The Factors That Limit Minority Lawyers' Success in Premier Firms

Ms. Heriot (Gail Heriot's "Affirmative Action Backfires" appeared as a commentary on the WSJ editorial page on Aug. 24) restates law professor Richard Sander's hypothesis that black and Latino attorneys fail disproportionately because of affirmative action. The essence of the thesis is that when colleges and universities, law schools and law firms "reach down" into the applicant pool until they have diversity in their incoming classes, they are pulling in minorities who are not competitive, doomed to be at the bottom of the performance curve, and thus more likely to fail and leave, when without affirmative action, those minorities would attend lower-ranked schools and do better.

Prof. Heriot did not give a critical review of Prof. Sander's papers, nor did she offer solutions to the persistently low representation of African-American and Latino attorneys in the nation's premier law firms and corporations. While the Sander argument has data and seemingly rational conclusions, the set of assumptions it begins with pretty much determines the conclusions. It suffers from a host of methodological shortcomings that compromise its findings. There are forces and factors that discourage these minorities from pursuing legal careers and cause those who do to face additional barriers to success. We know this from our own research and the published research by Prof. Marjorie Schultz at Boalt Hall and also studies described in the ABA's "Miles to Go: Progress of Minorities in the Legal Profession" and in MCCA's "Creating Pathways to Diversity" series.

Of greater concern than methodological shortcomings is the implication that the best action for the lack of African-American and Latino attorneys is no action at all. We do not accept this.

There are more reasoned approaches to creating diversity than arguing for or against affirmative action. If affirmative action means bringing in people who are not capable of success, then it is bad. If it means finding enlightened approaches to bring under-represented groups into the mainstream and enabling success, it deserves our effort and support. The argument should not be affirmative action, good or bad, but how to fashion a successful approach in a profession that is key to a functioning democracy. African-Americans and Latinos should be full participants in the profession that, by the American Bar Association's motto, is chartered to defend liberty and pursue justice.

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