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March 15, 2010

Center for Racial & Ethnic Diversity

American Bar Association

321 N. Clark Street

Chicago, IL 60654-7598

Attn: The Honorable Ellen F. Rosenblum

Dear ABA Center for Racial & Ethnic Diversity:

The Society of American Law Teachers (SALT) is pleased to have an opportunity to provide these comments regarding the report from the Presidential Initiative Commission on Diversity, *Diversity in the Legal Profession: The Next Steps*. Since 1974, SALT has been an independent organization of law teachers, deans, law librarians, and legal education professionals working to make the profession more inclusive, to enhance the quality of legal education, and to extend the power of legal representation to under-served individuals and communities. SALT's mission and efforts to diversify the legal profession and academy were recognized in the Diversity Report.

The ABA is to be commended for producing a report that provides important recommendations to guide the profession's work to create a diverse legal profession. The Commission's selection of three outstanding legal scholars to assist in this effort has ensured that the Report is comprehensive and incorporates recent developments in diversity work inside and outside the legal profession.

The Report acknowledges the challenges ahead and invites a dialogue on this very important issue. SALT is pleased to accept that invitation by submitting comments on the Report and standing ready to continue our long-standing efforts to diversify the academy and profession through collaborations with other committed partners.

The Continuing Need to Focus on Diversity

Citing the work done by SALT and Columbia's Lawyering in the Digital Age Clinic, the Report notes that the enrollment of African Americans and Mexican Americans has decreased since 1995 (p.17). Law schools enroll lower proportions of diverse students than do professional schools with similar high entrance requirements, such as medical schools and engineering schools. The continuing underrepresentation of the groups that are the focus of the Report within the legal profession means that we must not lessen our commitment and our efforts.

Underrepresentation of these groups in the legal profession is especially harmful because of the unique role of the legal profession. As law professors we have the opportunity to train students who will be leaders in law, government, business, and the nonprofit sector. We look forward to working with the ABA to ensure that the legal profession reflects the talents of all of the United States.

The Importance of Funding

Commitment to enhancing diversity is important, but it is not enough. While some recommendations in the Report can be implemented at little or no cost, others will require financial resources from law firms, government, law schools, the ABA, and other bar associations.

For example, the Report notes the important work being done by Professors Marjorie Shultz and Sheldon Zedeck at UC Berkeley to develop new methods for evaluating law school applicants (p.12). Initial funding for the Shultz-Zedeck work was provided by the Law School Admissions Council, but LSAC has not provided the funding needed to complete the work. Given the severe limitations of the information on applicants provided through the Law School Admissions Test, and the test's disparate impact on racial minorities and on women, the Shultz-Zedeck initiative has the potential to improve the quality of students admitted to law school as well as to increase the diversity of the applicants admitted to law school. The ABA should consider how it might contribute to funding this work, and how it might use its considerable influence to persuade other funders to contribute.

U.S. News and Enforcement of the ABA Standards

The Report recommends de-emphasizing the U.S. News & World Report's rankings because of their adverse impact on applicants of color (p.19). The Report also recommends promotion of the proper use of LSAT scores based on the guidelines published in the LSAC's "Cautionary Policies."

The ABA can do more than this. ABA Accreditation Standard 503 requires law schools to use the results of any admissions test "in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test." Interpretation 503-4 cites the LSAC's "Cautionary Policies" as an example of such a testing agency guideline. But schools are not held accountable for the way in which they use the LSAT, despite the existence of this standard. For example, the decline in enrollment of students of color at some law schools is widely attributed to the policy or practice at these schools of instituting a "cut-off" LSAT score, below which no applicant is admitted; these policies or practices are in turn often driven by the school's desire to maximize its U.S. News ranking. The LSAC's "Cautionary Policies" require that such cut-off scores be implemented only when there are data supporting the use of such a cut-off.

The ABA Council on Legal Education accreditation site teams could be instructed to inquire more thoroughly into the use of the LSAT and in particular to look closely at the use of such cut-offs and require schools to justify their reliance on such cut-offs by reference to data collected as part of the self-study required as part of the accreditation process. Such measures would go far towards ensuring appropriate use of the LSAT and decreasing the disparate impact of that test on applicants of color.

U.S. News maintains a law school "diversity index," but currently does not include those data as a factor in the overall rankings. According to a new study by Wendy Espeland and Michael Sauder, "Rankings and Diversity" in the Fall 2009 edition of the Southern California Review of Law and Social Justice, law school admissions policies are based, in part, on a school's standing in the rankings. If diversity were to be included as a factor in those rankings, law school admissions policies and applicant choices might both be impacted to promote greater diversity.

Bar Examinations

The Report asks whether the bar examination can “evaluate the skills necessary to deliver services in diverse legal environments” (p.13). SALT’s 2002 *Statement on the Bar Exam* (available at <http://www.saltlaw.org/userfiles/SALTBarExam.pdf>) noted the negative effect of the current bar exam on the profession’s ability to create a more diverse bench and bar. Since the 2002 statement, alternatives to the bar examination have been proposed and New Hampshire has implemented a pilot project for the Daniel Webster Honors Program. SALT’s recent statement, *SALT Raises Questions for States Considering Adoption of a Uniform Bar Exam* (available at <http://www.saltlaw.org/userfiles/1-20-10SALTuniformbarexamfinal.pdf>) describes these alternatives in more detail.

SALT stands ready to collaborate with the ABA Council on Legal Education in efforts to improve the current bar examination and to address the disproportionate impact that examination has on law graduates of color.

Scholarship as a Resource

As the Report notes, the professions outside of law (including medicine, business, and engineering) have succeeded in attaining greater diversity. The legal profession should look closely at the efforts undertaken in these other professions and, as the Report recommends, adapt similar initiatives for the legal profession.

Legal education has many scholars who have undertaken important work on diversity; much of this work is interdisciplinary and incorporates lessons learned in settings outside the law. SALT can be a resource for the ABA and other bar groups in helping to identify scholars with expertise in specific areas.

Collaboration

SALT appreciates the opportunity to comment on the Commission’s Report. Minority under-representation in the legal profession, funding for efforts to diversify, the future of bar examinations, the use of ABA Council on Legal Education accreditation standards, the effect of U.S. News rankings, and the use of scholarly work on diversity are just a few of the many issues raised in the Report that intersect with the mission and ongoing efforts of SALT. As the Report notes, diversity is a journey, not a destination (p.31). We look forward to working with the ABA and other groups in the profession on that important journey.

Sincerely yours,



Raquel Aldana
Co-President



Steven Bender
Co-President