a lot of knowledge about what happened before in similar cases, each case is handled individually, and the judge attempts to apply the knowledge gained from prior cases to the case before him or her. I continued my explanation by noting that we needed to review what other courts had done in the past and apply that precedent to the situation at hand.

As we walked through each of the precedent cases, the students were quizzed on the facts and the holding of each case and I had them explain in their own words what the precedent meant. Next, the students were asked to explain the result of the case, and if the particular precedent was the only available law, then the students were required to determine based on that precedent, what should happen in their case? The students presented really interesting insights on the problem. For example, when we used the Goldilocks problem, most of the students were adamant

9. See also Randy Lee, *Writing the Statement of the Case: The “Bear Necessities”*, 10 WHITTIER L. REV. 619, 619-35 (1989).

10. See Appendix B.

about the fact that Goldilocks should know better than to go into a strange house. Each of them expressed that they had been taught from an early age not to talk to strangers and never to approach a strange house. Additionally, the students were intrigued by the case law and how precedent shaped the outcome of a case.

Students overall really enjoyed the moot court exercise.¹¹ Throughout the oral arguments it was exciting to see some real diamonds in the rough emerge. Some of the students were shy in the beginning but as soon as they put on a judicial robe, their “inner judge” came out. The student judges were really tough on the advocates, testing the advocate’s knowledge of the case law and application. As for the student advocates, they really excelled. I saw some really talented advocates who truly embraced the exercise.

Overall, the entire day was a success, based on the student comments we received.¹² Several students commented while they had not considered law a career, it was now a viable option. In addition, some students were excited to see the different career options available with a law degree. Other students were inspired to work hard to achieve their goal of being the first in their family to attend college. All of these comments mirror goals that I intended to achieve through this exercise.

III. CONCLUSION AND RECOMMENDATIONS FOR FUTURE PROGRAMS.

The two exercises used at TTU engaged high school students in the law school experience in different ways and did not simply make the students attend classes and listen to lectures. The program introduced the students to skills used by lawyers by getting them active and involved in the legal process, and the program helped them understand law school in a different and more practical way. I have

11. The following are a sample of some of the students comments (on file with author):

“This is great, I had a blast and it opened my eyes to the world of law.”

“Fun yet informing [*sic*]. I learned a lot about the appellate court.”

“This [exercise] was at times confusing but the evidence and the information conjoined in the end to help me make a reasonable petition in my case.”

“I thought this was a very wonderful experience that showed me what really goes on in a courtroom [and] in a lawyer’s and law student’s mind.”

“Good learning experience. More information would help.”

“I thought that this was really fun and that the “story line” wasn’t confusing or anything . . . it gave room for both sides to be right.”

“I came in here nervous and not sure of myself, but I realized that it comes with practice, and it can actually be quite fun.”

12. Student comments on file with author: “I come from a family in which no one has ever had any further education than high school. Having people come in and talk to me about law school and college was great and helpful.”

“Today was a very interesting day. I have to say the first time I thought I wanted to be a lawyer was when I saw ‘Legally Blonde’. Being here today, I definitely can’t wait to get started and get serious about it.”

“I didn’t really know what I wanted to do, but now, I’m possibly considering law strongly.”

“Being a junior in high school I have to make a lot of big decisions. By coming here it helped me learn more opportunities that by having a law degree you have.”

“I learned how a law degree can get you different jobs not just being a lawyer.”

facilitated this exercise for three years—each time with great success. We define success in terms of likeability – and this is consistently the students’ favorite part of the Groundhog Day Shadow program.

Each year we have more students who want to participate in our program. At the law school, we continue to encourage interaction between high school students and the law school community after the event takes place. For example, in October 2007, TTU invited a group of students to a lecture given by Retired Justice Sandra Day O’Connor. By involving the high school students in numerous activities, it is TTU’s hope that the program will increase number of students who will enter higher education institutions, and ultimately increase the pool of eligible applicants for law schools, especially TTU.

While TTU’s shadow program has had great success, there also are concerns. This program is implemented in high school, and I fear that the program may be late in addressing the concerns of disadvantaged youth. Other schools have created programs that go into primary and middle schools. The University of California at Berkeley and Temple University have created such programs.¹³ These programs are growing in popularity, but may not be addressing underlying lingering issues that preclude young at-risk children from reaching their potential. I have great concern that simply identifying students with aptitude and interest without continuing mentoring will not be successful. The legal community needs to be creative when it comes to mentoring high school students. The legal community also needs to find funding to help disadvantaged youth prepare for college and graduate school study. The legal community needs to give the youth the appropriate tools for success in higher education, for example college preparatory classes, specialized instruction on test taking, and the financial backing to attend institutions of higher learning. TTU’s program appears to be one piece in developing a means to help disadvantaged students.

TTU does not yet know how many students may matriculate from these schools or how many may pursue a career in the legal profession. One day, I hope I have a student in my class who says, “I remember you from Groundhog Shadow Day and you inspired me to be a lawyer.”

13. Gretchen Kell, *25 Schools Join the Berkeley Pledge: Goal is to Assure Future Student Diversity*, <http://www.berkeley.edu/news/berkeleyan/1996/1002/pledge.html> (last visited January 15, 2008); Eryn Jelesiewicz, *Pipeline Feeds Inner-City Students into Medical, Pharmacy and Dental Schools*, <http://www.temple.edu/medicine/pipeline.htm> (last visited January 15, 2008).

MEMORANDUM

TO: Groundhog Job Shadow Day Participants
FROM: Senior Partner
DATE: February 4, 2003
RE: *John P. Jones-Selective Service Question*

I received a call this morning from our client, Nathan Jones. Mr. Jones is concerned because his son John is turning 18 next month, and John must register with selective service. Mr. Jones would like to know what the possible consequences are if his son does not register. Mr. Jones would also like to know why his daughter Belinda did not have to register when she turned 18. Your research will help me advise Mr. Jones about this issue.

Thank you.

1. persons or parties (who):

2. item or subject matter (what):

3. legal concepts:

II. Research Questions

1. Why did Congress pass the “Military Selective Services Act”?

2. Who determines the time, place, and manner in which men must register for selective service?

3. What are the possible penalties for failure to register for selective service?

4. Why don't women have to register for selective service?

GUIDE FOR RESEARCHERS

Group 1

Using the U.S.C.A. Index—look up Selective Service—it will refer you to “Military Selective Services Act.” (50 U.S.C.A. App. § 451 et seq.)

§ 451 is Congress’ declaration of policy-it explains why this Act was passed

§453 states that all men between 18 and 26 must register. It also gives the president the authority to name the time, place, and manner of registration.

§462 talks about offenses and penalties.

U.S.C.A. annotations (note 5 sec-based distinctions) will give you a case *Rostker v. Goldberg*

Move to the Federal Digest- - Look up the lower court opinion in *Rostker v. Goldberg*

Since the U.S.C.A. only gives you the Supreme Court case-look up the case name in the Table of Cases index.

This is a good opportunity to talk about how you can find cases using the Federal Digest. You will get a lot of information from the Table of Cases, including some indication of how the Supreme Court treated this case.

Look up the District Court case- 509 F.Supp. 586. (Range 8)

Talk about the “anatomy” of the opinion. What are all the parts? Talk about the holding - here that the statute was found unconstitutional. You can talk about levels of government here. Where a district court fits into the larger federal court scheme, or about constitutional law-how can a court tell Congress that a statute is unconstitutional?

Headnote 15 gets into the court’s reasoning for its decision.

Help them answer the questions for the client.

GUIDE FOR RESEARCHERS

2008]

OPENING THE PIPELINE

11

Group 2

Using the Am Jur 2d General Index - Selective Service - Military - Conscription

Book 53 § Military 90

Registration- Military 90-93

Refusal-156-157

Section 90 will answer all the questions.

Footnote 76 will lead you to the Supreme Court Case - *Rostker v. Goldberg*, 453 U.S. 57, 101 S.Ct. 2646, 69 L.Ed. 2d 478.

Go ahead and look up the Supreme Court case-use as an opportunity to talk about the anatomy of a case.

Help them answer the questions for the client.

General Information for all Students

FACTS: *State of Enchantment v. Hunter*

Mr. Peter Hunter was convicted of second-degree murder by a jury in the District Court. Hunter was charged in the death of John “Big Bad” Wolfe. The State prosecuted Mr. Hunter after John Wolfe was discovered dead in a nearby forest. Mr. Hunter swears that he was protecting a young girl, Little Red Riding Hood. According to Mr. Hunter, Mr. Wolfe had followed Ms. Hood into the forest, attacked Hood’s grandmother, and attempted to abduct Ms. Hood.

Ms. Hood testified at trial that she was walking through the woods to deliver food to her sick grandmother. A stranger, identified as Mr. Wolfe, approached her, and she naively told him where she was going. Mr. Wolfe then suggested that Ms. Hood pick the nearby flowers for her grandmother, which she did. When Ms. Hood arrived at her grandmother’s house, a wolf answered the door dressed in women’s clothes. Ms. Hood became frightened and ran deeper into the woods.

Mr. Hunter, who was chopping wood nearby, heard the screams of Ms. Hood and ran to her. Upon meeting up with Mr. Hunter, Ms. Hood explained what had happened. Suddenly, John Wolfe showed up on the scene, out of breath from running. Before Mr. Wolfe could even speak, Mr. Hunter struck him with the axe. According to the grandmother, Mr. Wolfe did not enter her house on that day. In fact, it was Mr. Wolfe’s cousin, Alfred “Pig Snatcher” Wolfe. The grandmother was able to pick out Alfred from a lineup. It turns out Alfred was out on bail, as he had recently been arrested on another breaking and entering charge involving three pigs.

Mr. Hunter is appealing his conviction, and he argues that the lower court judge did not allow him to present a defense of justifiable homicide.

The law in the State of Enchantment is that justifiable homicide is divided into two situations: (a) homicide owing to an unavoidable necessity and (b) homicide committed for the prevention of some atrocious crime, which cannot otherwise be avoided. If a defendant proves the act was justified, there is no penalty, either by way of fine or imprisonment.

In justifiable homicide cases, the important issue is the proportional response to the threatened evil. That is, only an action against a person that seems to put someone in imminent danger of death allows us to repel that action with death. Here are the major cases cited in the parties’ briefs:

State of Enchantment v. Prince Charming. Prince Charming was charged and convicted in the slaying death of the Wicked Witch. Prince Charming argued at trial that he was defending Snow White, who was in imminent danger. The prosecution

argued that Prince Charming was never in danger nor did he ever perceive he was in danger. The Court of Appeals ~~overruled the guilty~~ ~~verdict~~ ~~saying~~ ~~that~~ ~~the~~ ~~lower~~ ~~court~~ ~~should~~ ~~have~~ ~~applied~~ ~~the~~ ~~alter~~ ~~ego~~ ~~rule~~. The Appellate Court stated, “The court must not view the actions from the point of view of the defendant, but instead, take the point of view of the person the defendant was seeking to defend.”

State of Enchantment v. John Pig. John Pig was convicted of murder in the shooting death of the Big Bad Wolf. The lower court denied Pig’s request for a justifiable homicide instruction because the Court found that Pig did not have an “actual and reasonable” belief that he must protect another from imminent danger of death of great bodily harm. The Court held that under the alter ego rule, one who attempts to defend another person steps into the shoes of the other person, and so acts at his own peril if that person was in the wrong. The facts adduced at trial suggested that Pig’s Brother Tom and Big Bad Wolf were not arguing, but instead, were practicing for a debate at school the next day.

State of Enchantment v. Jack. Jack went up a hill to fetch a pail of water and on the way back down met up with his cousin, Jill. As he and Jill entered the forest, a man attacked Jill. Jack was able to save Jill by beating up the attacker. The court in its opinion said that the justifiable homicide instruction had never been extended to the cousin relationship. However, while the defense typically had only been allowed with husband and wife, parent and child, or brother and sister, the court extended it to cover this situation. The Court of Appeals affirmed.

State of Enchantment v. Peter “Pumpkin” Eater. The lower court refused to instruct the jury on the defense of justifiable homicide. Here the decedent snatched a piece of pie from Mrs. Eater. Peter killed the man with a knife. The Court said “. . . that a person may lawfully do in another’s defense what such other might lawfully do in her own defense, but no more.” Although a victim had the right to use reasonable force to recover her property, the act in question here, killing the thief, was not reasonably necessary.

State of Enchantment v. Cinderella. The court affirmed the conviction of Cinderella for the murder of her stepsister. The lower court had properly instructed the jury with regard to the defense of justifiable homicide. While traveling to the ball, Cinderella’s carriage was taken over by her angry stepsister. The lower court found insufficient evidence that Cinderella ever perceived that she was in imminent physical danger. The court based this finding on the lack of physical strength of the stepsister and the lack of any visible weapon.