

THE NEED FOR MEANINGFUL REPRESENTATION IN LEGAL EDUCATION

Zahraa Nasser & Marquan Robertson***

INTRODUCTION

Author: Zahraa Nasser

Law students receive the same piece of advice their first week of law school: cultivate relationships with your professors—they want to help you; just stop in and say hello. I looked up my professors when I received my first semester class schedule. I saw their accomplishments and prestigious formerly held positions and proceeded to close my internet tabs. We have nothing in common, I thought. How could we possibly connect?

The second week of the semester, I overheard discussions of clerkships, journals, and firm employment. All three were unfamiliar to me. I could tell I was already behind, and how could I not be when my classmates' relatives were professors, judges, and lawyers? I am the only person in my family to have applied to law school. Soon after, Notre Dame Law School's (NDLS) First Generation Professionals announced a panel in which first-generation professors would share their experiences navigating the legal world. I left that event feeling bittersweet. Although I discovered some professors who could relate to one aspect of my experience, few, if any, could understand my other challenges. Learning *Iqbal*¹ a couple of weeks into law school without addressing the anti-Muslim rhetoric made me wonder how I could practice in a legal system that discriminates against people of my faith. When I was denied flexibility to take my exams outside of the eighteen-hour-fast time window for Ramadan, I wished for an advocate to alleviate the stress of having to choose between my religious tenet and performing on the same level as my peers. I needed help, and I didn't know where to seek it.

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* Zahraa Nasser is a third-year law student at Notre Dame Law School.

** Marquan Robertson is a third-year law student at Notre Dame Law School.

1 *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Author: Marquan Robertson

Unsurprisingly, law school afforded me a similar experience. Suffering from the same paralysis explained above, I neglected reaching out to my professors in my first semester. Instead, I pivoted to upperclassmen, hoping they could provide insight on how to manage the imposter syndrome that prevented me from even considering office hour visits. Many of the upperclassmen I approached looked like me; my decision to be a 1L Representative for the Black Law Students Association (BLSA) contributed to this. All provided similar advice, usually consisting of the same few sentiments, such as, “Start with Professor Martinez!” and “Professor King is so easy for us to talk to!”

As thrilled as I was to finally have a starting point, I quickly realized how disappointing my collected advice actually was. I thought to myself, I’ve spoken to a dozen students and all of them recommended the same two professors. Although I have since found this sentiment to be as far as possible from the truth, I believed that these professors would likely be inundated with a backlog of minority students voicing the same concerns I had. To my own detriment, I allowed imposter syndrome to win, not once attending office hours in my first semester.

Our stories, although anecdotal, are indicative of the struggle many diverse students go through on their law school journey. We hope this Essay serves as a few things, chief among those is the call to further diversify the law faculty at NDLS. We believe that doing so will lead to increased success among diverse law students at NDLS, and also welcome more diverse students into the law school community through the admissions process.

I. UNDERREPRESENTED LAW STUDENTS BENEFIT FROM MINORITY FACULTY

It has long been established that legal education is generally more difficult for students of color and female students,² and the lack of meaningful faculty representation plays a contributing role. Minority students face increased adversity that hinders their ability to socially and academically integrate into their higher education institutions.³ Through mentoring and

² See Meera E. Deo, Walter R. Allen, A.T. Panter, Charles Daye & Linda Wightman, *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT’L BLACK L.J. 71, 73 & n.6 (2010).

³ See Elijah Genheimer, *The Impact of Minority Faculty and Staff Involvement on Minority Student Experiences* 5–7 (2016) (M.A. thesis, Taylor University), <https://pillars.taylor.edu/mahe/23>. Minority students are concerned with financial, social, and wellness challenges that their White peers are less likely to face. For example, several peers last semester were burdened with the fear of being unemployable due to the Trump Administration’s immigration policies. Others found it impossible to focus on academics because their communities were being racially targeted by hate groups. Some found themselves obsessively refreshing international news sites in class, hoping for updates on the status of their families in countries inflicted by war or natural disaster. Meanwhile,

advocacy, professors help students overcome these barriers and find satisfaction in their legal experience. Studies have shown that students of color rely more heavily on faculty for professional, personal, and academic support than White students do.⁴

Minority students' academic performance is improved by the availability of minority faculty. Minority faculty are more likely to incorporate diverse culture and experiences into their curriculum, enhancing the ways in which minority students are able to engage in the classroom.⁵ A 2002 study by Professors Fries-Britt and Turner found that even though students from historically Black colleges and universities (HBCUs) "usually come from lower economic backgrounds, score lower on standardized tests, and are disadvantaged by less adequate physical facilities and faculty with lower credentials," they received better learning outcomes than minority students at predominantly White institutions (PWIs).⁶ Studies further show: "[Ethnically] matched mentor relationships [show] greater gains in cumulative GPA and graduation rates than non-matched pairs."⁷ Minority students have trouble connecting to the majority of faculty, unable to discuss vulnerable issues that affect their day to day. This barrier hinders the development of long-lasting mentorships that increase students' overall satisfaction.

Minority students' overall vocational success and personal development is improved by the holistic mentoring opportunities that minority faculty are more likely to provide. Often, law professors are willing to connect students with opportunities that align with a student's interests. However, because minority law students struggle to personally connect with majority professors, genuine relationships are difficult to cultivate. Underrepresented law students feel the negative effects of this quickly—well-connected peers are set up with full-time vocational offers, prestigious internships, and judicial clerkships with just one semester's worth of grades. By the time underrepresented students learn the timeline of these processes through official school programming, their peers have already secured positions. This disparity follows the lawyer throughout their career as missed networking and mentorship opportunities. Increased accessibility to professors early on can help mitigate the disparity, and studies show that students from all

peers are organizing events that explicitly legitimize those same policies that threaten us or our families. Race-related incidents are not a rarity, and diverse law students often find themselves with few avenues to process and effectively address the incident.

4 Deo et al., *supra* note 2, at 95 tbl.4.

5 Genheimer, *supra* note 3, at 8.

6 *Id.* at 9–10 (quoting Sharon Fries-Britt & Bridget Turner, *Uneven Stories: Successful Black Collegians at a Black and a White Campus*, 25 REV. HIGHER EDUC. 315, 317 (2002)).

7 *Id.* at 9 (quoting Jolyn Dahlvig, *Mentoring of African American Students at a Predominantly White Institution (PWI)*, 9 CHRISTIAN HIGHER EDUC. 369, 371 (2010)).

backgrounds report female professors and professors of color are more accessible and engaging than their White male counterparts.⁸

II. LAW STUDENTS GENERALLY BENEFIT FROM A WIDER VARIETY OF PERSPECTIVES

The United States legal profession disproportionately trails behind other professions in terms of racial, ethnic, and gender diversity.⁹ This is troubling because it means lawyers are largely not representative of the communities they work with and impact. Diversity initiatives have been in place for over a decade, with little to no progress to show for it. Experts suggest that this is in part due to barriers such as implicit bias¹⁰ and structural policies and practices.¹¹ Intentional hiring of diverse law school faculty and increased variety of thought in the curriculum can help overcome these barriers.

Diverse learning environments enhance all students' educational experience, and an overwhelming majority of law students agree.¹² Topics discussed in law classrooms have political, ethical, and legal considerations that can be bolstered by the exchange of differing perspectives. Law professors are expected to contribute to scholarly discourse, and contributions from women and minority professors enrich the discourse by increasing the variety of styles of writing, positions, and debates.

Integration of diverse faculty fosters an environment of mutual respect and cross-cultural understanding that benefits students in their future professional careers.¹³ Elevating women and people of color to the esteemed position of tenured professor establishes that they are worthy of respect. It requires students to learn to communicate civilly when interacting with people from different backgrounds. In turn, the early exposure to highly esteemed minorities benefits all students when they enter the profession as lawyers in a society much more diverse than the likely PWI they attended for law school. Students would have already had the chance to become aware of their implicit biases and make active efforts to ensure no interference with their advocacy.

8 Deo et al., *supra* note 2, at 87.

9 Emma Bienias, Shruti Costales, Carly Lynch, Tam Thanh Pham, Rachael Rodman & Lonnie Rosenwald, *Implicit Bias in the Legal Profession*, IPO L.J., Nov. 2017, at 7.

10 "Implicit bias refers to the unconscious attitudes or stereotypes that affect our understanding, actions, and decisions. These biases—which can encompass both favorable and unfavorable assessments—manifest involuntarily without an individual's awareness or intentional control." *Id.* at 1.

11 *Id.* at 8.

12 Deo et al., *supra* note 2, at 81.

13 See John Hasnas, *The Quest for a Diverse Faculty: Theory and Practice*, 16 GEO. J.L. & PUB. POL'Y 753, 758–59 (2018).

III. TRADITIONAL BARRIERS TO BECOMING A LAW PROFESSOR ARE SLOWLY BEING TORN DOWN

Lack of diversity in law school professor ranks is certainly not a problem exclusive to Notre Dame. To the contrary, the legal profession as a whole appears to struggle with increasing the number of diverse faculty members. Most professors and hiring committees would hardly disagree that there needs to be a steady infusion of diverse talent, and yet statistics have shown that despite this recognition, there has been marginal improvement at best.¹⁴ The question raised then, is whether law faculty hiring practices are riddled with barriers that disproportionately affect diverse applicants? The short answer to this question is yes, although there is little proof to make the claim that the hiring process was intentionally designed to prevent diversity. Far more important than the barriers of the past are the openings of the future.

The legal profession has clearly acknowledged there is a lack of diversity and is attempting to make strides towards increasing inclusivity. In 2017, the Association of American Law Schools (AALS)—the primary employment mechanism for aspiring law professors—installed affirmative action policies to increase the number of minority hires.¹⁵ These policies call on law school deans to “set the tone,” ensuring that diversity is an emphasis in the hiring process.¹⁶ This push for diversity represents meaningful progress to the breaking down of traditional barriers in the legal academy. Still, the hiring process is, literally and figuratively, just the beginning to effectuating real change. The law schools that truly want to increase diversity within their ranks must focus on not just recruiting diverse talent, but also ensuring it is nurtured and allowed to thrive to assist with the retention of that talent.¹⁷

14 See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 19 (2019) (“Recent AALS statistics show that 62% of law professors are men and at least 71% are white; though faculty diversity is low now, it was even lower in past decades.”).

15 See *Diversity, Equal Opportunity and Affirmative Action*, ASS’N AM. L. SCHS., <https://www.aals.org/about/handbook/good-practices/diversity/> (last visited Feb. 1, 2021).

16 *Recruitment and Retention of Minority Law Faculty Members*, ASS’N AM. L. SCHS., <https://www.aals.org/about/handbook/good-practices/minority-law-faculty-members/> (last visited Feb. 1, 2021) (“Deans should set the tone regarding the importance of diversity in faculty hiring and recruiting by emphasizing the value of hiring racially and ethnically diverse candidates to their faculty.”).

17 DEO, *supra* note 14, at 39, 43 (hypothesizing that retention requires cultivation of a culture of inclusivity, and that one of the biggest factors of low retention is the silencing of minority faculty voices).

IV. NOTRE DAME, SPECIFICALLY

Since arriving at Notre Dame Law School, one thing has become increasingly apparent—the administration does not seek to follow the pack; it does not allow the decisions of outside entities to determine what is best for its students, and this insularity provides an advantage to the law school community. This was proven during the unprecedented switch to online classes, the decision thereafter to provide an opportunity for grades to students, and perhaps the biggest one of all, opting to allow in-person courses this most recent semester. All of these decisions boil down to one irrefutable fact: NDLS has proven itself to be a trailblazing institution, with the respect and attention of the nation. Given this, it stands to reason that NDLS could take advantage of its national profile by spearheading the legal profession's push for increased diversity in law faculty ranks, effectively adding to this profile and supporting its own students in the process.

One area where NDLS has successfully put together an impressive support system is through its hiring of first-generation faculty members. As previously mentioned, the panel for first-generation students held in our first semester was extremely eye-opening and springboarded many students into meaningful relationships with NDLS faculty. Faculty members like Professors Kozel, Garnett, Blanchard, and Velasco sharing their experiences assured those in attendance that they were not alone, and that they had understanding options. NDLS should seek to mirror the strides in first-generation faculty across the diversity spectrum.

Intention itself is not the problem though. There are external factors that cut against any desire for improvement. Conversations with NDLS faculty have indicated that there may in fact be a chicken-and-the-egg situation at play. More specifically, diverse applicants oftentimes flock to schools where there are others like them already. Unfortunately, this often means that schools that desire to increase diversity will have a more difficult time accomplishing this, precisely because they lack diversity. It will take creative solutions, beyond typical AALS recruiting, to address this cyclical dilemma.

Another area in which NDLS can find itself disadvantaged is in the geographical factor. An inescapable fact is that geography plays a role in where people settle down and choose to stay for their careers. Diverse candidates are now a hot commodity in today's academic world, and this means that they often have many choices of where to lay roots. The Midwest and South Bend communities may not be as appealing to some as they are to others, and this is the type of intangible that NDLS cannot simply wish away. This can make tenure positions a hard sell to some diverse candidates, despite the academic excellence and recognition that NDLS offers.

V. PROPOSED SOLUTIONS FOR THE LEGAL COMMUNITY

A. Long-Term Solutions

NDLS is a true community, and it should take advantage of this when developing a long-term plan to increase diversity within the halls and legal profession. First and foremost, NDLS should continue to make certain that the tenure process is transparent. Aspiring scholars have expressed that they are willing to deal with an exhausting process, so long as they can ensure they are on track and progressing toward tenure.¹⁸ After improving transparency, NDLS must remain vigilant in how it evaluates young professors, accounting for the aforementioned implicit biases of faculty and even students.¹⁹ The requirements for obtaining tenure at most law schools are divided into three distinct categories: teaching, service, and scholarship.²⁰

An unexplored area for improvement in the tenure process can be found in the teaching component. This provides a unique opportunity to call for not just faculty, but also students, to share the burden in ridding the tenure process of implicit biases. Student reviews and classroom interactions are a critical factor of the teaching category. Diverse professors are often subjected to denials for promotion due to perceived “poor” teaching stemming from student reviews.²¹ Students must be aware of their implicit biases in classroom interactions, ensuring they are not overly combative or questioning the intelligence of their diverse professors, in order to create a comfortable and fair classroom environment and tenure process. To that point, NDLS can preemptively address the implicit biases many students hold against diverse professors through e-mail blasts and in the orientation process. Faculty and administrators are not the only entities responsible for making an inclusive environment; students can be extremely powerful influencers in retention efforts and being consciously aware of this fact could make all the difference.

As mentioned in Part IV, attracting qualified, diverse candidates is difficult. One way to overcome this barrier is to provide increased support and resources for diverse candidates. In 2017, NDLS hosted a workshop, “Preparing for the Legal Academy.”²² This workshop came about as a result of NDLS acknowledging the opaqueness of the hiring process. NDLS

18 *Id.* at 82.

19 *Id.* (“Even when policies are clearly laid out, the way that various requirements are applied to women of color and other underrepresented faculty affects both the process and the outcome.”).

20 *Id.* at 85.

21 *See, e.g., id.* at 86–87.

22 Kevin Allen, *ND Law School Workshop Prepares Future Professors*, NOTRE DAME L. SCH. NEWS (Apr. 17, 2017), <https://law.nd.edu/news-events/news/nd-law-school-workshop-prepares-future-professors/>.

professors met with prospective candidates over the course of two days and provided the opportunity to discuss scholarship, receive feedback on research, and learn the expectations of applying for legal teaching positions. NDLS had the capacity to effectively host ten participants, but with the support of other leading institutions, this initiative has great potential for expansion. By hosting regular conferences with expansive regional scope to help mentor and create qualified candidates, law schools can proactively contribute to the availability of diverse faculty.

A robust support system for diverse candidates can help overcome the school's disadvantages discussed in Part IV. Inclusion efforts do not stop at acquiring diverse professors—legal education institutions should increase their efforts in supporting and equipping these professors. Minority professors are instantly tasked with more responsibilities than their majority counterparts. They feel expected to represent their culture to their colleagues and become one of few available mentors to diverse students.²³ They deal with both implicit biases and overt prejudice from their colleagues, causing stressful work environments. Minority professors find themselves doing more, and this takes away from their work in more highly regarded services, such as research and scholarship. Increasing awareness of the disparity in mental exertion and providing additional incentives and systems of support to minority professors proves the institution's commitment to diversity efforts.

B. Short-Term Solution

As discussed in our own reflections and in Part I of this Essay, underrepresented law students struggle reaching out to professors and forming meaningful relationships. The diversity problem amongst faculty is not going to be resolved overnight, and minority law students are still disparately impacted. Implementing a formal mentorship program pairing together students and professors alleviates students' discomfort. NDLS operates a program that randomly assigns 1Ls to a willing mentor professor. The limited diverse faculty makes it difficult to assign same social group pairs, but a more intentional pairing process is still more effective than the current process. For example, when pairing 1Ls with student mentors, the Student Bar Association (SBA) asks the 1Ls to indicate certain interests so that they can make compatible pairings. Implementing a similar system for professor-student mentorship pairings can help match viewpoints and interests, facilitating easy conversation with the shared goal of a genuine, long-term relationship. Furthermore, creating a more intentional matching process will alleviate students' concerns that they are bothering or overcrowding professors. A calculated match signals to students that they were assigned to

23 Genheimer, *supra* note 3, at 7–8.

a professor for a reason, and this professor truly desires to hear from them because they signed up to receive a predetermined mentee.

CONCLUSION

NDLS is an undoubtedly special place. Time spent in this community can be an unrivaled experience in one's life. Unfortunately, for many diverse students this can mean unrivaled difficulty and discomfort. This problem is not exclusive to NDLS and is not unacknowledged by law schools and the greater legal profession. Progress has been made at a snail's pace, but it is certainly being made. This Essay calls on NDLS, in its capacity as trailblazer and industry leader, to leverage its influence to continue to innovate the professor-hiring landscape. More diverse professors will lead to better minority student experience, increased social civility, and a better representation of the community we all intend to engage in after graduation. Again, NDLS is special, and it is prepared to take on the responsibility to push forward change.