

The Perceptions of Administrators Concerning the One Florida Initiative

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The purpose of this study was to discover the perceptions of Florida law school administrators on the impact of the OFI (one Florida initiative) and the addition of two MSI (minority serving institution) law schools on diversity in Florida's legal profession. This research explored the impact of Governor Bush's EO (executive order) on diversity within the SUS (state university system) of Florida law schools. Further, this study examined the impact of the creation of two MSI law schools after implementation of the OFI, as perceived by the administrators. The concept of CRT (critical race theory) provides modern legal debates outlining the usefulness of historical civil rights policies in opinionated climates. This study will examine the role of CRT in relation to affirmative action and desegregation case law. CRT forms the framework for examining the impact of the creation of two MSI law schools in the state of Florida. In conclusion, this study found that minority representation in law schools has improved in Florida as a result of the OFI as well as the addition of two MSI law schools. Black representation, however, continues to lag behind other races, particularly the Hispanic population. This study concluded that the OFI has helped improve minority representation in the legal profession.

Keywords: affirmative action, diversity, critical race theory, under-representation, minority serving institutions

Introduction

The legal profession in the US has been involved for many years in programs intended to increase minority representation, meeting with only minimal success (Glater, 2001). Minorities are significantly underrepresented in the legal profession, according to Barker (2005), who indicated that Blacks and Hispanics accounted for slightly more than 5% of lawyers in the top 250 grossing law firms in the country. The failure to make significant strides toward more racial diversity in the legal profession can be traced back to the classroom. Sadly, the nation's law schools continue to be woefully lacking in the enrollment of minorities, especially Blacks (Among the Nation's 30 Top-rated Law Schools, Harvard Has the Highest Percentage of Black Students, 2007).

In Florida's legal profession, the landscape is similar to the nation as a whole, with minorities

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underrepresented as a result of a lack of access, enrollment and production of minorities from publicly supported law schools (Herbert, 1999). For example, the FBA (Florida Bar Association) (2004) reported that there are 74,125 members of the Florida Bar, of whom, 43,007 reported their race, and of that number, minorities made up less than 10%. By comparison, minorities represented more than 20% of Florida's population during this period (US Census, 2002). The statistics are not very different in Florida's public law schools with Blacks (308) lagging behind Whites (1,808) and about 25% fewer in number than Hispanics (405) during 2006.

Nationally, the ABA (American Bar Association) has found that the percentage of minorities enrolled in law schools decreased over a two-year period (Mallory, 2005). The percentage of minority law school students diminished "from 20.6% in 2001-2002 to 20.3% in 2003-2004" (Chambliss, 2004, p. 2). The "Miles to Go" study conducted by the ABA's commission on racial and ethnic diversity found that African American representation in law is less than in any other profession. Chambliss (2004) described the reduction of minority enrollment in the profession "extremely troubling". "In 2000, African Americans made up only 3.9% of all lawyers, compared to 4.4% of all physicians, 5.6% of college and university professors, 7.8% of computer scientists and 7.0% of accountants and auditors" (Mallory, 2005, p. 5).

From data provided by the ABA, Blacks make up approximately 4% of the nation's lawyers even though Blacks represent 13% of the population of the US. This lack of representation has far-reaching effects in the distrust of the legal system by racial minorities because of the lack of lawyers and judges who look like them (Randall, 2004). Kim Keenan, President of the National Bar Association, believes the underrepresentation of African Americans in the law profession means that individuals of color will not be able to find lawyers of color (Mallory, 2005).

CRT (critical race theory), on which this study is based, suggests that encouraging more racial diversity in the legal profession is nationally important, especially for states like Florida, California, Texas and others referenced in US Census Bureau data, as among states with the fastest growing minority populations during the last decade. Florida is among the states that moved away from the use of traditionally defined affirmative action, such as quotas and preferential treatment. In Florida, affirmative action was redefined by the OFI (one Florida initiative), an EO (executive order) established by the state's former Governor, John Ellis "Jeb" Bush (Office of the Governor, 1999; Bush, 2000).

This EO seeks to increase diversity in education and contracting within the state by revising agendas for tests, race-based admission practices and contract set-asides. At about the same time as implementation of the OFI, Florida's legislature opened two MSI (Minority Serving Institution) law schools, the new FIU (Florida International University) College of Law and re-opened Florida A & M University College of Law.

Purpose of the Study

The purpose of this study is to examine the impact of the OFI and the addition of two MSI law schools on racial diversity in Florida's public law schools and legal profession through the lens of CRT, which analyzes laws that support the status quo of White authority and Black subordination. This study seeks to determine what impact, if any, these two events have had on recruitment, admissions, enrollment and graduation rates in Florida's public schools of law and racial diversity within the state's legal profession. Florida is significant here, because, like California, Texas and Michigan, it is part of a growing national trend toward dilution of

conventional affirmative action's race-based policies. The state of Nebraska recently took similar action, while others, such as Colorado, Arizona and Missouri are considering anti-affirmative action legislation. This research is expected to shed much-needed light on the issue of achieving greater diversity and on the continuing debate over programs and policies that alter the traditional concepts of affirmative action. This study is pertinent, because very few studies have examined the impact of the OFI and the creation of two MSI law schools, which occurred independently of the OFI, on increasing diversity in Florida's law schools and the state's legal profession.

Significance of the Study

The outcome of this study is of interest to higher education in America and current and future public policy as it relates to affirmative action and diversity. As a result of the OFI in Florida and other ballot initiatives (Proposition 209 in California, initiative 424 in Nebraska), American colleges and universities have been encouraged to revisit their admission and recruitment standards and practices in order to ensure compliance as well as their commitment to diversity. The research presented serves as an initial study for others to report findings in the future as well as provide valuable information to the institutions to effectively diversify their law schools.

This study is important for several reasons, not least among them is the benefit to others who are interested in the subject of diversity in higher education. It may also encourage other researchers to look further into the impact that implementation of non-traditional affirmative action policies might have on other communities considering implementing similar initiatives. This study, therefore, can be very helpful to those interested in developing policies that seek to increase diversity as well as those seeking to make informed decisions about policies affecting the use of conventional affirmative action.

Research Questions

Based on the purpose and the significance of the study, this research examined the impact of the OFI and the addition of two MSI law schools on diversity in the SUS (state university system) of Florida public law schools. In order to fully assess the impact of the two events, this research was conducted to determine whether the OFI affected student applications, admissions, enrollment and LSAT (law school admission test) scores. The study also asked if the OFI brought about a more diverse legal profession in Florida. In addition, the researchers were interested in learning whether the creation of two MSI law schools influenced diversity in student applications, admissions, enrollment and LSAT scores, and separately, how the creation of the two MSI law schools might have affected diversity in Florida's legal profession, graduates and those admitted to the Florida Bar.

Examining these issues, through the lens of CRT, is helpful to researchers who seek answers to the questions that are concerned with racial diversity within colleges and universities and affirmative action policy. Critical race theorists have long been interested in minorities' access to higher education, particularly their lack of access to PWIs (predominately White institutions) as a means of maintaining White superiority to other races. It was this lack of access to PWIs that led to the establishment of MSIs, and later, MSI graduate and professional schools. Access and equal opportunity are the *raison d'être* for many of this country's MSIs (Rivers, 2000; Swygert, 2004). Crenshaw, Gotanda, Peller and Thomas (1995) expressed the position that CRT

represents a racial analysis, intervention and critique of traditional civil rights theory, on the one hand, and critical legal studies, on the other.

Theoretical Framework

This study utilized CRT as the theoretical framework. Delgado (1995) indicated that CRT originated in the early 1970s as a result of the civil rights movement's legal strategy to achieve racial justice. Researchers consider CRT to be one of the most significant legal developments on issues of race and ethnicity since 1975 (Crenshaw, Gotanda, Peller, & Thomas, 1995). Harris (2002) promoted the idea that CRT:

"Coheres in the drive together to excavate the relationship between the law, legal doctrine, ideology and racial power but the motivation of CRT is not merely to understand this vexed bond between law and white racial power but to change it" (p. 1218).

An examination of policies, such as affirmative action and the OFI, including why they are used and whether they are effective, is well-suited to the concept of CRT. The framework for CRT is predicated on historical court decisions and laws, such as the Dred Scot decision, the Naturalization Act of 1790, *Ozawa vs. United States* 1922, and *Scott vs. Sandford* 1856 (Cooper, 2002). Critical race theorists, such as Delgado, Crenshaw and Bell, concentrated on legal, constitutional and civil rights concerns, which also included affirmative action.

Methods

In addition to a theoretical framework that involves CRT, this research also employed a design that utilized quantitative methodology. Secondary data sets provided by the SUS of Florida and the FBA were used to determine the impact of the OFI and the addition of two MSI law schools. The enrollment data compiled by the SUS of Florida consisted of data by race or ethnic make-up and by institution from 1998-2006. In addition, the research utilized data from the FBA, which included the percentage of minority attorneys in Florida's legal profession from 1998-2006. Quantitative data lent itself to analyses using both descriptive and inferential statistics. The types of statistics that were assembled include frequencies and percents.

Procedure

The secondary data sets compiled within the study were received from the SUS of Florida and the FBA office. These offices assisted with the compilation of the data needed for this study. The central office of the SUS of Florida was contacted by mail, email and follow-up telephone calls to request any and all data in their possession that included statistics on: (1) the number of applicants for law school in Florida's public colleges and universities between 1998-2006; (2) the number of students admitted to these schools during those years; (3) the number of students that enrolled; as well as (4) the number of students that graduated.

The headquarters for the FBA were contacted by mail, email and by follow-up telephone calls by the researchers to request data in their possession related to this study. The requested data included statistics on the number of bar certified attorneys in Florida between 1998-2006. This was done in an effort to determine, as accurately as possible, the number of lawyers that are bar certified to practice in the state of Florida. The quantitative data was gathered in Microsoft Excel and later analyzed using an Excel spreadsheet and the quantitative data analysis software, SPSS (statistical package for the social sciences).

Data Analysis

After the receipt of the secondary quantitative data sets from the SUS of Florida and the FBA, the information was analyzed with two types of analyses, descriptive and inferential. The descriptive statistics within this study consisted of frequencies, percents, means and standard deviations. Inferential statistics are used to draw inferences about a population from a sample.

The independent variable distinguished within this research was the time frame before and after the OFI and the time frame before and after the addition of the two MSI law schools. The dependent variables were: (1) percentage of minority applicants; (2) percentage of minorities admitted; (3) percentage of minorities enrolled; (4) LSAT scores; (5) percentage of minority graduates; and (6) percentage of minority law school graduates sitting for the bar. This research was conducted using a Z-test of proportion, because the independent variable was categorical and the dependent variable was a proportion. The difference in the average LSAT scores of the public law schools prior to and following the implementation of the OFI and the addition of the two MSI law schools were evaluated using a one-way analysis of variance, because the independent variable was categorical (year) and the dependent variable was interval (LSAT score). The level of significance for rejecting the hypotheses was $\alpha = 0.05$.

Findings

There are areas in which implementation of the OFI seems to have had a significant impact, including the percentage of minorities applying, admitted and enrolling in Florida's public law schools. In all but a few years when there were non-significant declines in the percentage of minority law school applicants, there was an overall increase each year since 2000 when the OFI was implemented, and that increase continued through 2006. Moreover, the percentage of minority students admitted to the four public law schools rose immediately after the OFI and has increased in most years since, from nearly 28% in the 1999-2000 academic year to more than 31% in 2005-2006. In addition, there was a significant and similar increase in the percentage of minorities who ultimately enrolled in Florida's public law schools. These significant increases, however, proved to be inconclusive and may simply be the result that would be expected with the addition of two MSI law schools. In fact, these two minority-serving law schools accounted for much of the overall increase in the percentage of minorities applying and ultimately enrolling in Florida's public law schools.

Based on the findings of the study of minority representation in Florida's public law schools before and after the OFI, and the addition of two MSI law schools in the state during roughly the same period, it appears that minorities fared better following both events. The data suggests, however, that the combination of the two events was a major reason for the increase in minority representation and that each without the other would have resulted in less significant improvement. In summary, this study found there were more minorities enrolled in Florida's public law schools and yet, the diversity of the schools was substantially impacted. The larger share of the rise in Black enrollment was realized at the historically Black FAMU (Florida A & M University) College of Law, and likewise, the minority-serving law school at FIU accounted for a sizeable portion of growth in the Hispanic student population. It is important to note that, despite the increase in minorities, this study found a non-significant difference in median LSAT scores and graduation rates of students who attended public law schools in Florida prior to and following implementation of the OFI and the creation of the two MSI law schools.

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