The End of the Pipeline

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A Journey of Recognition for African Americans Entering the Legal Profession

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Foreword

Michael A. Olivas

When I was asked to write the Foreword to this book, I did so even though I am on record against the use of the metaphor of the "pipeline." In an earlier piece, I had written:

> In the spirit of wishful thinking, I am recycling a small part of an earlier piece I wrote on the social science of admissions and the search for metaphors, or what I once called "the Pool Problem" Problem: I switch gears here to consider appropriate metaphors for the admissions process, particularly the quest for minorities in college enrollments. First, in the search for paradigms, I would like to enact a ban, or at least a temporary restraining order, on the "pool" and the "pipeline." Much of the research literature on admissions and affirmative action employs these metaphors, prominently and uncritically.
>
> I am not merely quibbling, like deconstructionists over original intent, or theologians over articles of faith and morals. Rather, I believe the paradigms of the pool and pipeline are inapt, both because they misconstrue the nature of the problems (as I define them) and because they misdirect attention. A pool is static, likely to turn brackish, and bounded. It requires restocking and resupply, and if it overflows its bounds, it is no longer a pool. Most crucially, it can become stagnant and unusable without fresh water; it cannot replace itself. A pipeline is even worse as a metaphor, though I acknowledge its widespread use and recognition value. But think of the pipeline in its quotidian, oil-industry meaning. It is a foreign mechanism introduced into an environment, an unnatural device used to leach valuable products from the earth. It requires artificial construction; in fact, it is a dictionary-perfect artifice. It cuts through an ecosystem and can have unintended and largely uncontrollable, deleterious effects on that en-

vironment. It can, and inevitably does, leak, particularly at its joints and seams. It can also rust prematurely, and if any part of it is blocked or clogged, the entire line is rendered inoperative.

For the admissions process, I prefer the metaphor of the "river." It is an organic entity, one that can be fed from many sources, including other bodies of water, rain, and melting snow. It can be diverted to create tributaries without altering its direction or purpose, feeding streams, canals, and fields; it can convey goods, drive mills and turbines, create boundaries, and irrigate land—all without diminishing its power. Although it can be fouled by unnatural pollutants, it has a natural filtration system to slough off impurities. It can adapt to new flows and can even be reversed or altered by engineering and hydraulic interventions. Its surface can be frozen, yet its power will be undiminished beneath the floes.

This is the image I want to convey, rather than those conjured by pipelines or pools, neither of which has a river's power, purpose, potential, fecundity, or majesty. If this is a simple autobiographical quirk derived from my childhood in New Mexico, with its magnificent Rio Grande, then understand my search for a more apt metaphor.

The metaphor chosen to describe the admissions process is important for its characterization of the problem, for the evidence mounted to measure the problem, and for the solutions proffered to resolve the problem. Let me illustrate briefly. Characterizing the problem of minority underenrollment at any level as a "pool problem" suggests a supply shortage or, at best, a failure to cast one's line in the right fishing hole. The pipeline metaphor reinforces this view of the problem, suggesting that minority enrollment is simply a delivery glitch, or that admissions committees would admit minorities if only they used better conveyances. After all, pipelines do not produce anything of value; they only carry or convey products. While both the supply function and the conveying function are important, they are not, individually, rich enough metaphors to portray the complex phenomenon of both functions intertwining to produce undergraduates and transform them into graduate or professional students.

A river, in contrast, provides nutrients and conveys resources, unlike its more static counterparts that do one or the other, but not both. Finally, a river also creates demand through its dynamic flow and natural, organic properties. It constantly changes form, seeking new flows

> and creating new boundaries. It can even wear down rock, as observers of the Rio Grande Gorge and Grand Canyon can attest. This is what I wish to convey; that demography and efforts by schools to do the right thing will inevitably lead to improvement over time.[1]

When Professors Pratt and Evensen approached me to write, they were surely unaware of my categorical reservations about their central, organizing pipeline metaphor, or at least they seemed so. I had only slight previous acquaintance with them, and only had met Carla Pratt once, when she and I were teamed up in a University of Houston law review project several years ago.[2] Professor Evensen and I had corresponded about a national law student data base in which she was involved, but we had never met. So when they asked me, I said I would think about it, and skeptical, I read the draft they had sent. Several hours later, I resurfaced and looked up, astonished at the narratives they had recorded and the analysis they had assembled to flesh out their careful interviews. Almost fifty subjects are a lot of people for such ethnographic work, and they constituted an almost hermetically-sealed *Our Town* of Black lawyers, all with riveting survivor-tales to tell in a rich and honorable oral tradition.

What particularly struck me was how much these stories mirrored my own, and even more, the many immigrant stories I have recorded over the years in my immigration research and service activities. The authors completely won me over with the many various stories, which I recognized and absorbed: the role of private and particularly Catholic education; how one person's recognition and encouragement can affect impressionable young students; how parents are indispensable models, but only if they are present and engaged; how children form aspirations; how so many children are strivers until they hit a wall of some sort; and how one can nurse the inevitable slights both to resist and to concede. Virtually all of these forces have affected me at some point in my

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1. Michael A. Olivas, *Law School Admissions After Grutter: Student Bodies, Pipeline Theory, and the River,* 55 J. Leg. Educ. 16–18 (2005).

2. For a 2006 University of Houston event, she and I responded to an article by Professor Dorothy Brown: *see* Dorothy A. Brown, Taking Grutter Seriously: Getting Beyond the Numbers, 43 Hous. L. Rev. 1 (2006); Carla D. Pratt, Taking Diversity Seriously: Affirmative Action and the Democratic Role of Law Schools: A Response to Professor Brown, 43 Hous. L. Rev. 55 (2006); Michael A. Olivas, *Reflections on Academic Merit Badges and Becoming an Eagle Scout*, 43 Hous. L. Rev. 81 (2006). The complete *Houston Law Review* symposium issue is *available at:* http://www.houstonlawreview.org/2006/05/01/volume-43-number-1-tenth-annual-frankel-lecture-symposium-2006.

life, and as a result rang true to me, even when my circumstances differed from their respondents' lives. That one lawyer was inspired to undertake the life by attending a courtroom trial resonated for me, as my own childhood trip to the magnificent, old-fashioned *Mockingbird*-style Federal Courthouse in Santa Fe, New Mexico introduced me to the law when my grandfather Sabino Olivas took me there when I was 8 or 9 years old. Concerning slights, I've had a few, as Sinatra sang: I was once crushed when a senior colleague asked me why I had an interest in improving instructional evaluation practices at my institution, *as they were not really a part of affirmative action*!

But the most eerie resemblance is how much like the lives of immigrants these African-American lawyers have lived their lives—especially the striving ethos that is so evident and well-recorded here. Following the tragic results of Hurricane Katrina upon the African-American population of New Orleans, there has been resistance to the comparison of conflating immigration tropes with the Black experience, even that of African-American immigrants from Africa or from the Caribbean. For example, African-American immigration scholar Professor Anna Shavers has emerged as one of the more astute and nuanced observers of the Katrina legal story and has particularly contributed to the ongoing scholarly attention brought to the children of Katrina. While she acknowledges that scholars such as Kevin R. Johnson have raised important critiques, she is skeptical of his reasoning—when he notes that people have been too quick to dismiss what he judges to be the obvious parallels between the minority poor and immigrants, particularly undocumented immigrants.[3] For example, Professor Shavers writes: "By comparing the two groups, Professor Johnson presents a situation where the reader can come away thinking black Americans are acting to subordinate immigrants. I do not think this is his intent, and he ultimately does urge coalition building between these and other subordinated groups. But he does not raise this point in the passionate way in which he has raised it elsewhere."[4] As one concrete example, she says of his

3. Kevin R. Johnson, *Hurricane Katrina: Lessons About Immigrants in the Administrative State*, 45 Hous. L. Rev. 11 (2008). *See also,* Michael A. Olivas, *Immigrants in the Administrative State and the Polity Following Hurricane Katrina,* 45 Hous. L. Rev. 1 (2008).

4. Anna Williams Shavers, *The Invisible Others and Immigrant Rights: A Commentary*, 45 Hous. L. Rev. 99, 108 (2008). For her important earlier work on this subject, *see* Anna Williams Shavers, *Katrina's Children: Revealing the Broken Promise of Education*, 31 T. MARSHALL L. REV. 499 (2006); Anna Williams Shavers, *Providing an Adequate and Equitable Education for the Children of Katrina and Other Victims of Disaster*, *in* Children, Law, and Disasters: What Have We Learned from the Hurricanes of 2005 (Howard Davidson, Ellen Marrus, & Laura Oren, eds., 2008).

emphasis upon the strong, negative reaction by many African Americans to the use of the "refugee" characterization: "The rejection of the term was not a way of distancing themselves from immigrants or vilifying immigrants but rather a recognition of the choices made by the government when dealing with people in distress. A plausible explanation of the rejection of the term refugees, and one that I accept, is that there was no focus at all on immigrants themselves but rather a focus on the relationship between black Americans and the U.S. government that had often rejected black Americans who had a claim to all rights that accompany citizenship."[5] She then likens the admixture of immigration and poverty metaphors to justifiable skepticism by black Americans about refugee policy concerning Africans and Haitians, and accounts for the poor treatment accorded these predominantly black groups with other refugee populations, particularly the relaxed policies towards non-Black Cubans who make it to U.S. soil.

All readers and politicians need to tread carefully here, lest one disenfranchised group be pitted against another such community, as often happens in the inter-ethnic polity. In some respects, such as a finite number of Congressional seats, one group's gain may be seen as another's loss, as appears to happen in Voting Rights Act jurisprudence and in redistricting, but there are many more occasions where the gains by one group can work to the advantage of all members of the larger community. Surely, having successful African-American lawyers is one such example, as they have achieved on their own merits and according to their own talents. It is in this specific spirit that I acknowledge this record and celebrate it without hesitation. Earlier work by African-American law scholars about this cohort, such as the work of J. Clay Smith, David Wilkins, and others,[6] has been historical and quantitative, so it is another celebratory development that the field and the discourse are taking a turn towards case studies and this form of detailed ethnographic inquiry.

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5. Williams Shavers, *supra,* note 4, at 108.

6. J. Clay Smith, Jr., Emancipation: The Making of the Black Lawyer, *1844–1944* (1993); David B. Wilkins, The Black Bar: The Legacy of Brown v. Board of Education and the Future of Race and the American Legal Profession (2005); David B. Wilkins, *If You Can't Join 'em Beat 'em! The Rise and Fall of the Black Corporate Law Firm,* 60 Stan. L. Rev. 1733 (2008); Carla D. Pratt, *Way to Represent: The Role of Black Lawyers In Contemporary American Democracy,* 77 Ford. L. Rev. 1409 (2009). *See also*, Paul Finkelman, *Not Only the Judges' Robes Were Black: African-American Lawyers as Social Engineers*, 47 Stan. L. Rev. 161 (1994) (review of Smith book).

As for the metaphor of the pipeline, I would just note that the language of the river looms large in Mexican American literature and that concerning Blacks, both crossing the Rio Bravo/Rio Grande and in navigating the Mississippi on a raft. Once again, it is evident that in many respects, the lives of African-American lawyers are the lives of all lawyers, and that we all have more in common with each other than we recognize.

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Acknowledgments

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About the Authors

"*Why is a white lady and a Latina lady so concerned about black lawyers*?" This was the question that greeted us when we attended a National Bar Association conference in order to test the preliminary findings of the study presented in this book. The question was a legitimate one and it reminded us that identity matters. Our identity mattered to the black lawyers who were contemplating participating in our study. They wanted to know what our interest was in doing this research. So here we share a bit about ourselves to explain the genesis for this project and our interest in undertaking it.

First, neither of us is Latina. One of us is white, a senior researcher and a professor at Penn State's College of Education who teaches doctoral level courses in research philosophies and qualitative research methods. The other is a light-skinned African American whose racial identity upon quick observation may appear ambiguous to some, a law professor in Penn State's College of Law whose research is informed by Critical Race Theory, but an academic relatively new to qualitative research. Despite our racial differences, we bring some commonalities to this project. We both traveled a precarious pipeline to academia. We both were products of working class families that struggled to make ends meet, so many of the stories of the participants in this study personally resonated with us. One of us began our higher education in a community college in New York City, the other in an obscure four-year college in Texas that would give her an academic scholarship. Most importantly, we both care about the African-American community because we both relate to the community, one as a member, the other as a long-time ally.

Our principle aim in writing this book is to nudge the legal profession in the direction of making meaningful change to the pipeline itself so that more people, especially African Americans and other under-represented minorities can get through it. We set out to examine how the "successful ones" made it to the end of the pipeline and what could be learned from their stories. This project was a labor of love. We loved hearing and analyzing each of the stories presented in this book and we hope that it will be shared not only with those in positions of power who can effectuate change, but also with those who are

contemplating stepping, perhaps with trepidation, into the pipeline. We hope the stories presented in the study will resonate with young African Americans contemplating a career in law and assure them that they too can be "successful ones." We hope also that the analysis of these stories can further the dialogue within the community of law, rally its extensive resources, and stimulate action to ensure that the end of the pipeline more closely resembles the citizenry of our country.

Dorothy H. Evensen is a professor in the Program in Higher Education and a senior scientist in the Center for the Study of Higher Education at Penn State University. She holds a Ph.D. in Applied Psychology from New York University. Her research focuses on learning and teaching in the professions. She has conducted numerous studies in legal education investigating student study practices and literacy development, and is currently working on a book about the uses of formative assessment tools in law school classrooms.

Carla D. Pratt is a professor of law at Penn State University's Dickinson School of Law. She earned a J.D. with honors from Howard University School of Law where she also served as an Editor of the Howard Law Journal. She has taught courses in Race and Law, The Legal Profession, and Constitutional Law. Her research examines the role of race in the legal profession and the role of law in constructing racial identity.

List of Contributors

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Sarah E. Redfield is a Professor of Law at the University of New Hampshire School of Law and Affiliate Professor with the University of New Hampshire Department of Education. Her primary teaching field is education law and her major research focus is on diversity in the legal profession. Professor Redfield has served as a member of the ABA Pipeline Council, the California Bar's Council on Access and Fairness, CLEO, the ABA Section of Litigation Task Force on Implicit Bias, and the Education Commission of the States. She has also been active in launching and supporting various pipeline projects and currently serves on the Advisory Boards for the University of California, Irvine Saturday Academy of Law and Chicago Legal Prep.

Tara Scales Williams is the Director of the Multicultural Resource Center and Affiliate Faculty of Education, College Student Affairs Program at Penn State University. She is committed to providing services to students that ensure their personal, academic, and professional growth and success. Her research interests are in examining college students and their development, the effects of college environments on student behaviors and outcomes, high-achieving African-American collegians, and the retention and graduation of underrepresented students.

Kamille Wolff is a professor at the Thurgood Marshall School of Law of Texas Southern University. She teaches in the commercial law area with an emphasis on banking and international transactions. Her scholarship focuses on issues pertaining to economic equality through education and financial literacy.

Introduction

The journey through the pipeline to the legal profession is indeed long. For some the pipeline is rather straight and unobstructed. But for others, it is a winding maze with detours, dead ends, obstructions, and holes. While some scholars have urged the use of "the river" as the more apt metaphor for describing the undergraduate and law school admissions process,[1] we embrace the use of the pipeline for several reasons. First, it is the term that has been adopted by the legal profession and used pervasively when addressing the issue of increasing the number of minority lawyers in the profession. Simply stated, it has recognition from the people we hope will read this book. Second, while we appreciate the power of "the river" for purposes of looking at the admissions process in higher education, this project aims for a higher level of abstraction by looking at the entire journey that African Americans[2] travel to reach the

1. *See* Michael A. Olivas, *Affirmative Action: Diversity of Opinions: Constitutional Criteria: The Social Science and Common Law of Admissions Decisions in Higher Education*, 68 Colo. L. Rev. 1065 (1997) (urging the abandonment of the "pool" or "pipeline" metaphor in favor of "the river" which can be fed from many sources and has "power, purpose, potential, fecundity [and] majesty"; *see also* William G. Bowen & Derek Bok, The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions (2000) (using the river as a metaphor for which they credit Mark Twain). Bowen and Bok state: "The image of the river is … central to the story of our book, which is concerned with the flow of talent." We address the issue of talent in Chapter 2 in the context of the "Talented Tenth" and challenge the conception of talent as "natural." We see talent as something made, not found. *See* S.A. Barab, and J.A. Plucker, *Smart people or smart contexts? Cognition, ability, and talent development in an age of situated approaches to knowing and learning*, 37 Educ Psych 165–182 (2002). In this way, we agree with the more organic metaphor that talent is "cultivated." *See* Michael A. Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 Chicano-Latino L. Rev. 117 (1994).

2. We use the terms African American and black interchangeably in this work although we understand that the term black could be conceptualized as a broader racial or ethnic category than African-American, and that some recent voluntary immigrants of African ancestry do not embrace the term African-American to describe their racial identity. We invited study participants to self identify as "African-American" without providing any def-

legal profession. That journey begins long before the undergraduate or law school admissions process. It is indeed a journey which begins at birth, and it is a journey that is anything but organic. The obstacles that one encounters in the pipeline often depend, in part, on the family into which one is born, the neighborhood where one lives, and the quality of the education one receives from birth forward.

The stories of the African-American lawyers contained in this book tell us that their journey to the legal profession was precarious; that there were stoppages along the way, and that there were junctures where some of them came treacherously close to falling out of the pipeline, or indeed did fall out and often had to fight to find a way back in. The stories in this book remind us that privilege and race are social constructs, not naturally occurring phenomena, and that they can act as lubricants or blockages in the pipeline, depending upon the status of the traveler. Because privilege is generally invisible, it often appears natural or organic, but the participants in the study remind us that there are structures that have been built to create the pipeline to the legal profession, and that these structures could be rebuilt and reshaped to better enable the passage of those without the "lubricant" of privilege. At times we pondered whether the "railroad" might be a more apt metaphor since many of the stories hailed the importance of "mentors" and "role models" during the journey and reminded us of the "conductors" on the Underground Railroad. In the end, however, we retained "the pipeline" hoping that it would resonate with more people, and that the message of this book would spread, like a river, to all those interested in the work of further diversifying the legal profession.

Much of the literature that has been written about the goal of pipeline programs to improve diversity in the legal profession, has been focused on the numbers. Numbers have much to tell and the statistics that describe the representation of African Americans in the legal profession might be interpreted as signifying the failure of almost fifty years of policies and programs aimed at increasing those numbers. Despite a ten-fold increase in the percentage of at-

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inition of the term. Interestingly, this approach yielded black lawyer participants with Caribbean born parents, as well as participants with only one biological parent of African ancestry. We opted not to capitalize the terms "black" or "white" even though we understand and respect the rationales for doing so, as well as the argument for capitalizing "black," but not "white." For authors who contributed work to the book, we honored their preference to the extent they expressed one. When quoting authors who use capitalization for these terms, we retained the capitalization for purposes of representing that author's work accurately.

torneys who are African American since the 1960s Civil Rights Era,[3] African Americans remain proportionally under-represented in the legal profession. At the start of the new millennium, according to the 2000 U.S. Census, 12.9 percent of the US population self-identified as African American. Around that same period, a study conducted by the Law School Admission Council (LSAC) found that 6.5 percent of law school graduates identified as African American,[4] and an American Bar Association commission reported that in 2000 the US bar included only 3.9 percent African Americans.[5]

Race-conscious admission policies, mostly associated with affirmative action, have been posited as reasonable and equitable ways of increasing the numbers of African Americans in the legal profession; however, race-conscious policies have not only failed to achieve equity of representation, but also increasingly have been challenged in social and political spheres where ways of achieving diversity in education remain under siege.[6] In particular, the use of race-conscious affirmative action in higher education admission policies survives only in the narrowest legal sense with the Supreme Court declaring its use constitutional only when race is used as a "plus" factor and perhaps for only a limited time.[7] Moreover, the political movement to ban affirmative action in public institutions through state legislative processes has gained momentum.[8]

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3. Gary Orfield & Dean K. Whitla, *Diversity in Legal Education: Student Experiences in Leading Law Schools,* (Nov.16, 2005) *available at:* www.civilrightsproject.harvard.edu/research/lawmichigan/lawsurvey.php.

4. Gita Z. Wilder, *The Road to Law School and Beyond,* (LSAC Research Report 2003).

5. American Bar Association, Commission on Racial and Ethnic Diversity in the Profession, Goal IX Report 2007–2008, *The Status of Racial and Ethnic Diversity in the American Bar Association* (2008).

6. *See* Preston C. Green, *Can Title VI Prevent Law Schools From Adopting Admissions Practices That Discriminate Against African Americans?* 14 Southern U. L. Rev. 237–261 (1997) (affirming the "siege"); *see also*, Richard A. Sander *A Systemic Analysis of Affirmative Action in American Law Schools,* 57 Stan. L. Rev. 367–454 (2004) (claiming that affirmative action contributes to a decrease of minorities in the legal profession).

7. *Grutter v. Bollinger,* 539 U.S. 306 (2003) (with Justice O'Connor writing for the majority asserting the Court's expectation that race-conscious affirmative action will no longer be necessary 25 years from 2003).

8. *See* California Proposition 209 (1996); Michigan Civil Rights Initiative, Proposal 2, (2006). At the time this book went to press, Michigan's Proposal 2 which amended the Michigan State Constitution to effectively ban race-conscious affirmative action in state education, employment and contracting was held to violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution because it unconstitutionally altered Michigan's political structure in a way that impermissibly burdened racial minorities. The decision was issued by a panel of the Sixth Circuit Court of Appeals and was awaiting *en banc*

Programs provide a way of circumventing the obstacles erected against affirmative action policies, and the legal education community has been involved in such efforts through what has become known as "pipeline programs."[9] These pipeline programs, which vary significantly from one another in their scope and scale, aim to widen the pathways and shore up the leaks where African Americans and other under-represented minorities who aspire to law are putatively lost to higher education, law school, and the legal profession. Yet, despite the marked increase in these initiatives, representational discrepancies persist. It is both perplexing and distressing that despite the increase in the number of law schools in the US and the concomitant addition of seats, the number of blacks enrolled has actually decreased since a peak in 1996.[10]

In her recent book, *Diversity Realized*,[11] Sarah Redfield uses numbers to illustrate the problem and includes examples of "selected law pipeline programs" to describe the types of programmatic work she thinks necessary to produce desired outcomes. Redfield's book is well-researched. It digs deeply into the pipeline to report educational disparities and inequities in K–12 settings and argues that only connected, concerted, and continuous efforts best spearheaded by the legal community have the possibility of remedying the lack of representation of minorities in the legal profession.

Redfield's book provides data necessary, but not sufficient to inform policy and influence programming and she is forthcoming about the need for more research. In particular, while she applauds the work of particular programs, throughout the book she notes that what's missing from so many individual programs is systematic, rigorous, and meaningful evaluation work. The types of evaluation she advocates would move beyond simple, short-term assessments of "What works?" and would provide more than testimonials of pre/post-pro-

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review. *See Coalition to Defend Affirmative Action v. Regents of the Univ. of Michigan et al.*, Nos. 08-1387/1389/1534; 2011 U.S. App. LEXIS 13405; 2011 FED App. 0174P (6th Cir., July 1, 2011).

9. Such programs are launched through the ABA, AALS, LSAC, individual law schools and the practicing bar. For a directory of pipeline projects operating in the U.S., *see* http://adwww2.americanbar.org/PipelineDiversity/Lists/Pipeline%20Diversity%20Directory/robin%20view.aspx?View={D5CB2826-7560-466E-AACD-9E37412761F8}&FolderCTID=0x012001 (last visited March 8, 2011). Note that participation in the directory project is voluntary, hence, it most likely under-represents the actual number of pipeline programs operating in the U.S.

10. *See generally, id.; see also* Conrad Johnson, *A Disturbing Trend in Law School Diversity, available at:* http://blogs.law.columbia.edu/salt/.

11. Sarah E. Redfield, Diversity Realized: Putting the Walk With The Talk for Diversity In The Legal Profession 17 (2009).

gram attitudinal changes. In short, what must be an integral component of programmatic efforts is research simultaneously pragmatic and longitudinal.

It is research that motivates this book which positions itself differently than Redfield's, however. It takes seriously and indeed remains mindful of the numbers that point to the problem of minority and African-American participation in the pipeline to law, but it seeks to focus on the more positive aspect of the numerical reporting: the numbers of blacks who *have* graduated from law school, who *have* been admitted to the bar in US jurisdictions, and who *are* working in some area of law. We do this by moving beyond numbers to stories. We do this not through statistics, but through the traditions, practices, and tools associated with qualitative research: interviewing, analyzing, interpreting, representing. We also do this not from the putatively value-neutral stance consistent with a post-positivistic position, but through the adoption of a perspective afforded by Critical Race Theory (CRT)[12] that assumes non-equity in racial relations within traditional institutions and professions, and furthermore contends that these relations can be made manifest through "stories" that will include instances of "microaggressions."[13] In short, the purpose of this book is to reveal the factors and understand the issues facing those who successfully navigated the pipeline to the legal profession. We adopt this purpose in order to inform a theory of intervention[14] necessary for those who are in positions to create more successful policies and programs capable of addressing the underrepresentation of blacks in the legal profession.

Methodology and Theoretical Perspective

Not unlike other race-based interventions, pipeline projects tend to be launched in atheoretical ways.[15] Simply *doing something* is perceived as better than *doing nothing*. Many are designed to reflect a simple, "commonsense" model of intervention: good inputs produce good outputs. Furthermore, when

12. Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction (2001); Gloria Ladson-Billings & W.F. Tate, *Toward A Critical Race Theory of Education*, 97 Teachers' C. Rec. 47–68 (1995).

13. Peggy Davis, *Law As Microaggression,* 98 Yale L.J. 1559, 1565 (1989) defining "microaggressions" as "subtle, stunning, often automatic, and non-verbal exchanges which are 'put downs' of blacks by offenders."

14. Janet A.Weiss, *From Research to Social Improvement: Understanding Theories of Intervention.* 29 Non-Profit and Voluntary Sector Q. 81–110 (2000).

15. Daniel G. Solorzano & Tara J. Yosso, *Critical Race Methodology: Counter-storytelling as an Analytical Framework for Education Research*, 8 Qual. Inq. 23–44 (2002).

the discourse in which initiatives are embedded is examined, it is often framed in terms of *deficiency* or *rejection*.[16] These discourses fault the culture of underrepresented minorities rather than questioning the role of power, privilege, and institutional racism in students' lack of preparation or shortcomings in motivation. In addition, these discourses fail to account for, and indeed ignore, instances of success. Hence, the research literature tends to focus on the instances of failure, occasionally featuring extraordinary success stories or narratives of exceptional individuals beating the odds. Successful students are seen as outliers from whom little that is generalizable to the larger population can be learned.

The present study addresses both of these problems. First, in looking at attorneys who successfully navigated the pipeline to the legal profession, the study is conceptualized within a discourse of *achievement*.[17] Second, the goal of the research is to articulate a grounded theory of how that success was achieved. It purposefully explores contextual, perceptual, and strategic factors that may have facilitated or impeded the pipeline journey. In doing this, we set out to construct a generalizable theory,[18] a "theory of intervention," that can be taken up, judged for its utility, and adapted where necessary by those who engage in pipeline work and those who set policies that affect such work.

To conduct this study we draw upon what is called grounded theory methodology, a form of qualitative inquiry. Grounded theory is associated with a constructivist paradigm that translates into a set of methods where "concepts and theories are constructed by researchers out of stories that are constructed by research participants who are trying to explain and make sense out of their experiences and/or lives, both to the researchers and themselves".[19] Essentially, as social science researchers we sought to obtain stories, through interviews, and to understand these stories, through inductive analyses, about how the pipeline was navigated from "pre-kindergarten to the bar"[20] for a group of African-American attorneys newly admitted to the bar.

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16. *See* David W. Stinson, *African American Male Adolescents, Schooling And Mathematics: Deficiency, Rejection, and Achievement,* 76 Rev. Educ. Research 477–506 (2006).

17. *Id.*

18. *See* Robert C. Bogdan & Sari K. Biklen, Qualitative Research for Education (5th ed), (2007) *at* 36 (explaining that "Some qualitative researchers … are … interested in deriving universal statements of general social processes …).

19. Juliet Corbin & Anselm Strauss, Basics of Qualitative Research 10 (3rd ed. 2008).

20. Evett L.Simmons, *Diversity in the Legal Profession: Opening the Pipeline*, *Report to ABA House of Delegates* (2006).

Because this study focuses exclusively on the experiences of African Americans, we chose to conduct the research within the perspective offered through Critical Race Theory. As will be seen in Chapter 1, we sought research volunteers who "traveled a precarious pipeline" to the profession and left it up to the volunteers themselves to determine how this criterion pertained to them. Nonetheless, the assumptions of CRT would hold that given the persistence of racial tensions in the US, the preponderance of African-American attorneys would have experienced some form of race-based subordination. Indeed, one of our participants, a woman who probably lived the most privileged life as compared to the entire participant group appended her personal anecdote of micro-aggression by calling it an "outlying story," but concluded that she knows "a lot of people who have a story like that. Some weird experience that they had that definitely is an outgrowth of race."

The conceptual framework undergirding the study also was attentive to findings from pilot work conducted with students at Harvard Law School[21] indicating that "how" some minority students "got to Harvard Law School" was through chances of birth (reported as "concerned, sacrificing, but often 'clueless' parents") or circumstance (interpreted as "serendipity or luck"). It was from that pilot work that ideas about the benefits of and needs for interventions emerged and our interest in pipeline programs evolved.

The Study

The empirical portion of our study was conducted in three parts. The methods and rationales for each part appear in subsequent chapters, but here we give a general summary. The first part involved open-ended interviews with a total of 28 lawyers who self-identified as African American, had graduated from law school after the year 2000, had been admitted to the bar in at least one U.S. jurisdiction, were at the time of the study working in some area of law, and agreed that they had traveled a "precarious pipeline" to the profession of law.

The second part of the study took place at a National Bar Association conference for "young lawyers." We conducted two focus groups with 16 African-American attorneys to "test" the credibility and applicability of our preliminary findings and gain more confidence in the interpretations we were making from the data collected in our first part.

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21. Dorothy H. Evensen & Mindy Kornhaber, *How Do You Get To Harvard Law School?* (2003) (unpublished manuscript on file with first author exploring how African Americans get to Harvard Law).

A third part of the study involved upper-level law students who also self-identified as African American. This part of the study was initiated because we found that few of our original lawyer participants had the benefit of a pipeline program, and we wanted to learn more about the perceived benefits of pipeline-to-law programs themselves. This information was deemed particularly important to our goal of building a model that could be useful to pipeline interventions.

In its entirety the study is descriptive. It describes successful pipeline journeys both in concrete and abstract terms. It depends heavily upon quotations from participants that capture their lived experiences, but also synthesizes and interprets those experiences to arrive at a general concept that we call *working recognition*. Through completing the first part of the study, we concluded that because recognition was *working* within families, communities, and educational settings, and because students so *recognized* were wont to *work* strategically to achieve envisioned (or newly *recognizable)* goals, consequently they were *recognized* as *working* members of the law community, and were more likely to reach back into the pipeline to law to serve as the *recognizers* of future African-American law students and lawyers. Chapter 1 presents the detailed findings of the study, while Chapter 2 reviews the findings through the lens of CRT noting that much of the study findings are consonant with concepts associated with the CRT lexicon.

The interpretive work of the study moves beyond the conclusions drawn above, however. We have looked to others who have theoretical, empirical, and practical interest and expertise in various aspects of pipeline work to contribute to this volume by writing responses to the first study. Chapter 3 presents these response essays, which are motivated by the themes that emerged from the study and serve to connect the study to broader scholarship and practical activity.

Three contributors to this Chapter focus particularly on how structures within law school affect the pipeline and the ways in which restructuring might yield better passage through the law school segment of the pipeline. First, Janice Austin discusses the law school admissions process and argues for more attention to student applicants who lack the traditional numerical indicators of success but whose social and academic journeys demonstrate attributes of success such as motivation, persistence, diligence and integrity. Second, Shirley Lung and David Nadvorney move from the issue of law school admission to retention by discussing the need for law schools to provide appropriate academic support to ensure student success. Third, Sam Museus explores the experience of black students in law school and shows how affinity groups, such as the Black Law Students Association (BLSA), serve an important role contributing to student success.

Other contributors emphasize the role of various pipeline supports outside the law school context. Kamille Wolff offers a vision of Historically Black Colleges and Universities that reveals the critical role they are playing in diversifying the legal profession. Preston Green examines the need to improve the K–12 educational experience for black children and posits, among other things, that it is *de facto* segregation that creates the need for pipeline interventions. Tara Williams discusses the role of identity in helping students become successful in academic pursuits, while Kimberly Griffin looks at the importance of mentoring black students as they traverse the pipeline.

Chapter 4 presents the findings from the second wave of the study, which examines the stories of upper-level law students who participated in some type of pipeline program prior to law school. This extension of the larger study allowed us to more deeply investigate the ways in which pipeline programs facilitated pipeline journeys.

In Chapter 5 we draw together the major findings from all parts of the study and move toward a theory of intervention aimed at providing a framework for future pipeline work. We present the theories of others that we found useful in our efforts to theorize, revisit our model of working recognition, and draw conclusions concerning the principles that might best undergird future pipeline programs.

In the Afterword we include voices from the pipeline. Professor Len Baynes concludes with a description of the award-winning pipeline program at St. John's Law School, and an exposition of the lessons that he has learned in creating and managing the program. Professor Sarah Redfield addresses the policy issues that follow when the law community commits to its goal of achieving diversity.

The final voice readers hear is from a new entrant to the pipeline, Alexis Halty, a seventh grader we met after being invited to speak at her school. We thought it apt to conclude this book that started at the end of the pipeline by recognizing a new aspirant just entering the pipeline to law.