

 LEADING STRATEGIES

Strategies for Diversifying the Legal Profession Pipeline: A Critical Race Theory Review

By Kelly Long

Diversity in the legal profession is key to ensuring representation and equity in laws, but there is a longstanding imbalance in the representation of marginalized racial and ethnic groups in the legal profession. By merging literature, quantitative data, and qualitative evidence under the lens of critical race theory and QuantCrit, this article charts the systemic nature of inequities in the legal profession pipeline. Then, it focuses on strategies higher education institutions might employ to address inequities.

Racial categories were solidified in the U.S. legal system as the early U.S. government focused on counting and tracking free and enslaved people (Prewitt 2013). As the U.S. census changed its tracking over time (Brown 2020), the concept of race categories became widely accepted. Notably, these categories were previously proposed by several white scholars throughout the 17th and 18th century including Bernier (1684), Blumenbach (1795), and Linnaeus (1758). Remarkably, census population counts split by race is the oldest continuously collected dataset in the United States. (U.S. Census Bureau 2021). However, scholars have highlighted that race is a socially constructed variable in that it was created over time through social interactions and social and legal structures (Omi and Winant 2014). Particularly in the legal system, a person's race determined their legal rights to citizenship,

voting, work education, consumer rights, housing, marriage, and more (Library of Congress n.d.).

It is estimated that 90 percent of Black people in the United States were enslaved by 1865 (Statista n.d.). Also, throughout early U.S. history, being a person of Asian, Pacific Islander, American Indian, Black, or Hispanic ancestry meant having limited to no legal power for hundreds of years. It is no wonder that in the comparatively limited amount of time since people of color have had equitable legal rights, at least on paper, that progress toward equitable education has not materialized (Ladson-Billings 2006).

In a review of the history of students of color in law school since desegregation in the 1950s, Kidder (2003) described how the *Sweatt v. Painter* case regarding law school admissions ruled that "Sweatt had a right

to enroll at the University of Texas Law School (UTLS) rather than a hastily constructed separate and inferior law school designated for African Americans” (3). These types of historical issues are still relevant, considering that people born during this time are now baby boomers, many of whom still hold much of the power in the United States, including the current presidency. While this is not to suggest that individuals of a particular generation are inherently racist, there is a need to acknowledge that what is considered normal is dependent on lived experiences. For example, some people living today once perceived it to be normal that Black people were not allowed to attend white law schools.

Today in higher education, many institutions are writing goals to increase student racial/ethnicity diversity. For example, the University of Michigan Law School strategic diversity plan for 2020 stated a goal, “[t]o assemble an exceptional community of talented and interesting students with diverse backgrounds...” (4). Similarly, the Duke University Law School diversity plan for 2020 had a goal to, “[a]nalyze the strategies we have used in the past to recruit diverse students and determine whether to continue, discontinue, or expand these strategies” (11). Similarly, national organizations in general, as well as organizations specific to the legal profession, are calling for greater diversification of the legal workforce. These include the American Bar Association (2021a), the National Association for Law Placement (2021), and the Minority Corporate Counsel Association (2021). The strategies that are used to tackle this problem depend on a clear definition of the complexity of systemic inequities, perhaps better phrased as systemic racism, at major phases in the legal profession pipeline.

Furthermore, as the racial/ethnic diversity of the U.S. student body continues to increase (Hussar and Bailey 2020), higher education needs to recruit racial and ethnically underserved populations to meet enrollment goals. Atkins (2020) conducted an extensive qualitative study on Generation Z students to better understand what future legal students might demand of their higher education experience. The study found that, “Gen Zers are passionate, focused on making a difference for others, and are unafraid to stand up for what they believe in, driven by

a deep desire for transformational change” (170). Diversification of the legal profession is critical from a human rights standpoint (Hull 2013), and a more vocal and racially diverse generation demanding equity is upon us (Atkins 2020). It is recommended that higher education institutions take quick action to meet the needs of underserved students and correct lingering inequities.

Problem Statement

Population counts by race and ethnicity show that the representation of underserved students drops as students move through the education pipeline toward the legal profession. This drop is evidence of inequity, based on the utilization analysis approach to monitoring diversity, wherein researchers compare the expected values of a particular race/ethnic group to the larger population (Weinberg 2008). In other words, if there was equity in the educational pipeline, then there is no systemic reason to expect that the representation of students by race/ethnic group would remain stable across all points in the pipeline.

Representation in the legal profession is a key to combating racism in the United States (Vernon 2021). Law students go on to become defenders of and judges over legal issues that affect millions of Americans’ most intimate life decisions, such as marriage, abortion, healthcare, and death. The American Bar Association (2022, para. 1) would seem to agree, stating “equity and inclusion in the legal system requires diverse representation in the legal profession.”

There is a problem with racial inequity in the legal profession pipeline for people of color (Table 1, on page 43). For example, while 13.3 percent of students enrolled in college are Black (de Brey, Zhang, and Duffy 2022), only 7.94 percent of students enrolled in American Bar Association (ABA) accredited law schools are Black (Enjuris, 2021). The loss continued into the profession, wherein only 5 percent of attorneys are Black (ABA 2021a). Ensuring representation in these decisions is urgently important. This article explores evidence within a theoretical framework as a way to inform practitioners broadly of the issues that add contextual interpretation of this data.

TABLE 1 ► Representation by Race/Ethnicity through the Legal Profession Pipeline

Race/Ethnicity	Undergraduate Students (%) ¹	Law School Enrollments (%) ²	Legal Profession (%) ³	Law Firm Partners (%) ³	Federal Judges ³	
					%	n
American Indian or Alaska Native	0.3	0.54	0.04	n.r.	0	0
Asian	7.4	6.36	2.00	n.r.	0	0
Black	13.3	7.94	5.00	n.r.	0	0
Hispanic	20.3	12.70	5.00	n.r.	0	0
Pacific Islander	7.1	0.13	n.r.	n.r.	0	0
White	54.3	63.40	86.00	90	92	12
Two or More Races	4.1	4.00	2.00	n.r.	8	1

¹ National Center for Education Statistics (2021)² Enjuris (2021)³ American Bar Association (2021b)

■ n.r. = not reported

■ Columns do not always add to 100% because of rounding

Significance of Study

Law school represents a major investment of cost and time on the part of students. However, recent data provide evidence that there is systemic racism in the legal profession pipeline that continues to marginalize Black, Asian, American Indian, Pacific Islander, Multiracial, and Hispanic/Latinx students. In a recent study on young lawyers, the American Bar Association (2021c) reported just over half of graduates (60.9%) reported they would get a Juris Doctorate again, knowing what they now know about debt, law school, and the legal profession. At slightly better than a coin flip, that is a deeply concerning outcome.

For students of color, these types of regrets carry even more significant burdens. For example, in a survey of recent law school graduates, the average debt for Black graduates was \$198,780, \$149,572 for Hispanic, and just \$100,510 for white graduates (ABA 2021b). There was also a difference in borrowing for bar loans by race/ethnicity, with 50 percent of Hispanic and American Indian students borrowing, 42 percent of multiracial students borrowing, 29 percent of Black students borrowing, and 23 percent of white students borrowing. Despite eight pages on lawyer wages, the American Bar Association (2021c) did not report wages nor promotion gaps by race/ethnicity from their recent survey of the profession. As Table 1 shows above, while 86 percent of attorneys in the legal profession were white, when it came to partners, 90 percent were white. This reflects

gaps in access to partner positions. Similarly, Table 1 displays gaps in attainment at the highest levels of legal power, namely in the ranks of federal judges. Taken together, students of color may be facing systematic barriers to entering the legal profession after law school, and since students of color accrue higher debts from law school (Webber and Burns 2022), the negative impacts are exasperated for this group.

Relatedly, there is a national discussion regarding a myth among law firm leaders that there is a lack of qualified talent in the hiring pool (such as Perez 2020; Yang 2019). As Table 1 shows, there is an underrepresentation at each step in the pipeline, not a lack overall of qualified persons. These types of misconceptions reflect implicit bias and deficit thinking, assigning blame to the marginalized individuals rather than examining the system that fosters and reproduces the problems. However, the data reviewed in this section provide evidence that there is not a lack of talented Black, Asian, American Indian, Pacific Islander, Multiracial, and Hispanic/Latinx people in the hiring pools. Instead, firms should question what they define as talent and how it is evaluated.

Theory and Conceptual Framework

Critical Race Theory in Education

In the search for understanding the pipeline of prospective legal professionals of color, this article utilized the lens of critical race theory (CRT). CRT arose out

of the critical legal studies scholarship of Derek Bell and colleagues in the 1980s. As the word critical in the name suggests, CRT is housed in the rich tradition of critical theory of the Frankfurt school, which is distinct from traditional theory in that it aims to reveal and correct injustices in society. CRT is also characterized as a “unique form of scholarship in that Critics reject objective truth” (Cabrera 2018, 213). That is to say, challenging what has been previously accepted as normal or objective and reconsidering that knowledge. Importantly in application, scholars use CRT as a way to encourage critical counter-theorizing rather than as a theory “in-and-of-itself” (Cabrera 2018, 213).

In a recent paper critiquing CRT in education in attempts to improve it, Cabrera posited a reconstruction of CRT, including six tenets:

- The intercentricity of race and racism
- The challenge to the dominant ideology
- The commitment to social justice
- The centrality of experiential knowledge
- The interdisciplinary perspective
- Hegemony of whiteness

To apply the CRT tenets to the context of this article, the literature search focused on race and racism as it relates to phases in the law profession pipeline. Importantly, there was room for additional themes to be uncovered in the literature review process. Moreover, to challenge the dominant ideology, the literature search focused on strategies for addressing barriers, including addressing *hegemonic whiteness*, or the “cultural and discursive practices” that “naturalize unequal social relations along the color line” (Cabrera 2018, 223). Maintaining a focus on the centrality of experiential knowledge, the approach was to utilize existing research, documenting marginalized student experiences from qualitative studies. Ultimately, the aim for this article was to provide a guide for colleges to use to select strategies they can implement to improve the pipeline for legal professionals of color. In that way, this work demonstrates a commitment to social justice by taking action to educate and address inequities.

Finally, this article maintains an interdisciplinary perspective in three ways. First, it draws upon literature

from a broad array of fields. Second, it recognizes the systemic nature of racism and therefore analyzes many events along the student journey—from access, to experiences in the classroom, to eventual employment—to identify solutions in many arenas. Thirdly, it applies intersectionality to consider the ways that other identities compound to shape marginalized student experiences at various stages in the pipeline.

QuantCrit

The forthcoming literature review relied on the interpretation of qualitative data through the lens of Critical Race Theory (CRT). Additionally, quantitative data is used to show either the distribution of students by race/ethnicity or to split students on some outcome by race/ethnicity. When researchers seek to interpret quantitative racial data, a useful framework to use is QuantCrit.

Like CRT, QuantCrit is a lens that researchers use when interpreting statistics split by socially constructed identities. Although the approach was developed specifically for use with race, researchers have shown how to use this frame with other marginalized identities. The tenets of QuantCrit include (Gillborn, *et al.* 2018):

- Recognition that racism is deeply rooted and not amenable to quantification.
- Numbers are not neutral as they are subject to interpretations, which is often impacted by deficit thinking.
- Racial categories are not natural.
- Numbers do not speak for themselves.
- There may be a role for numbers in social justice action.

Despite the fact that QuantCrit acknowledges the limitations and inadequacy of racial statistics, there is a recognition that quantitative data are well suited for highlighting broader systemic inequalities for marginalized groups. This approach is consistent with the utilization analysis approach for measuring equity (Weinberg 2008).

Applying this frame to the present topic, when making comparisons of data split by race categories, interpretations should deploy an understanding that any

differences seen are not due to individual factors, such as motivation, commitment, or innate talent (*e.g.*, deficit frames). Instead, it must be considered that systemic racism is a possible explanation for the gaps in the data, and with that in mind, researchers can then scour the (often qualitative) literature to better understand how the differences seen in the racial statistics may be explained by documented racism at various parts of the whole education pipeline.

Next in applying this framework, the aim is to interpret quantitative data to better understand the legal profession pipeline for students of color, in which case CRT as a strategy helps the researcher avoid using deficit thinking. Moreover, a focus on the system is maintained, instead of on the student, unless to relay student experiences. In these ways, this scholarship honors the QuantCrit tenet that says numbers do not speak for themselves. Instead, caution is used when interpretations are offered for the numbers, keeping the interpretations in check under the CRT frame, and relying on participants' own voices from qualitative literature to make meaning of trends. Moreover, since educators have the power to change the system, and they do not have the power to change the individual, focusing on the system has the greatest potential for fulfilling the final QuantCrit tenet, that numbers might be used in the service of social justice. This is also consistent with the CRT tenet that research should promote social justice action.

The remaining tenet, which says that race categories are not natural, takes more time to establish in this research. First, scholars must recognize the historical context of race categories. The theory of race came from a non-scientific, atheoretical place, namely via the musings of Bernier (1684), Linnaeus (1758) as cited in Charmantier (2020), and Blumenbach (1795), who were all white men. Additionally, the five Blumenbach categories are credited as being the most influential to the social construction of race in the United States (Gould 1994):

- Caucasian: light-skinned people of Europe and adjacent parts of Asia and Africa
- Mongolian: other inhabitants of Asia, including China and Japan
- Ethiopian: dark-skinned people of Africa

- American: native populations of the New World
- Malay: Polynesians and Melanesians of the Pacific and Australian aborigines

Early race categories influenced the way European immigrants, who would later morph into a single 'white' group, began to otherize people who physically looked different. White Americans were eager to justify the atrocities of slavery, and the infant race theories were an ideal fit, allowing white Christians to view African people as property and therefore non-human (Smedley, *et al.* 2005).

After hundreds of years of slavery, segregation, and de facto segregation post-civil rights movement in the 1960s, what it means to be a part of a race group varies greatly. Firstly, there is no one way an individual comes to determine their own race. As Morning (2018) has outlined, individuals might use any one, or a combination of, affiliations that include genetic, biological, socioeconomic, cultural, subjective, or constructivist. The genetic race concepts include descendant membership and genetic membership. Descendant membership is tied to ancestry as identified through genealogy, and similarly genetic membership is tied to DNA as documented through genetic testing (Morning 2018), though it is valuable to clarify here that it is scientifically accepted that human race is not present in human DNA as it is in other animals (Romualdi, *et al.* 2002; Sundquist 2008). Instead, DNA in this case refers to genetic testing, which would reveal ancestry as known through DNA mutations in certain geographical regions. For biological conceptions of race, wherein biology is expressed physically, somatic membership relies on unaltered bodily traits, wherein race is determined based on a person's appearance (Morning 2018). Similarly, cosmetic membership is based on appearance, though it is the altered appearance that induces the racial identity (Morning 2018), such as in the well-known case of Rachel Dolezal (see Orbe 2016).

Two ways of knowing your race that are observed or interaction-based include socioeconomic status members and behavior-based membership, which is a cultural concept (Morning 2018). Similarly, emotive

members feel a sense of belonging to a particular race, which Morning (2018) called a subjective concept of race. The final way of knowing race is constructivist. The constructivist approach involves a higher-level understanding that race is a socially constructed phenomenon that only holds meaning because people say it holds meaning (Morning 2018). People may use any singular or combination of these ways of determining race to evaluate themselves and others.

In turn, race is something people experience as they interact with people and organizations, or as they are impacted by norms, laws, and organizational procedures. Therefore, what it means to be any particular race depends on the typical ways that U.S. society sees that race group. This brings the concept full circle to the tenet of CRT, which stated that people should rely on the voices of those who identify in a race group to tell us what it is like to experience being that race (and of course, experiences vary within groups as well).

All of that said, in 1977 the Office of Management and Budget set forth definitions for federal race/ethnicity categories, which is still used today. These categories as reported by the Integrated Postsecondary Education Data System (IPEDS n.d.) include:

- **Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
- **American Indian or Alaska Native:** A person having origins in any of the original peoples of North and South America (including Central America) who maintains cultural identification through tribal affiliation or community attachment.
- **Asian:** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **Black or African American:** A person having origins in any of the black racial groups of Africa.
- **Native Hawaiian or Other Pacific Islander:** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

- **White:** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- **Race/Ethnicity Unknown:** The category used to report students or employees whose race and ethnicity are not known.
- **Nonresident Alien:** A person who is not a citizen or national of the United States and who is in this country on a visa or temporary basis and does not have the right to remain indefinitely. Note: Nonresident aliens are to be reported separately in the places provided, rather than in any of the racial/ethnic categories described above.

In U.S. higher education, institutions are required to ask students to self-report their race/ethnicity, though students may decline to report. Data on enrollment and student outcomes is then reported to IPEDS for any institution that accepts federal financial aid. Notably, the last category is not a race/ethnic category, but rather a removal from any category if students meet the listed criteria. Notably, if students indicate they are two or more races, excluding Hispanic, they are reported together. Lastly, if students report Hispanic and any race, they are only reported as Hispanic.

Conceptual Framework of the Pipeline

Social mobility describes the movement or potential movement of people from one class in society to another. There is a general belief in the United States that higher education facilitates social mobility (Haveman, *et al.* 2006). Data largely supports this idea, where at each stage of the educational attainment ladder, lifetime earnings increased overall (Tamborini, *et al.* 2015).

Attaining social mobility, or retaining social class, is dependent on people making it through various barriers. When it comes to the legal profession, at the highest levels, prospective students must develop an interest in pursuing law school admissions, take the LSAT, persist through coursework, pass the bar, and obtain an offer for employment. The barriers encountered at the steps are similar for many students, though for students of color there are additional disadvantages, which white students do not commonly experience, as will be explored

below. Conversely, there are common unearned advantages white students experience that students of color largely do not experience, namely a lack of barriers.

Showing the main parts of the pipeline to the legal profession illuminate a) whether there is equitable representation by race/ethnic group as well as other intersectional identities, b) to what extent there is inclusion and discrimination, as revealed primarily through the firsthand experiences with systemic racism from students of color, and c) what strategies to achieve social justice have been used and have these been successful. Professors, administrators, and people responsible for recruiting in the legal profession can use this information to better understand the ways that systemic racism impacts people of color in the legal profession pipeline and how to advocate to resolve these long-standing injustices.

Literature Review

This article employs a semi-systematic narrative literature review as method. As Synder (2019) described, this approach “is designed for topics that have been conceptualized differently and studied by various groups of researchers within diverse disciplines” (335). The goal is to show how a field has progressed over time (Synder 2019). Narrative literature review was employed because historical context is central to understanding present and persistent issues with race and racism. This approach is also useful for detecting themes outside of a single field (Synder 2019). The goal herein was to tell the story of a journey through parts of higher education, bringing together research from varied fields.

As discussed below, there is literature describing both the problems in each step of the educational pipeline for people of color in the legal profession, as well as strategies for addressing the problems. These strategies span from access to law school, to experiences in law school, and challenges for obtaining employment in the legal profession.

Worth noting is that most of this literature review focuses on the experiences of people of color; at times it is relevant to flip the focus to the experiences of white people. Whiteness is something white people and people of color experience, though notably in different

ways. Whiteness is an abstract construct that is better understood in concepts including unearned privileges and an unwillingness to acknowledge and name privileges (Frankenberg 1997; Gillborn 2016; McLaren, *et al.* 2000). The reason to highlight the construct of whiteness in research is to focus on the other side of the discrimination coin, revealing how language, politics, and societal culture are used to silence discussions of racism and privilege (Giroux 1997).

Law School Access

In terms of access, more than decade ago, Lustbader (2012) remarked on a ten-year decline in enrollment of African American and Latino students in law schools. Moreover, Lustbader lamented that there was a consistent supply of applications for both groups during that same time period, but fewer acceptances. Today, the inequity in enrollment of students of color in law school persists (*see* Table 1, on page 43).

To begin the journey to law school, prospective students must learn about law school as a potential option, covered under the section on recruitment below. Once interested, students must take the LSAT and apply to law programs. The next section of this review examines the journey to access law programs, including barriers, as well as solutions for rectifying these injustices. For each stage of the journey to law school, the review focuses specifically on the quantitative data that shows inequity in outcomes. Then, the focus shifts to the qualitative data that captures the first-hand experiences of students of color. Finally, this section highlights strategies that have been used to combat these problems.

Recruitment

For the 199 American Bar Association (ABA) accredited law schools in the United States, there is not an overall recruitment problem, compared to the rest of higher education, which has been facing enrollment declines since the end of the recession in the 2010s (National Center for Education Statistics 2023). As Figure 1 (on page 48) shows, the number of applicants has been increasing in law, but the number of spots available has remained relatively stable. That said, recruitment is still

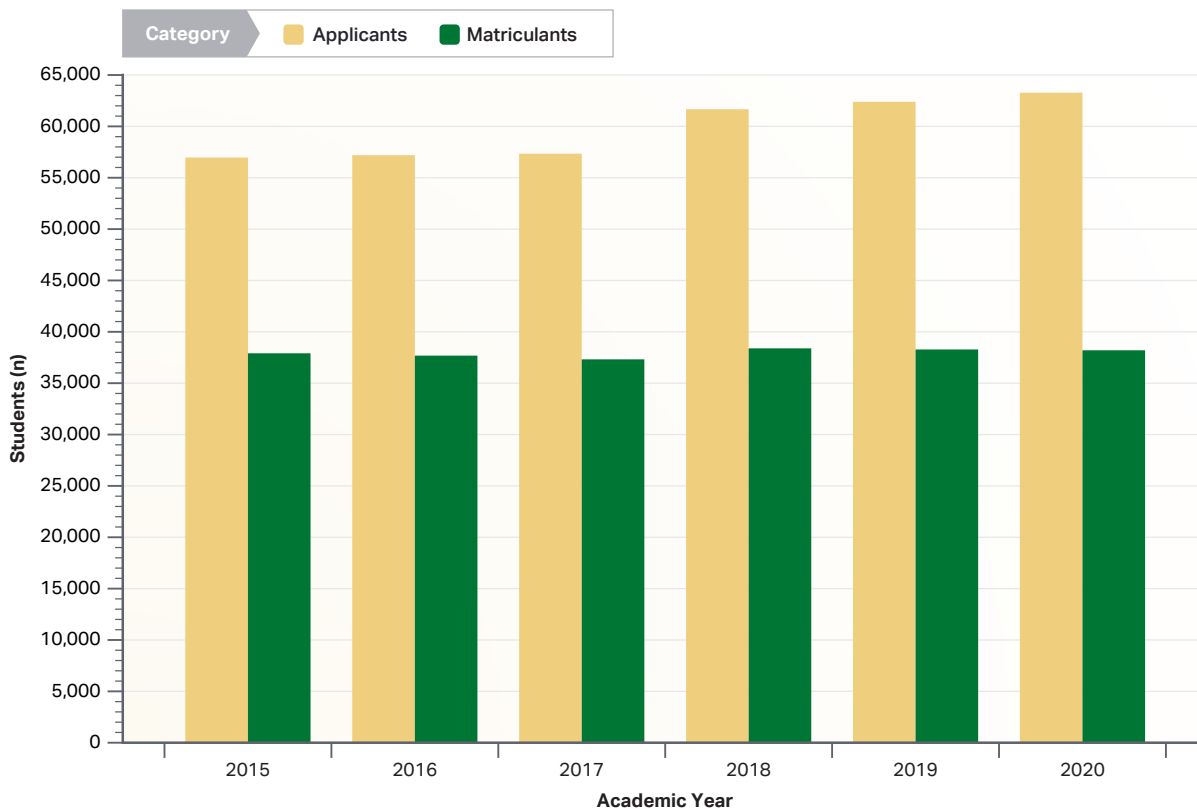


FIGURE 1 ➤ Law School Applicants and Matriculants

Source: Law School Admissions Council 2020

an activity undertaken in some law schools, though the extent of these activities appears largely undocumented.

In a systematic search of the literature, there was no research identified that directly examined race or racism in the recruiting process for law school. Cordes (1991) offered a related example, aiming to address how students of color were underrepresented in law school. To combat this problem, three law schools partnered on a program to improve access for students of color. The program focused on LSAT score improvement and improving the pool of qualified students of color by offering summer pre-law programs. Cordes (1991) was adamant that the schools did not view the summer program as a recruiting strategy, but rather a general strategy to increase the pool of qualified candidates. This does appear to be a deficit view, in that the assumption was students were not qualified, but could be remediated. In

contrast, viewing this program as a recruiting tool, instead of as a remediation tool, may be placing the blame not on the students who failed to be qualified to apply to law school, but rather to the school that has failed to engage prospective students on the subject of law. Therefore, offering such an engaging summer activity attracts qualified students and increases interest in law school. In either case, the summer pre-law program had merit and was shown to be effective. Students reported feeling that the summer program increased their preparation for law school. Importantly, students also indicated that participating in the program strengthened their interest in applying to law school (Cordes 1991).

As Smith (2010) recommended as an administrator in a law program, partnering with undergraduate programs can help increase racial diversity in law programs. Therefore, undergraduate major of study is a related

TABLE 2 ► Enrollment of Bachelor's Degree-Seeking Students at Public Four-Year Institutions Across Fields of Study, Percentage by Race and Ethnicity (2015–2016)

Race	STEM Fields	Business	Education	Health Care Fields	Social Sciences	Humanities
All Racial and Ethnic Groups	25.6	18.0	5.5	10.5	12.4	7.0
American Indian or Alaska Native	12.4	13.5	15.3	6.8	17.0	5.5
Asian	40.7	18.3	2.2	10.7	8.9	4.3
Black	17.7	17.4	5.2	13.3	15.5	4.4
Hispanic	22.4	16.4	4.5	9.0	15.0	8.6
Pacific Islander	21.7	11.5		16.2	17.2	8.9
White	25.8	18.3	6.4	10.9	11.0	7.7
More Than One Race	29.1	14.7	5.4	7.7	13.8	8.0
International Students	35.6	28.4	2.0	4.5	14.2	3.2

issue to student recruitment into law school. Depending on where law programs recruit students, as there is racial imbalance in majors, the pipeline into law school is further compromised.

The American Bar Association (n.d.) stated that any college major is suitable preparation for law school, and they mention that students may seek what they call a “traditional preparation for law school” which includes history, English, philosophy, political science, economics, or business programs. The ABA also explained that diverse majors are also welcome, such as art, STEM, nursing, or education. If the top ten majors for law school applicants is any indicator of where administrators recruited, then the programs to examine for racial representation include political science, psychology, criminal justice, English, economics, history, arts and humanities as well as philosophy, sociology, and communications. That said, as Ohio Northern University reported (n.d.), the more rare and specialized the undergraduate major, the higher the admissions rate seems to be. What remains unknown nationally is, from which majors do law programs recruit? And then, what is the representation of students of color in those majors?

What is known from the American Council on Education (Espinosa, *et al.* 2019, 62) is that for public institution bachelor's programs across the United States, in 2015–2016, while a quarter of all students were enrolled in STEM fields, only 17.7 percent of Black students

were enrolled in STEM fields. Instead, Black students were more often enrolled in health care and the social sciences (Table 2). Asian students on the other hand enrolled in higher rates in the STEM fields, as did multi-racial students, compared to peers. American Indian students were enrolled in the social sciences at higher rates than peers. Hispanic students most closely represented the overall distribution of students by major. White student distributions were close to the overall distributions, though they were more commonly enrolled in STEM fields than the overall student population.

However, this data does not include the requisite sensitivity needed to examine specialized sub majors as suggested by Ohio Northern University. It would be ideal to confirm if this is also true of other law schools, to understand if calls are needed to study individual majors in more detail. In turn, this could allow law schools to add programs to their radar for recruitment to increase representation of students of color.

Intersectionality of First-Generation Status

Thanks to Crenshaw (1990), the concept of intersectionality has allowed researchers to better define populations of interest and understand the subtle ways multiple marginalized identities result in compounded disadvantages. For the present research on students of color, a potentially intersecting identity is first-generation status, since students of color are more likely to

also be a first-generation student, compared to white students (Redford, *et al.* 2017). More specifically, 70 percent of continuing generation students were white, and just 49 percent of first-generation students were white. In the complete reverse direction, 11 percent of continuing generation students were Black while 14 percent of first-generation students were Black.

First generation is commonly defined as “students whose parents both have had no postsecondary education experience and have a high school education or a lower level of educational attainment” (Redford, *et al.* 2017, p. 3). According to the Center for First Generation Student Success (2017, para. 5), the grouping is relevant because there is reason to believe that these students “may lack the critical cultural capital necessary for college success because their parents did not attend college.” Cultural capital can be understood as “the direct or indirect ‘imposition’ of evaluative norms favoring the children or families of a particular social milieu” (Lareau, *et al.* 2003, 598). These types of norms are reflected in the literature and document that the needs of first-generation students revolve around what they called social capital, namely parent’s lack of knowledge about college, including knowledge of scholarships, financial aid, and other key resources for success (Evans, *et al.* 2020). Moreover, robust research has been conducted for decades regarding supports for first-generation students (Ives, *et al.* 2020; Spiegler, *et al.* 2013) as well as calls to incorporate intersectionality into this field of research (Nguyen, *et al.* 2018).

What is less well known is how first-generation students navigate the law school landscape (O’Bryant, *et al.* 2017). A few studies have documented first-generation student experiences navigating graduate school (Cao 2021; Holley, *et al.* 2012). Even fewer have discussed first-generation students and law school. Almost 25 years later, O’Bryant, *et al.* (2017) described a similar program to that of Cordes (1991) at the University of Memphis called the Tennessee Institute for Pre-Law program. Accepting around 50 diverse applicants a year for 20 spots and running at just under \$100,000 a year in operating costs, the program admits bachelor’s degree holders who show promise to succeed in law school.

LSAT Scores

Beginning at the turn of the 20th century, law schools began utilizing various types of aptitude tests to evaluate prospective students (LaPiana 2003). The Law School Admission Test (LSAT) used today evolved from efforts at the Columbia Law School in the 1940s, but the more modern version took shape in the 1970s and 1980s (LaPiana 2003). The Law School Admission Council (LSAC) described the current test as follows:

The purpose of the LSAT is to test the skills necessary for success in the first year of law school. Those skills include reading comprehension, reasoning, and writing, and the test results help admission decision makers and candidates alike gain valuable insight as to law school readiness. Studies have consistently shown the LSAT to be the single best predictor of first-year law school performance, even better than undergraduate grade-point average. While LSAC believes the LSAT is important, we strongly encourage schools to include it as just one part of a holistic admission process that considers the skills and lived experience of each candidate. (n.d.)

While the LSAC sounds laudable, there is a long hearty debate in the literature regarding the use of LSAT scores in law school admissions, particularly as it relates to unintended racial inequities in representation of students of color in law school. Importantly, contrary to the LSAC claim that “Studies have consistently shown the LSAT to be the single best predictor of first-year law school performance” as well as scholars who argue the LSAT is the most reliable predictor available (Woodson 2021), there is also literature that makes the claim that the LSAT is considered a poor predictor (Hill 2019). Apart from a meta-analysis conducted in 1984 by Linn, *et al.*, there appeared to be no other meta-analytic studies that look across the body of research to make a determination on the effectiveness. It would be ideal if future researchers conduct a meta-analysis of more recent years of admissions data to determine the overall predictive power of the test.

The working theory as to why educators use test scores in admissions is that these scores help predict whether a student will be successful. For this to be true,

the average scores by race/ethnicity should be equitable. Yet, white and Asian test takers on average received a score of 153 while Latino test takers scored 146, and Black test takers scored 142 (Taylor 2019). Since there are sizable gaps in equity as documented by student test scores split by race/ethnicity, scholars need to explain and account for these differences.

Compounding the problem is that the LSAT scores are tied into law school ranking, and that may be one reason schools aim to set higher cut scores (Lustbader 2012). Rankings are important in higher education because it helps colleges gain in reputation and, therefore, increase their pool of qualified prospective applicants. At the top of rankings are what scholars consider elite and selective institutions of higher education. These elite schools are notable because they are the most desirable schools to attend based on their reputation and rankings and, therefore, they famously received thousands more qualified applicants than they have room to admit in each cohort. Hence, the label of ‘selective’ applies, as these schools can afford to be incredibly picky about the composition of their incoming cohorts. In fact, there is a 98 percent correlation between the law school ranking and the admissions rate, based on the rankings available from the Internet Legal Research Group (2020). Using the same data, the present research found a 77 percent correlation between ranking and median LSAT score; though notably 20 percent smaller than the correlation of ranking to admissions rate, the ranking and LSAT correlation is still considered large by social science standards. There are other public rankings systems though, such as the *U.S. News & World Report* rankings. Worth noting is that the rankings are similar, considering the top 20 schools on each list are identical for 2020, even if the order differs slightly. Unfortunately, since Black and Latino students score on average ten points lower than white and Asian counterparts, this means that Black and Latino students are systemically excluded from law school admissions, and even more so at selective elite institutions with higher cut scores.

The solution to the LSAT score problem has taken two branches: one calling for improvement in scores, and a second calling for the elimination or at least partial

reduction of the reliance on these tests for law school admissions. When it comes to improving LSAT test scores, test prep is effective, but can be expensive (Smith 2010). One administrator who was interested in improving racial justice in law programs worked to reduce the cost of test preparation as a strategy to help increase the average scores of students of color (Smith 2010). Ultimately though, Hill (2019) argued that the LSAT needs to be deemphasized as a criteria for admission because racial bias exists, and thus a new bias free test should be created. One example created by Shultz, *et al.* (2012) measured student potential to succeed in legal practice via scenario-type questions. These new types of measures could be used, but it would take a coordinated and cooperative effort on the part of law schools to make the shift. Perhaps there are schools now that are beginning to consider alternatives. Researchers should examine this across institutions to determine what tests are used and in what capacities the tests are used. One possibility is to examine accreditation self-studies, if admissions testing is described in these reports, since the reports would fall under the Freedom of Information Act (FOIA) and therefore be available to researchers for examination.

Affirmative Action

It would be remiss to talk about admissions in law school and not mention affirmative action, but it is a massive topic in and of itself. Dozens of robust books, amicus briefs, and scholarly articles have been written about the topic. For example, see *Defending diversity: Affirmative Action at the University of Michigan*. As LaPiana (2003, 986) explained of the then recent legal challenge at the University of Michigan, “The position of the plaintiff in *Grutter v. Bollinger* can be understood at the most general level as expressing the idea that a candidate with a higher score should always be admitted in preference to a candidate with a lower score, although perhaps it is more accurate to say that the argument is that a preference based on race cannot offset a lower score.”

A decade ago, Lustbader (2012) called to abandon the phrasing of Affirmative Action since it was so politically charged. Today, the same emotional charge is present, with the Supreme Court presently challeng-

ing two formerly resolved legal cases surrounding race-conscious admissions. As affirmative action has been covered eloquently in such great detail, and since this article's aim was to bring together the dispersed research on the legal profession pipeline, no further detail on affirmative action will be discussed.

Classroom Experiences

Once students of color make it through the numerous barriers to get into law school, they face challenges in the classroom that threaten retention. Enrollment managers need to understand the ways that classroom experiences shape retention to better advocate with their academic counterparts for holistic enrollment management. Discussions of racial issues arise in the legal classroom because racial issues are a legal reality (Dallinger-Lain 2017). How professors respond to students in these situations influences whether white students experience a disruption in biased thinking, or whether stereotypes are reinforced. At the same time, professors validating the experiences of students of color can be healing; ignoring negative comments can be damaging (for a review of literature, see Dallinger-Lain 2017). Moreover, these conversations are emotional and can trigger student's flight, fight, or freeze response (Dallinger-Lain 2017).

The cumulative effect of these classroom interactions creates the classroom climate. One definition of campus racial climate from Solórzano, *et al.* (2002) included things such as inclusion, representative curriculum, programs supporting recruitment, retention, and graduation, faculty and administrators that respond to the needs of students of color, a broader mission that supports these efforts, and a campus free from overt racial conflicts. Solórzano, *et al.* (2002) conducted focus groups with a total of 25 students and reported that students of color in law school faced microaggressions.

Other research on classroom climate showed that a positive climate contributes to the retention of students of color (McClain, *et al.* 2017). However, across 130 institutions in the United States for a sample of more than 8,000 students, Cress (2008) found that students of color were the most likely to observe and experience discrimination in the classroom. Students of color

in the law classroom experienced peers and professors making comments that ranged from ignorant marginalization to outright offensive (Prince 2017, 37).

Strange, *et al.* (2001) argued that students need to experience safety in the classroom in order to succeed. As Dallinger-Lain (2017) explained, safety includes psychology safety, which is defined as, "the sense that one's identity, perspectives, and contributions are valuable, despite the experience or possibility of discomfort or harm within a learning setting" (Williams, *et al.* 2016, 18). To improve the classroom experience, faculty need to establish a psychological safe space (Dallinger-Lain 2017), break the habit of colorblindness and the silence norm (Dallinger-Lain 2017), and speak out during racialized interactions (Dallinger-Lain 2017; Pasque, *et al.* 2013). Moreover, faculty who help students understand a balanced view of contentious issues, acknowledge their own biases and privileges, and use their power to ensure class time is evenly distributed among varying perspectives in order to "generate the most effective class dialogues about race" (Dallinger-Lain 2017, 792).

In addition to how the instructor engages with students in the classroom, the curriculum and pedagogy can serve to reduce injustices. Ledesma (2014) wrote about how critical pedagogy can be used with experiential learning to show students first-hand the experiences of the marginalized clients they serve. Similarly, Smyth, *et al.* (2014) examined the application of critical pedagogy in the clinical classroom, highlighting that supervisors need to see theory as relevant to practice, and see themselves as teacher rather than as a manager overseeing the completion of a set of job tasks. Schwöbel-Patel (2016) wrote about the way professors can use critical pedagogy to teach international law, while al Attar (2021) focused on critiquing the eurocentricity of international legal education.

Taken as a whole, the literature suggests that professors should ensure a balanced curriculum that is representative of diverse perspectives and based upon relevant theory, such as critical pedagogy. Then, when delivering the curriculum in the classroom, professors need to be prepared to tackle racialized discussions from an honest and open position. If students of color

feel supported throughout their time in the legal classroom, they are more likely to persist in the profession. What remains to be understood is the extent to which professors are implementing these strategies to impact students of color. While qualitative research is available, larger quantitative surveys of student experiences with discrimination in law school would help reveal frequencies and track changes.

Conclusion

By deploying critical race theory and QuantCrit, researchers can view empirical literature and existing data through a lens that promotes a discussion of social justice action. Throughout these lenses, the literature and existing data from an interdisciplinary perspective challenged the dominant ideology that racial differences in data reflect issues to be addressed by individual students. This article showed how the problem of racial injustice in the legal profession pipeline may be explained by inequitable student experiences throughout the pipeline. Moreover, consistent with CRT, the focus remained centered on the idea that race and racism are inseparably linked. This literature, spanning decades, underscored the persistent nature of racial injustices. Ultimately, these systemic issues stalled social justice action.

As law schools set goals to increase student racial diversity, and as the law profession does the same, leaders need to be able to explain the systemic process related to race and racism. This article provided a compilation of some of the key recent literature that has demonstrated problems and solutions. Namely, institutions need to monitor racial representation in their own pipelines, from recruiting applicants to LSAT test scores, to admits, retained students, graduates, bar results, and employment outcomes. Institutions need to continue to explore the pros and cons related to switching away from the LSAT in law school admissions, including implications for accreditation, rankings, and the potential for racial bias in new approaches. For students who enter law school, institutions also need to consider to what extent are law professors creating psychologically

safe spaces, basing their practice on critical pedagogies, and representing diverse perspectives consistently in the curriculum. By implementing relevant strategies, institutions can measure improvements to diversity (*e.g.*, representation), inclusion (*e.g.*, whether perceptions of racial climate improve for students of color), and equity (*e.g.*, admission rates, retention rates, graduation rates, bar passage rates, and employment outcomes split by race/ethnic group).

Limitations and Future Research

A barrier to better understanding the pipeline is the lack of data from law schools. For example, future research is needed to understand from which majors law programs recruit, as an assumption was made that the top undergraduate programs from law students reflected areas of recruitment. If law schools examined the programs from which they recruit and specifically the racial/ethnic representation of students of color in those programs, a key missing piece of the pipeline may be revealed. Similarly, there is a lack of empirical research addressing race and racism in other recruiting processes for law schools.

Future researchers should also conduct a meta-analysis of admissions data to determine the overall predictive power of the LSAT. Since this test is a central gatekeeper to law school admissions that may function as a barrier for marginalized applicants, understanding the predictive abilities as well as racial disparities is needed. Additionally, research should be expanded to better understand trends in classroom experiences that impact retention, such as the extent to which professors are implementing documented best practices to improve racial justice in the classroom.

There is also ample literature examining the bar passage rates split by race/ethnicity, as well as inequities in bar preparation program access (as these programs come at high costs). This literature also needs to be considered by institutions who aim to improve racial justice. As this article focused on the experiences getting access to law school, and bar preparation is a post-law school activity, further research may be imperative in that regard.

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