

Race and Law School: The Intersection of Obstacles for Aspiring Black Lawyers

By

Hope Smith

SPUR

Faculty Advisor: Brian Peterson, Ph. D.

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Abstract

Recent data of the legal profession have raised red flags about the lack of diversity in the field as compared to other career choices. Due to the fact that 4 of 5 lawyers are white, this leaves very little room for black lawyers to fill jobs in their desired positions. This paper first establishes the literary origins of the black lawyer and succinctly follows the progression made to the emergence of corporate law as an attractive legal sector for black lawyers and further analyzes the connection of the two. Using the survey data, the paper gathers and explains lived experiences of black law students and graduates and calls upon their struggles in their path as a black person in their respective institutions.

Keywords: black lawyer, corporate law, legal

Introduction

In recent years, the majority of the American people bought into the idea that the US was in a post racial society. This was largely attributed to the election and reelection of former president, Barack Obama, as well as the surge of black accomplishment and uplift through means of social media. This belief, unfortunately, has obstructed the awareness of discrimination and macroaggressions in every institution black people are a part of. Imagine going to a doctor with an illness that they say they've already eradicated, and because of that, they not only believe you don't have that specific illness, but they also won't offer to treat you at all. This is the type of climate that breeds a false sense of diversity in higher education and the workplace.

The statistics of job sectors are appalling, many people are absolutely shocked when they hear the truth. With numbers provided by the Bureau of Labor Statistics, the legal sector has been labeled as one of the least diverse professions, owing to the fact that 88% of lawyers are white. Right behind this sector are surgeons, physicians, engineers and architects.

Lawyers hold so many roles and positions in society, judges, legislators, prosecutors, corporate councils and presidents. With this thought in mind, I'd want the lawyer population to be largely reflective of the national population to maintain those checks and balances. The American Bar Association has very public numbers for 2016, the total number of newly licensed lawyers of that year were 1,315,561. Of that number, 64% were male, 36% were female. The race/ethnicity split was 88% white, 5% black, 4% Hispanic and 3% Asian pacific islander.

Now the challenge comes from battling the problem in the circumstances of actors of this institution believe that there is no problem. This research strives refute this conclusion with a serving of reality and lived experiences. Using a self-survey method, participants' experiences were divided into three very critical areas: before law school, during law school, and after law

school. The population was black law school students and graduates at The University of Pennsylvania Law School.

I. Origin of Literature for the Black Lawyer

One of the earliest scholarly works by the black lawyer, for the black lawyer was *Emancipation: The Making of the Black Lawyer*, written in 1993. There were few earlier works pertaining to black lawyers in the 1980's and 1970's, however, their scope was a bit limited and perspective somewhat muddled. Through J Clay Smith's well written and organized work, he offers a discerning analysis of the vital part of significance of the black lawyer embedded into the social and judicial climate of society. While creating a timeline that reaches back more than a century, stretching to more than forty states, the author highlights the effect of black lawyer as public attendants of change.

With the time, Smith chose to focus his work on being the least studied period in terms of racial climate, the first black lawyer, Macon Bolling Allen and the first black woman lawyer, Charlotte E Ray, in 1844 and 1872 respectively, this was the perfect starting point for his research. This then later starts the groundwork for more popular and contemporary figures like Thurgood Marshall, and Charles Hamilton Houston. Very symbolically, the book begins with a foreword featuring the words of Thurgood Marshall. Essentially, Smith is setting the framework of the key milestones black lawyers made in protesting racial judicial injustice. The book, later on, puts more focus on the elimination of inequality through the medium of the legal process.

The necessity of the book is one that heralds it as a work that concisely and succinctly establishes a very factual foundation for the high-level analysis of the struggle black lawyers faced through the legal system. Smith touches on many different facets of topics for the black lawyer and framework intertwined and set in one place. These topics being how racial oppression affects the lives of black lawyers, a narrative on the larger forces, structural, and legal, and a very detailed history of black lawyers in all regions of the nation.

Another area Smith puts a fair amount of emphasis on is paired with the factual aspects of the book. Archival documentation is the pseudo superheroes of the work, offering a very original scholarship of research on the subject. To a large extent, the actions of black lawyers in the face of racial oppression has largely reactionary origins. When faced with the racial caste system, black lawyers used this experience to fuel intentions for institutions like law firms and bar associations. The aspect of separation for black lawyers in terms of business thrived, but may have slightly dwindled in the aspect of spheres of influence due to the lack of presence in predominantly white institutions.

Furthermore, the book fills a gaping hole that was left in the elite professional and academic literature pertaining to the black lawyer narrative. There have been works before about elite positions in law firms for black lawyers, but always with the position of a contemporary framework and elite white lawyers. This homogeneous and industrial in the legal workforce stems from the culture shift in the late 1950's. This was all evidenced from the discrimination of blacks and women in law schools and bar associations of the time. Over time, these limiting institutions set the groundwork for veins of institutional discrimination to develop and solidify in the legal system. Smith is unique in his exclusively black analysis with race highlighting every intersection.

The largest takeaways of Smith's work is not only the deep connection black lawyers have with the activism and the black community, but also, the efforts of lawyers to combat systematic oppression through means of the law. A pertinent story is told about the upward trajectory black lawyers were able to attain in not only the black community, but also mainstream legal fields.

II. Progression of Black Lawyers to Corporate Law

Shifting forward to more recent developments in the literature of black lawyers and their progression through time, there is a field that, until fairly recently, very few black lawyers were apart of. This field is corporate law. To put it very frankly, despite the increase in black students at law school in the past half decade, African American make up only a miniscule percentage of partners and associates in country's leading corporate law firms. How paradoxical of the profession's promotion of equality and opportunity and the actuality of discrimination ingrained in these systems. The evidence of black lawyers' general inability to reach the highest ranks are clear indicators of something insidious lurking on the path to that realm of success. After the legal eradication of jim crow and the integration of schools, there has been progress made from the bottom of the job market, making blue collar jobs more accessible to the black population. Unfortunately, these results have not made their way up the pay scale of white collar jobs. This lack of professional upward mobility for blacks is not uncommon and completely coincidental, it fits a larger system at work.

The defense firms use when explaining their lack of diversity in the workforce point to a scarcity of applicants with necessary qualifications, a reason for black applicants to be hesitant is the dominant white male culture already preexisting in the firm, as well as the clients they serve.

Because these shoddy responses, have so many holes in their reasoning, it must be imperative to look past these very wide reaching rebuttals and dig deeper to the roots of the problem. To receive answers to these questions, an interest must be taken in the skeletal structure of these elite corporate institutions.

David Wilkins and Mitu Gulati put a very interesting spin on the sequence of black lawyers by highlighting the discrepancies they face in field of corporate law. Through their article, they seek to explain in much more detail the legal profession as it relates to black lawyers, and also how corporate law firms hire and maintain lawyers and why these specific systems would disadvantage employment possibilities for black lawyers.

The authors begin with a concise overview of facts on African Americans in the corporate law sector. It works as a means to set a strong foundation of factual and data based evidence to support their claims. They then proceed to an in depth explanation of the model of the corporate law firm. In large it is made up of two facets, the cost and complication of monitoring, and the subjective nature of assessments. With these circumstances in mind, it is understood that firms follow a strategy of a high starting wage as means of attraction, a high ratio of associate to partner to drive promotional motivation, and a tracking system to denote the reception of low training and undemanding work. This trifecta are the unintended weapons of the progress for black lawyers. Firstly, because firms hire with the intent to give new employees undemanding work, they don't receive an accurate gauge about the quality of the individual. This can lead to future decision making based on race leaving the firm seemingly unaffected. This carries over to review and promotions, because of the firm's overall disinterest and lack of incentive to view decisions pertaining to employment objectively. This cycle continues to hurt blacks in the firm because of the reality that black workers and white workers are often judged

differently with the same performance. Black lawyers' opportunity to receive the skills necessary to be successful in the corporate culture are diminished by the simple existence of the corporate law firm.

Moving on, this model is testing against the lack of empirical data and analysis of the topic of black corporate lawyers. Though the authors make this known, they push forward with the knowledge that the limited amount of data they have shows a strong correlation to the disadvantages of black lawyers. The criteria big firms use to recruit is largely shallow, despite the very high cost of the hiring process, metrics like rank ability and personality fit to the culture are held in very high regard. This poisonous amalgamation of subjective and objective systems of decisions hurt the prospects of black lawyers by deluding firms that this mixture of rank and personality automatically correlate to superiority. In the same vein, it allows hiring teams to discount black prospect because of the misfit of homogeneity ensconced in the firm's culture. Furthermore, with decisions being made about which employees to train for mentorship purposes, partners are thinking about which employees would make as much money as possible for the firm in the future. The stark reality is that at almost every avenue, black lawyers are fighting an uphill battle in firms whose structure is working against them.

The article then proceeds to evaluate the five top proposed solutions for the problem corporate law firms face with regards to diversity. One solution could be race-neutral firm reforms, firm incentives, another could be educational initiatives, anti-discriminatory laws, and created demand efforts. To deeper and poke holes in these solutions, these race-neutral reforms would largely consist of formal training and extensive associate reviews. Though helpful on the surface, problems arise when these decisions are put in the hands of firm higher ups that don't understand the personal bias they carry, granting valuable training resources to people they

would see as successful based on their personal experiences. This points to the weakness of this solution as one that may help white candidates whose personality may not synchronize with the firm initially, but may get a second chance. The people that need these benefits of doubt aren't reached because of the race neutrality.

The next solution, centering around affirmative action, has a base understand that corporate law firms in no way make any particular attempts to hire and promote black employees. Critics of affirmative action believe that black lawyers are hired with lower quality expectations than white candidates. And if white employees really believe this, they will in turn, work with less effort to 'level the playing field'. Another critique is that there is a stigma associated with firms that impart affirmative action that relates to falling subsequent falling standards at the firm. A proposed middle ground is to not to completely renounce affirmative action in the hiring process, but to impart it in decisions of promotions, training and mentorships within the firm.

Diversity training as a solution has recently been the first option for firms that wish to more inclusive to employees. Diversity consultants have the arduous task of informing lawyers about the lived experiences of their colleagues that have differing opinions and identities, while also refuting and realizing personal stereotypes they may harbor. These all seem very necessary, but their effectiveness remains to be seen, there has to be follow up actions for these initial efforts to show efficacy. Furthermore, this training also needs to not only touch upon surface level situations and anecdotes, it must be made very clearly that people of color, especially black lawyers, face these bias forces everyday at the workplace and beyond.

Anti-discrimination laws such as Title VII have some import with black lawyers and their experience with corporate law firms. Unfortunately, there is no way for high level jobs to be able

to objectively determine the quality of work the person does. The reality that these laws make it harder for black lawyers to be fired, hurts more than it helps the, in the firm. A scenario of this is that, firms are less inclined to hire more average black candidates, as opposed to an above average prospects because of the fear of the average lawyer's impending poor performance. Because of these obstacles, there is a very low historical number of claims to these laws in the corporate law sector, even smaller are the cases that won.

Lastly, the solution of stimulating demand within the legal practice was largely initiated in 1988 with the American Bar Association's creation of the Minority Counsel Demonstration Program. The goal of the program was to create a medium in lawyers that were people of color to be able to integrate seamlessly into the community. Participating firms make sure that these minority lawyers get in direct contact with minority partners at different firms. This in turn creates a market of need of black lawyers as candidates for firms. To be as effective as possible, firms must have very specific and quantitative reasons for hiring black lawyers that the largely intrinsic benefits aren't making them believers. These specific benefits lie in superstar lawyers with potential client power, as well as, lawyers with meaningful relationships with mentors and partners in the firm.

The article concludes with insight of higher level firms implementing changes in the future to bridge that gap minorities have to navigate. They also claim that the defense of the current system in place that it's as efficient as possible is false on the basis that if it isn't efficient for all, it isn't good enough for everyone to be apart of it. They also believe that the legal profession at large is at a very unique intersection and a new route must be created for these institutions to advance to these larger romantic ideals and themes of justice and fairness in which it was originally founded on.

III. The Dangerous Dichotomy Plaguing the Image of Black Lawyers

With these two very prominent frameworks of the black lawyer in mind, it was in the best interest of the research efforts to bridge these two gaps and see how they coexist. While initially, in the very early stages of the inception of the black lawyer, they were largely seen as agents of structural and systematic change in their societies. This has continued into the 21st century. Though, that doesn't seem to be a problem on the surface, there seems to be caveats when one digs a bit deeper. There is nothing wrong with lawyers' acknowledgment of the short hand black people are dealt in the justice system. What is a problem, however, is when black lawyers are seen as simply nothing more than change makers for the black community.

These assumptions rear their ugly heads in the form of type casting of black lawyers by non-black colleagues and partners of firms, hiring directors and super networkers. This extends to academics and administrators of law school, they expect black students to be the ones largely interested in civil rights and humanities legal sectors. Any black students and lawyers with aspirations that deviate from this very narrow view are criticized much harsher than their white counterparts. The reality is, they are constantly underestimated by white peers and higher ups, and at the same time are criticized by black lawyers who did not deviate, that their focus of law practice isn't engaging in that active seek for legal justice for the community. These biases remain dangerous obstacles for hopeful pre-law students. They seem to be a minefield of barriers in the legal profession for anyone that doesn't fit the mold of the majority.

Methodology

Because of the overall lack of empirical data and scholarly articles pertaining to black lawyers, there was a large void in the aspect of data collecting that was faced. The overarching research question was anchored around the experience of black Penn Law students and graduates with the law school process and beyond as it relates to their blackness. Penn Law was the institution of choice due to the ease of proximity for participants. As well as other factors that positively attributed to the promise of the choice. Penn Law has history of black achievement, Sadie TM Alexander was the first black woman to receive a law degree from the institution in 1927. Penn Law's diversity program have been subsequently one of the highest ranked in the country, students of color are not there by chance. This was the most ideal survey population.

The survey consists of 11 questions, the first one asks for your graduation date, and the rest are grouped into three subgroups. The first group was the pre-law sector, the questions asked related to the experience before admission to law school, i.e. test prep, last, info sessions. The next group was labeled during law school, questions were geared toward the intersection of their individual black identity and their class curriculum. The final subgroup was post law, focusing on their experiences after law school and entering the job market.

Data

The desired target of response for the survey was six, regardless of their student or graduate status. While there was a push initially to seek a split representation of both students and graduates, having only graduate responses served to be advantageous because the entire law school process is complete and that offers much more information to be available. This is very

much an experimental research project and that makes for a lot of flexibility in the structure and system.

For the pre-law sector, there seemed to be an overwhelming mention about how much of a financial obstacle it was just to apply for law school and get study aids and services for the LSAT. During law school, a common thread was the scarcity of black students, even more, black professors. Building relationships with professors and peers was a big struggle, this hindered their confidence and their networking abilities. Also, personal life circumstances that may affect their performance are seen as less valid to excuse than other students with similar situations. Because of this, they feel like their allowance of mistakes are slim to none. The academic work for a large part didn't seem to be a problem on the surface, however, about half have intermittent realizations of the legal system their engaging in and how skewed it can be against them. Resources that really made a difference in their experience was participation in the Black Law Students Association. While this was very helpful, most responders felt that more was necessary to fully have enough support for black students, like an emphasis of cultural competency early on and a strong mentorship with black alumni. For the post-law sector, there was a variety of representations for different areas of the legal field, like civil rights, corporate, intellectual property, etc. The majority of participants received a job in their desired field, and unfortunately did reach some push back along the way and were advised to change their initial interests. With a final question geared to catching any significant events that weren't asked, there was insight to how students that don't come from a prestigious background or well connected family, it can be difficult adjusting and succeeding in the law school environment. While others wish they were prepared for the big law firm culture that they had a very tough time adapting to.

Conclusion

Yes, there seems to be a general trend of acceptance of black people holding positions in previously overwhelmingly white spaces, this has been a popular narrative for a few decades now. However, these are institutions that are deeply entrenched in the systematic oppression of marginalized people and definitively not enough progress is being made for the new claims of a post racial society. The legal sector is no different, it unfortunately is on the worst end of this trend. From the survey results, there's evidence of these extra obstacles black lawyers must conquer that are completely nonexistent to their white counterparts. The inability to connect with professors and peers. The extra expectation of being the sole representative in the room of the black community. And the constant biases that comes to mind when someone thinks of black people, more specifically, black lawyers. Moving forward, a larger population of surveys in different regions of the country, as well as varying prestige of law schools could be very interesting for the next possible iteration of this project.

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