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Article

Entrenched Racial Hierarchy: Educational Inequality from the Cradle to the LSAT

Kevin Woodson[†]

INTRODUCTION

For my contribution to this special issue of the *Minnesota Law Review*, I will attempt to situate the problem of black underrepresentation at America's law schools¹ within the broader context of racial hierarchy in American society. The former has generated an extensive body of legal scholarship and commentary,² centering primarily on

[†] I would like to thank Bret Asbury for his helpful comments on previous drafts of this article. I would also like to thank Chris Chavarría for his excellent research assistance. Copyright © 2021 by Kevin Woodson.

1. See AMERICAN BAR ASSOCIATION, ABA PROFILE OF THE LEGAL PROFESSION 33 (2020) (black Americans make up only five percent of the profession even though they are over thirteen percent of the overall U.S. population). See Law School Enrollment by Race & Ethnicity (2019), ENJURIS, <https://www.enjuris.com/students/law-school-race-2019.html> [<https://perma.cc/BZH5-MNWW>] (black students were 7.57% of incoming law students in 2019); *id.* ("Black enrollment in law school dropped for the fourth consecutive year" and nearly half of all black law school applicants are not admitted to a single institution); Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FLA. INT'L. U. L. REV. 489 (2019) (nearly half of all black law school applicants did not gain admission into a single program). Further, black students who enroll in law school are less likely than other students to persist until graduation. Kyle Thomas & Tiffane Cochran, *ABA Data Reveals Minority Students are Disproportionately Represented in Attrition Figures*, ACCESSLEX (Sept. 18, 2018), <https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures> [<https://perma.cc/5PNS-C4MT>] (black students are only nine percent of all 1Ls but account for 15.5 percent of all 1L non-transfer attrition).

2. See, e.g., Vernellia R. Randall, *The LSAT, U.S. News & World Report, and Minority Admissions: The Misuse of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHNS L. REV. 107 (2006); Diane Curtis, *The LSAT and the Reproduction of Hierarchy*, 41 W. NEW ENG. L. REV. 307 (2019); Paula Lustbader, *Painting Beyond the Numbers: The Art of Providing Inclusive Law School Admission to Ensure Full Representation in the Profession*, 40 CAP. U. L. REV. 71 (2012); Anthony Peirson Xavier Bothwell, *The Law School Admission Test Scandal: Problems of Bias and Conflicts of Interest*, 27 T. MARSHALL L. REV. 1 (2001); Preston C. Green, III, *Can Title VI Prevent Law Schools from Adopting Admissions Practices that Discriminate Against*

the racial impact of law schools' admissions criteria and procedures, particularly the substantial weight placed upon the Law School Admissions Test ("LSAT").³ This focus is understandable: given the substantial racial disparities in LSAT performance⁴ and the test's relatively limited value in predicting academic and professional

African-Americans?, 24 S. U. L. REV. 237 (1997); Alex M. Johnson, Jr., *Knots in the Pipeline for Prospective Lawyers of Color: The LSAT Is Not the Problem and Affirmative Action Is Not the Answer*, 24 STAN. L. & POL'Y REV. 379 (2013); William C. Kidder, Comment, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 CALIF. L. REV. 1055 (2001).

3. See, e.g., Randall, *supra* note 2, at 107 ("If a Black or Mexican applicant is denied admission to law school, there is an excellent possibility that he or she may have been discriminated against based on race It is institutional racism"); Curtis, *supra* note 2, at 310 (contending that "the reliance on the LSAT diminishes diversity, reinforces pernicious and anti-democratic hierarchies, and exacerbates financial inequities in the legal profession and among legal professionals"); Lustbader, *supra* note 2, at 94 (2012) ("law schools continue to over-rely on LSAT scores. In doing so, they significantly reduce enrollment of the underrepresented."); Bothwell, *supra* note 2, at 1 (arguing that the LSAT is "inherently and unfairly biased against racial minorities"). Kimberly West-Faulcon, *More Intelligent Design: Testing Measures of Merit*, 13 J. CONST. L. 1235, 1241-44 (2011); Green, *supra* note 2 (discussing possible disparate impact challenge against use of LSAT in admissions).

Multiple Supreme Court justices also have criticized the racial impact of the LSAT. See *DeFunis v. Odegaard*, 416 U.S. 312, 319-44 (1974) (Douglas, dissenting) (suggesting that schools may need to "abolish" the LSAT to avoid racial unfairness); *Grutter v. Bollinger*, 539 U.S. 306, 369-70 (2003) (Thomas, dissenting) (observing that "no modern law school can claim ignorance of the poor performance of blacks, relatively speaking, on the Law School Admission Test (LSAT). Nevertheless, schools continue to use the test").

4. The average LSAT score for black test takers is 142, a score in the bottom quintile of all test-takers. Scott Jaschik, *Do Law Schools Limit Black Enrollment with LSAT?*, INSIDE HIGHER EDUC. (April 15, 2019), <https://www.insidehighered.com/admissions/article/2019/04/15/study-argues-law-schools-limit-black-enrollment-through-lsat> [<https://perma.cc/ZT6B-J7S6>]. By comparison, the average test score for white and Asian test takers is 153. *Id.* This average score falls below the 25th percentile LSAT scores at virtually every law school in the country, and falls within the range that some observers have concluded puts students at "extreme risk" of bar failure. *Law School Enrollment*, L. SCH. TRANSPARENCY DATA DASHBOARD, <https://data.lawschooltransparency.com/enrollment/admissions-standards> [<https://perma.cc/8C3X-KNN8>]. See also Kidder, *supra* note 2, at 1073 (finding significant racial disparities in LSAT scores among white students and students of color with similar grades at equivalent undergraduate institutions).

outcomes,⁵ it makes sense that efforts to increase black representation in law school would start here.⁶

But in focusing primarily on the inequities of law school admissions, the existing discourse to some extent has unduly isolated the issue of black law school underrepresentation from the broader context of American racial inequality. The law school admissions process is but the final stage in a long chain of events that determines whether an individual becomes a law student. The vast majority of black students effectively are prevented from attending law school by conditions that they encounter before they even apply.

Accordingly, in this article I offer a broader account of the underrepresentation of black law students, one that focuses on the conditions of entrenched racial hierarchy that impede black Americans' educational trajectories and limit their mobility into high-status

5. See, e.g., Richard O. Lempert, David L. Chambers & Terry K. Adams, *Michigan's Minority Graduates in Practice: The River Runs Law School*, 2 L. & SOC. INQ. 395 (2000) (finding that LSAT scores do not predict success or satisfaction post-law school); Bothwell, *supra* note 2, at 4; Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQ. 620 (2011) (finding that the LSAT does not predict professional competence); William Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Under-theorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975 (2003-2004) (concluding that the LSAT's predictive value lies largely in its ability to measure performance on timed tests). See also Roy Freedle, *The LSAT, U.S. News & World Report, and Minority Admissions: How and Why Standardized Tests Systematically Underestimate African-Americans' True Verbal Ability and What to do About it: Towards the Promotion of Two New Theories with Practical Applications*, 80 ST. JOHN'S L. REV. 183 (2006) (proposing the adoption of a new test that might more meaningfully assess the abilities of minority applicants).

6. Without endorsing the test, it is worth noting that a number of researchers and commentators have countered many of criticisms of the LSAT by emphasizing that the test remains the most reliable predictor of student performance and pushing back against claims that the test is discriminatory. LISA C. ANTHONY, SUSAN P. DALESSANDRO, & TAMMY J. TRIERWEILER, LAW SCHOOL ADMISSION COUNCIL LSAT TECHNICAL REPORT, PREDICTIVE VALIDITY OF THE LSAT: A NATIONAL SUMMARY OF THE 2013 AND 2014 LSAT CORRELATION STUDIES 14 (2016) (LSAT scores have a much stronger correlation with first-year law school grades than undergraduate grade point averages); Katherine Auston, Catherine Martin Christopher, & Darby Dickerson, *Will I Pass the Bar Exam? Predicting Student Success Using LSAT Scores and Law School Performance*, 45 HOFSTRA L. REV. 753, 757 (2017) (concluding that "the LSAT is still a strong predictor of academic success and bar passage, as well as career success."); Gail L. Heriot & Christopher T. Wonnell, *Standardized Tests Under the Magnifying Glass: A Defense of the LSAT Against Recent Changes of Bias*, 7 TEX. REV. L. & POL. 467 (2003) (reporting on studies finding that the LSAT actually overestimates the future performance of black students in law school); Robert Steinbuch, *A Different Take On Why Law Schools Are Not Admitting More Black Students*, NAT. JUR. (Jan. 24, 2018), <http://www.nationaljurist.com/national-jurist-magazine/different-take-why-law-schools-are-not-admitting-more-black-students> [<https://perma.cc/3CK6-JWP6>].

occupations, including the practice of law. This entrenched hierarchy has three core, distinct, though related, components that each contribute to the underrepresentation of black law students: stark racial socioeconomic disparities, the pernicious racial stigma that subjects black Americans to various anti-black prejudices and stereotypes, and enduring patterns of racial segregation. Collectively, these conditions subject many black children to an onslaught of deprivations, disadvantages, and discrimination that work to divert them away from professional careers from the very outset of their educational careers. By the time law schools review students' applications, entrenched racial hierarchy has produced staggering educational disparities that all but ensure that black Americans will be underrepresented among law students.⁷

The resultant struggle to secure sufficient numbers of academically well-prepared black law students who are likely to thrive will persist indefinitely in the absence of more far-reaching, holistic interventions.

This article will proceed in three parts. Part I introduces the three core components of racial hierarchy in America, each of which deprives black people of equal opportunities and treatment. Part II explains how these conditions diminish the potential pipeline of black attorneys by generating educational disparities at every stage of students' academic careers, from early childhood through college. Building upon this analysis, Part III identifies some approaches through which a variety of institutions, including law schools, might better enable more black Americans to enter the legal profession.

I. ENTRENCHED RACIAL HIERARCHY

America's structures and processes of racial hierarchy powerfully limit the life chances of black Americans and thereby perpetuate

7. Further, given the overrepresentation of black students from immigrant families and among black students at of higher education, the existing statistics, as bad as they are, likely understate the impact of racial hierarchy on the educational trajectories of multi-generation, single-race black students. See generally Kevin Brown, *LSAC Data Reveals that Black/White Multiracials Outscore All Blacks on LSAT by Wide Margins*, 39 NYU REV. L. & SOC. CHANGE 381, 383-84 (2014) (describing evidence of the overrepresentation of biracial students among black students at highly-selective colleges); Sara Rimer & Karen W. Arenson, *Top Colleges Take More Blacks, but Which Ones?*, N.Y. TIMES (June 24, 2004), <https://www.nytimes.com/2004/06/24/us/top-colleges-take-more-blacks-but-which-ones.html> [<https://perma.cc/CPG5-5PDE>] (reporting that according to Harvard professor Henry Louis Gates, as much as two-thirds of the school's black undergraduate population were biracial or from immigrant families).

racial inequality. This Part will introduce the three primary elements of this hierarchy—socioeconomic inequality, stigma, and segregation—that ultimately contribute to the underrepresentation of black law students.⁸

A. SOCIOECONOMIC DISPARITIES

Racial socioeconomic disparities originated from the institution of slavery and the legal regime erected to manage and preserve it. Laws and social practices that forbid or hindered black Americans

8. The impact of racial hierarchy is not limited to the legal profession. It produces similar racial deficits in virtually all high-status occupational fields. *See, e.g., Women, Minorities, and Persons with Disabilities in Science and Engineering*, NAT'L SCI. FOUND., <https://www.nsf.gov/statistics/2017/nsf17310/digest/occupation/blacks.cfm> [<https://perma.cc/B2Q7-S937>] (engineering and science fields); AAMC, DIVERSITY IN MEDICINE: FACTS AND FIGURES 2019, Figure 18, <https://www.aamc.org/data-reports/workforce/interactive-data/figure-18-percentage-all-active-physicians-race/ethnicity-2018> [<https://perma.cc/YC8E-7KVU>] (medicine); *The Dentist Workforce—Key Facts*, AM. DENTAL ASS'N HEALTH POL'Y INST., https://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIgraphic_0716_1.pdf?la=en [<https://perma.cc/7DEA-7B6E>] (black Americans were only 3.8% of all dentists in 2015); Amanda Iacone, *Fifty Years, Little Progress for Black Accountants*, BLOOMBERG TAX (July 8, 2019), <https://news.bloombergtax.com/financial-accounting/fifty-years-little-progress-for-black-accountants> [<https://perma.cc/F6JH-C9N9>] (“Out of 650,000 CPAs in the U.S., an estimated 5,000 are black”); U.S. EQUAL EMP. OPPORTUNITY COMM'N, DIVERSITY IN THE FINANCE INDUSTRY tbl.2 (2006), <https://www.eeoc.gov/special-report/diversity-finance-industry> [<https://perma.cc/ZJ2Z-QXRF>] (professional and management-level positions in finance); Sam Dean & Johana Bhuiyan, *Why are Black and Latino People Still Kept out of the Tech Industry*, L.A. TIMES (June 24, 2020), <https://www.latimes.com/business/technology/story/2020-06-24/tech-started-publicly-taking-lack-of-diversity-seriously-in-2014-why-has-so-little-changed-for-black-workers> (last visited Feb. 27, 2021) (black Americans are less than 1% of venture capitalists); Sinduja Rangarajan, *Here's the Clearest Picture of Silicon Valley's Diversity Yet: It's Bad. But Some Companies are Doing Less Bad*, REVEAL N. (June 25, 2018), <https://revealnews.org/article/heres-the-clearest-picture-of-silicon-valleys-diversity-yet> [<https://perma.cc/XB5W-LECU>] (finding “grave” racial disparities in a study of 177 of the largest Silicon Valley tech companies); Leslie Davis & Richard Fry, *College Faculty Have Become More Racially and Ethnically Diverse, but Remain Far Less so Than Students*, PEW RES. CTR. (July 31, 2019), <https://www.pewresearch.org/fact-tank/2019/07/31/us-college-faculty-student-diversity> [<https://perma.cc/9CGK-W6EN>] (only six percent of all professors are black). *See also* Denise Lu, Jon Huang, Ashwin Seshagiri, Haeyoun Park & Troy Griggs, *Faces of Power: 80% are White, Even as U.S. Becomes More Diverse*, N.Y. TIMES (Sept. 9, 2020), <https://www.nytimes.com/interactive/2020/09/09/us/powerful-people-race-us.html> [<https://perma.cc/6K8F-GZ57>] (similar disparities exist in the upper-echelon positions of influence and power in business and government).

from acquiring land,⁹ attaining education,¹⁰ and securing employment in desirable occupations gave rise to conditions of extreme socioeconomic inequality. The financial, educational, and occupational inequities imposed by these early injustices were perpetuated by government-sanctioned discrimination and segregation well into the twentieth century.

The black-white income gap is perhaps the most commonly used measure of this socioeconomic inequality. Thanks in part to the disproportionate concentration of black workers in lower-status jobs,¹¹ the median black household earns barely 60% as much as the median white household.¹² Black households are highly overrepresented in the bottom quintile of the U.S. income distribution,¹³ and the black poverty rate remains more than twice that of white Americans.¹⁴ Even

9. See Roy W. Copeland, *In the Beginning: Origins of African American Real Property Ownership in the United States*, 44 J. BLACK STUD. 646, 647–48 (2013) (noting legal restrictions that prevented enslaved and free black Americans from owning land).

10. See Christopher M. Span, *Learning in Spite of Opposition: African Americans and their History of Educational Exclusion in Antebellum America*, 131 COUNTERPOINTS 26 (2005) (discussing compulsory illiteracy laws in the antebellum South).

11. See *Labor Force Statistics from the Current Population Survey*, U.S. BUREAU OF LAB. STATS., <https://www.bls.gov/cps/cpsaat11.htm> [<https://perma.cc/2AEN-4AU8>] (black Americans are highly underrepresented in high-status jobs and overrepresented in service-sector employment). See also *supra* note 8.

12. See Valerie Wilson, *Racial Disparities in Income and Poverty Remain Largely Unchanged Amid Strong Income Growth in 2019*, ECON. POL. INST. (Sept. 16, 2020); Valerie Wilson & William M. Rodgers III, *Black-White Wage Gaps Expand with Rising Wage Inequality*, ECON. POL. INST. (Sept. 20, 2016). See also Deirdre Bloome, *Racial Inequality Trends and the Intergenerational Persistence of Income and Family Structure*, 79 AM. SOC. REV. 1196 (2014) (finding this gap has held relatively steady and closed very little over the past half century).

13. Scott Winship, Richard V. Reeves & Katherine Guyot, *The Inheritance of Black Poverty: It's All About the Men*, Brookings (March 22, 2018), <https://www.brookings.edu/research/the-inheritance-of-black-poverty-its-all-about-the-men> [<https://perma.cc/2AKG-57RY>] (more than forty percent of black children grow up in households in the bottom fifth of the income distribution, a rate more than three times higher than that of white children).

14. John Creamer, *Inequalities Persist Despite Decline in Poverty for All Major Race and Hispanic Origin Groups*, U.S. CENSUS BUREAU, <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html> [<https://perma.cc/SMZ9-TD6U>]; Black children are more than three times more likely to live in poverty than white children, and in some states, including Minnesota, they are more than five times as likely. *Status and Trends in the Education of Racial and Ethnic Groups: Indicator 4 Snapshot: Children Living in Poverty for Racial/Ethnic Subgroups (Feb. 2019)*, NAT'L CTR. FOR EDUC. STATS., https://nces.ed.gov/programs/raceindicators/indicator_rads.asp [<https://perma.cc/6J8F-9KEQ>] (34 percent of black children lived in poverty in 2016, compared to 11 percent of white children); David Murphy, Jonathan Belford, Susan Baldwin & Samuel Beckwith, *In 33 States, Hispanic or Black Children are More than Twice as Likely to be in Poverty Than*

these dismal numbers understate the economic gulf separating black and white families. Poor black families remain in poverty for much longer than poor white families, and they are far more likely to be part of an intergenerational cycle of family poverty.¹⁵ Because of residential segregation, they are also far more likely than poor whites to live in concentrated poverty.¹⁶ Although black Americans achieved significant progress toward closing this gap during the middle of the twentieth century,¹⁷ income disparities have increased substantially since 1970, eroding this convergence almost entirely.¹⁸

As large as these income-based disparities are, they are dwarfed in magnitude by another, even more important indicator of racial socioeconomic inequality,¹⁹ the black-white wealth gap. Whereas measures of income only capture the amount of money that households or individuals earn during a specified time period, wealth encompasses their total stock of accrued assets.²⁰ Wealth provides a fuller picture of a family's economic well-being.²¹ Far more so than

Their White Peers, CHILD TRENDS (2018), <https://www.childtrends.org/blog/in-33-states-hispanic-or-black-children-are-more-than-twice-as-likely-to-be-in-poverty-than-their-white-peers> [https://perma.cc/24LT-RZW8].

15. See Raj Chetty, Nathaniel Hendren, Maggie R. Jones & Sonya R. Porter, *Race and Economic Opportunity in the United States: An Intergenerational Perspective*, 135 Q. J. ECON. 711 (2020).

16. See Lincoln Quillian, *Segregation and Poverty Concentration: The Role of Three Segregations*, 77 AM. SOC. REV. 354,355 (2012) ("About one in three poor white families live in poor neighborhoods and send their children to high-poverty schools, compared to two in three poor black and Hispanic families"). See also Sean F. Reardon, Lindsay Fox & Joseph Townsend, *Neighborhood Income Composition by Household Race and Income, 1990-2009*, 660 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 94 (2015) (black families with incomes of roughly \$55,000-\$60,000 lived in neighborhoods that were socioeconomically similar to those of white families with incomes of roughly \$12,000).

17. See Patrick Bayer & Kerwin Kofi Charles, *Divergent Paths: Structural Change, Economic Rank, and the Evolution of Black-White Earning Differences, 1940-2014* 2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 22797, 2017), <https://www.nber.org/papers/w22797> [https://perma.cc/L9CY-PK5L] (finding that the black-white income gap "narrow[ed] consistently from 1940 to 1970").

18. See *id.* at 2-3 ("the median black man's earnings would have placed him at the 24th percentile of the white earnings distribution in 1940. Years after the end of the Great Recession, his position had scarcely budged, rising to only the 27th percentile.").

19. See MELVIN OLIVER & THOMAS N. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 3 (2d ed. 2006) (positing that the wealth gap "reveals dynamics of racial inequality otherwise concealed by income, occupational attainment, or education").

20. *Id.* at 2.

21. See THOMAS M. SHAPIRO, *TOXIC INEQUALITY: HOW AMERICA'S WEALTH GAP DESTROYS MOBILITY, DEEPENS THE RACIAL DIVIDE, AND THREATENS OUR FUTURE* 14 (2017) (describing wealth as "a fundamental pillar of economic security").

income, wealth determines the amount and quality of the resources and opportunities that families are able to provide their children, and thereby powerfully contributes to the intergenerational transmission of privilege and inequality.²² The wealth gap reflects a number of historic and ongoing racial dynamics, including income disparities, discriminatory housing policies,²³ and unequal access to credit.²⁴

The median wealth of black families in 2019 (\$24,100) was a scant 13 percent of the median white family wealth (\$188,200).²⁵ Black families hold less wealth than white families at every income level,²⁶ and over a third of all black families have negative wealth or no wealth at all.²⁷ Passed down from generation to generation on account of racial differences in inheritances and access to *in vivo* gifts and financial support,²⁸ wealth disparities continue to grow because of contemporary differences in income, home ownership, and marriage rates.²⁹ The full magnitude of this wealth gap is perhaps most evident when relatively well-off black families are compared to white families who would otherwise appear to be less privileged. On

22. *Id.* at 32 (“the reality for most families is that income supplies the necessities of life, while wealth represents a kind of ‘surplus’ resource available for improving life chances, providing further opportunities, securing prestige, passing status along to one’s family, and influencing the political process.”); DALTON CONLEY, *BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA* 58 (2010 ed.) (“two families with the same household income might have vastly different resources at their disposal to provide advantages to their children.”).

23. See KENNETH JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985); Louis Lee Woods II, *The Federal Home Loan Bank Board, Redlining, and the National Proliferation of Racial Lending Discrimination, 1921-1950*, 38 J. URB. HIST. 1036 (2012). See also *infra* notes 42–44 and accompanying text.

24. See MEHRSA BARADARAN, *THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP* 1 (2017).

25. Neil Bhutta, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BD. OF GOVERNORS OF THE FED. RESRV. SYS. (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm> [<https://perma.cc/TLV3-PJE6>]. See also Heather Long & Andrew Van Dam, *The Black-White Economic Divide Is as Wide as It Was in 1968*, WASH. POST (June 4, 2020), <https://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households> [<https://perma.cc/LZV9-FVTB>] (the wealth gap has not closed over the past half-century).

26. See CONLEY, *supra* note 22, at 26.

27. See BARADARAN, *supra* note 24.

28. Bhutta, *supra* note 25.

29. Alexandra Killewald, *Falling Behind: The Role of Inter- and Intragenerational Processes in Widening Racial and Ethnic Wealth Gaps Through Early and Middle Adulthood*, 97 SOC. FORCES 705 (2018) (more than half of present wealth inequality stems from racial differences in the intergenerational transmission of wealth).

average, black families with employed heads of household have less wealth than white families whose heads of household are jobless.³⁰ Black households whose heads have university degrees have less wealth than white households whose heads never completed *high school*.³¹ Black families with graduate or professional degrees typically are worth hundreds of thousands of dollars less than their comparably-educated white counterparts.³² Due to the interplay of these discrepancies and persisting patterns of residential segregation, even middle-class, relatively high-income black households tend to live in far more disadvantaged neighborhoods than comparable white families.³³

B. STIGMA

Another foundational component of racial hierarchy is the racial stigma that categorically marks black Americans as inferior and dangerous in the eyes of their fellow citizens.³⁴ In America, the institution of slavery first gave rise to pervasive black racial stigma, as white Americans developed mythologies of innate racial differences to excuse the enslavement and oppression of black people.³⁵ The rise of scientific and social scientific racism at the tail end of the nineteenth

30. WILLIAM A. DARITY JR. & A. KIRSTEN MULLEN, FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY 33 (2020).

31. *Id.* See also Patricia Cohen, *Racial Wealth Gap Persists Despite Degree, Study Says*, N.Y. TIMES (Aug. 16, 2015), <https://www.nytimes.com/2015/08/17/business/racial-wealth-gap-persists-despite-degree-study-says.html> [<https://perma.cc/PEP5-8VPS>] (“From 1992 to 2013, the median net worth of blacks who finished college dropped nearly 56 percent (adjusted for inflation). By comparison, the median net worth of whites with college degrees rose about 86 percent over the same period”).

32. Janelle Jones, *The Racial Wealth Gap: How African-Americans Have Been Shortchanged out of the Materials to Build Wealth*, ECON. POL. INST. (Feb. 13, 2017), <https://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth> [<https://perma.cc/MM7M-L5EY>].

33. Patrick Sharkey, *Spatial Segmentation and the Black Middle Class*, 119 AM. J. SOC. 903 (2014).

34. See GLENN C. LOURY, THE ANATOMY OF RACIAL INEQUALITY 87 (2002) (describing racial stigma as the refusal to accord black Americans “the presumption of equal humanity”). See also Arjan E.R. Bos, John B. Pryor, Glenn D. Reeder & Sarah E. Stutterheim, *Stigma: Advances in Theory and Research*, 35 BASIC & APPLIED SOC. PSYCHOL. 1 (2013) (describing stigma as “widespread social disapproval”); ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 9 (1963) (describing stigma as “the situation of the individual who is disqualified from full social acceptance”).

35. See Matthew Wills, *How Antebellum Christians Justified Slavery*, JSTOR DAILY (June 27, 2018), <https://daily.jstor.org/how-antebellum-christians-justified-slavery> [<https://perma.cc/88GP-G43L>].

century further reinforced black stigma by introducing new “proof” of black otherness and inferiority under the veneer of supposedly objective empirical analyses.³⁶ An extensive body of social science research has demonstrated the continued force of racial stigma and prevalence of anti-black racial biases (albeit increasingly in subtle and covert forms).³⁷ On account of this stigma, black Americans suffer discriminatory, life-altering mistreatment in employment,³⁸ the criminal justice system,³⁹ and in their commercial and financial dealings.⁴⁰ This anti-black racial stigma also extends to black neighborhoods and institutions, which are often inaccurately perceived to be far more dangerous and of lower quality than comparable non-black ones.⁴¹

C. SEGREGATION

The profound racial segregation that persists between black and white Americans is another defining characteristic of racial hierarchy in America. This segregation is the legacy of concerted and sustained efforts to deny black Americans access to white residential and educational spaces. It became a prominent feature of American life in northern metropolitan areas around the turn of the twentieth century, as cities and their white citizens attempted to confine black residents to racially designated neighborhoods through a variety of invidious means, ranging from racist laws and contractual restrictions to

36. See KHALID GIBRAL MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* 36–54 (2010) (discussing the impact of Frederick L. Hoffman and similar-minded researchers in promoting the thesis that blacks were innately inferior and criminally inclined).

37. See JENNIFER EBERHARDT, *BIASED: UNCOVERING THE HIDDEN PREJUDICE THAT SHAPES WHAT WE SEE, THINK, AND DO* (2019); ANTHONY GREENWALD & MAHZARIN BANAJI, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013).

38. See DEVAH PAGER, *MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION* (2007).

39. See Radley Balko, *There's Overwhelming Evidence that the Criminal Justice System is Racist. Here's the Proof*, WASH. POST (June 10, 2020), https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?utm_term=.051189c87977 [https://perma.cc/P59R-M2EQ] (discussing more than 120 studies that have found evidence of racial bias in the criminal justice system).

40. See Devah Pager & Hana Shephard, *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*, 34 ANN. REV. SOC. 181 (2008).

41. See Robert J. Sampson & Stephen W. Raudenbush, *Neighborhood Stigma and the Perception of Disorder*, 24 FOCUS 7, 10 (2005) (demonstrating that perceptions of neighborhoods disorder are heavily influenced by neighborhoods' racial compositions).

campaigns of violence and terrorism.⁴² When black Americans successfully breached neighborhoods and schools that were previously all-white, their arrival often led to white flight and, ultimately, resegregation.⁴³

More recently, residential segregation has been sustained through unlawful racial steering,⁴⁴ exclusionary zoning,⁴⁵ the strategic placement of schools and public housing in racially defined neighborhoods,⁴⁶ and the consistent refusal of white families to move to black neighborhoods.⁴⁷ More than a half century after the Supreme Court struck down separate but equal in public education⁴⁸ and the 1968 Fair Housing Act proscribed housing discrimination,⁴⁹ many of America's neighborhoods remain highly segregated.⁵⁰ This residential segregation invariably fuels patterns of school segregation,⁵¹ which are further exacerbated by the refusal of many white parents to send their children to predominantly-minority schools.⁵² As a result, nearly

42. See JEANNINE BELL, *HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING* (2013); JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* (2006).

43. See generally David Card, Alexandre Mas & Jesse Rothstein, *Tipping and the Dynamics of Segregation*, 123 Q.J. ECON. 177 (2008); TODD GITLIN, *THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE* xvi (revised ed. 1993).

44. See Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 ANN. REV. SOC. 167 (2003).

45. See Kimberly Quick, *Exclusionary Zoning Continues Racial Segregation's Ugly Work*, CENTURY FOUND. (Aug. 4, 2017), <https://tcf.org/content/commentary/exclusionary-zoning-continues-racial-segregations-ugly-work/?agreed=1> (last visited Feb. 27, 2021).

46. See RICHARD ROTHSTEIN, *COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

47. Lincoln Quillan, *Why Is Black-White Residential Segregation So Persistent? Evidence on Three Theories from Migration Data*, 31 SOC. SCI. RES. 197 (2002); Ann Owens, *Racial Residential Segregation of School-Age Children and Adults: The Role of Schooling as a Segregating Force*, 3 RSF: RUSSELL SAGE FOUND. J. SOC. SCI. 63 (2017).

48. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

49. 42 U.S.C. § 3601 (2012).

50. William H. Frey, *Black-White Segregation Edges Downward Since 2000, Census Shows*, BROOKINGS (Dec. 17, 2018), <https://www.brookings.edu/blog/the-avenue/2018/12/17/black-white-segregation-edges-downward-since-2000-census-shows/> [<https://perma.cc/22SP-V5TE>] (most metropolitan areas remain highly segregated by neighborhood, with dissimilarity indexes of above 50).

51. See Erica Frankenberg, *The Role of Residential Segregation in Contemporary School Segregation*, 45 EDUC. & URB. SOC. 548 (2013).

52. See ERIC TORRES & RICHARD WEISSBOURD, *DO PARENTS REALLY WANT SCHOOL INTEGRATION* 3 (2020); Chase M. Billingham & Matthew O. Hunt, *School Racial Composition and Parental Choice: New Evidence on the Preferences of White Parents in the United States*, 89 SOC. EDUC. 99, 112 (2016) (finding that white parents became

seven out of ten black students now attend schools in which most students are racial minorities.⁵³

Segregation, socioeconomic inequality, and stigma operate in tandem, and their effects on racial inequality constitute a mutually reinforcing feedback cycle of deprivation and mistreatment. For example, segregation is both a function of the wealth gap, which leads to black families being priced out of many white neighborhoods, and a contributing factor, as the values of the homes that black Americans ultimately purchase in more heavily black and less affluent neighborhoods appreciate at lower rates than comparable homes in white neighborhoods.⁵⁴ Segregation also contributes to socioeconomic inequality through the phenomenon of spatial mismatch, in which many employers are located in areas remote from, and difficult to access by, people living in black neighborhoods.⁵⁵ The disparities and social problems brought about by segregation, concentrated poverty, and wealth disparities further stigmatize black people and black spaces as inferior, leading to discrimination that in turn reinforces socioeconomic inequality. The tendency to blame black people for the outcomes brought about by racial hierarchy also leads to greater support for racially repressive and regressive public policies⁵⁶ and apathy and resentment concerning the plight of the black poor.⁵⁷ These

significantly less likely to enroll their children in a hypothetical school as the proportion of black students there increases).

53. Emma Garcia, *Schools are Still Segregated, and Black Children are Paying a Price*, ECON. POL. INST. (Feb. 12, 2020), <https://www.epi.org/publication/schools-are-still-segregated-and-black-children-are-paying-a-price> [<https://perma.cc/9K7Z-DUNK>].

54. See generally Katrin B. Anacker, *Still Paying the Race Tax? Analyzing Property Values in Homogeneous and Mixed-Race Suburbs*, 32 J. URB. AFFAIRS 55 (2010) (finding that homes in predominantly black neighborhoods are appraised for less than comparable homes in white neighborhoods); Junia Howell & Elizabeth Korver-Glenn, *The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980–2015*, SOC. PROBLEMS 1, 19 (2020) (in the years between 1980 and 2015, homes in white neighborhoods appreciated \$194,000 more than comparable homes in minority neighborhoods).

55. See Michael A. Stoll, *Job Sprawl, Spatial Mismatch, and Black Employment Disadvantage*, 25 J. POL. ANAL. & MGMT. 827 (2006) (finding evidence that job sprawl reduced black workers' employment outcomes); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987) (describing the impact of deindustrialization and job loss on predominantly-black urban communities).

56. See ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* (2017) (arguing that perceptions of black pathology helped fuel the rise of mass incarceration).

57. See MARTIN GILENS, *WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY* (1999) (finding that Americans supported the

conditions of racial hierarchy all jointly contribute to educational inequality, as the following Part will explain.⁵⁸

II. THE LONG PIPELINE PROBLEM

The underrepresentation of black students in American law schools is the product of a series of disparities that occur throughout the educational careers of black Americans. The inequities of entrenched racial hierarchy disadvantage black Americans through the childhood and early adulthood years in which students attain the academic preparation and credentials necessary for entrance to law school. In fact, this process begins before they even reach kindergarten and produces cumulative disadvantages that increase at every step along the way from elementary school to secondary school to college.

A. CHILDHOOD DISPARITIES

The impact of racial hierarchy on the educational trajectories of black children is evident by the time they first go to school. Socioeconomic inequality leads to racial disparities in developmental parenting practices⁵⁹ and exposure to adverse childhood experiences (“ACEs”),⁶⁰ both of which strongly influence children’s school readiness and future educational outcomes.⁶¹ Further, most black 3- and 4-

retrenchment of AFDC because they perceived that the program primarily helped undeserving black beneficiaries).

58. These educational disparities are multifaceted and stem from a diverse, complex array of causes. There is no way to determine the precise degree to which the conditions associated with racial hierarchy are responsible for these problems, but the social science research suggests that they play critical roles.

59. See Jeanne Brooks-Gunn & Lisa B. Markman, *The Contribution of Parenting to Ethnic and Racial Gaps in School Readiness*, 15 *FUT. CHILD.* 139, 157 (2005) (finding that black and Hispanic mothers were less likely to use certain parenting behaviors that are associated with greater school readiness and finding that these differences may account for 25 to 50 percent of the school readiness gap).

60. See Vanessa Sacks & David Murphey, *The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race or Ethnicity*, *CHILD TRENDS* (Feb. 12, 2018), <https://www.childtrends.org/publications/prevalence-adverse-childhood-experiences-nationally-state-race-ethnicity> [https://perma.cc/ZQ3K-VRDB] (33% of black children have multiple ACEs, compared to only 19% of white children).

61. See Nadine Forget-Dubois, Ginette Dionne, Jean-Pascal Lemelin, Daniel Pérusse, Richard E. Tremblay & Michael Boivin, *Early Child Language Mediates the Relation Between Home Environment and School Readiness*, 80 *CHILD DEV.* 736, 736 (2009) (finding that certain parenting tactics and qualities increased school readiness); Annie Bernier, Stephanie M. Carlson & Natasha Whipple, *From External Regulation to Self-Regulation: Early Parenting Precursors of Young Children’s Executive Functioning*, 81 *CHILD DEV.* 326, 334 (2010); Dylan B. Jackson, Alexander Testa & Michael G. Vaughn,

year-olds do not attend preschool,⁶² and those who do disproportionately receive low-quality care.⁶³ Thus, black children arrive at kindergarten already an extraordinary seven to twelve months behind their white counterparts in math and reading on average,⁶⁴ and also substantially trailing them in other measures of school readiness.⁶⁵

These early disparities beget later ones.⁶⁶ As a group, black students never overcome this initial deficit. The black-white achievement gap persists through elementary and secondary school. It is a near-universal feature of American education: it exists in every state⁶⁷ and

Adverse Childhood Experiences and School Readiness Among Preschool-Aged Children, J. PEDIATRICS (Nov. 23, 2020), [https://www.jpeds.com/article/S0022-3476\(20\)31435-9/fulltext](https://www.jpeds.com/article/S0022-3476(20)31435-9/fulltext) [<https://perma.cc/3V39-S9N9>].

62. See Farah Z. Ahmad & Katie Hamm, *The School-Readiness Gap and Preschool Benefits for Children of Color*, CTR. AM. PROGRESS (Nov. 12, 2013), <https://www.americanprogress.org/issues/early-childhood/reports/2013/11/12/79252/the-school-readiness-gap-and-preschool-benefits-for-children-of-color> [<https://perma.cc/9QNP-7FXW>] (“recent data from 2011 show that more than half of African American children and 63 percent of Hispanic children ages 3 to 4 do not attend preschool.”).

63. See Rachel Valentino, *Will Public Pre-K Really Close Achievement Gaps? Gaps in Prekindergarten Quality Between Students and Across States*, 55 AM. EDUC. RES. J. 79 (2018) (finding that that the public prekindergarten programs that served poor black children were much lower in quality than those that served more affluent whites); Diane M. Early, Iheoma U. Iruka, Sharon Ritchie & Oscar A. Barbarin, *How Do Pre-Kindergartners Spend Their Time? Gender, Ethnicity, and Income as Predictors of Experiences in Pre-Kindergarten Classrooms*, 25 EARLY CHILD. RES. Q. 177 (2010) (schools with greater percentages of minority children spend less time engaged in stimulating developmental activities).

64. Allison Friedman-Krauss, W. Steven Barnett & Milagro Nores, *How Much Can High-Quality Universal Pre-K Reduce Achievement Gaps?*, CTR. AM. PROGRESS (April 5, 2016), <https://www.americanprogress.org/issues/early-childhood/reports/2016/04/05/132750/how-much-can-high-quality-universal-pre-k-reduce-achievement-gaps> [<https://perma.cc/5845-PLE6>].

65. See Emma Garcia & Elaine Weiss, *Early Education Gaps by Social Class and Race Start U.S. Children Out on Unequal Footing*, ECON. POL. INST. (June 17, 2015), <https://www.epi.org/publication/early-education-gaps-by-social-class-and-race-start-u-s-children-out-on-unequal-footing-a-summary-of-the-major-findings-in-inequalities-at-the-starting-gate> [<https://perma.cc/4XY5-LVGU>]. Racial disparities in mass incarceration also contribute to these disparities to some extent, as the experience of having an incarcerated parent has been associated with lower school readiness scores. Anna R. Haskins, *Unintended Consequences: Effects of Paternal Incarceration on Child School Readiness and Later Special Education Placement*, 1 SOC. SCI. 141 (2014) (boys whose fathers have been incarcerated have lower school-readiness scores and are more likely to be placed in special education classes).

66. See Kevin Woodson, *Why Kindergarten Is Too Late: The Need for Early Childhood Remedies in School Finance Litigation*, 70 ARK. L. REV. 87, 99–105 (2017).

67. See *Racial and Ethnic Achievement Gaps*, STANFORD CTR. FOR EDUC. POL’Y ANALYSIS, <https://cepa.stanford.edu/educational-opportunity-monitoring-project/achievement-gaps/race> [<https://perma.cc/Q9JN-CX9R>]. See also Sean F. Reardon &

within virtually all school districts that educate black students.⁶⁸ If the past few decades are any indicator,⁶⁹ there is little reason to expect that this gap will close in the foreseeable future.

These disparities are not mere byproducts of cultural pathologies or self-sabotage on the part of black children succumbing to peer pressure.⁷⁰ Instead, they are the natural and foreseeable results of the conditions of racial hierarchy set forth in Part I. Socioeconomic inequality, for example, contributes to this achievement gap substantially, and in

Joseph P. Robinson, *Patterns and Trends in Racial/Ethnic and Socioeconomic Academic Achievement Gaps*, in HANDBOOK OF RSCH. IN EDUC. FIN. AND POL'Y 14 (2014) ("Across all 50 states, white-black . . . gaps remain quite large.").

68. Sean F. Reardon, Joseph P. Robinson-Cimpian & Ericka S. Weathers, *The Geography of Racial/Ethnic Test Score Gaps*, 124 AM. J. SOC. 1164, 1204 (2019) (studying several thousand districts and finding "but a handful in which the achievement gap is near zero."). *Id.* ("there is no school district in the United States that serves a moderately large number of black or Hispanic students in which achievement is even moderately high and achievement gaps are near zero.").

69. Racial disparities in critical measures of academic achievement have diminished very little in the past three decades. For example, white fourth-, eighth-, and twelfth-graders outscored black students on the National Assessment of Educational Progress ("NAEP") reading and math tests in 2019 by similar margins as they did in 1992. *National Student Group Scores and Score Gaps, NAEP Report Card: Reading*, NATION'S REP. CARD, <https://www.nationsreportcard.gov/reading/nation/groups/?grade=4> [<https://perma.cc/TGC4-RBYU>]; *National Student Group Scores and Score Gaps, NAEP Report Card: Mathematics*, NATION'S REP. CARD, <http://cepa.stanford.edu/educational-opportunity-monitoring-project/achievement-gaps/race/#first> [<https://perma.cc/AXX5-YBZW>]; *National Student Group Scores and Score Gaps, NAEP Report Card: Reading*, NATION'S REP. CARD, <https://www.nationsreportcard.gov/reading/nation/groups/?grade=8> [<https://perma.cc/BK3U-YZ52>]; *National Student Group Scores and Score Gaps, NAEP Report Card: Mathematics*, NATION'S REP. CARD, <https://www.nationsreportcard.gov/mathematics/nation/groups/?grade=8> [<https://perma.cc/7FSY-CDBD>]; *National Student Group Scores and Score Gaps, NAEP Report Card: Reading*, NATION'S REP. CARD, <https://www.nationsreportcard.gov/reading/nation/groups/?grade=12> [<https://perma.cc/NL76-K5QR>]; *National Student Group Scores and Score Gaps, NAEP Report Card: Mathematics*, NATION'S REP. CARD, <https://www.nationsreportcard.gov/mathematics/nation/groups/?grade=12> [<https://perma.cc/B9F8-M5G2>].

70. The "acting white" trope, which posits that culturally-maladapted black children eschew academic achievement, has been roundly rebuked in recent social science research. *See, e.g.*, PRUDENCE L. CARTER, *KEEPIN' IT REAL: SCHOOL SUCCESS BEYOND BLACK AND WHITE* (2005) (finding that minority students used the "acting white" criticism in reference to social and cultural behavior that were not necessarily related to academic achievement); KAROLYN TYSON, *INTEGRATION INTERRUPTED: TRACKING, BLACK STUDENTS, AND ACTING WHITE AFTER BROWN* (2011) (arguing that academic-related concerns about "acting white" only arise with respect to high-achieving black students who have been isolated by racial tracking).

a variety of ways.⁷¹ The strong and growing correlation between socioeconomic status and educational achievement⁷² and the deleterious effects of living in poverty,⁷³ especially long-term exposure to poverty,⁷⁴ undermine black educational achievement. Racial hierarchy depresses black educational outcomes by relegating black students to inferior schools. Black students attend schools with higher concentrations of inexperienced and uncertified teachers⁷⁵ and fewer school counselors.⁷⁶ Their schools offer calculus, physics, chemistry, and Algebra II less frequently than schools with low minority enrollments.⁷⁷ Most black students in large metropolitan areas attend high-poverty schools,⁷⁸ and this exposure to school poverty is a powerful mechanism of educational inequality.⁷⁹

71. See Jesse Rothstein & Nathan Wozny, *Permanent Income and the Black-White Test Score Gap*, J. HUM. RES. 509, 537 (finding that “family financial circumstances can explain 40 to 75 percent of the raw [black-white test score] gap at age 10 or 11.”).

72. See Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, in *WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN’S LIFE CHANCES* (2011) (explaining that “the achievement gap between children from high- and low-income families is roughly 30 to 40 percent larger among children born in 2001 than among those born twenty-five years earlier.”).

73. See Robert Sampson, Patrick Sharkey & Stephen W. Raudenbush, *Durable Effects of Concentrated Disadvantage on Verbal Abilities among African American Children*, 105 PROCEEDINGS NAT. ACAD. SCI. 845–52 (2008) (finding that living in severely disadvantaged neighborhoods reduced later verbal ability by the equivalent of an entire year or more of school).

74. See Caroline Ratcliffe, *Child Poverty and Adult Success*, URB. INST. 4 (Sept. 9, 2015), <https://www.urban.org/research/publication/child-poverty-and-adult-success> [<https://perma.cc/BA6N-PRRX>] (children who spend at least half of their childhoods in poverty are 13 percent less likely to complete high school and 43 percent less likely to complete a four-year college degree than other children who experienced poverty).

75. U.S. DEP’T OF EDUC. OFF. OF CIV. RTS., 2013-2014 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK 9 (2016), <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf> [<https://perma.cc/6T3K-72UE>] [hereinafter A FIRST LOOK].

76. *Id.*

77. *Id.* at 6.

78. See Janie Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, ATLANTIC (Feb. 29, 2016), <https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414> [<https://perma.cc/4US3-XVBM>] (in the vast majority of large U.S. cities, most black students attend high-poverty schools).

79. Reardon et al., *supra* note 16, at 95. See Janie Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, ATLANTIC (Feb. 29, 2016), <https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414> [<https://perma.cc/2T8A-UF3K>] (quoting Sean Reardon as explaining that “The difference in the rate at which black, Hispanic, and white students go to school with poor classmates is the best predictor of the racial-achievement gap.”).

Racial stigma impairs black students' educational careers by subjecting them to discrimination at the hands of teachers and other school personnel. Black students are subject to excessive surveillance and disparate levels of discipline, including suspensions,⁸⁰ expulsions,⁸¹ referrals to law enforcement,⁸² and arrests.⁸³ These inequities begin as early as preschool⁸⁴ and persist throughout students' educational careers. Black students also experience discrimination in the classroom, for example when they are "tracked" into less rigorous courses that less adequately prepare them for college admissions exams and the academic rigors of college.⁸⁵ Some evidence suggests that teachers may give black students worse grades and devote less effort to improving their performance because of racial biases.⁸⁶ Racial stigma may also harm black students in even more subtle ways. Many social psychologists have posited that black students' awareness of racial stigma may lead them to underperform on important exams on

80. U.S. GOV'T ACCOUNTABILITY OFF., K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 13 (March 2018) ("Although there were approximately 17.4 million more White students than Black students attending K-12 public schools in 2013-14, nearly 176,000 more Black students than White students were suspended from school that school year.").

81. A FIRST LOOK, *supra* note 75, at 4 (black students are nearly twice as likely as white children to be expelled from school).

82. *Id.* (black students are more than twice as likely as white students to be referred to law enforcement).

83. Moriah Balingit, *Racial Disparities in School Discipline are Growing*, *Federal Data Show*, WASH. POST (Apr. 24, 2018), https://www.washingtonpost.com/local/education/racial-disparities-in-school-discipline-are-growing-federal-data-shows/2018/04/24/67b5d2b8-47e4-11e8-827e-190efaf1f1ee_story.html [<https://perma.cc/G4M4-27F5>] ("Black students accounted for 15 percent of the student body in the 2015-2016 school year but 31 percent of arrests").

84. A FIRST LOOK, *supra* note 75, at 3 (black preschoolers are 3.6 times as likely as white children to receive one or more suspensions, and make up 47% of suspended preschoolers despite constituting only 19% of all preschoolers); Walter S. Gilliam, Angela N. Maupin, Chin R. Reyes, Maria Accavitta & Frederick Shic, *Research Study Brief, Do Early Educators' Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?*, YALE CHILD STUDY CTR. (Sept. 28, 2016) (describing experimental evidence suggesting that implicit racial biases may lead preschool teachers more likely to expect challenging behavior from black boys).

85. See generally Whitney Pirtle, *The Other Segregation*, ATLANTIC (April 23, 2019), <https://www.theatlantic.com/education/archive/2019/04/gifted-and-talented-programs-separate-students-race/587614> [<https://perma.cc/W2MM-FSZQ>] (discussing racialized patterns of tracking within schools).

86. See generally Harriet R. Tenenbaum & Martin D. Ruck, *Are Teachers' Expectations Different for Racial Minority than for European American Students? A Meta-Analysis*, 99 J. EDUC. PSYCHOL. 253 (2007) (finding that teachers scored certain assignments lower when they believed that they had been completed by black students).

account of stereotype threat, a phenomenon in which anxieties about confirming negative stereotypes situationally hinder their cognitive abilities.⁸⁷

Conditions of racial hierarchy also inhibit the educational performance of black children from higher-income households.⁸⁸ Thanks to the wealth gap, even fairly well-to-do black families may lack the financial resources necessary to provide their children the same opportunities and support that their privileged white peers enjoy,⁸⁹ including private tutors, test preparation services, and college admissions coaches. Further, black students who attend low-poverty, predominantly-white schools potentially face various forms of discrimination, including the disparate enforcement of school rules.⁹⁰

These achievement gaps culminate in black school dropout rates that are twice those of white students.⁹¹ In some predominantly black

87. See Toni Schmader, Michael Johns & Chad Forbes, *An Integrated Process Model of Stereotype Threat Effects on Performance*, 115 PSYCHOL. REV. 336 (2008).

88. See also Reardon et al., *supra* note 68, at 1205–07 (finding that educational disparities are largest among students from high-SES households).

89. See Jones, *supra* note 32 (noting that “Even the typical black family with a graduate or professional degree had more than \$200,000 less wealth than a comparable white family.”).

90. See AMANDA E. LEWIS & JOHN B. DIAMOND, *DESPITE THE BEST INTENTIONS: HOW RACIAL INEQUALITY THRIVES IN GOOD SCHOOLS* 45–83 (2015) (black students were more likely to be punished than white students who committed the same rule infractions).

91. *Secondary School Completion: Public High School 4-Year Graduation Rate*, AM. COUNCIL ON EDUC., <https://www.equityinhighered.org/indicators/secondary-school-completion/public-high-school-4-year-graduate-rate> [https://perma.cc/RPQ9-6WF2]. Although the percentage of black Americans who have completed high school has converged upon the national average, this statistic is misleading, as it includes students who have dropped out of school and attained General Equivalency Degrees (“GEDs”). *Secondary School Completion*, AM. COUNCIL ON EDUC., <https://www.equityinhighered.org/indicators/secondary-school-completion/high-school-completion-rate-by-gender> [https://perma.cc/TN74-CY86]; James J. Heckman & Paul A. LaFontaine, *The American High School Graduation Rate: Trends and Levels*, 92 REV. ECON. STAT. 244 (2010). Black students are highly overrepresented among GED-holders, who as a group are far less likely than high school graduates to attend or complete college. See *id.* See generally THE MYTH OF ACHIEVEMENT TESTS: THE GED AND THE ROLE OF CHARACTER IN AMERICAN LIFE (James J. Heckman et al. eds., 2014). Many other students earn enough credits to graduate high school through online credit recovery programs, in some instances with minimal little work or demonstrations of proficiency. See Stephen Smiley, *Fast. Isolating. Superficial.*, SLATE (May 23, 2017), <https://slate.com/news-and-politics/2017/05/what-class-is-like-for-high-schoolers-taking-their-courses-online.html> [https://perma.cc/254G-YM9P]; Molly Bloom, *Atlanta Schools: How Online Credit Recovery Students Actually Perform*, ATL. J-CONST. (Oct. 14, 2016), <https://www.ajc.com/news/local-education/atlanta-schools-how-online-credit-recovery-students-actually-perform/e3XdYJHSRuuNOTxRMDJNdN> [https://perma.cc/82XA-RH27] (reporting that although 90 percent of Georgia students passed

cities, fewer than half of all students who begin high school graduate within four years.⁹² As few students who drop out of high school ultimately complete college, let alone attend professional school, this disparity effectively eliminates a significant number of black students from the law school pipeline.⁹³ Those black students who persist in high school through graduation are less likely to have amassed the types of academic records that might make them candidates for admission at selective colleges and universities—the schools that typically serve as pathways to law school. As a group, black high school graduates have GPAs that are substantially below the national average,⁹⁴ a troubling indicator given the well-documented correlation between high school GPAs and academic performance in college.⁹⁵ They also take fewer Advanced Placement courses and are less likely to be enrolled in gifted and talented programs.⁹⁶ Although standardized

their online credit recovery courses, only 10 percent passed the corresponding state proficiency tests).

92. See Sam Dillon, *Large Urban-Suburban Gap Seen in Graduation Rates*, N.Y. TIMES (Apr. 22, 2009), <https://www.nytimes.com/2009/04/22/education/22dropout.html> [<https://perma.cc/V7YD-TVMM>] (referring to low graduation rates in Cleveland and Baltimore).

93. At least some students who drop out of high school and later earn GED credentials go on to attend law school. See In *'Bastards of the Reagan Era' A Poet Says His Generation Was 'Just Lost,'* NPR (Dec. 8, 2015), <https://www.npr.org/2015/12/08/458901392/in-bastards-of-the-reagan-era-a-poet-says-his-generation-was-just-lost> [<https://perma.cc/CJE2-XZ2R>] (describing the life and educational career of Reginald Dwayne Betts); Debra Cassens Weiss, *Onetime High School Dropout and Single Mom Celebrates Her Law School Graduation in Viral Photo*, ABA J. (Apr. 11, 2018), https://www.abajournal.com/news/article/onetime_high_school_dropout_and_single_mom_celebrates_her_law_school [<https://perma.cc/7NP2-Q49T>]; Jey Born, *A High School Dropout Finds Support on Road from Prison to Law School*, NPR (Oct. 23, 2020), https://www.npr.org/2020/10/23/926632001/a-high-school-dropout-finds-support-on-road-from-prison-to-law-school?utm_medium=RSS&utm_campaign=morningedition [<https://perma.cc/YR7Q-FB6G>]. This group likely represents an extremely small percentage of the overall law student population.

94. *Race/Ethnicity: Grade Point Average*, NATION'S REP. CARD, https://www.nationsreportcard.gov/hsts_2009/race_gpa.aspx?tab_id=tab2&subtab_id=Tab_1 [<https://perma.cc/PF4K-J8N7>] (the average GPAs of black high school graduates were 2.47 in core academic courses and 2.82 in other academic courses, compared to 2.88 and 3.22 for white students).

95. See Elaine M. Allensworth & Kallie Clark, *High School GPAs and Act Scores as Predictors of College Completion: Examining Assumptions About Consistency Across High Schools*, 49 EDUC. RES. (2020); MICHELLE HODARA & KARYN LEWIS, HOW WELL DOES HIGH SCHOOL GRADE POINT AVERAGE PREDICT COLLEGE PERFORMANCE BY STUDENT URBANITY AND TIMING OF COLLEGE ENTRY? (2017), https://ies.ed.gov/ncee/edlabs/regions/northwest/pdf/REL_2017250.pdf [<https://perma.cc/8NMZ-Y6Q4>].

96. A FIRST LOOK, *supra* note 75, at 7 (black students account for only 28 percent of the students enrolled in such programs despite constituting 42 percent of the student bodies in schools with such programs).

tests are highly imperfect predictors of future academic performance, the very low scores of black students, which have been linked in part to racial segregation,⁹⁷ reveal the academic deficit that many would need to overcome to succeed in college. Black students score an average of 927 on the Standardized Achievement Test (“SAT”),⁹⁸ compared to the average white score of 1104,⁹⁹ and only 32 percent of black test-takers scored above 1100,¹⁰⁰ compared to 72 percent of white test-takers.¹⁰¹ A quarter of all black test-takers scored below 800,¹⁰² compared to 5 percent of white test-takers.¹⁰³ Only 20 percent of black test-takers met College Board’s benchmarks of presumptive college readiness on both the math and Evidence-Based Reading and Writing sections of the test,¹⁰⁴ compared to a majority of white test-takers.¹⁰⁵

Black students also fare very poorly on the ACT test, the other major college entrance exam. The average black ACT score of 16.9 (compared to 22.2 for white test-takers)¹⁰⁶ falls below the ACT College Readiness Benchmark, the minimum scores associated with a 50 percent chance of earning a B grade or better in related college courses.¹⁰⁷ These disparities not only make black students less competitive applicants at selective colleges and universities but suggest that they will have greater difficulties transitioning to college if they ever enroll.¹⁰⁸ One study found that college enrollees with ACT scores and GPAs in the same range as the mean black test-takers and high school

97. See David Card & Jesse Rothstein, *Racial Segregation and the Black-White Test Score Gap*, 91 J. PUB. ECON. 2158 (2007).

98. 2020 SAT SUITE ANNUAL REPORT TOTAL GROUP, COLLEGEBOARD 3 (2020), <https://reports.collegeboard.org/pdf/2020-total-group-sat-suite-assessments-annual-report.pdf> [<https://perma.cc/2X3J-RRJS>].

99. *Id.*

100. *Id.* at 5.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 3.

105. *Id.*

106. *Fast Facts: ACT Scores*, NAT’L CTR. FOR EDUC. STATS., <https://nces.ed.gov/fastfacts/display.asp?id=897> [<https://perma.cc/BSS5-6LTL>].

107. *ACT Scores for Higher Education Professionals*, ACT, <https://www.act.org/content/act/en/products-and-services/the-act-postsecondary-professionals/scores.html> [<https://perma.cc/U736-AJSG>].

108. See Emily J. Shaw, *An SAT Validity Primer*, COLL. BD. RES. (Jan. 2015), <https://files.eric.ed.gov/fulltext/ED558085.pdf> [<https://perma.cc/3AXR-5GK6>] (describing studies finding strong correlations between SAT scores and first-year and cumulative college grade point averages).

graduates (16–17 and 2.75–2.99, respectively) have only a 39 percent graduation rate.¹⁰⁹

Thus, the educational deficits and inequalities brought about by conditions of racial hierarchy remove a very high percentage of black students from the law school pipeline before they even enter adulthood. The disparities evident in academic performance, standardized test scores, and high school graduation rates all drastically limit the supply of potential black attorneys who survive the next critical stage of the law school pipeline: college.

B. COLLEGE AS A DEAD END

The social dynamics that lead to many black students not attending college also undermine the performance and outcomes of those who do.¹¹⁰ Black college attendance has fallen greatly in recent years,¹¹¹ and only a minority of those who do enroll in college emerge with the credentials and preparation necessary to pursue careers as attorneys. Black college students are only half as likely as their white peers to graduate within four years,¹¹² and most do not even graduate within six years.¹¹³ In total, these disparities lead to a deficit of

109. Allensworth & Clark, *supra* note 95, at tbl. 2.

110. See generally Jason M. Fletcher & Marta Tienda, *Race and Ethnic Differences in College Achievement: Does High School Attended Matter?*, 627 ANN. AM. ACAD. POL. SCI. 144 (2010) (finding that inequalities in the high schools black and white students had attended explained much of the disparities in their college grades).

111. *African American Students in Higher Education*, PNPI (June 12, 2020), <https://pnpi.org/african-american-students> [<https://perma.cc/9TK4-N8AF>] (explaining that black undergraduate enrollment fell 21% between 2010 and 2018).

112. *Digest of Education Statistics*, NAT'L CTR. FOR EDUC. STATS. Tbl. 326.10, https://nces.ed.gov/programs/digest/d14/tables/dt14_326.10.asp [<https://perma.cc/6333-9WAB>] (Black students are actually less likely to receive a bachelor's degree within six years than white students are in four). *Id.* Black students take a year longer than white students on average to complete their degrees. See Ariana De La Fuente & Marissa Navarro, *Black and Latinx Students Are Getting Less Bang for Their Bachelor's Degrees*, CTR. AM. PROGRESS (Jan. 23, 2020), <https://www.americanprogress.org/issues/education-postsecondary/news/2020/01/23/479692/black-latinx-students-getting-less-bang-bachelors-degrees> [<https://perma.cc/BHU6-L7HH>].

113. *Status and Trends in the Education of Racial and Ethnic Groups*, NAT'L CTR. FOR EDUC. STATS. (Feb. 2019), https://nces.ed.gov/programs/raceindicators/indicator_red.asp [<https://perma.cc/K6N8-PK3V>] (only 40 percent of black students graduate from their initial institutions within six years). See also *Undergraduate Completion Rates at Public Four-Year Institutions*, AM. COUNCIL ON EDUC., <https://www.equityinhighered.org/indicators/undergraduate-persistence-and-completion/undergraduate-completion-at-public-four-year-institutions> [<https://perma.cc/4VUN-YQCF>] (six years after first enrolling at public four-year institutions, black students are more likely to be unenrolled without having received a degree than to have graduated); Doug Shapiro et al., *Completing College - National by Race and Ethnicity - 2017*, NSC

upwards of 100,000 black college graduates per year.¹¹⁴ As a result, less than 30% of all black adults from ages 25–29 hold bachelor's degrees (compared to 45% of whites in this age group),¹¹⁵ a basic prerequisite for admission to law school.

College dropouts are not the only students eliminated from the law school pipeline. A large percentage of black students who graduate from college do so with grades that render them unlikely candidates for admission to law school. 2009 data from the U.S. Department of Education revealed that 45 percent of all black college graduates finished with cumulative grade point averages of less than 3.0,¹¹⁶ a cutoff point that falls below the median incoming GPAs at even the least selective law schools in the country, and below the 25th percentile at many. Fewer than one in five black college graduates finished with a GPA of 3.5 or higher,¹¹⁷ less than half the percentage of white graduates.¹¹⁸ These numbers indicate that the LSAT is not the only, or perhaps even the most significant, barrier that prevents black students from attending law school.

Moreover, black college students are also less likely to attend the selective and well-resourced institutions that best prepare students for the academic rigors of law school.¹¹⁹ The percentage of black

RES. CTR. (April 2017), <https://nscresearchcenter.org/signaturereport12-supplement-2> [<https://perma.cc/7MEF-9TGQ>] (44.6% of black students who enrolled in four-year public institutions had not graduated and were no longer enrolled after six years).

114. See Libassi, *The Neglected College Race Gap: Racial Disparities Among College Completers*, CTR. AM. PROGRESS (May 23, 2018), <https://www.americanprogress.org/issues/education-postsecondary/reports/2018/05/23/451186/neglected-college-race-gap-racial-disparities-among-college-completers> [<https://perma.cc/R3UB-46B9>] (finding that racial disparities in college graduation resulted in an estimated 435,000 fewer black graduates between 2013 and 2015 alone).

115. See *African American Students in Higher Education*, POSTSECONDARY NAT'L POL'Y INST., <https://pnpi.org/african-american-students> [<https://perma.cc/C7UF-XLM2>].

116. *Profile of 2007-08 First-Time Bachelor's Degree Recipients in 2009*, U.S. DEPT. OF EDUC. tbl.2.3 (Oct. 2012), <https://nces.ed.gov/pubs2013/2013150.pdf> [<https://perma.cc/9Z6C-Y726>]. By comparison, only 25 percent of white students graduated with GPAs below 3.0. *Id.* Black students also were nearly three times as likely as Whites to graduate with a GPA of less than 2.5. Some 14.5 percent of Black graduates and 5.5 percent of White graduates had a GPA of less than 2.5. *Id.*

117. *Id.*

118. *Id.* See also Jason M. Fletcher & Marta Tienda, *Race and Ethnic Differences in College Achievement: Does High School Attended Matter?*, 627 ANN. AM. ACAD. POL. SCI. 144 (2010) (reporting a black-white GPA gap of .39 for sixth-semester University of Texas students).

119. More selective institutions generally devote far more resources toward educating and providing support services to students. See ANTHONY P. CARNEVALE, PETER SCHMIDT & JEFF STROHL, *THE MERIT MYTH: HOW OUR COLLEGES FAVOR THE RICH AND DIVIDE AMERICA* 115–37 (2020).

students attending the nation's most selective schools has declined in recent years,¹²⁰ while the numbers attending less selective and less well-resourced schools rose substantially.¹²¹ Black students now account for only 6 percent of students at the nation's top-tier research institutions,¹²² and they are highly underrepresented at the flagship public universities of many states.¹²³ As of 2016, 14 percent of black college students pursuing bachelor's degrees attended for-profit colleges,¹²⁴ by far the largest percentage of any major racial group.¹²⁵ Because of racial differences in the quality of the institutions of higher learning that students attend, states ultimately spend billions more on educating white students.¹²⁶ This racial sorting of black college students into less well-resourced and academically rigorous institutions further limits their law school prospects.

Financial considerations may also push many black college graduates away from law school. Black students leave college owing \$7,400 more than their white counterparts,¹²⁷ and that gap explodes

120. Andrew McGill, *The Missing Black Students at Elite American Universities*, ATLANTIC (Nov. 23, 2015), <https://www.theatlantic.com/politics/archive/2015/11/black-college-student-body/417189> [<https://perma.cc/26K9-UHWG>].

121. *Id.* Black college students attending selective non-profit 4-year institutions are twice as likely as white students to be enrolled in minimally selective institutions *Undergraduate Enrollment in Selective Public and Private Nonprofit 4-Year Institutions, by Race and Ethnicity: 2015-16*, AM. COUNCIL ON EDUC., <https://www.equityinhighered.org/indicators/enrollment-in-undergraduate-education/enrollment-in-selective-institutions> [<https://perma.cc/6ZKP-EDHJ>] (12.9 percent compared to 6.3 percent). They are somewhat more likely to be enrolled in schools with open admissions. *Id.* (17.1 percent compared to 14.2 percent).

122. McGill, *supra* note 120.

123. Meredith Kolodner, *Many State Flagship Universities Leave Black and Latino Students Behind*, HECHINGER REP. (Jan. 29, 2018), <https://hechingerreport.org/many-state-flagship-universities-leave-black-latino-students-behind> [<https://perma.cc/63YX-5HQY>].

124. *Enrollment in Undergraduate Education*, AM. COUNCIL ON EDUC., <https://www.equityinhighered.org/indicators/enrollment-in-undergraduate-education/bachelors-degree-seeking-students> [<https://perma.cc/5L27-9QDY>].

125. *Id.*

126. Sarah Garcia, *Gaps in College Spending Shortchange Students of Color*, CTR. AM. PROGRESS (April 5, 2018), <https://www.americanprogress.org/issues/education-postsecondary/reports/2018/04/05/448761/gaps-college-spending-shortchange-students-color> [<https://perma.cc/VO6F-3XXZ>].

127. See Judith Scott-Clayton & Jing LI, *Black-White Disparity in Student Loan Debt More than Triples After Graduation*, BROOKINGS (Oct. 20, 2016), <https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation> [<https://perma.cc/5Q9N-6KQF>]; Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, CTR. AM. PROGRESS (Dec. 2, 2019), <https://files.eric.ed.gov/fulltext/ED602791.pdf> [<https://perma.cc/9ZHU-VLBJ>].

in size to \$25,000 a few years after they have graduated.¹²⁸ Black college graduates earn lower salaries upon graduating¹²⁹ and are less likely to receive family support in paying back their loans than white graduates.¹³⁰ These disparities, a direct result of racial socioeconomic inequality, likely deter a significant number of black college graduates from applying to law school.

* * *

This overview of the challenges and disparities that greatly diminish the law school prospects of the vast majority of black students is intended to encourage readers to think about the law school underrepresentation problem more expansively. By the time students are old enough to apply for admission to law school, profound educational deficits and disparities arising from the confluence of socioeconomic inequality, racial stigma, and racial segregation have effectively removed the vast majority of black Americans from the law school pipeline. This set of problems defies simple solutions. Resolving them will require far more than mere tinkering with law school admissions criteria. In the following part, I will briefly propose some policy and programming efforts that law schools and other interested parties might undertake to address this problem more holistically.

III. THE PATH FORWARD

The enduring underrepresentation of black students in American law schools has proven resistant to quick fixes and easy solutions. Representing the culmination of lifelong educational disparities rooted in centuries of racial hierarchy, it calls for broad, wide-ranging policy solutions that address those underlying conditions. Without substantial interventions, law schools could well struggle in perpetuity to enroll more representative numbers of black students. A truly comprehensive solution to this problem would require ambitious policy reforms at every level of government to help ameliorate racial hierarchy and reduce its impact on the educational prospects of black

128. *Id.*

129. See Editorial Board, *Even College Doesn't Bridge the Racial Income Gap*, N.Y. TIMES (Sept. 20, 2017), <https://www.nytimes.com/2017/09/20/opinion/college-racial-income-gap.html> [<https://perma.cc/SYN2-5HUQ>] (reporting that “black college graduates earned about 21 percent less per hour on average than white college graduates”).

130. Andrew Howard Nichols & Marshall Anthony Jr., *Graduation Rates Don't Tell the Full Story: Racial Gaps in College Success are Larger than We Think*, EDUC. TRUST (Mar. 5, 2020), <https://edtrust.org/resource/graduation-rates-dont-tell-the-full-story-racial-gaps-in-college-success-are-larger-than-we-think> [<https://perma.cc/YEK7-8XUJ>].

children. There are any number of policy measures that might help address the effects of racial socioeconomic inequality, such as targeted employment and training initiatives that would provide black families access to higher-paying jobs, student loan forgiveness measures, and programs to bolster black homeownership. A more expansive Moving to Opportunity-style housing policy program might offer housing vouchers and mobility counseling to help more disadvantaged black families move to more affluent and less segregated neighborhoods.¹³¹ Other policy solutions could address the conditions of black schooling directly. They might entail, for example, programs that provide black children and their families greater access to high-quality early childhood education and parenting assistance programs,¹³² and reform efforts to provide more black children access to high-quality primary and secondary schools.¹³³ Additional measures might seek to rein in the excessively punitive policies and practices at the heart of the school-to-prison pipeline and to prevent racial discrimination in pupil placement and college counseling. These policy reforms would not lead to immediate increases in the number of black law students, but by attacking the root causes of their underrepresentation, they would help bring about greater diversity in the profession in the long-term.

131. See Raj Chetty, Nathaniel Hendren & Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AM. ECON. REV. 855 (2016).

132. Woodson, *supra* note 66; Allison Friedman-Krauss, W. Steven Barnett & Milagros Nores, *How Much Can High-Quality Universal Pre-K Reduce Achievement Gaps?*, CTR. AM. PROGRESS (April 5, 2016), <https://www.americanprogress.org/issues/early-childhood/reports/2016/04/05/132750/how-much-can-high-quality-universal-pre-k-reduce-achievement-gaps> [<https://perma.cc/YZ76-49V8>] (“it is estimated that high-quality UPK would reduce the achievement gap at kindergarten entry in math 45 percent for African American children”).

133. Of course, experts and researchers remain sharply divided about the relative merits of the leading approaches to education reform. Some researchers and education reform advocates have emphasized the potential value of high-performing charter schools. See, e.g., Sarah Cohodes, *Charter Schools and the Achievement Gap*, FUT. CHILD. 1 (2018); Bret D. Asbury & Kevin Woodson, *On the Need for Public Boarding Schools*, 47 GA. L. REV. 113 (2012). Others have argued for prioritizing greater funding for existing public schools. See, e.g., C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question*, in CONFRONTING INEQUALITY: HOW POLICIES AND PRACTICES SHAPE CHILDREN’S OPPORTUNITIES 165–86 (L. Tach et al. eds., 2020). Still others have emphasized the importance of providing disadvantaged children access to more high-quality teachers. See, e.g., Steven G. Rivkin, Eric A. Hanushek & John F. Kain, *Teachers, Schools, and Academic Achievement*, 73 ECON. 417 (2005); Raj Chetty, John N. Friedman & Jonah E. Rockoff, *Measuring the Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood*, 104 AM. ECON. REV. 2633 (2014).

But while there are many policies that might help alleviate racial hierarchy, the political will necessary to bring those policies to fruition is in short supply. The American public's well-documented resistance to policies that redistribute resources to racial minorities¹³⁴ renders the wholesale adoption of many of these policies highly unlikely.¹³⁵ Because these ambitious reforms will likely remain unattainable for the foreseeable future (and if they are implemented eventually, would still take many additional years to bear fruit), the primary responsibility for resolving this problem will fall upon law schools. These are the institutions best situated to achieve immediate, tangible progress, and the breadth and depth of the pipeline problem does not absolve them of their moral obligations to pursue this goal. Therefore, it is particularly important to consider measures law schools might feasibly undertake to help increase the representation of black law students.

Law schools committed to diversifying the profession have a number of options. First, they should reevaluate and revise their admissions criteria to minimize the impact of the inequities brought about by racial hierarchy.¹³⁶ Individual schools should each examine their admissions data to ensure that they are not placing unnecessary weight on applicants' LSAT scores for the sake of prestige or on the basis of misguided notions about the extent of their predictive value. And by sharing their data and working collectively, law schools might be able to develop an even more precise and fine-grained understanding of the predictive value of LSAT scores for black applicants.

Law schools should also create new pipeline programs, or expand existing ones, to cultivate a broader pool of potentially viable black applicants. Such initiatives ideally would include academic support, career advice, help preparing for standardized tests, assistance with application materials, and financial aid support, but they can vary considerably in their breadth of focus. The most narrowly-tailored programs would entail efforts on the part of law schools to increase their

134. See Gilens, *supra* note 57.

135. In the absence of government action, wealthy non-governmental entities such as philanthropic foundations and universities may still be able to leverage their resources to help alleviate the conditions of racial hierarchy. For an exemplary recent example, see Michelle Caffrey, *University of Pennsylvania Pledges \$100M to Philadelphia Public Schools*, PHIL. BUS. J. (Nov. 17, 2020), <https://www.bizjournals.com/philadelphia/news/2020/11/17/university-of-pennsylvania.html> [<https://perma.cc/F3EC-8V9X>] (describing the University of Pennsylvania's pledge of \$100 million to improve the quality of education available at Philadelphia public schools).

136. Numerous scholars have proposed that law schools place less emphasis on applicants' LSAT scores. See *supra* note 3 and accompanying text.

own minority student populations in relatively short order. This approach is perhaps best exemplified by CUNY Law School's Pipeline to Justice program, which admits a select group of applicants who have been denied admission to the law school into a special preparatory program and then reconsiders them for admission upon completion.¹³⁷ Another type of targeted pipeline initiative involves forming partnerships with HBCU undergraduate institutions. One model for this approach is the "3+3" dual-degree program that Drexel University's Thomas R. Kline School of Law and Spelman College formed in December 2020,¹³⁸ in which students begin taking classes at Drexel after finishing their third year of coursework at Spelman.¹³⁹

Other less-targeted pipeline efforts might focus on expanding the pool of black law school applicants more broadly, with less emphasis on funneling students into their own programs. One prominent example of this approach is the University of Houston Law Center's Pre-Law Pipeline Program, which offers several programs including an eight-week summer program that provides university undergraduates and alums from underrepresented backgrounds preparation for the LSAT, the law school admissions process, and law school coursework.¹⁴⁰ A number of other schools also have implemented such programs, including the University of California at Davis School of Law,¹⁴¹ St. John's

137. See *Pipeline to Justice*, CUNY SCH. OF L., <https://www.law.cuny.edu/academics/pipeline> [<https://perma.cc/3WCG-5QJ3>] (program provides participants intensive preparation for the LSAT exam and the academic rigors of law school coursework).

138. *Kline Law Forms 3+3 Program with Historically Black Spelman College*, DREXEL UNIV. THOMAS KLINE SCH. OF L. (Dec. 11, 2020), <https://drexel.edu/law/about/news/articles/overview/2020/December/drexel-kline-selman-3-plus-3> [<https://perma.cc/U92T-XAK6>].

139. *Id.* The credits that students earn during their first year at Drexel also count toward their bachelor's degree requirements at Spelman.

140. *UH Law Center Provides Introduction to Law School with Two New Pre-Law Programs*, PR NEWSWIRE (May 14, 2020), <https://www.prnewswire.com/news-releases/uh-law-center-provides-introduction-to-law-school-with-two-new-pre-law-programs-301059622.html> [<https://perma.cc/HLB8-5XKY>].

141. *King Hall Outreach Program (KHOP)*, U.C. DAVIS SCH. OF L., <https://law.ucdavis.edu/outreach/khop.html> [<https://perma.cc/PJ86-VC33>] (King Hall Outreach Program provides mentoring, advising, and weekend programming to undergraduate students from underrepresented communities).

University School of Law,¹⁴² UCLA School of Law,¹⁴³ and the University of Baltimore.¹⁴⁴ Other schools hold similar programs that, while not specifically targeted to minority students, still may help increase the pool of well-prepared black applicants.¹⁴⁵

These pipeline programs are valuable tools for increasing the representation of black law students, and far more schools should adopt such initiatives. But broader and even more ambitious outreach efforts that would begin working with black students during their critical childhood years would hold even greater potential for expanding the pool of qualified black law school applicants over time. A small number of law schools already have implemented such programs. The University of Baltimore's Charles Hamilton Houston Scholars Program, for example, offers attorney mentors, mini-internships, and weekly workshops on academic skills to participating college freshman and sophomores.¹⁴⁶ The Georgetown University Law Center's Early Outreach Initiative sends Georgetown staff to visit select groups of high school seniors at dozens of high schools across the country,

142. See ST JOHN'S UNIVERSITY SCHOOL OF LAW, RON BROWN PREP PROGRAM, <https://www.stjohns.edu/sites/default/files/2019-12/2020%20RHB%20Brochure.pdf> [<https://perma.cc/P365-3Z39>] (Ronald H. Brown Law School Prep Program for College Students offers several LSAT Boot Camp programs and law school prep programs for college seniors and graduates from disadvantaged or underrepresented backgrounds).

143. *Outreach*, UCLA SCH. OF L. ACAD. OUTREACH RES. CTR., <https://www.law.ucla.edu/life-ucla-law/diversity-inclusion/outreach> [<https://perma.cc/3ERH-PCFF>] (UCLA Law School Fellows Program seeks to "increase the pipeline of diverse students interested in the law" through workshops and seminars, and supports them with mentoring and academic advising).

144. See Yvonne Wenger, *University of Baltimore Recruits Top Talent from Historically Black Colleges*, WASH. POST (Oct. 21, 2017), https://www.washingtonpost.com/local/education/university-of-baltimore-recruits-top-talent-from-historically-black-colleges/2017/10/21/5ceff974-b394-11e7-9e58-e6288544af98_story.html?noredirect=on&utm_term=.7d2d5a00c938 [<https://perma.cc/R59K-MY8C>]; *The Fannie Angelos Program for Academic Excellence*, UNIV. OF BALT., <http://law.ubalt.edu/admissions/diversity/fannieangelosprogram/index.cfm> [<https://perma.cc/8YR3-LFQ7>] (Fannie Angelos Program for Academic Excellence provides LSAT preparation, mentoring, and other forms of support, including full scholarships for those who are later admitted to the law school, to select students from the state's HBCUs).

145. See Donald J. Weidner Summer for Undergraduates, COLL. OF L. FLA. STATE UNIV., <https://law.fsu.edu/academics/summer-for-undergraduates> [<https://perma.cc/A4BS-ZKEP>]; *Pre-Law Undergraduate Scholars (PLUS) Program*, CHICAGO-KENT COLL. OF L., <https://www.kentlaw.iit.edu/academics/pre-law-undergraduate-scholars-program> [<https://perma.cc/Q39Y-RAA2>].

146. *Charles Hamilton Houston Scholars Program, About the Program*, UNIV. OF BALT., <http://law.ubalt.edu/admissions/diversity/chhsp/index.cfm> [<https://perma.cc/G4WE-FTDB>].

providing mentorship support and advising aimed at preparing them for college and for their postgraduate educational and professional careers.¹⁴⁷ Several bar associations and non-profit organizations also have developed similarly long-term pipeline programs.¹⁴⁸ An obvious downside to these more expansive programs is that they offer far less in the way of direct returns for the individual law schools that run them. The students who participate in them may very well end up attending law school elsewhere, or not applying to law school at all. The broad dispersion of these programs' benefits potentially poses a collective action problem that may deter some schools from investing the resources necessary to fund such programs. Law schools might avoid this problem by agreeing collectively to support such programs, either by developing their own programs or by pooling their resources with other institutions.

Finally, law schools and law professors can help address the underlying conditions of racial hierarchy by supporting or engaging in research, policy advocacy, social activism,¹⁴⁹ and efforts to promote doctrinal reforms.¹⁵⁰

147. *Early Outreach Initiative*, GEO. L., <https://www.law.georgetown.edu/admissions-aid/early-outreach-initiative> [<https://perma.cc/P8Y4-ULTG>]. See generally Marisa Manzi & Nina Totenberg, *'Already Behind': Diversifying the Legal Profession Starts Before the LSAT*, NPR (Dec. 22, 2020), <https://www.npr.org/2020/12/22/944434661/already-behind-diversifying-the-legal-profession-starts-before-the-lsat> [<https://perma.cc/28EP-UZAR>] (describing the Georgetown Early Outreach Initiative).

148. See, e.g., *Student Pipeline Programs*, NYC BAR, <https://www.nycbar.org/serving-the-community/diversity-and-inclusion/student-pipeline-programs> [<https://perma.cc/B3QF-LN48>] (describing several pipeline support programs that the New York City Bar Association offers to high school and college students); *About Us*, LEGAL OUTREACH, https://legaloutreach.org/?page_id=2 [<https://perma.cc/V2A7-CFW5>] (New York City organization, Legal Outreach, Inc., works with students starting in the eighth grade to interest them in, and prepare them for, legal careers); NJ LEEP, <http://njleep.org> (NJ Law and Education Empowerment Program ("LEEP") provides similar support to middle- and high-school students from New Jersey).

149. See generally James E. Moliterno, *The Lawyer as Catalyst of Social Change*, 77 *FORDHAM L. REV.* 1559, 1568 (2009) (noting some of the many competencies that position attorneys to help achieve social change, including "[l]eadership qualities, forensic ability, talent for reasoning, [and] knowledge of the legal system").

150. For example, in recent years, a number of prominent education law scholars have made the case for more robust education-related rights under federal and state constitutions and statutes. See James E. Ryan, *A Constitutional Right to Preschool?*, 94 *CALIF. L. REV.* 49 (2006); Derek W. Black, *The Fundamental Right to Education*, 94 *NOTRE DAME L. REV.* 1059 (2019); See generally *A FEDERAL RIGHT TO EDUCATION: QUESTIONS FOR OUR DEMOCRACY* (Kimberly Jenkins Robinson ed., 2019). The recent decision of the Sixth Circuit Court of Appeals in *Gary B v. Whitmer* suggests that at least some members of the federal judiciary may be open to such rights claims, given sufficiently compelling legal argumentation and evidence.

CONCLUSION

Continued black underrepresentation at America's law schools has produced a substantial body of scholarship and commentary. This Article contributes to this literature by situating this problem against the backdrop of racial hierarchy that impedes the educational trajectories of black Americans. Conceptualizing black underrepresentation through this broader lens underscores the need to approach the law school diversity problem expansively and holistically. Only bold, persistent efforts on the part of a broad set of stakeholders, including policymakers and members of the bar, will achieve the type of lasting and transformative progress that advocates have sought for so long.