



Sarah E. Redfield: *Professor of Law*

Closing the Achievement Gap Working Toward Diversity in Education

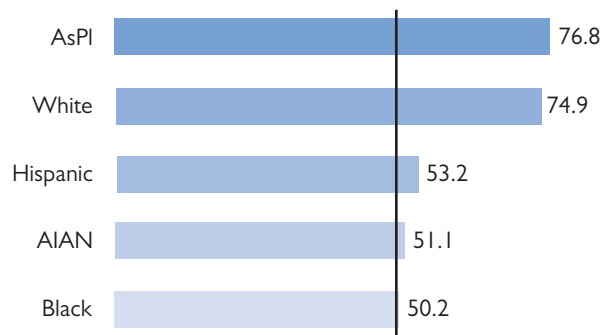
“I’ve long been interested in social justice and social change, from my college days registering voters in the South, to my environmental work for the Maine Attorney General, to my current work with education issues. I’m particularly interested in the role the law does, can, and should (or should not) play in these arenas.” – *Professor Sarah E. Redfield*

Q: Would you please explain what you refer to as the achievement gap?

SER: The American bar is 90% white and has been for some time. The American population is not and is significantly changing. As the country becomes more diverse, the bar remains essentially white, and that isn’t improving. In most law schools today, there is not enough diversity to change the profession.

If you don’t have enough diversity in the students going to law school, you won’t have enough diversity going into the profession. The numbers of African-American students are going down in law schools; Hispanic students and other minorities are basically level.

There will not be a more diverse bar unless something changes. Under-represented minority students — Hispanic, black, American Indian, Alaskan Native — leak from the education pipeline all the way from preschool to the profession. Current numbers show that about half these students won’t graduate from high school. Another 20% or so will not finish college. For those students who do graduate with BAs, their LSATs and GPAs are generally not as high as their white or Asian peers. And in today’s competitive climates, law schools find it difficult to admit them in significant numbers.



Comparative high school graduation rates.¹

Q: What could change this?

SER: One thing is that *U.S. News and World Report* could stop ranking law schools. Then law schools would be less concerned about LSAT and GPA scores because it would not affect their rankings.

Another choice would be for law schools to put the walk with the talk and be willing to match their admissions to their assertions. Some schools have done this — Thomas Jefferson in San Diego and some new law schools are examples. But, for the most part, things are static. I am not advocating admitting unqualified students, but a more holistic and diverse approach.

So what else could change it? More diverse kids could stay in high school, could do better, could graduate from college and could do better on their LSATs. There would be a larger qualified pool for law schools. The law academy and profession could work in a more focused way on projects along the education pipeline directed to these ends. I know it sounds a little strange to suggest that you can change the entire education system, but you can’t change *U.S. News and World Report*.

Q: When did you first become interested in working on diversity and achievement gap issues?

SER: Over the last four years while I was in Sacramento, California, I worked with a charter high school on a “pipeline” project, which means working with more than one level of the education system, as students move along from elementary school through high school to higher education to the profession. The high school, the University of the Pacific, McGeorge School of Law and the University of the Pacific’s Education and Liberal Arts colleges, and the bench and bar of Sacramento all worked together. That was the beginning of my indoctrination and education for myself about what the issues are in school reform and the achievement gap. As I said earlier, we have an achievement gap between races and it is pretty steady. I got interested in what the legal community could do about it. And it turns out we are already doing a lot. Here, at Pierce Law, we have a course in Street Law that takes our law community and reaches out to high school kids. In other parts of the country, other law schools are doing more and more things. And there are some programs out there that now have evidence that they have brought about change.

Q: What are some of the programs now in place?

SER: For example, one of the biggest programs is in the state of California, Career Partnership Academies, which have now been studied long enough that we know they produce results for minority kids. There is a structure in California for how this has to be done, and at least one part of the Academy work has to be with industry sector partners. If we had a law partnership academy, we would have to show the state that the bar is involved in supporting the kids. In addition, the high school has to have partners in the community and at least three years of subject-specific curriculum. For example a student could do police ‘ridealongs’ or have a law student mentor or an externship with a community law office. The student will also take a certain set of courses. This multi-faceted and sustained approach hooks students — test scores have improved and the students graduate. They have tracked their students and can even tell you what colleges they are attending.

Q: Would you please describe some of the law-related partnership programs that are currently in practice?

SER: There are examples of law school-centered or law school-started programs all over the country. Cleveland is one of my favorites. Cleveland-Marshall College of Law, together with the City of Cleveland and the Cleveland bar, started a mentor-teaching program. Nearly 700 lawyers are teaching constitutional law, in teams of four, in every high school in Cleveland. They developed the curriculum thoughtfully, and they did it well. Their goal was to see social studies scores rise, and they have. It’s a phenomenal scheduling event. And there have been some unintended consequences. It wasn’t necessarily going to be a mentoring program, but these lawyers go out and meet these kids, and what do you think happens?

Q: I understand that you are currently writing an article on the achievement gap for publication. Would you discuss the focus and the title of the article?

SER: The article is entitled “No Chance in Hell.” The name comes from a research presentation on the *Grutter v. Bolinger* (2003) case involving affirmative action and the University of Michigan’s law school. In her opinion, Justice O’Connor found that the United States constitution “does not prohibit the law school’s narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body.” The Court held that the law school’s interest in obtaining a “critical mass” of minority students was indeed a “tailored use.” O’Connor noted that sometime in the future, perhaps twenty-five years hence, racial affirmative action would no longer be necessary in order to promote diversity. The opinion implied that affirmative action should not be allowed permanent status and that eventually a “colorblind” policy should be implemented.

So last year, educators got together to see how we were doing on Justice O’Connor’s 25-year window. Their conclusion was “No Chance in Hell.” My article addresses what has the bar done so far, why I think it hasn’t worked, and what I think the bar could do to try and change this picture.

For example, some of the programs like the ones that we have talked about have not been written about. And that’s part of the problem — no one has written about them. How do you get the successful ones known elsewhere? You can find their websites, and some get some local press. But only one of my colleagues has written a law review article about these programs. Brigham Young University Law Professor Brett Sharff wrote, “Starting a Law School Youth Mentoring Program.” Without more publication, there is a huge ‘silencing’ of what people do.

Q: What other things are you doing to promote change?

SER: One of the things I started doing when I went to California was to get more engaged in national work. At McGeorge, we started an informal consortium of law schools known as Wingspread that was doing this type of work. More and more schools and bars are becoming interested and there is much to be gained from the Wingspread collaboration and meetings.

I am also on the Presidential Advisory Council on Diversity (ACD), one of three major ABA diversity committees. The ACD deals specially with the pipeline in the profession. I think that through the ABA, this committee, and the current president Thomas Wells, Jr., who is supportive of these issues, there will be change. But change is difficult. The ABA is very big. You can almost do more at a small, single law school. Still, when the ABA says something, a lot of people are listening.

Q: What will the ABA do to bring about change on the part of law schools?

SER: This year, the ABA president is holding hearings and a summit on these issues. Whether these events will result in a direct impact on law schools remains to be seen. The ABA law school standards do include rules on diversity. They require equal educational opportunity and that law schools ‘shall demonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.’(Standards 212, quoted and 211).

The application of these rules is controversial within schools, within the law school community, and within the United States Department of Education, which authorizes the ABA to accredit law schools.

Q: Can you tell me if No Child Left Behind has brought about positive change?

SER: That's an interesting question. One thing it did for all of us was to require data — you measure or count something, such as, how many were in a program and how many finished the program. NCLB is a big count-something law. It required that states not only report data on students, but also that the data be disaggregated.

For example, reports on math scores now show not only what the scores were, but also how the students did, disaggregated by race, gender, income, and foreign language. NCLB also required that special education statistics be reported separately. And some schools found out that they were not doing very well. The more you reported, the more people began to study it, which created more attention on graduation rates.

Again, this was a counting/ reporting issue. Graduation rates suddenly became very important. For example, how do you count your graduation rates from high school? Do you count the students who started in the beginning of that year and finished, or the students who started in 9th grade and finished high school? Finally, the federal government had to propose a new rule governing how to calculate to calculate this.

All these pieces are fuel for understanding what is generally called the achievement gap, which is the difference between white and Asian and underrepresented minority students. Now you can see the numbers — you can see test scores disaggregated, you can see the national test scores.

Look at the numbers more carefully. If you look at the numbers and see that on average minority students who are age 17 read at the same level as white eighth graders, how many of them do you think will make it into law school? Do you think you can do well at the LSAT if you are reading below basic, the lowest level on the National Assessment of Educational Progress (NAEP)? We are not providing an equal quality of education to children of all races and the NCLB and NAEP data show the results.

Q: Did you find a huge diversity in the wealth of the school districts in California?

SER: Wealth is a huge factor. But that's only part of the story. Data shows differences that are race-based though not necessarily coterminous with income. These are children we have placed at risk because we haven't provided them with interesting rigorous work to do in a high expectation atmosphere. There are a lot of differences in education of the teacher, the qualifications of the teacher, as well as the rigor and kind of courses that are offered.

Q: How and when will your work make a difference?

SER: Law offers interesting and engaging work. Just turn on your TV and you can watch a law show or *CSI* pretty much every hour of the day. Some kids are interested in law because of the media, others because they have had a bad relationship with the law enforcement community. The law community clearly has the engagement piece. Beyond this, every lawyer knows how to read, graduated from high school, attended college, took the LSAT, and knows how the process goes. They can guide others. From all of this, the law community has some wonderful strengths to bring to this endeavor — as soon as they know what to do. Our community can work at what we are strong at, reading, writing, critical thinking, and pedagogy. Even without training, lawyers are going to teach the way they have been taught. They are going to push students, ask questions. Now, I am hoping to finish this article and hope that others will write more.

Q: Do you hope most of the students who are mentored by members of the bar will go into the law profession?

SER: Hope, yes. Expect, no. Be satisfied with some, yes.

These programs are designed to encourage students to graduate from high school, to have aspirations, and to understand access to careers and college. There are lots of choices of careers; they don't all have to lawyers or police chiefs. I give them my business cards and ask them to email me when they decide what they want to do. I encourage my colleagues to do this as well. To quote President Kennedy, 'A rising tide lifts all boats.' We want to educate these students so they do have choices.

1. High School Graduation Composite, Alliance for Excellent Education, About the Crisis, http://www.all4ed.org/about_the_crisis (last visited April 6, 2009).

A nationally-known expert and author on education law, Redfield's book entitled Thinking Like a Lawyer: An Educator's Guide to Legal Analysis and Research was published in 2002 by Carolina Academic Press. Redfield co-authored Special Education Law Case Materials, published by Lexis Nexis in 2007 (2nd edition), for use by law students as well as educators. Her current education law textbook, Education Law: An Interactive, Problem-Based Approach, written with Scott Johnson JD '97, will be published by Lexis Nexis this fall. She has also published law review and bar articles on threatening speech, the convergence of law and education, and K20 school reform. This year, she will offer lectures at several meetings on education law, including the 16th Annual Education Law Conference, the ABA Annual Meeting and the ABA National Conference for Minority Lawyers.