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EMPOWERMENT AND ACHIEVEMENT IN MINORITY LAW STUDENT SUPPORT PROGRAMS: CONSTRUCTING AFFIRMATIVE ACTION

Leslie G. Espinoza*

Minorities are still drastically underrepresented in the legal profession—total minority representation in the legal profession is less than one-fifth of the percentage of racial minorities in the population. These statistics indicate a lack of access by minorities to legal education, as well as a lack of access to legal services by the minority community.

In March of 1988, the Minority Affairs Committee of the Law School Admissions Council ("LSAC") issued a summary report on special law school programs for minority law students. The Report is based on responses to a questionnaire sent to all LSAC member law schools. One hundred and twenty-eight schools responded. The special academic support programs for minority students in the Report included: 1) summer orientation programs, 2) tutorial programs, and 3) legal writing programs.

* Associate Professor of Law, University of Arizona College of Law. J.D., Harvard Law School, 1977. I am indebted to Professors Richard Delgado and Rob Williams for their insightful comments, advice, and encouragement. With gratitude, I also acknowledge Dean Kenney Hegland for his continuing support of minority law student programs at the University of Arizona and Professors Trina Grillo, John Martinez, Barbara Atwood, and Andrew Silverman for their helpful suggestions. Finally, I thank Professor Laurence Tribe who in 1975 inspired in me, a then alienated law student, a love for the study of law.

4. Other nonacademic, special support programs in the LSAC Report included recruitment programs and miscellaneous other programs. The Report is based on a questionnaire sent to all LSAC member schools, approximately 180 law schools. Of the 128 schools responding, 81 law schools have a minority recruitment program, 51 have a summer orientation program, 59 have a tutorial program, 32 have a legal writing program, and 58 have other special programs for minority students. LSAC Report, supra note 3, at 5.
Disturbingly, the LSAC Report reveals that nearly half of the 128 responding law schools have no academic support program for minorities. This lack of support exposes the apathy—and hostility—of many in legal education towards affirmative action. The mere existence of support programs is hardly comforting. The LSAC Report does not address, and most law schools have ignored, the assumption that too often underlies academic support. The message support programs relay to minority students is not encouragement and empowerment; the message is incompetence and the predictive certainty of failure. The law schools’ attitude toward affirmative action is telegraphed through support programs and can be a powerful force in making the belief of incompetence a reality. Until the message changes, academic support programs are destined to fail.

Part I of this Article reviews the findings of the LSAC Report. The LSAC Report is a good beginning for an understanding of the structure of current minority academic support programs. The data provided by the Report, particularly regarding student selection criteria, demonstrates the link between support programs and affirmative action. Part II explores the stigma exacerbated by many academic support programs and the prejudice that stigma perpetuates. Part III examines law school myopia in approach and design of academic support programs. Academic support should do more than reiterate, albeit at a slow and studied pace, earlier classroom material. Students with a different acculturation require new approaches to material. Finally, Part IV describes concrete, affirmative measures to ameliorate the prejudice that isolates and undermines minority law students, the most important of which is the hiring of minority law faculty.

Academic support programs are rarely comprehensive. Most are developed in isolation, fragmented in execution, and continued without evaluation. More is needed than a piecemeal attempt to help a few students, generally those with low scores on the Law School Aptitude Test (the “LSAT”). Without an institutional commitment to and evaluation of academic support programs for minorities, we create a mere palliative to our own

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5. Of the 128 schools responding, 109 report having special programs for minorities. LSAC REPORT, supra note 3, at 5. Thirty-two, however, had no academic support programs for minorities. Id. at 32-42. These 32, in addition to the 18 that have no special programs for minorities at all, put the number of law schools without academic support programs for minorities at 50. As only 97 of the 109 provided school-specific information, 12 remain unaccounted for. Id. at 11.
guilt about the high attrition rate of minority students from law school, a rate nearly twice that of white students.  

Poorly designed law school support programs, even when arising out of the best of motives, may well make things worse for minority students. Too little is known of the minority experience in law school and of how support programs affect minority students. Thus, the assessment of such programs should be more than a numbers game of "Do we have one?" More important than the fear that there is an insufficient commitment to minority law student success in law school is the fear that the programs that are implemented may be counterproductive.

I. THE LSAC REPORT ON SPECIAL PROGRAMS FOR MINORITIES

The LSAC Report is a significant first step in expanding the law school community's knowledge about programs for minorities. There are many academic support programs, but there are not enough. Only two-thirds of the schools that permitted identification by name in the Report have any kind of academic support program—either a summer orientation program, a tutorial program, or a writing program. Of the identified schools,

6. A Report on the NBA/ABA Legal Education Conference: An Assessment of Minority Students' Performance in Law School: Implications for Admission, Placement and Bar Passage, (N. Skillman ed.) 20 U.S.F. L. Rev. 525, 548 (1986) [hereinafter Report] (summarizing R. Smith's report on the preliminary findings of his comprehensive study); see also Hamlar, Minority Tokenism in American Law Schools, 26 How. L.J. 443, 532 (stating that in 1979-80 the minority attrition rate was 22.88%, almost double that of all law students.).

7. Cf. Ripps, A Curriculum Course Designed for Lowering the Attrition Rate for the Disadvantaged Law Student, 29 How. L.J. 457, 461-62 (1986) (citing Panos, Picking Winners or Developing Potential, 81 SCH. REV. 437 (1973)). The manner of providing compensatory education for minority undergraduate students has long been criticized: "[T]he classification of minority students into a collective, homogeneous body, funneled into segregated remedial classes, branded these students as different and caused their failure to fully integrate on campus." Id. at 462.

8. Id. at 458 (There is a "void of available empirical data as to these [undergraduate and graduate compensatory education] programs where one can analyze them and measure their success."); see also id. at 462 (indicating a lack of evaluation of undergraduate support programs).

9. The data contained in the Report are dependent on the reporting schools regarding a given program for minority students as a "special program." LSAC REPORT, supra note 3, at 2-3.

10. Of the 128 schools responding, 31 did not want their responses identified by school and thus are included only as part of the overall data summary. LSAC REPORT, supra note 3, at 1; cf. supra note 4 (citing overall data).

11. The "other program" category of the Report is not included as academic support. Of the 97 schools reporting school-specific information, 52 schools reported other special programs. Broadly categorized, the programs in the "other" category include: "Big
less than half have a summer orientation program, half have a
tutorial program, and approximately one-fourth have a special
writing program. Furthermore, the programs tend to be con-
centrated in relatively few schools.

While most schools do not provide a substantive description
of their academic support program, the descriptions of programs
given by some schools in the "law school comment" section of
the Report give a flavor for the differences among minority sup-
port programs. Thirteen schools provide some description of
their summer orientation program. Two schools have summer
programs where minority students take one or two first year
courses and thus have a reduced load during the first year. Other
summer programs range from an extensive two week im-
ersion in the law school experience to an afternoon's dipping
of the toe following first-year orientation.

Fifteen schools described their tutorial programs to some de-
gree. UCLA provided a detailed description of an innovative and
comprehensive program involving both student-led and faculty-
led tutorials. Uniquely, the University of Baltimore School of
Law reported instituting a comprehensive evaluation of its tutor-
ial program.

Brother/Big Sister" programs (4); "Minority Day" programs (7);
support for minority student associations (12); minority student placement seminars (5); bar preparation pro-
gram (1); recruitment/"pre-law day" programs (10); and minority admissions programs
(7). LSAC REPORT, supra note 3, at 142-44.

12. Of the 97 schools providing school-specific information, 65 schools have some
kind of academic support program, either a summer orientation program, a tutorial pro-
gram, or a writing program. Of these 97 schools, 46 have a summer orientation program,
54 have a tutorial program, and 29 have a special writing program. Id. at 32-42.

13. Of the 97 schools identified, 18 report having all three support programs and 24
schools have two programs. Furthermore, 27 schools have but one program (eight have
only a summer orientation program, 16 have only a tutorial program, three have only a
writing program), and 32 have no academic support program at all. LSAC REPORT, supra
note 3, at 32-42, 73-164.

14. The two schools are Texas Tech University School of Law and Wayne State Uni-
versity Law School. LSAC REPORT, supra note 3, at 85-86.

15. UCLA's student-led tutorials are led by third-year student tutors who attend a
first-year class and lead weekly review sessions for that class. The tutorials are open to
all first-year students; the tutors are paid for their time. Faculty-led tutorials are held
both on a group and an individual basis. Faculty members volunteer their time. In the
first semester, students are selected for participation based on GPA, LSAT, and Index
(the single-number ranking done by ETS for individual law schools based on a variable
weighting of a student's LSAT score and GPA). In the spring semester, students are
invited to participate based on their fall grades. LSAC REPORT, supra note 3, at 101.

16. "Questionnaires will be sent to student advisors, advisees, attorney mentors, and
faculty advisors in order to assess the effectiveness of the workshop from their respective
viewpoints upon completion of the fall and spring semesters." LSAC REPORT, supra note
3, at 100.
Ten schools gave some description of their writing program for minority students. Some of these programs included an intensive multi-week writing seminar, some a special minority writing section of the usual legal writing course, some a writing "enhancement" program offered in addition to the regular legal methods course, and some a writing "lab" for minority students. At least two programs employed non-law faculty with advanced degrees in English.

Academic support programs vary so much in design and scope that it is really a misnomer to identify them by broad categories. There is, however, one characteristic that they almost universally share—the student selection criteria. Selection criteria is indeed the common ground occupied by "minority" academic support programs. It is the foundation that commands structure. It both masks the institution's underlying attitude toward minority participation in the academy and painfully reveals the contradiction of the institution's demands and expectations.

Those schools with substantial summer orientation programs usually select students for the program by using LSAT, GPA, and/or Index. Race is used as a criterion primarily for those schools providing a briefer summer orientation (a sort of welcoming of the minorities to the law school).

For tutorial programs, students are overwhelmingly selected based on their LSAT, GPA, and Index. Eighteen schools exclusively use these indicators, thirteen schools use these indicators combined with race and/or economic background, eight schools use race, six schools open tutorials to all first-year students, five schools select students for participation in tutorials based on first semester or other academic performance, and one school uses an analysis of orientation examinations to select students for its tutorials.

Legal writing programs also select eligible students on the basis of LSAT, GPA, and Index. Seven schools use these indicators, eight use these indicators with race, two use the LSAT writing sample, two select by performance, one uses only race, one uses only race, and one uses only race.

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17. South Texas College of Law and University of Wisconsin Law School. LSAC Report, supra note 3, at 131, 133.
18. Id. at 88-96. Four of the schools with substantial orientation programs indicated that admission to the law school was dependent on performance in the summer program.
19. Id. at 115-24. Five schools require participation by selected students in the tutorial program; the remaining schools are split between strongly urging participation and making participation voluntary.
20. Id. at 134-39. Ten schools require selected students to participate; the remaining schools either strongly urge participation to selected students or encourage the students to volunteer for the writing program.
four are open to all students, and five use some other selection criteria. Thus, admission criteria guide the composition of academic support programs. For the student, "objective" criteria are supposed to take the sting out of the law school's statement that success is not expected. Predictors are also comforting for the law school; they dictate amelioration of the bad score by traditional remedial education. In reality they serve as prior justifications for the failure of academic support for minority law students. Use of predictors allows law schools to ignore their role in perpetuating the cycle of failure—ill-funded, inconsistent from year to year, and poorly designed, the programs most tragically undermine the minority law student's belief in his or her own ability to achieve.

II. THE STIGMATIZING EFFECTS OF CURRENT SUPPORT PROGRAMS

The stigma that academic support programs engender is not an argument to abolish them but a demand to carefully design them. Indeed, the label given to academic support programs reflects the double message we send minority students. The use of the terms "retention" and "tutorial" evokes a vision of failure and incompetence. Such terms create an expectation that the best a minority student can hope to do is survive.21 Nevertheless, academic support for minority students can be helpful.22 Academic support recognizes that educational opportunities for minority students are not equal to those of other students in America.23 Such programs are legally valid, may be legally re-


22. Though there are little evaluation data on graduate support programs, limited studies of minority undergraduate support programs conducted in the mid-1970s revealed that, "although compensatory programs were unable to narrow the 'achievement deficit' between the advantaged and disadvantaged students, they did significantly improve the academic performance of disadvantaged students." Ripps, supra note 7, at 462; see also infra notes 26 and 57 (success of Council for Legal Educational Opportunity (CLEO) program).

23. "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'You are free to compete with all the others,' and still justly believe that you have been completely fair." Hamlar, supra note 6, at 534 (citing President L.B. Johnson at the commencement address at Howard University on June 4, 1965).
quired, and should be embraced by the educational community as a moral obligation to our society.

In selecting students for academic support programs, law schools primarily rely on "objective" predictors, particularly the LSAT. This choice reveals that support programs are extensions of affirmative action programs. It suggests the ambiguity and ambivalence felt about affirmative action. Law school affirmative action programs too often are perceived as a "lowering of standards" to allow access to minorities. Blinded by belief in a measurable meritocracy, those who design academic support programs fail to recognize that the standard criteria for admission may well be inapplicable to minorities with different cultural experiences. The nature of affirmative action dictates that while there will be a few nonminority, "diversity" students in support programs using predictors as selection criteria, unquestionably the vast majority of students with low predictors will be minority. Thus there is a double bind. If a school uses race as a selection criterion for academic support programs, there is a fear that it will be called racist. Furthermore, students not in need of aid, such as minority students with high or average predictors, may suffer stigma, and some nonminority students may not receive needed help. On the other hand, the use of predictors creates "retention" groups that are almost entirely minority. Such selection relies upon the predictors used for law school admission, while wrongly suggesting that such predictors are necessarily accurate and reliable. LSAT scores and GPAs, however, are merely admission criteria for all other students in the law school, flaunted by some, hidden by others, forgotten by most. For minority students, the use of predictors to select students for support programs may turn scores and grades into a

24. See, e.g., Lau v. Nichols, 414 U.S. 563 (1974)(holding that the city of San Francisco violated Title VI of the Civil Rights Act by failing to "equalize educational opportunity" by providing academic support programs for non-English speaking Chinese students).

25. See Smith, Beyond DeFunis: Testing the Nation's Will, 4 BLACK L.J. 457, 458 (1975)("The focusing of national attention on the admission policies of law schools [in the DeFunis case] . . . has caused irreparable injury to a whole generation of minority attorneys. That unarticulated but omnipresent presumption of incompetence has been given substance.").

26. The CLEO program, a performance-based admissions program for minority students, represents an alternative approach. Report, supra note 6, at 533 (summarizing L. Flores' report on CLEO).

27. The designation by law schools of programs using LSAT/GPA/Index criteria as "special . . . programs for minority students" in the LSAC Report explicitly recognizes this fact. LSAC Report, supra note 3, at 12.
mantle to be worn throughout law school, not to be discarded until practice.\textsuperscript{28} Institutions should not forget and

[s]tudents admitted to law school should remember that LSAT scores are only statistical predictions that are accurate less than fifty percent of the time. The information they provide serves a useful purpose for harried law school admissions officers with far more applicants than first-year places, but they should not be permitted to neutralize those survival strengths without which most minority-group students would never have reached the professional school level.\textsuperscript{29}

What happens when we take a group of students who have been educationally and economically deprived, who are excited about being the first in their family or neighborhood to attend law school, who are painfully aware of their LSAT score and undergraduate GPA (the "objective" criteria for admission),\textsuperscript{30} and we place these students in their first semester of law school into a special remedial program with the explicit message that, "You are going to have problems"? Not surprisingly, many of these students have academic problems. Of course, this does not mean that the remedial program was the cause of academic problems or that predictors have no validity. Indeed, it is likely that the support program did provide assistance. It is also likely, how-

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\textsuperscript{28} Although not labelled "inherently" inferior, minority students admitted under these [preferential admission] programs are nonetheless considered "less qualified" than rejected white applicants. These explicit statements by state officials risk perpetuation of stereotypes and interfere with the potential benefits of student interactions and scholastic accomplishments which should dispel derogatory assumptions . . . \textit{Brown v. Board of Education}'s teachings not only allows [sic] a successful defense of admission programs conscious of race, but also demands that they be defended and implemented in a way which nullifies rather than perpetuates racial prejudice.


\textsuperscript{30} \textit{Bell, Law School Exams and Minority-Group Students}, 7 \textit{BLACK L.J.} 304, 307 n.5 (1981); see also Hathaway, \textit{The Mythical Meritocracy of Law School Admissions}, 34 \textit{J. LEGAL EDUC.} 86 (1984) (arguing that over the course of the J.D. program, the LSAT is a "particularly inaccurate predictor of academic success for various subgroups including men, younger students, and members of racial minorities."); Romero, \textit{An Assessment of Affirmative Action in Law School Admissions After Fifteen Years: A Need For Re-Commitment}, 34 \textit{J. LEGAL EDUC.} 430, 433 n.19 (1984).

\textit{Cochran, The Law Schools' Programmatic Approach to Black Students}, 17 How. L.J. 358, 365 (1972) (citing James McPherson (a moving description of the thoughts of a minority student deciding to attend law school while knowing he has been admitted because of his race)); see also Hamlar, \textsuperscript{supra} note 6, at 536.
ever, that the support program damaged the students' self-expectations. The stigmatizing effects of such programs create self-doubt in the minority student and reduce the effectiveness of the program.

Programs that create a visible, insular group of students, all or most of whom are easily identifiable inside and outside of class as minority students, send a message of incompetence, say to the community that the group will perform poorly, and undoubtedly impede integration of these students. Segregation affects motivation. Much of academic success stems from a sense of confidence. Without a sense of confidence a student will be afraid to venture, to become involved in the material being studied. This is particularly true in law school. Much of the first semester classroom experience is learning to make arguments and fighting to defend them. To engage in classroom discussion one must be willing to make mistakes and to be found out. This experience is difficult for all students not accustomed to being challenged. It can be devastating for a minority student who has already been segregated into the group doomed to survival at best, failure at worst. For every minority whose face and name stand out from the crowd, every response to a question or comment in discussion becomes a time of judgment. Every mistake is seen not only as an error, but as a reaffirmation of the prediction of failure. Every failure is seen not only as a reflection on the individual, but as an assessment of the individual's racial or ethnic group.

There is no question that law faculty are central to this dynamic. "Sensitive" faculty are hesitant to call on minority students or to press them in class. Those opposed to affirmative action see every error as ammunition to be used against the

31. The now classic documentary on racism, "A Class Divided," amply demonstrates this effect. Jane Elliot, a third-grade teacher, divided her class into two groups—blue-eyed children and brown-eyed children—and then discriminated against one group in favor of the other. The discrimination affected the test scores of both groups. The oppressed group performed poorly, while the dominant group performed well. The results were precisely opposite when the two groups switched roles. Brooks, Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?, 20 U.S.F. L. Rev. 419, 426 n.21 (1986).

32. White, supra note 28, at 381 (citing Brown v. Board of Education, 347 U.S. 483 (1954)). "The first cause of lower educational achievement among minority students is the sense of inferiority generated by segregated facilities of any sort. The Supreme Court in Brown was aware of this when it noted that a sense of inferiority affects the motivation of a child to learn." Id.

33. Hamlar, supra note 6, at 536. Discussing the LSAT's effect, Hamlar cites a MALDEF Study, which notes that: "lack of confidence can be a dominant cause of a student's academic problems" (emphasis in original); see also Cochran, supra note 30, at 365.
"lowering of standards." To benefit from the law school experience students must be encouraged to articulate their thoughts. Participation is central to the learning process. It is the foundation for writing. Law school examinations, like legal briefs, confront the advocate with a problem and demand presentation of arguments. Ability to write is closely linked with willingness to write. Law schools must not undermine the courage to make mistakes.

When affirmative action is seen as a gift to an "underqualified" minority, little attention is given to stigma. It is the price of affirmative action. That price is paid by minority law students. The bargain is a good one for the law school. The school meets its social obligation by the affirmative action program and the existence of the support program. If the student fails, well, it was to be expected. The path of discouragement, isolation, alienation, and failure proves the assumption of incompetence underlying the whole of affirmative action.

III. THE PROBLEM OF PROGRAM DESIGN

The focus of most academic support programs is remedial. The programs are structured by faculty or administrators to address the anticipated or perceived needs of minority students. Unfortunately, few of those creating the programs have ever been minority law students. There is indeed a woefully inadequate number of minority law professors. The recent Society of American Law Teaching (SALT) study found that twenty-eight law schools have no minority faculty, thirty-two have only one, twenty have only two, and only fourteen law schools (excluding historically black schools) have more than two minority faculty. Thus, most support programs are established and implemented by persons who have no experience as a minority law student.

34. It may be that stigma not only affects the performance of minority students, but also, by reinforcing the prejudice of those in power, causes certain law professors not to recognize performance that is different from their negative expectations. Report, supra note 6, at 538 (summarizing V. Gordon's presentation on the experiences of black graduate students).


36. Ripps, supra note 7, at 468 (asserting that "[g]etting the students to speak well translates into better writing and more confident students").

The usual support program is designed to develop the "skill" most valued by law professors—writing, including basic spelling, grammar, sentence structure, and issue spotting. Although support and development of these skills are important, they are only a limited part of the true support minority law students need.

Minority law students face a duality of expectations. Many of the majority law students and faculty expect the minority student to be less capable. At the same time, the minority students’ families and communities as well as other law students, faculty, and administrators characterize them as “super student.” The first image, the image of inferiority, excludes them from the natural information and networking system of the first year of law school. They will not be invited to join study groups, and will have difficulty developing personal relationships with faculty. The second image, the image of altruism and omnipotence, makes minority law students a symbol for their race. They are expected to have an unending commitment to the “community,” beginning with the law school community. While experiencing all the academic pressures of majority students, minority students are expected to engage in the admissions process, including recruitment, committee work, and encouragement of individual candidates for enrollment. They must continually carry on the fight for affirmative action in admissions. It is expected that minority students will participate in and sometimes run orientation programs. Upper-class students are expected to offer tutorials. The minority law students association must function as a support for all minorities and be visible to the outside community. On a subtler level, minority students are expected to fulfill the access obligation of the law school to the outside community.

39. See, e.g., Hamlar, supra note 6, at 553 (“[M]any [first-year minority students] are unaware of the existence of law reviews . . . .”); cf. Simon, Judicial Clerkships and Elite Professional Culture, 36 J. LEGAL EDUC. 129 (1986) (documenting the elitism of judicial clerkships).
40. See Bell, supra note 29, at 311 (noting the value of study groups, but that study groups composed entirely of minority students often spend their time reviewing their difficulties, not their courses).
41. Lawrence, supra note 37, at 435 (noting that “[e]ven those minority students who have excelled academically are less likely than their white counterparts to have developed personal relationships with their white professors”).
42. This is analogous to the pressures put on minority law professors. Brooks, supra note 31, at 420; Moran, supra note 38, at 508.
They are not supposed to be concerned about money, but are expected to dedicate themselves to legal services for the poor.\textsuperscript{43}

The reality for most minority students is shaped by these images. Minority law students try to straddle two cultures. On a mundane level, this means they come to law school without the same level of familiarity with law related topics. They have not been exposed to commercial and legal concepts. They have different approaches to study and have not developed a method to synthesize and organize large quantities of written material. On a symbolic level, the minority student has a different understanding of the meaning of language based on a different culture and life experience. Because all law professors "teach what [they] have lived,"\textsuperscript{44} too often minority students do not share understanding with the majority.\textsuperscript{45} Unfortunately, this results in a "painfully long" adjustment period for many first-year minority students.\textsuperscript{46} To facilitate rapid adjustment, the design of academic support programs for minority law students must provide for networking and acculturation, as well as for writing and substantive review.

\section*{IV. A Comprehensive Approach to Academic Support}

\subsection*{A. Minority Law Faculty—The Foundation of Support}

Minority law students need a vision of themselves that is accurate and empowering. Support programs must focus less on the remedial and more on acculturation. To be truly effective, support programs should be designed and implemented by those affected.\textsuperscript{47} Optimally, this means minority faculty involvement

\begin{itemize}
\item \textsuperscript{43} Despite these unrealistic and demanding expectations, minority students often experience resentment on the part of majority students for the support they do receive. See, e.g., Rappaport, The Legal Educational Opportunity Program At UCLA: Eight Years of Experience, 4 BLACK L.J. 506, 513 (1975) (discussing white students' resentment of minority tutorial program).
\item \textsuperscript{44} Moran, \textit{supra} note 38, at 511 (quoting Christopher Edley) (emphasis in original).
\item \textsuperscript{45} Skillman, \textit{supra} note 21, at 555 (stating that minority students tend to approach legal problems through the "translucent glasses" of social justice. Skillman notes that students should be informed that "the achievement of social justice is not the overriding policy concern of the legal system.").
\item \textsuperscript{46} Hamlar, \textit{supra} note 6, at 535 (quoting J. Kupers' observations in the MALDEF Study); Romero, \textit{supra} note 29.
\item \textsuperscript{47} Cf. Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Pa. L. Rev. 561, 572 (1984) (In legal scholarship, "[t]he uniformity of life experience of the inner circle of writers may color not only the way they conceptualize and frame problems of race, but also the solutions or remedies they devise.").
\end{itemize}
Constructing Affirmative Action in the design process. At minimum, this requires the incorporation of student evaluation of a support program into its design.

Minority faculty provide concrete role models for minority law students. They dispel the myth of preordained mediocrity for minorities. Minority faculty challenge the idea of "diversity" in law school admissions which is too often translated as the presence of interesting "oddities" in the classroom. Minority faculty, though they may be marginalized and undermined by some, do represent power. Statistically, their presence means a higher retention of minority students. Their perceived accessibility creates a resource for advice and support. Minority faculty inspire confidence by their example; they provide perspective by their shared cultural experience.

B. Summer Programs—A Framework for Law School

A positive academic support program can take many shapes. Ideally, a "program" means more than just one activity. Minority students, like their majority counterparts, are individuals. Though they share a culture within their own racial or ethnic group, they have unique educational experiences and individual strengths and weaknesses. Summer programs, first-year programs, and continuing support programs all have much to offer.

The model for a comprehensive summer program is CLEO. CLEO is a program designed to replicate the intensity of the first year of law school. On a regional basis, CLEO operates six-week, in-residence programs for educationally and economically disadvantaged students. It aims more at psychological and cul-

48. Id. at 570 n.46 (criticizing utility-based justifications of affirmative action programs made by majority scholars who argue that diversity is educationally valuable to the majority). The author argues that "such an admissions program may well be perceived as treating the minority admittee as an ornament, a curiosity, one who brings an element of the piquant to the lives of white professors and students. Do not women treated in this manner complain, rightly, for the same reasons?"

49. Report, supra note 6, at 532 (summarizing R. Smith's findings) ("The study found that the presence of minority faculty had a positive (statistically significant) relationship upon the retention rate of first-year black students.")

50. Report, supra note 6, at 539 (summarizing J. Jones' observations); Cochran, supra note 30, at 380.

51. Unfortunately, most minority faculty are isolated as a "Society of One." Moran, supra note 38, at 512. Few law schools have more than one minority faculty member. Lawrence, supra note 37, at 441. Thus, unlike her majority colleagues, the minority professor bears a heavy burden to her students.

52. CLEO was established in 1968. Ripps, supra note 7, at 465.

53. CLEO is an admissions program as well as a support program. CLEO provides many students who otherwise would not be admitted to law school, even under preferen-
tural adaptation than at compensatory education. And CLEO is a proven success both in terms of law school retention and bar passage.

Importantly, CLEO has always emphasized the hiring of minority faculty. The teaching assistants are minority students who have themselves been successful in law school. These role models create an atmosphere in which minority law students can thrive. The students can experience the frustration and confusion of the first year; they can articulate and address their problems without loss of confidence. CLEO students all know they have a real chance to excel at the institute. And their success can, with hard work, continue throughout law school and their future careers.

The success of the CLEO programs has been ably described elsewhere. All law schools should be encouraged to participate. However, CLEO is limited in the number of students it can accommodate. Law schools concerned that students with low predictors need additional work on basic skills would do well to consider a supplemental summer support program for minority students who did not attend CLEO. Schools that choose not to be members of CLEO should consider a comprehensive summer support program. CLEO is a case study of what works and is an available model for new programs.

There are many advantages to summer academic support programs for minority law students. A summer program can provide support without the stigma and isolation that a school year program may create. Majority students are not present. No one asks "Why are you in that writing group?" In addition, this ap-
approach does not overburden first-year students with extra writing projects or extra classes to attend. In a summer program, minority students can forge a support system not only of other minority students but also of faculty.

One of the disadvantages of summer programs can be the financial burden to the student for time lost from work. Programs that operate on a part-time basis for employed students, however, are not nearly as effective. To account for this, CLEO provides financial support in the form of a stipend for students successfully completing the program. Financial support to attend a summer program as well as to supplement lost wages is a crucial part of a successful summer program as well.

C. Academic Year Programs—A Base for Operations and A Shelter from the Storm

Summer programs do not eliminate the need for academic year support. Summer programs can only provide initial support for first-year minority law students. The danger of summer programs is that they may be allowed to create a false sense of security either for minority law students or for law schools. Nor should academic support center solely on the first semester of law school. Indeed, the focus on the first semester reflects the reliance on predictive test scores and undergraduate GPA. It implicitly validates admission criteria as predictive of inevitable minority failure. While it is important to make sure that students are not so far behind or so alienated in the first four to six weeks that they will never recover, it is also important to remember that students learn from mistakes and need to be given room to make sense from chaos. While support programs are needed in the beginning of the first year, intensive intervention is best left to the time when it is certain that it is needed.

1. Variety in the first semester of the first year—The challenge in creating first-semester programs is to support without sending a message of anticipated failure. Law schools should try a number of approaches. Each support program may reach and meet the needs of different students. There are three basic areas to be addressed in the first year: legal writing, substantive course material, and acculturation to law school. While each is a separate need, all are equally important.

59. Hamlar, supra note 6, at 543.
To develop the writing skills of students, most schools, as part of the regular curriculum, have a legal methods or writing program for all students. These courses should be flexible to afford instructors time to work with minority students on an individual basis. An individualized program demands a committed faculty and consistent review of the experiences of minority students. Trying to meet the individual needs of students with either low predictors or demonstrated problems through special sections of legal methods poses the problem of creating a special "dummy" class, with all the attendant problems. Voluntary writing "labs" or enhancement groups held as a supplement to the writing program can provide much of the same concentrated support offered by the more isolating separate course, but of course may be an additional burden on the student. Some schools choose to focus on basic English skills, others on the particular structure of "legal writing." Either program must be sensitive to the time pressures from additional work as well as the psychological pressure from being singled out from the group.

In addition to writing programs, many schools have tutorial programs for minority students. These programs often work on substantive review as well as writing. Various formats are used. Some use faculty tutors to meet regularly with students. Others use student tutors with faculty supervision. Programs that provide a tutor to give a summary substantive lecture about a course appear to be the least effective. Because it is generally agreed that "spoon-feeding" black-letter law in the classroom is ineffective, it is not surprising that it is ineffective as a tutorial.

All too often, these programs focus on the substantive material in a course rather than how the law exam is to be written. In some instances, this substantive course enrichment is self-defeating; the student knows the subject matter so well that he assumes basic principles, does not refer to them in the answer, and, thus, scores lower than if he or she had skipped the tutorial sessions.

60. But see Ripps, supra note 7, at 467 (advocating a curriculum-based course).
61. See, e.g., supra note 17 and accompanying text.
62. But see Rappaport, supra note 43, at 512 (noting that some schools, such as UCLA, "concluded that if after getting through high school and college the student still hadn't learned at least the minimal English skills needed to practice law, he or she was not going to learn them while at the same time trying to learn the law of Contracts and Civil Procedure").
63. LSAC REPORT, supra note 3, at 101 (indicating that UCLA faculty members volunteer to conduct tutorials for targeted group).
64. Bell, supra note 29, at 307.
The problem of focusing on substantive review is compounded when the tutorial is not oriented to an individual professor's course but rather to the general subject area. If student tutors are to be used, first-year faculty should suggest possible tutors by offering a list of students who performed well in their course in the previous year. The tutor should then focus on an individual professor's course. Tutorials should center around an exam problem drafted by the tutor to include material covered in the course. This is the learning and writing format most relevant to law students. The problem should be given to students before the tutorial so that it is a practice exam as well as a tutorial. In preparing the session, the tutor should consult with the first-year professor for whose course the tutorial is being conducted. During the tutorial, the tutor dissects the problem line by line. The discussion then focuses not only on what arguments might be made (issues spotted), but also on how to write the possible, but often contradictory, viewpoints.

The special demands of examination writing bring together the skill of legal writing and the knowledge of substantive course material. Examination techniques are best learned by exposure to the actual experience. To be effective, however, practice examinations often require time-consuming review. Ideally, this kind of review is provided in the school's writing program and in group tutorials. Additionally, substantial individual review can be provided by professors who volunteer to work with one to two individual students. For example, on a voluntary basis, first-year minority law students can be invited to take a practice examination. A comprehensive answer to the examination is distributed to participating volunteer faculty. Each professor then meets individually with one or two students, who are not in any of the professor's classes. The professor spends a considerable amount of time (a half-hour to an hour) reviewing both the examination and exam techniques. Such a program encourages first-year students to interact with professors. Because the students work with professors who are not teaching them, they do not feel the same threat or sense of embarrassment, nor is there a possibility of conflict for the professor. Individual tutoring provides law students with a noncompetitive, nonthreatening way to write a practice exam and to work on examination techniques. It also provides faculty with an opportunity to get to know students. Individual tutoring requires the cooperation of faculty. Law schools and students have always expected minority law faculty to volunteer their time for this kind of support. Is it too much to ask all faculty to make a much more limited effort?
Acculturation begins with psychological empowerment. It is as necessary to law school success as writing and substantive knowledge. Early in the first semester minority students need to open their eyes and open their minds to fuller participation in the law school. Minority faculty are central to this process. In small meetings with minority students, minority faculty can discuss their own experiences as minority law students and as law professors. The first myth that needs to be dispelled is that if one is a minority law student, one does not really belong in law school. The admissions process needs to be exposed; predictors are at best correlations, not predestinations. Further, the LSAT correlates only to the first year of law school. For many minorities, law school itself is a process of cultural adaptation. The point is to use the first year of law school to learn about oneself, and to act on that knowledge.

Minority students need to be as demanding of their legal education as majority students. Seldom do minority students pursue issues in class; seldom do they ask questions in class; seldom do they follow a professor to his or her office to discuss points of the day’s lecture on which they were not clear. Seldom does one see minority students in the halls waiting to talk to a professor. This must change.

In the first semester, conscious of the stigma attending the use of admission predictors, law schools should offer a variety of different support programs. Academic support is primarily offered not because minority students are likely to have difficulties in the first semester, but to encourage students to maximize their potential. Use of academic support programs recognizes that minorities have been historically underrepresented in the legal profession and in law schools. Academic support programs must begin with an understanding of the cause of that under-representation, but the mandate of the program is to work on its solution.

2. **Intervention in the second semester of the first year**— In the second semester, there should be extensive academic support for those students with demonstrated need. At this stage, law schools can better determine those students who need assistance. Moreover, stigma problems will be less acute because stu-

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65. Ideally, the informal minority student support systems established in the first semester, particularly those aiding acculturation, are continued throughout the three years of law school. This support requires administrative and financial commitment by the law school. Discontinuing support for minority students simply because they are not in a bottom percentage of the class after the first semester ignores the often hostile environment in which minority law students must continue to function.
students will have established relationships in the law school. A model for second semester support is suggested here.66 The program format is a special study group led by an upperclass student.67 Students are invited by letter to participate based on first semester grades and on recommendation of first semester professors. Such a second semester support program is not directed at minority law students, but is designed to meet the obligation of the law school in assuring all law students an equal opportunity to succeed.68

The concept behind the study group is that if a student can “tune in” to one course, the student will be able to transfer that knowledge to other courses. Mastering a course involves more than the developing of writing skills, whether in grammar or organization. Likewise it involves more than the review of substantive material. The goal of the model study group is to provide a different experience of law school for students whose current approach to law school is not successful.69

The design of the program is based on the traditional law school study group. Over the semester, the group is formatted in three segments: 1) understanding and verbalizing case analysis; 2) synthesizing and organizing cases studied into an outline; and 3) applying legal principles to new factual settings in preparation for examination. The less formal, but equally important, design element of the group is the attention and networking the group leader can provide to individual students. This is particularly important in the second semester, when the students have the additional pressures of moot court and the search for summer employment. The group leader is a resource to students for everything from course work to research assistantships to registration for the second year.

A new course in the second semester provides a fresh start to the student experiencing difficulty. The study group begins with

66. This model was developed and implemented at the University of Arizona College of Law in the spring of 1988.
67. Second-year students chosen as group leaders were paid a substantial honorarium.
68. Of the 22 students in the program, 13 were minority students. Of the 22 students in the 1988 Arizona group, 12 would have been in a group composed of the bottom 22 entering students selected by use of Index. As composed, the group ranged throughout the lower 100 Index rankings of entering students in a class of 160 total entering students.
69. Student evaluations of the 1988 Arizona group asked for descriptive statements. The evaluations were insightful. Almost universally, the students in the group were not in a study group at all in the first semester, or were in a group that was primarily social. The study group changed the way the students approached their other classes. Many students had not even prepared a study outline for their first semester courses.
this course, and it is around this course that the formal structure of the group centers. There should be a separate group for each section of the new course. The group leader is chosen after interviewing the five or six top students from the previous year's section of the chosen course. Creativity, an ability to work with others, verbal skills, and time availability are stressed. The group leader attends every class of the chosen course. This is crucial in the first phase of the group, where assigned cases are discussed in detail. The study group meets twice a week, directly following the class if possible.

In the first phase of the program, the group discusses the cases presented in class. A student presents the case, stating the facts and the holding. Another student is asked what the professor felt was important about the case when it was discussed in class. Comparison is then made with cases immediately preceding in the book. Students are asked how the courts could reach opposite conclusions. Much comparing and contrasting of cases is made, with a focus on making the best argument using the holding as opposed to memorizing the "rules of law." All students are encouraged to participate and are called on by name. This kind of discussion brings timid students out of their shells and teaches the group members how to approach a case. Case analysis, while time consuming, engages the student and gives a direction to studying.

In the second phase, the group concentrates on developing a course outline. Working together, the group writes, line by line, various sections of a study outline for the subject areas covered thus far in the course. As the outline develops, the payoff for the study group is manifest. The students gain confidence as well as study skills. Also, by developing the outline as a group, there is discussion of each section as it is written.

In the third stage of the group, the concentration is on examination techniques. Sample examinations are given and reviewed both as a group and individually. There is also discussion of how various professors approach examinations. Practical guides, such as studying and what to do the night before the exam (get some sleep), are also reviewed. In individual meetings, the group leader makes every effort to address the disappointment and frustration the students experienced after the first semester. The group develops confidence about the upcoming examination
through practice and feedback from the group leader, a student known to have excelled in the course.\textsuperscript{70}

New academic support programs for minority law students should be evaluated both by students and tutors. The evaluations should be reviewed by the law school administration as well as by faculty. Administrative evaluation should include more than acceptability of the program by the students involved; evaluation should lead to better program design. The review should discern whether the right group of students is included in the program. While grades are not the primary measure of a support program, they can, combined with class rank, give some indication of the effect of the program. If law school grades are used to evaluate—or to select students for the program—there must be tracking of the students through the three years of law school to determine short-term and long-term effects. There should be a control group of students to determine if the program has any negative effects or if another selection procedure might be more appropriate.\textsuperscript{71} To make this kind of evaluation meaningful, there must be continuity in the program. There must also be a willingness to redesign current programs and to experiment with new programs. This kind of evaluation will inform individual law schools about their academic support programs. It will inform the law school community about the use of admission predictors beyond the admissions process and it will illustrate the opportunities for overcoming the predictors’ message of failure.

\textsuperscript{70} The Arizona group also, according to student evaluations, dispelled some of the harsher first-year fables. Students who knew that they were at the bottom of the class now did not believe they would necessarily stay there. For example, many of the group members received awards in the first-year moot court competition, including one runner-up for best brief. In addition, students who never voluntarily participated in the first semester occasionally raised their hands in class. A number of students described how they had withdrawn psychologically from law school, and that the first positive feedback they received was in the study group. For some it was good just to know that they were not the only person in the class having difficulty.

\textsuperscript{71} For purposes of evaluation, Arizona is using a control group of students at the bottom of the Index who were not in the study group. These students, as well as the study group students, will be tracked for law school grades and ranks. Finally, the first-year professors who recommended students for the group included more students than could be accommodated. Students who were recommended and are not part of the Index control group will also be tracked for comparison purposes.
CONCLUSION

Law schools are shirking their obligation to society by failing to produce lawyers from and for all sectors of the community. How to nurture and support minority law students is a question that will not be answered by any one law school. All law schools, however, should shoulder the responsibility of enterprise. Academic support programs for minority law students need to be developed, funded, and implemented. Above all, they need to be evaluated. Academic support should develop a positive, active image for the minority law student. The students themselves should perceive that the program has made a difference—that the program was not just one more hoop they had to jump through as part of the price of affirmative action.