

**Rising to the Occasion: Understanding How the End of Affirmative Action
Will Affect Legal Education and the Legal Profession**

Panel Two: An Agenda for Future Research

Friday, January 10, 2025
4:30-5:50 pm
Moscone Center Room 153

Research about the impact of *Students for Fair Admissions* is just beginning, and there are many topics to explore. During this session, participants chosen from a call for proposals will discuss planned or ongoing empirical work related to those many topics. Tiffane Cochran, Vice President for Research at the AccessLex Institute, will open the discussion by outlining empirical research that AccessLex has conducted or funded in this area, data sources for research, and criteria that AccessLex uses in deciding whether to fund projects. Discussions will then occur at tables, focused on fostering collaboration among schools and researchers.

Deborah Jones Merritt will moderate the session. This document includes short biographies of each speaker as well as a summary of the research project(s) they will discuss.

Tiffane Cochran, Vice President of Research at AccessLex Institute

Tiffane Cochran is the Vice President of Research at AccessLex Institute. In this role, she leads research, evaluation and data initiatives for the AccessLex Center for Legal Education Excellence, conceptualizing, guiding and implementing projects that advance access, affordability and the value of legal education. Her legal education expertise and research experience spans a breadth of topics, including data collection and reporting, law school admission, financial aid and debt, academic success, rankings, and bar passage. Prior to working at AccessLex, Tiffane served as an institutional researcher and management consultant. She holds a bachelor's degree in economics from Northwestern University and a master's degree in education leadership and policy studies with a concentration in higher education from the University of Maryland, College Park.

Research Projects:

- The value of HBCU law schools: a qualitative study
- Program evaluation of admission, scholarship, and law school outcomes for participants in the LexScholars diversity pathway program
- Predictors of first-time bar passage: admission and law school factors
- The relationship between course taking, course performance, and first-time bar passage
- Value-added modeling of law school bar passage differential and bar passage preferred/required job placement outcomes

Major Coleman, Assistant Professor of Law, Benjamin L. Crump College of Law at St. Thomas University

Dr. Major Coleman began his legal career clerking for the boutique law firm of McClellan and Spevack in Laurel, Maryland. He learned much from the personal touch McClellan and Spevack gave to the legal needs of their working class clients. Dr. Coleman was also attorney-advisor for the Department of the Army, Tank and Automotive Command, Contracts division in Detroit, Michigan, and served in the Department of Defense General Counsel's office in Washington, D.C.

Professor Coleman received his Bachelor degree (B.A.) in Law Enforcement from the University of Maryland, College Park. He received his Juris Doctor (J.D.) from the University of Maryland Law School, a Master of Arts (A.M.) and Doctor of Philosophy (Ph.D.) from the University of Chicago, and Master of Laws (LL.M.) and Doctor of Juridical Science (S.J.D) from the Center for the Study of Law and Religion at Emory Law School. In 2024, Professor Coleman was awarded the much coveted Gertie and John Witte Prize in Law and Religion for outstanding work in Law and Christianity by the Center for the Study of Law and Religion at Emory Law School. He has taught at numerous universities on their law or political science faculties.

Research Project: "The Cost of Racial Equality." America may choose to pay a price to achieve the goal of racial equality, and that price may be high, medium, low, or anything in between. The fundamental problem for America is not that the nation is choosing a certain level of cost for racial equality. The problem is that America is choosing to pay no costs at all. America has three options when it comes to racial equality: 1. Do nothing, 2. Continue with non-substantive but symbolic overtures (like high-level political appointments) to peoples-of-color, while the dangers of political instability and racial polarization continue, or 3. Choose a certain level of racial equality, (low, medium or high) to pursue and stay the course of that policy until certain goals are met.

The thesis of *The Cost of Racial Equality* is that America is choosing a combination of the first two options above. America spends little on the problem of racial inequality, in comparison to the size of the problem, and refuses to pursue racial equality, while at the same time the White population dwindles, and the ratios of peoples-of-color increases. This combination of demographic changes with concentrations of economic and political power in a soon to be racial minority portends difficult times ahead. Not only is America ignoring costs, but also most of America does not know what those costs and dangers are. Examining the different types and levels of costs and fixes necessary to achieve racial equality is the focus of this project, which is in press as a book from Cascade Books.

Meera E Deo, The Honorable Vaino Spencer Professor of Law, Southwestern Law School

Meera E Deo, JD, PhD, is The Honorable Vaino Spencer Professor of Law at Southwestern Law School, Director of the Law School Survey of Student Engagement (LSSSE), and Affiliated Faculty at the American Bar Foundation where she was recently

the Neukom Fellows Research Chair in Diversity and Law. Her research merges jurisprudence with empirical methods to interrogate hierarchies in legal education. Professor Deo's book, *Unequal Profession: Race and Gender in Legal Academia* (Stanford University Press, 2019) examines the intersection of race X gender with law faculty experiences. Building on the book, another empirical study investigated pandemic-era inequities in legal education, especially for women faculty and students of color. One current project explores methods to improve student belonging (and thereby retention), while another promotes wellness in legal education and the legal profession. The National Science Foundation, Paul & Daisy Soros Fellowship, AccessLex Institute, and Wolters Kluwer have supported her research. Professor Deo has served as a Senate-appointed member of the California Commission on Access to Justice, a consultant to the ACLU of Southern California and the Law School Admission Council (LSAC), and Chair of the AALS Section on Law and the Social Sciences. In 2020, she was elected to the American Law Institute.

Research Project: "Building Belonging." Given the end of affirmative action as we know it, a decline in numeric representation of students of color in higher education is inevitable—resulting in devastating losses for legal education, the legal profession, and American leadership. Yet, those who seek to maintain diversity cannot focus their attention solely on cultivating novel admissions strategies. We must couple recruitment with retention. Belonging, a student's malleable sense of their connection to campus, is a critical tool for improving retention rates as well as academic outcomes and student wellness. Critical Race Theory (CRT) is instructive in this context as a framework that centers the lived experiences of the students of color at the heart of the affirmative action debate. Law schools must encourage all members of their community to engage in behaviors to increase students' sense of belonging on campus, particularly activities that will support law students of color most at risk of attrition post-SFFA. Using a CRT lens and drawing on literature from multiple academic disciplines, *Building Belonging* uses national, longitudinal, quantitative data to propose belonging interventions in legal education. After reviewing both settled questions and unresolved opportunities in our evolving affirmative action jurisprudence, and building on the CRT-infused SFFA dissents, I propose empirically informed strategies for faculty, students, and administrators to enhance retention through increases in student belonging.

Chris Chambers Goodman, Professor of Law, Pepperdine Caruso School of Law

Professor Goodman teaches Evidence, Constitutional Law, Racial Justice, and Comparative Anti-Discrimination Law. She has participated in the Sudreau Global Justice Program in both Uganda and India, and taught in London and Switzerland. She was elected to the prestigious American Law Institute in 2023. She also serves on the Board of the National Conference of Women's Bar Associations, previously as Vice President of Finance, and Treasurer. Professor Goodman served as the Vice President of Diversity, Inclusion, and Outreach of the Los Angeles County Bar Association for two years. She is a former chair of both the AALS Litigation Section and of the Evidence

Section. She served on the board of Schools on Wheels, a local nonprofit that provides tutors and school supplies for homeless youths, and currently serves on the board of the Western Center on Law and Poverty. She has been an officer of the Black Women Lawyers Association of Los Angeles, the 2016-2017 President of California Women Lawyers, and the 2017-18 President of its Foundation. Professor Goodman is a frequent speaker on the subject of diversity, equity, inclusion, and implicit and algorithmic bias.

Research Project: This empirical research project focuses on some of the preconceptions about legacy admissions, whether legacy admissions programs overall benefit or harm students of color, and whether those programs *further* substantive equality or take us *farther* from substantive equality. The research methodology is to collect data on legacy applicants and admitted students, disaggregated by race and ethnicity where possible, to respond to these and other research questions:

1. Is the legacy boost different for POC than for White applicants?
2. Does legacy status play a different role in application and matriculation decisions for POC and White applicants?
3. How do differences in definitions of legacy identity (parent/grandparent v. step-parent v. siblings v. other relatives) influence applications or affect admissions across races/ethnicities?
4. Do the legacy boosts differ at HBCUs and HSIs (Historically Spanish-Serving Institutions) versus PWIs (Predominantly White Institutions)?
5. Do POC apply as legacies in similar percentages to Whites?
6. How does the impact of legacy status, wealth and high educational achievement scores impact POC compared to white students?

The subjects for the data collection efforts could include applicants, admitted students, college counselors, admissions committees, parents, universities, and alumnae organizations. Limited data is available from Harvard, based on the recent lawsuits, so exploring discovery from other litigation might yield some more useful data.

Tabrez Y. Ebrahim, Associate Professor of Law, Lewis & Clark Law School

Professor Ebrahim is an Associate Professor of Law at Lewis & Clark Law School; Visiting Scholar, University of Texas at Austin School of Law & McCombs School of Business; Scholar, George Mason University Center for Intellectual Property x Innovation Policy; Affiliate Faculty, Data Science Program, Lewis & Clark College; Research Affiliate, Bates Center for Entrepreneurship & Leadership, Lewis & Clark College; Research Affiliate, Fariborz Maseeh Department of Mathematics & Statistics, Portland State University; and Research Affiliate, Portland Institute for Computational Science. He is a registered U.S. patent attorney and holds numerous degrees and certificates: J.D., Northwestern University Pritzker School of Law; M.B.A., Northwestern University Kellogg School of Management; LL.M., University of Houston Law Center; Graduate Entrepreneurship Certificate, Stanford Graduate School of Business; M.S.

Mechanical Engineering (Computational Engineering), Stanford University; B.S. Mechanical Engineering, University of Texas at Austin.

Research Project: This Article presents a novel, quantitative analysis of changing demographics of law students' enrollment in an area that, on first glance, may appear a bit removed from the on-going conversations about law school diversity: law school faculty. This Article assess and compares law schools' student ethnicity and gender profiles to the ethnicity and gender profiles of law faculty to explore correlation as an initial step for assessing potential causality. Why do I compare law students' profiles with law faculty profiles for ethnicity and gender? Research in "similarity-attraction" in management and industrial/organizational psychology theory and in relational demography theory suggests that characteristics such as ethnicity and gender define groups and promote a positive self-identity and attachment. The similarity-attraction effect suggests that connectedness to similar groups or similarity in characteristics is a major driving force for followers. In exploring the value of diversity in law schools and situating this project within the growing literature on ethnicity, gender, and intersectionality in law schools, this Article draws upon data to gain a clearer picture of the nature of law school diversity.

Deborah Jones Merritt, Distinguished University Professor and John Deaver Drinko/Baker & Hostetler Chair in Law Emerita, Moritz College of Law, The Ohio State University

Professor Merritt is the Chair-Elect of the Section on the Empirical Study of Legal Education and the Legal Profession. She has published numerous articles related to affirmative action, diversity, equity, and inclusion in legal education and the profession, including several works that draw upon her empirical research. In 2024, the Section presented her with its inaugural Judith Welch Wegner Award for Outstanding Contributions to the Empirical Study of Legal Education or the Legal Profession. Her current work focuses on restructuring the legal profession's licensing process to better assess minimum competence and reduce the inequities generated by the current bar exam.

Melissa H. Weresh, Dwight D. Opperman Distinguished Professor of Law and the Herb and Karen Baum Chair of Ethics in the Profession, Drake University Law School

Professor Weresh is the recipient the 2017 Thomas F. Blackwell Memorial Award for Outstanding Achievement in the Field of Legal Writing, and the 2023 Linda Berger Lifetime Achievement Award for Excellence in Legal Writing Scholarship. She is a Past President of the Legal Writing Institute, Past Chair of the AALS Section on Teaching Methods, and Past Chair of the Professionalism Section of the Iowa Bar Association. She is also past editor of both the *Journal of Legal Education* and *Legal Communication and Rhetoric: JALWD*. Her scholarly interests range from politics to professionalism, and from persuasion to pedagogy. Prior to joining the Drake law faculty, she practiced

law in Ohio, specializing in environmental law. Professor Weresh received her J.D. from the University of Iowa and her B.A. from Wake Forest University.

Research Project: In connection with professional identity formation instruction, I use an exercise that was modeled after one used in medical education. In the medical education setting, students read vignettes from practicing physicians who relinquished, hid, or downplayed aspects of their personal identities in order to conform with what they perceived as the predominant professional culture. Reflecting on this pressure to modify their personal identity in order to conform to perceived professional expectations, known as “covering,” medical students are then encouraged to identify aspects of their own personal identities that they will protect as they enter the professional community. When I conducted this exercise in my law school class, I had trouble finding similar vignettes or reflections from practicing lawyers on how they modified aspects of their personal identity in order to conform to traditional professional norms. My research therefore aims to engage in an empirical, qualitative analysis of pressure to cover in the legal profession. I hope to initiate a large-scale survey asking members of the legal profession what aspects of their personal identities they felt pressure to cover and/or what aspects they chose to maintain.

Kimberly C. West-Faulcon, James P. Bradley Chair in Constitutional Law, Loyola Law School Los Angeles

Professor Kimberly West-Faulcon holds the honorary James P. Bradley Chair in Constitutional Law at Loyola Law School Los Angeles where she teaches Constitutional Law. She graduated from Duke University, Phi Beta Kappa, summa cum laude and went on to attend Yale Law School where she served as a senior editor of the *Yale Law Journal*. After law school, she clerked for Judge Stephen Reinhardt on the Ninth Circuit U.S. Court of Appeals. Prior to becoming a legal academic, Professor West-Faulcon was lead counsel in representing African American, Latino, and Asian American high school students in a lawsuit alleging the admissions practices of the University of California at Berkeley violated Title VI and the U.S. Constitution. She is a pioneer in interdisciplinary research of antidiscrimination law, standardized testing, and merit. Professor West-Faulcon’s academic articles, such as *Obscuring Asian Penalty with Illusions of Black Bonus*, are published in law journals that include the *University of Pennsylvania Law Review*, *UCLA Law Review*, and the *Yale Law Journal*. She has also filed solo-authored amicus curiae briefs in *Fisher I and II* in the United States Supreme Court based on her scholarly expertise and insights.

Research Project: “Exclusion of African American and Latino Students from Flagship State Universities.” Exclusion of Latino and African American students from state flagship university campuses persists and “is on the rise in the midst of attacks on affirmative action,” Kimberly West-Faulcon, *Affirmative Action After SFFA v. Harvard: The Other Defenses*, 74 *Syracuse L. Rev.* 1101, 1166 (2024). Maintaining “white predominance” at the flagship (most selective and prestigious) campuses of multi-campus state university systems (e.g., UC Berkeley and UCLA in the ten-campus University of California system and UNC-Chapel Hill in the seventeen-campus

University of North Carolina system) is a key goal of the attacks on racial inclusion-motivated policies like affirmative action. See Kimberly West-Faulcon, *The SFFA v. Harvard Trojan Horse Admissions Lawsuit*, 47 Seattle U. L. Rev. 1355, 1420 (2024) (presenting an empirical analysis of the high degree of “white predominance” at UNC-Chapel Hill). It is important that future empirical research on the exclusion of Latino students from flagship state universities defines and considers flagship-excluding impacts to include *disparities* between increases in the *percentage of high school graduates* who are Latino and smaller increases in the *proportion of admitted students* who are Latino. This research should also identify when a multi-campus university system, versus the system’s most selective flagship campus, supposedly “recovers” Latino racial inclusion lost after ending policies such as affirmative action *mainly due to an increase in the state’s Latino population base* (manifested in increased Latino admissions to non-flagship campuses). Empirical research on the exclusion of African Americans from flagship state universities should prioritize examining the uniquely flagship-excluding consequences of attacks on affirmative action in light of the fact that *the population base comprised of persons descended from enslaved (African) Americans does not and cannot grow through immigration.*