Seattle Journal for Social Justice

Volume 6 | Issue 2 Article 4

6-3-2007

Simply Put: How Diversity Can Benefit Whites and How Whites Can Simply Benefit Diversity

Angela Mae Kupenda

Follow this and additional works at: http://digitalcommons.law.seattleu.edu/sjsj

Recommended Citation

Kupenda, Angela Mae (2007) "Simply Put: How Diversity Can Benefit Whites and How Whites Can Simply Benefit Diversity," *Seattle Journal for Social Justice*: Vol. 6: Iss. 2, Article 4.
Available at: http://digitalcommons.law.seattleu.edu/sjsj/vol6/iss2/4

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized administrator of Seattle University School of Law Digital Commons.

Simply Put: How Diversity Benefits Whites and How Whites Can Simply Benefit Diversity

Angela Mae Kupenda[1]

> "My boss is white," said Simple . . . .
> "And being white and curious, my boss keeps asking me just what does THE Negro want. Yesterday, he tackled me during the coffee break . . . . My boss says, 'Now that you-all got . . . [integration], what more do you want?'" . . . .
> "Reintegration," I said . . . . That you be integrated with *me*, not me with you.". . . .
> "Negroes are the ones who want to be integrated," said my boss.
> "And white folks are the ones who do not want to be," I said.
> "Up to a point, we do," said my boss.
> "That is what THE Negro wants," I said, "to remove that *point*."
> "The coffee break is over," said my boss.[2]

INTRODUCTION

As suggested by Simple's white boss in the excerpt above, education is integrated "up to a point." Unfortunately, since the formal integration of blacks and whites in education,[3] the U.S. Supreme Court's focus has not been to move beyond formal desegregation to achieve fuller integration. Rather, the primary focus has been on using the law to defeat affirmative action for racial minorities—now called reverse discrimination against whites—and to prevent legal institutions from going further in employing intentional, race-specific means to assure diversity.[4] Courts have held that schools exceed constitutional limits in trying to rectify any vestiges of slavery and segregation by having more black-friendly admission policies.[5] Even in the more progressive University of Michigan diversity cases, the Court sanctioned diversity efforts in holding that diversity was a compelling government interest,[6] but limited the scope and duration of such efforts.[7] In the more recent Seattle case, *Parents Involved in Community Schools v.*

Seattle School District No. 1, the Court halted two districts' efforts to improve racial diversity and learning for its schoolchildren by holding that race-conscious methods used to address de facto school segregation were not narrowly tailored.[8]

Although there are surmountable[9] legal barriers to racial integration in education, fuller integration is possible. But first, whites must see how they benefit from diversity, and, second, whites must take simple steps toward integration that may, in turn, reveal to whites their desire to become more fully integrated. These two steps may help remove the limiting point to true integration. First, however, an introduction to the character of Simple is appropriate, as the truths expressed by a literary character often help us to confront difficult realities.

I. WHO IS SIMPLE AND WHY IS HE IMPORTANT?

Interestingly, literary characters provide a provocative means to uncover and examine nonfictional truths, especially truths on sensitive topics like race.[10] The defensiveness that Americans feel when confronted by racial truths is a frequent barrier to honest communication about race. "Oh, I personally did not do any wrong to blacks, so I have no obligation to apologize now" is a too frequent and popular response by some whites when they face an opportunity for racial progressiveness.[11] Literature, then, provides us an opportunity to examine ourselves and is therefore an indirect means of achieving direct racial progress.[12]

Langston Hughes's short story, *Coffee Break*, is helpful here.[13] The main character is Jesse B. Simple of Harlem. Simple, a black man, is a talkative soul who laughs sometimes to keep from crying.[14] Hughes often used this character to illustrate an important racial point and to "wonder[] and laugh[] at the numerous problems of white folks, colored folks and just folks."[15] The setting for the conflict illustrated in the story is a coffee break shared by a black man and his white boss.

Many blacks who have worked in predominantly white settings will know, all too well, the potential dangers of taking coffee breaks with white coworkers, especially white bosses. During a coffee break with white coworkers, there may be an illusion of openness, even about issues of race. However, if a black person answers probing race questions honestly and forthrightly, it may lead to the abrupt end of such a break, as it does in the introductory excerpt. It may even lead to a mischaracterization of the black person as angry, illogical, emotional, or obsessed with race.

In the introductory excerpt from *Coffee Break*, Simple's white boss is pressuring Simple to explain what more than integration the Negro could possibly want.[16] Simple initially declines to answer, explaining to his boss that he cannot speak for the entire Negro race.[17] But then Simple decides to explain that he, as a Negro, wants "reintegration"; he wants whites integrated with blacks and not just blacks integrated with whites.[18] This exchange leads to the abrupt ending of the coffee break by the white boss.

Hughes's exploration of the complexity surrounding integration also addresses, albeit indirectly, whether education has ever fully integrated the black experience into the school environment. Schools are integrated, but only up to a point. Some blacks have been integrated into the white experience: they attend predominantly white institutions, are taught by mainly white faculty, attempt to join school organizations primarily run by their white classmates, and study books written by whites that exclude the fuller stories of the experiences of racial minorities in America. Blacks have learned the "language" of the dominant white culture, have bonded with whites over issues important to the white community, and have learned to remain silent while white teachers and assimilated nonwhite teachers ignore racial implications in the curriculum and in their classrooms.

But diversity—or, as Simple put it, the reintegration of the white environment into the black experience—has not occurred. True integration requires the predominantly white environment to change as well. The educational environment that many whites experience is still very white, as

it has only embraced integration "up to a point," as Simple's white boss suggests.

The purpose of this essay is twofold. This essay will first address the benefits to whites of moving beyond this point—the benefits of true diversity and further integration. Second, this essay will explain ways that whites can move beyond racial isolation and improve diversity. In exploring this second point, I hope to answer those that ask, "Why would whites want to remove the limiting point and truly achieve integration?" Although I address these issues as they play out through our educational system, and specifically our legal educational system, the arguments apply to many other contexts in which race is a force.

II. HOW DOES DIVERSITY BENEFIT WHITES?

Significant racial progress "occurs when the goals of black Americans coincide with the perceived need of whites."[19] Therefore, a major question is how whites will benefit from diversity. Persuasive answers to this question may encourage whites to see the pursuit of diversity as a worthwhile, and even necessary, venture.

How does diversity benefit whites? I posed this question to a number of my students in a racially diverse law school class, and I was saddened that they had great difficulty coming up with any ways that diversity actually benefits whites. Perhaps my students could only think of the forced racial negotiations during the protests and boycotts of the 1960s, where whites conceded to certain demands in order to end economic boycotts. Indeed, some whites cooperated because the racially motivated boycotts threatened their own financial survival. Perhaps my students did not see any parallel motivations for whites today to want or even desire integration and diversity.[20] I disagree with my students. Even without forced economic compliance, whites stand to benefit greatly from diversity in the following ways: diversity eliminates limiting fallacies that harm white students, it replaces limiting points with progressive options, and it teaches patriotism.

A. Diversity Eliminates Limiting Fallacies that Harm White Students

A number of limiting fallacies harm the educational development of white students. Several of these fallacies will be discussed here, introduced with short quotes from my students and colleagues over years of experience.[21]

1. Diversity Eliminates Fallacies from Uncritical Media Exposure

In a Civil Rights class, an almost thirty-year-old, nonblack law student told me, "I didn't know black or poor people cared for themselves or their children until I completed the reading for class today." I asked her where she got such an idea, and she replied, "I got my information from the television, and if it were not so, it would not have been on television."

This is what she had thought until she completed the supplementary reading to the casebook. This student had done well academically throughout her "education," but her education was sorely lacking. By believing the disparaging images about blacks and other minorities[22] that the media bombarded her with, this student's education was deficient—she was harmed by her lack of cultural understanding. Her lack of diverse educational experiences that might have countered these misconceptions resulted in a law student who lacked the necessary perspective and sensitivity to function as an attorney in an increasingly diverse America.

Not only are whites injured by the fallacies from the media that portray minorities and the poor in a negative light, whites are also injured by the overwhelmingly positive representation of whites in the media One of my white male students wrote a paper on race and class. His preliminary thesis was that class differences are more limiting than racial differences.

Over the course of the semester, this student and I had many conversations as he worked on his paper. He shared with me his personal motivations for wanting to work on this specific topic. He explained that he grew up and was still living in poverty. But as a future lawyer, his concern was that he assimilate into the culture of success projected by most of his

classmates. He was afraid for his classmates to really know him and his background, as they might think less of him because he was not from the middle or upper class. He felt comfortable sharing with me, though, because he thought I might understand. One day, he brought pictures of his family, which reflected their living conditions, as well as some racial diversity among those who had married into his family. Although the entire family was poor, he explained that some had great difficulty accepting the children born from the interracial marriages in the family.

By the end of his research, he had concluded that a white individual could transcend economic limitations and move into a higher economic class, or at least appear to others to be in a higher economic class. He had reflected on how he had "disguised himself," as he called it, to be a "normal white privileged male" law student. Conversely, he also concluded that a racial minority, in spite of personal achievement, could not necessarily transcend racial limitations: those limitations come from whites' perceptions of a minority, which may not be affected by a minority's abilities, economic condition, or advancement.[23]

When this white student presented his research, he started his presentation with his own story of growing up very poor in a trailer home. His story was so moving that he and several others in the class were moved to tears. When he finished, one of his white male classmates turned to him and said, "I would have never thought that about you, that you were so poor growing up and had so many struggles. You look like a normal white student." Indeed, this student had lived much of his life in hiding to maintain the fallacy: good whites are not poor, like some blacks.

This fallacy had harmed him in his personal and professional development. His constant fear of being exposed resulted in the restriction of his own expressions and participation in class. Part of the goal of law school is for students to grow in self-knowledge and self-expression. Until he allowed himself to be comfortable with being both white *and* poor, his growth had been severely limited.

Diversity helps eliminate the fallacies that restrict white students' perceptions of nonwhites and white students' perceptions of their own lives and the lives of other whites. Diversity encourages whites to explore their own limiting points, helps free them to be real, and releases them from the stereotypes of white privilege. Diversity encourages whites to see and accept diverse experiences even among their own white community.

2. Diversity Eliminates Fallacies that Lead Whites to Uncritically Reject Minorities as Authority Figures

One semester I was exceptionally excited about teaching my class of first year law students. I prepared myself well and dressed myself professionally. Placing a warm smile on my dark brown face to greet these future lawyers, I walked into the predominantly white classroom. I taught. Later in the semester, I was out of town for several days. When I returned, one of my white female students had left several messages for me. She was experiencing a personal crisis and wanted to talk with someone. I returned her calls, counseled and encouraged her, and eventually she worked through her situation. A few weeks later she came by my office to thank me personally. But she said she also owed me an apology.

Apparently, before she made contact with me, she had told some of her white classmates that she was trying to contact me for counsel. A number of her white male classmates had asked her why in the world she would want to talk with "that woman." She explained to me that she had never had a black female teacher. On the first day of class, when I had walked in the classroom, before I had even said a word, she had said to herself, "Good grief, not that black woman for a teacher." Fallacies lead whites to resist minorities as authority figures. Her own limiting fallacy almost kept her from getting the support she needed.

Resisting blacks as authority figures is based on a fallacy of incompetence, a fallacy of nondesirability. Many things could be at the root of the fallacy—fear, lack of familiarity, even hatred. Diversity, though, as it

did with this young woman, helps eliminate such fallacies and can help whites to obtain support in their personal and educational issues, as it may be a nonwhite that is best situated to help them.

3. Diversity Eliminates Fallacies of Presumed Superiority

One semester, several black students earned the grade of A in a very difficult course I taught. Although several white students also received As, other whites who presumed themselves smarter than the black students received the grade of B+. These white students had very busy semesters with several activities and had great semesters overall. However, many of them were upset when they somehow learned that several blacks had earned higher grades than they had. When the white students with grades of B+ met with me, we reviewed their papers, and they understood why they had not received an A.

This incident led to many false rumors that I only give As to blacks and not to whites. Even though a number of years have passed, the rumors persist contrary to fact that my annual awards for the best paper are regularly earned by white males. Some white students have told me that they do not enroll in my classes because they think I only give As to blacks. No whites have gone to the academic dean to determine the truth or falsity of this rumor.

When white students are outperformed by blacks, they may institute this fallacious thinking. This injures the white students because they do not accept responsibility for the lower grade and use it as a learning tool for the future. Further, the white students are injured because they may miss out on excellent class opportunities. White students may consequently avoid classes with other nonwhite professors. With little diversity in their schools, white students may manage to graduate never having been taught again by another nonwhite teacher. Their cross-cultural understanding would be limited, as they may think that all nonwhites are the same. In addition, they may miss out on courses covering subject areas that would

enhance their education if they avoid nonwhite teachers and classes with a critical mass of nonwhite students. White students who are not a minority in a class may never develop an understanding of the experiences of those who daily must function as minorities at school or work. As a result, white students will be ill prepared to prosper in an increasingly diverse America.

When I first started teaching at the college level, I taught undergraduate business courses. I was diligent in treating all of my students fairly, using the same rules and procedures regardless of the student involved. Many years later, after I had become a lawyer, I was a member of a predominantly white group seeking racial understanding in the community. At one of the lunch meetings, a young white man rushed up to me and told me he was one of my former students. I gave him a hug, but he looked so worried. He told me that he had spotted me on the highway in my car and had unsuccessfully tried to stop me. He had been searching for me for years.

At that point, I was greatly confused by the conversation. He explained that he was in my class when I taught at a predominantly white college. He had asked me to break a rule for him. I refused and, according to him, he then called me racist and sexist. He assumed that because I would not break the rule for him that I had a problem. In recent years, he confessed, he realized that he was the one with a problem, for he had expected to be entitled to unearned privilege and I had challenged that privilege. For years, he had searched for me to apologize.

More diversity would give white students opportunities to challenge the fallacy of white superiority and confront their own expectations of white unearned privilege. As a result, they would learn to work harder and would not underestimate the academic abilities, competitiveness, and fairness of nonwhites.

4. Diversity Eliminates Fallacies of Adequate Preparation in Nondiverse Environments

I had lunch with a white administrator who was under the impression that I wanted to work permanently at his school. Although I worked hard to disavow him of this notion, he kept trying to explain that if only I had clerked at the U.S. Supreme Court and was of the right religious affiliation, they would hire me. I reminded him again that while I was enjoying myself at his school, I had no desire to work there permanently. He was quite surprised but then asked for my help. Although his school as a whole was very nondiverse, the administration was trying to argue that the law school itself was actually diverse. This was the administration's argument: the law school was diverse because it offered future lawyers another option—the option of nondiversity. So, by offering a different option, the school was actually contributing to diversity.

I thought for a few moments. Then I explained that if his school were a kindergarten, perhaps I would have a slightly different view. But his school was a law school, preparing future leaders for top positions in our country. How could these future leaders be adequately prepared to lead a diverse country without the experience of learning in a diverse learning community and without any exposure to contrary views to their religious and/or political worldview? How could they lead a diverse country without acknowledging their own racial prejudices and attitudes? Considering that many of the students already came from environments that were exclusively white, I explained to him that his well-ranked school delivered a substandard legal education. I experienced a moment similar to Simple's: after my comment, the white male administrator hurriedly announced that the lunch was over even though I expressed a desire to continue our conversation.

Leaders of nondiverse institutions labor under the fallacy that they provide excellent educations to their students. However, students schooled without cross-cultural experiences have not received a full education. As

the U.S. Supreme Court suggested in *Grutter*,[24] these inadequately educated students may place the entire country at risk.[25] Diversity is essential to effective education.

B. Diversity Replaces Limiting Points with Progressive Options

With little or no diversity, whites risk being dishonest about merit, experiencing racial guilt that limits personal growth, and spending resources on maintaining a racial lie rather than using those resources more productively. I address these limiting points below and offer progressive replacement options that move the country closer to true merit evaluations and real patriotism.

1. Diversity Replaces False Notions of White Superiority with Real Merit Evaluations

Diversity initiatives help whites to become more honest and progressive about merit. For example, several white colleagues have explained to me that many racial minorities do not gain admission into various programs because they are unqualified based on various standardized test scores and other factors. Having served for many years on admissions and hiring committees, I know that an applicant's grade point average is adjusted depending on the perceived quality of the school. Sometimes a minority student's high grade point average is subjectively discounted if that student has attended a historically or predominantly black educational institution.

Some whites believe that to accept a nonwhite student with a lower standardized test score or a discounted grade point average is to erode admission standards. However, the standards are based on the following fallacies: a standardized test score is the most important criteria; the weight of white students' grades from predominantly white schools is in fact a reflection of true merit, not a continuation of false presumptions of white superiority; and other subjective factors on which admission of white students are merit based as opposed to unearned privilege.

Educational institutions routinely, and without legal challenge, utilize factors other than merit in making admission decisions.[26] Throughout my time in higher education, I have seen white students admitted because their parents play golf with the right people, because they are a legacy admit (applicants whose parents or other relatives attended the institution[27]), because they won beauty pageants, because of fraternity membership, and so on. Being diversity minded helps whites see that systems are already not based on true merit.[28] Whites may convince themselves that they are successful because of their own hard work and character. A critical look at all of the factors that affect opportunity, including whether a person has contacts within the institution, shows that one's actual abilities and motivations are not the sole basis for opportunity. Diversity helps whites to see the many different ways that merit can be measured, helping whites to think more critically and holistically about more legitimate admission factors. Therefore, diversity initiatives can help whites act with more integrity and honesty.

2. Diversity Also Replaces White Guilt and Fear with Knowledge and Understanding of Self and Others

Over the years, some of the white students in my Race and the Law[29] class have told me that they do not want to discuss race (even though they have enrolled in a race and the law class) because these discussions make them feel guilty as whites. Diverse perspectives in a classroom help expose nonwhite anger and white guilt. It helps whites to see that some guilt, though not personal, attaches collectively from unearned privilege and the structural and systematic exploitation of racial minorities.[30] Diversity encourages whites to engage in discussions of race and to make racial progress, which can free them from some of the guilt. Diversity helps whites emotionally and psychologically by replacing guilt with progressive action.

3. Diversity Replaces the Effort to Maintain Racial Segregation with the Effort to Improve Society

More racial diversity and less racial discrimination will help whites to allocate resources in a better way. Whites devote resources to protect themselves from less privileged citizens. These expenditures include the economic and social costs of imprisoning themselves in gated communities to protect against poverty-related crime; sending their children to private (mostly white) schools to avoid the ill-funded public schools predominantly populated by racial minorities; spending tax dollars to build larger prisons that house large, nonwhite populations; and spending tax dollars to support the government's defense of suits alleging racial discrimination. Whites can reduce these expenditures by learning to work with and value our increasingly diverse society.[31]

C. Diversity Teaches Patriotism

Diversity replaces "Love it or leave it" with "Love it enough to really know it and to make it better." Since September 11, 2001, patriotism and security have become big national concerns. Diversity actually furthers patriotism. Diversity encourages individuals to fairly assess our country's history and its relationship to minorities. Although this can be hard work facing earned and unearned guilt, diversity teaches that the greater love of America is to love it enough to improve it to be its best.

"Love it or leave it" suggests that one is satisfied with mediocrity, that one would rather not have progress in the sciences, with the environment, in relationships, or in the economic and international success of this country. If "Love it or leave it" had been strictly followed, this country would be without the contributions from nonwhites.

A greater love of America suggests that one wants the best for the object of the love. With America as an object of each educator's, parent's, or citizen's love, this means that we want what is best for America. And what is best is progress: each person realizes their fullest potential, making the

greatest contribution. There can be little progress among a multicultural America without better cultural understanding. That is perhaps why retired military officials, corporate executives, and other amici in *Grutter* urged that diversity is a compelling governmental interest.[32]

III. HOW CAN WHITES SIMPLY BENEFIT DIVERSITY?

Diverse elementary schools are critical if we want whites to benefit from the inherent lessons of a diverse community at a more fundamental stage in development. With all of the benefits of diversity to whites that I have explored above, what is the problem? Why have we progressed so little in our efforts to become more diverse? Even with the recent U.S. Supreme Court cases, there are simple steps that academia can take to more fully embrace diversity, i.e., the reintegration of whites to nonwhites. In this section, I explore some simple measures that white elementary and secondary schools and districts can take. I also discuss these measures and how they relate to predominantly white law schools.

A. Simple Steps for White Elementary and Secondary Schools

Unfortunately, since the formal desegregation of public education, the focus has not been on moving from formal desegregation to a truer integration. Much of the Court's jurisprudence has explored the limits to school policies aimed at creating further racial mixing. In *Brown*, the Court suggested the need for black children to be educated with whites for the good of blacks, holding that separate was inherently unequal and a denial of equal protection for blacks.[33] Conversely, in *Grutter*, the Court emphasized the benefits of diversity to whites.[34] Considering the power the white community still wields politically and economically, it is critical that white students be educated with more understanding and with a more accurate image of people of color so as to begin to halt ongoing racism in America. In the most recent of these decisions, *Parents Involved in Community Schools v. Seattle School District No. 1*, Justice Kennedy suggests some

methods that school districts may employ to encourage diversity.[35] In this essay, I want to move beyond his suggestions to several simple steps we can take to move closer toward the reintegration of whites to others.

White children can receive an education that promotes cross-racial understanding, even given the present de facto segregation that exists in many schools. For example, schools with predominantly white students could partner with schools with predominantly minority students to have joint activities and programs.

At the *Brown* Undone?: The Future of Integration in Seattle After *PICS v. Seattle School District No. 1*[36] symposium at Seattle University, I had lunch with a white female lawyer who is currently a stay-at-home mother. Her children are in virtually all white schools, as they moved to a neighborhood where she thought her children could receive the best education available. However, she is greatly concerned about diversity—or the lack thereof—in the upbringing of her children and other similarly situated white children. She told me that she is well acquainted with several teachers from her children's "white" school, and that she also knows several teachers from a "black" school. I suggested that she develop a joint program, as a pilot project, where a small group of children from both schools get together on a number of Saturdays during the school year for various activities—art sessions, for example. Most children love to draw and pride themselves on their art work. We brainstormed such a project. She said some of the white children already tutor at the black school. Although I remarked that this was a good start, I thought she could lead an effort where the children would meet together as equals to learn from each other. This is why I suggested art. Perhaps at the end of several months the children could have an art show and invite their families.

This lovely woman was then concerned about funding; she thought both schools should be required to pay a fair share. I suggested that, as she had many business contacts, she could obtain private funding so as not to increase the burden on already financially overburdened school or families.

We went over a number of other issues, and, during our short lunch together, came up with a way she could create diversity for her own white children and others.

White public schools could also develop sister relationships with historically black colleges and universities. Likewise, predominantly black public schools could have sister relationships with predominantly white colleges and universities to promote cross-racial exposure and understanding. Such programs, which would also bring white students into environments different from the ones to which they are normally exposed, are clearly acceptable under the U.S. Supreme Court's current jurisprudence.

Similar to student bodies, faculty members are also integrated only up to a point. To move beyond that point, schools must honestly examine their hiring requirements and hiring history. Are the hiring requirements for nonwhite teachers actually higher than those for white teachers? Is extra scrutiny given to black candidates? Is subconscious racism polluting the process? To move beyond that point, schools could conduct internal studies and hire outside consultants to study their processes. Schools should consider having a minority advisory board, filled with open-minded and open-mouthed minorities, who feel free to critique the school, evaluate practices, and offer feedback.

Schools should evaluate every aspect of the environment to see if it communicates messages of "whites only," or if it reflects true integration. Subtle, but nevertheless powerful, messages are sent on graduation day if a school has an all white platform of administrators and speakers. The administration has a responsibility to ensure that the public figures and other invitees that come to campus are a result of a race-conscious sensibility.

There are a variety of other practices that academic institutions should examine in an effort to determine the implicit messaging about race. As I explored above, true integration is not just about blacks having the

opportunity to learn. It should also include opportunities for white students to have exposure to diverse cultures. Schools should consider having service requirements for graduation or required internships that involve students in diverse communities. Schools should evaluate their educational materials to see if these materials also announce "whites only." For example, schools should be careful to consider whether their books—both picture books and stories—reflect diversity. Special care should be made to be sure that minorities appear in all different contexts and not just in negative or stereotypical places or roles. In addition, literature and history books should, in age-appropriate ways, discuss the cultures and experiences of nonwhites in America.

Even aesthetics should be considered. Are all the pictures on the walls of former white male principals? Does the physical environment express integration? If the physical environment only depicts the legitimacy of whites, white children will be subtlety conditioned to believe that nonwhites do not exist in their world or that positive depictions of nonwhites do not exist.

Academic institutions should also examine their policies on racial harassment. Schools serious about removing this limiting point can go farther by having required annual diversity workshops for administrators, faculty, staff, and students. Schools tend to wait for a racial incident to occur before they act. Schools could be more preemptive in addressing racial issues and could hire and fully fund a minority affairs office.

B. A Few Comments Regarding Legal Education

In admissions, the de jure discrimination of the past has been eliminated.[37] Yet, there remain limiting points. In legal education, although the potential racial bias of standardized test scores[38] and other factors may favor white students over black students at times,[39] black students with good standardized test scores and high grade point averages seem to have a good chance of gaining admission to law school. Some

schools actually take steps to seek out nonwhite students. Even the conservative-minded U.S. Supreme Court has recently ruled that diversity may be a factor in admission decisions, as a diverse student body is good for the white students who must learn to function in a diverse society.[40] Although the student body at law schools may be integrated, it is integrated only up to a point. Minority representation, particularly for black students, is declining in law schools nationally.[41] Furthermore, the number of nonwhite lawyers in America is far lower than the growing percentage of nonwhites in America.[42]

Blacks in legal education suffer in a setting similar to the coffee break with Simple and his white boss, with some whites wondering, "Now that they have integration, what more could they possibly want?" In the introductory excerpt, Simple's boss attempts to place Simple on the defensive, wanting Simple to justify any further progress requested by blacks. This is analogous to the struggle over diversity in legal education. Completely absent from the boss's viewpoint is the curiosity about what more can be done to have a better racial environment for *everyone*.

In order for whites to be integrated with blacks, we need larger numbers of black law students and legal professionals. Even the U.S. Supreme Court has acknowledged the need for a "critical mass" of minority students to make the classroom discourse richer and fuller[43] and less white. So although we have achieved some integration, again, it is only up to a point. As Simple expressed above, what blacks want now is to remove that point.

What can law schools constitutionally do to go beyond that point? A law school may feign helplessness with the common refrain, "We would accept more black students if we could only find more qualified black applicants." If the actual problem, however, is a dearth of qualified black applicants, *and* if law schools in fact want to increase their black enrollment, then law schools could take a number of simple steps to accomplish reintegration.

First, schools must take measures to improve student diversity in the long run. For example, law schools could partner with other law-related

organizations, or work alone, for early interventions and preparation of black students for law school.[44] Law schools could develop sister programs with historically black colleges and universities, as well as with high schools, middle schools, and elementary schools with large minority student bodies. This could eventually increase the pool of black applicants for law school.

In addition, for the short term, law schools could view applicants from historically black colleges and universities with a more sensitive eye, instead of suspecting that these students come from schools that are academically "questionable." Such consideration is clearly within the U.S. Supreme Court's emphasis that the whole applicant be considered.[45]

Additionally, law schools could examine their admissions policies to see if their admissions decisions are based on actual merit. It is very easy for primarily white faculty and admissions personnel to have a subconscious preference for those with whom they feel more comfortable—those that look like them. It may be that the actual beneficiary of affirmative action is in fact white and male.[46] Law schools should have clear policies for evaluating applicants on criteria *other* than LSAT scores and grades. If law schools carefully studied their admission decisions based on other factors, they likely would find that a substantial number of these admits are actually white students who have been admitted because of alumni connections, parental clout, and/or social memberships.[47] Law schools should also conduct studies of black alumni, examining their actual career success and contributions as compared to LSAT predictors.[48] This could encourage schools to develop more open-minded approaches in examining the qualifications of applicants.

The law faculty is also integrated up to a point.[49] A small number of black professors are hired, promoted, and tenured. The experiences of black law professors confirm that we are integrated only up to a point.[50] To move beyond that point, law schools must examine the hiring requirements and hiring history of their faculty. Are the hiring requirements for black faculty

actually higher than for white faculty? Is extra scrutiny given to black candidates? Is covert racism polluting the process? To move beyond the point, law schools could conduct internal studies and hire outside consultants to study their hiring and promotion and tenure processes. Are hiring or tenure criteria often changed when a black person is being evaluated?[51] Consider black faculty who were denied tenure, where white faculty with weaker credentials were promoted because they fit in or were regarded as being more collegial.[52]

Student organizations play a unique role in representing the school and propelling students' careers forward and are often predominately white. If a school's law journals are overwhelmingly white, the school should look at criteria used and examine cultural incompetence and covert racism in write-on competitions. When law journals are overwhelmingly white, they communicate the message that the only really qualified students are the white ones. Law journals also lack the diversity that may be necessary for a crucial evaluation of the organization's tendency to maintain a status quo of whiteness in articles accepted for publication and topics considered for symposium issues. Similar concerns are present with moot court. Here, as a starting point, some consideration could be given to the number of minority lawyers used as guest judges in the moot court process.

Some faculty may argue that law school student organizations should be left to student control; however, law journals, moot court, and other career-building activities must be culturally competent and diverse. Involvement in these student organizations may strongly affect a student's future, and they represent the degree to which a law school has examined and embraced diversity.

Instead of being content with a few diversity goals in admission policies, schools should evaluate every aspect of the educational environment and note whether it sends messages of "whites only" or reflects reintegration—true integration regarding the course curriculum, the coverage of subjects in classrooms, the diversity of invited speakers, and the physical environment.

At one law school, I questioned why only pictures of whites were on the walls. The dean replied that the pictures were of the deans and that all the deans had been white. I suggested that the law school could creatively incorporate diversity. It could replace some of the other pictures of landscapes and of other white subjects with pictures related to a theme, such as reflecting the civil rights movement, or the successes of a diverse group of graduates. Otherwise, the physical environment inside and around the school would suggest that blackness is foreign and inimical to the legal educational environment. Moreover, for southern schools, any confederate type flags on display could suggest, to whites and nonwhites, a refusal to fully integrate.

True integration is not just about blacks having the opportunity, for example, to learn corporate law at a white institution. It also should include opportunities for white students to have exposure to cultures that are different from their own. Law schools should go beyond the current point and evaluate themselves carefully to see that at least simple steps are taken for the good of future white attorneys and leaders.

IV. CONCLUSION

What prevents schools from going beyond that point? Is it as Simple's white boss stated, that whites really do not want to be fully integrated with blacks? Or is it that whites do not want full integration if it requires more time and resources? Are there too few concerned faculty and students—nonwhite or white—pushing for progress? Regardless, schools can take at least a few steps to move beyond the limiting point. As Simple explains, that is what the Negro wants, and that is what white America needs.

---

[1] Professor of Law, Mississippi College School of Law. I thank Professor Bryan Adamson and the Seattle University School of Law for the excellent symposium, "*Brown* Undone? The Future of Integration in Seattle after *PICS v. Seattle School District No. 1*."

[2] Langston Hughes, *Coffee Break*, *in* BLACK VOICES 106–08 (1968).

[3] *See* Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Okla. State Regents, 339 U.S. 637 (1950); Sipuel v. Bd. of Regents, 332 U.S. 631 (1948); Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).

[4] *See* Grutter v. Bollinger, 539 U.S. 306 (2003) (white applicant challenging the diversity efforts of law school); Regents of Univ. of Cal. v. Bakke, 448 U.S. 265 (1978) (addressing claims of white applicant that affirmative action policies of school injured whites and were unconstitutional).

[5] *See, e.g.*, Gratz v. Bollinger, 539 U.S. 244 (2003) (holding that the college's system that awarded points for minority race status was not narrowly tailored).

[6] *Grutter*, 539 U.S. at 325.

[7] In the undergraduate case, *Gratz*, the Court held that the school's admission policy was not narrowly tailored enough. 539 U.S. at 270. In the law school case, *Grutter*, although the Court upheld the institution's policy, the Court noted that diversity efforts will likely be constitutional only for a finite period of time, stating, "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." 539 U.S. at 343. So, is the Court saying twenty-five years should be all that is required of diversity efforts for generations of whites to eliminate racism from their hearts and institutions? Or, perhaps the Court is saying, "Sorry blacks and other minorities, twenty-five years will be it regardless. You've been given enough already."

[8] Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1 (*PICS*), 127 S. Ct. 2738, 2760 (2007).

[9] I call these barriers surmountable because at least five justices agreed that diversity is a compelling government interest and that there are legitimate steps a school district can take to minimize racial isolation. *See PICS*, 127 S. Ct. at 2789 (Kennedy, J., concurring), 2800 (Breyer, J., dissenting, Stevens, Souter, and Ginsburg, JJ., joining dissent).

[10] *See* Angela Mae Kupenda, *For White Women: Your Blues Ain't Like Mine, but We All Hide Our Faces and Cry—Literary Illumination for White and Black/Sister Friends*, 22 B.C. THIRD WORLD L.J. 67, 69, 75 (2002) [hereinafter Kupenda, *For White Women*]; *see also* Cynthia G. Hawkins-Leon, *The History of the Insanity Plea and a Fictional Application Within the Law and Literature Canon,* 72 TEMP. L. REV. 381, 383–89 (1999) (collecting authorities and applying law to literature and discussing the various applications of literature to law).

[11] As an example, consider the refusal of several southern senators to join in the U.S. Senate's apology for lynching in America. *See* Editorial, *Civil Rights: Cochran, Lott Can Make Amends*, CLARION LEDGER, July 3, 2005, at 4G (Senator Trent Lott is quoted as saying, "I just don't think I should apologize for what the Senate failed to do—or did do—when I wasn't there.").

[12] Kupenda, *For White Women*, *supra* note 10, at 75.

[13] Hughes, *supra* note 2.

[14] *Id.* at 98–99.

[15] *Id.* at 98.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] Robert Belton, *Title VII at Forty: A Brief Look at the Birth, Death and Resurrection of the Disparate Theory of Discrimination,* 22 HOFSTRA LAB. & EMP. L.J. 431, 471 n.255 (2005) (citing DERRICK BELL, RACE, RACISM AND AMERICAN LAW 18 (5th ed., 2004)).

[20] *See* Angela Mae Kupenda, *Negotiating a Metaphorical Contract Between Blacker and Whiter America,* 37 U. MEM. L. REV. 707, 734 (2007).

[21] I have worked in educational settings for almost twenty years. Over the years, I have tutored and mentored in public elementary schools (predominantly composed of minority population). Before attending law school, I taught in the business schools at Jackson State University, a historically black college and university in Mississippi, and at the University of Mississippi (Ole Miss), where I was the first African American to teach in its business school. After law school, clerking, and practicing law, I taught at Mississippi College School of Law, Boston College Law School, Franklin Pierce Law Center (in New Hampshire), and Notre Dame Law School in Indiana. In addition, I was a scholar in residence at Pine Manor College, a women's college in Massachusetts.

[22] *See, e.g.*, Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1260–81 (1992). *See generally* JUAN F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, JEAN STEFANCIC & STEPHANIE M. WILDMAN, RACE AND RACES, CASES AND RESOURCES FOR A DIVERSE AMERICA 1035–77 (2007) (discussing cultural imagery).

[23] *See generally* STEPHANIE WILDMAN, PRIVILEGE REVEALED (1996).

[24] Grutter v. Bollinger, 539 U.S. 306 (2003).

[25] *Grutter*, 539 U.S. at 331 ("What is more, high-ranking retired officers and civilian leaders of the United States military assert that based on decades of experience, a highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle mission to provide national security." (internal quotations and citations omitted)).

[26] *See generally* Angela Mae Kupenda, *Why Isn't What's Good for the Goose, also Good for the Gander: Confronting the Truth and Reframing the Affirmative Action Question*, 25 S.U. L. REV. 141, 144–47 (1997) [hereinafter Kupenda, *Confronting the Truth*].

[27] For predominantly white schools, especially those that once denied admission to nonwhites solely on their race, it just seems logical that the legacy admits will likely be whites. Therefore, giving preference for legacy admits is closely akin to giving preference to whites. *See id.* at 144.

[28] *See id.* at 144–47.

[29] Over the years, I have also taught Race and the First Amendment and Race, Gender and the Law, and I have addressed race in my courses on contracts, constitutional law, civil rights, and the First Amendment.

[30] *See generally* CHARLES MILLS, THE RACIAL CONTRACT (1997).

[31] *See* Angela Mae Kupenda, *On Choosing to Stir from the Bottom, in* DEMOCRACY AND GLOBALIZATION 9–10 (Charles L. Nieman ed., 2003), *available at* http://upress.kent.edu/nieman/Introduction_Kupenda.htm.

[32] Grutter v. Bollinger, 539 U.S. 306, 330–33 (2003).

[33] Brown v. Bd. of Educ., 347 U.S. 483 (1954).

[34] *Grutter*, 539 U.S. at 330–31.

[35] Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1 (*PICS*), 127 S. Ct. 2738, 2792 (Kennedy, J., concurring in part and concurring in the judgment).
[36] Please visit the symposium website for further information about the topics discussed: http://www.law.seattleu.edu/cle/archive/2008/brown?mode=standard.
[37] *See* Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Okla. State Regents, 339 U.S. 637 (1950); Sipuel v. Bd. of Regents, 332 U.S. 631 (1948); Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).
[38] *See* Sarah B. Bowman et al., *Racial Integration and the Legacy of Brown at Seattle University School of Law*, 3 SEATTLE J. FOR SOC. JUST. 143, 158–59 (2004).
[39] *See* Kupenda, *Confronting the Truth*, *supra* note 26, at 143–47.
[40] Grutter v. Bollinger, 539 U.S. 306, 330–31 (2003).
[41] *See Diversity Initiatives: Is Your Firm Overlooking a Significant Source of Talent?*, L. OFF. MGMT. & ADMIN. REP., April 2005, at 1.
[42] *Id.* Soon, nonwhites will be close to being the majority of the workforce. Yet, in 2005, nonwhites made up only 9.7 percent of lawyers in America. *Id.*
[43] *Grutter*, 539 U.S. at 330.
[44] The American Bar Association and the Law School Admission Council are seeking to spearhead similar efforts.
[45] *Grutter*, 539 U.S. at 334.
[46] *See* Kupenda, *Confronting the Truth*, *supra* note 26, at 143–47.
[47] *Id.*
[48] Professor Ruth-Arlene W. Howe at Boston College Law School is engaged in such a study. *See* http://www.bc.edu/schools/law/fac-staff/deans-faculty/hower.html (last visited May 15, 2008).
[49] *See* Bowman et al., *supra* note 38, at 170–71.
[50] *See, e.g.*, Peter C. Alexander, *Silent Screams from Within the Academy: Let My People Grow,* 59 OHIO ST. L.J. 1311 (1998); Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, the Life of One Black Woman in the Legal Academy,* 28 HARV. C.R.-C.L. L. REV. 259 (1993); Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color,* 33 U.C. DAVIS L. REV. 1105 (2000).
[51] *See* Vincene Verdum & Vernellia Randall, *The Hollow Piercing Scream, an Ode for Black Faculty in the Tenure Canal,* 7 HASTINGS WOMEN'S L.J. 133 (1996).
[52] *See* Michael Boucai, *Caught in a Web of Ignorances: How Black Americans are Denied Equal Protection of the Laws*, 18 NAT'L BLACK L.J. 239, 251 (2004–05).