

Life after affirmative action

By Michael Bobelian

April 26, 2007

The Minority Law Journal

After Michigan voters passed a ballot proposal last November abolishing the use of affirmative action in public universities, the University of Michigan Law School has adjusted its admissions process to comply. Like law schools in California and Texas that were forced to abandon affirmative action policies, UM Law has aggressively stepped up minority recruiting efforts to compensate. But the experience of other law schools shows that UM Law is likely to fall short of maintaining its current level of diversity.

Moreover, UM Law might not be the last state law school to face a ban on affirmative action. Spokesperson Diane Schachterle of the American Civil Rights Institute, a nonprofit group that spearheaded support for the Michigan referendum, says that the organization plans to introduce similar initiatives in five more states in 2008. She declined to name the states.

"It was so sad," says Sarah Zearfoss, UM law school admissions director, of Proposal 2, the Michigan referendum that barred state universities from employing affirmative action in the admissions process. The referendum, which received 58 percent of the vote, came three years after the U.S. Supreme Court upheld UM Law's use of affirmative action in *Grutter v. Bollinger*. The university asked a federal court to postpone enactment until the 2007 admissions cycle, but after an appellate court denied the request, the school began to comply with the new law in December.

Now the Law School Admission Council (LSAC), the body that administers the admissions process for all applicants, removes race and ethnicity labels from transcripts and LSAT scores sent to UM Law, Zearfoss says. When the school receives applications, staffers record the candidates' race and ethnicity to comply with federal requirements but remove the information before sending the applications to the admissions officers who evaluate them. "There is a wall between us," says Zearfoss.

So far, the law school has not seen any decline in applications from minority candidates, probably because the referendum came well into the application season, Zearfoss says. However, she speculates that minority applications may fall in future years.

In recent years, African Americans have made up about 7 percent of UM Law's entering class, and

Hispanics have made up 5–7 percent. Other law schools with similar limitations on affirmative action have suffered major losses in minority enrollment. In 1997, the year a statewide referendum banning affirmative action went into effect in California, the number of African American first-year law students enrolled at the University of California at Los Angeles's law school fell from 19 to ten. African American numbers at University of California, Berkeley's Boalt Hall School of Law dropped even more dramatically between 1996 and 1997: First-year enrollment skidded from 20 to one. A significant portion of the drop came from a decline in minority applications.

The University of Texas Law School at Austin faced a similar hurdle when the U.S. Court of Appeals for the Fifth Circuit struck down the school's affirmative action admissions policy in a 1996 decision called *Hopwood v. Texas*. (After the Supreme Court's decisions in *Grutter* and its sister case *Gratz v. Bollinger* in 2003, UT reinstated affirmative action.) Just as at the University of California schools, minority head counts plummeted. As African American and Hispanic applications to UT fell, African American first-year enrollment plunged from 31 in 1996 to four in 1997, and Hispanic first-year enrollment dropped from 42 in 1996 to 26 in 1997.

Both Boalt and UT responded by increasing recruiting and outreach efforts to minority candidates. (UCLA declined to comment on its current admissions practices.) "We had to overcome a very negative message," says Boalt dean of admissions Edward Tom. Boalt created a new position in the admissions department to get the message to student organizations and prelaw advisers at historically black colleges and traditional feeder schools that Boalt was still a welcoming environment for minority students. UT sent recruiters to Texas universities in the El Paso and Rio Grande valleys, home to many Mexican American undergraduates, who in the past had rarely applied to the law school. It also established prelaw institutes at several of these schools, often sending faculty to teach summer classes and helping students with LSAT preparation courses. Both Boalt and UT boosted their recruiting efforts at historically black colleges like Howard University and Morehouse College, and UT visited smaller schools that it had overlooked in the past, says assistant dean of admissions Monica Ingram.

Alumni from both schools established scholarship funds for minorities. One UT alumnus, a state senator, convinced airlines to offer free plane tickets to fly minority candidates to the school's open houses. Boalt also established a financial aid program for minority students that matched scholarship offers from private law schools.

Despite all these efforts, results have been mixed. At Boalt, African American enrollment never fully recovered. Prior to the 1996 California referendum banning affirmative action, first-year African American enrollment hovered between 20 and 31 students. Now it is in the range of 14–16 students.

At UT, even before the Supreme Court's decision in the Michigan cases invalidated *Hopwood* in 2003, Hispanic first-year enrollment had recovered, reaching 43 in 2002. By 2003, before UT reinstated affirmative action, African American first-year enrollment returned to 1996 levels with 30 students.

Citing UT's improvements, Ingram says, "Affirmative action is significant, but it's not the most important thing" in maintaining diversity. Still, when the Supreme Court invalidated *Hopwood* in 2003, it gave UT's law school just the boost it needed to recruit more minority students. Admission and enrollment figures for African American candidates have hovered at all-time highs since the 2003 decision, while Mexican American enrollment reached new highs in 2005. "We were able to better compete with our peers in a competitive environment," says Ingram.

Part of the reason for such competition is the relative scarcity of minority applicants to law school. The number of African Americans applying to law school has barely increased in the past decade, according to the LSAC, making admissions a zero-sum game for the schools eager to grab top minority students. (Hispanic applications have risen steadily but still do not match that ethnic group's proportion in the population.) African American first-year enrollment at all law schools actually dropped from 1996 to 2005—falling from 3,030 to 2,980—before rebounding to 3,300 in 2006.

Without affirmative action, says Boalt admissions head Tom, his law school remains "at a disadvantage compared to private schools." A private law school can easily categorize applications by race and ethnicity, he says. It can then rank students and send the top 50 minority candidates quick acceptance letters and scholarship offers. Because Boalt cannot consider race or ethnicity, it cannot move as swiftly and vigorously to accept and recruit these candidates, he says.

At Michigan, Zearfoss says, the law school has implemented new measures to mitigate the impact of the referendum. "The faculty has stepped up to the plate," she says: Faculty members have begun to contact admitted students, particularly minorities, to persuade them to come to Michigan. Alumni, mostly through the Michigan Black Law Alumni Society, have personally sought out potential minority candidates and recruited admitted applicants. As at UT and Boalt, alumni have established funds to allow interested minority applicants to visit the Michigan campus. (The school sends lists of admitted minorities to the Michigan Black Law Alumni Society but does not take part in any recruiting efforts conducted by alumni.)

Zearfoss admits that the end of affirmative action at Michigan will likely hurt minority enrollment. "The only way to effectively have racial diversity is to count race as a factor," she says. But she

remains optimistic: "We'll likely have fewer minorities, but I would be surprised if [Proposal 2] had a dramatic impact."