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Overcoming Obstacles and Breaking Down Barriers to Improve
Diversity in the Law Professoriate**

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“JUST ANOTHER LITTLE BLACK BOY FROM THE SOUTH SIDE OF CHICAGO”: OVERCOMING OBSTACLES AND BREAKING DOWN BARRIERS TO IMPROVE DIVERSITY IN THE LAW PROFESSORiate

MICHAEL Z. GREEN*

Abstract

As I reflected on my personal experience to help address the persistence of discrimination in legal academia, I chose to focus on five areas of discussion for the open mic portion of the program held at the Association of American Law Schools Cross-Cutting Program, “The More Things Change . . . : Exploring Solutions to Persistent Discrimination in Legal Academia,” held on January 4, 2015, in Washington, D.C.¹ First, I decided to address

* Professor, Texas A&M University School of Law. This Article derived from a presentation given at the “Open-Mic” panel session at the Association of American Law Schools Cross-Cutting Program, “The More Things Change . . . : Exploring Solutions to Persistent Discrimination in Legal Academia,” held on January 4, 2015, in Washington, D.C. I would like to thank student assistants Brian Bailey and Casandra Johnson for their research efforts. I am also grateful for the financial support from Texas A&M University School of Law’s summer research grant program. I must acknowledge the diligent and insightful edits by all the members of the *Columbia Journal of Gender and Law* that made this final Article so much better than the initial draft. This Article is dedicated to the memory of James E. Jones, Jr., whose passing on November 21, 2014, was a loss for all those who knew and learned from him as a labor law and race scholar. A pioneer as one of the earliest tenured, black, law faculty members at the University of Wisconsin, Jones played a key role in affirmative action, labor, and employment discrimination law as a teacher, scholar, and arbitrator. He also founded the nationally recognized Hastie Fellowship in 1973 at Wisconsin Law School. See James E. Jones, Jr., *LL.M. Programs as a Route to Teaching: The Hastie Program at Wisconsin*, 10 ST. LOUIS U. PUB. L. REV. 257, 263 (1991).

1 In preparing this Article, I learned a lot from the experiences of faculty of color captured in a recent book. See generally PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. Gonzalez & Angela P. Harris eds., 2012). I thank my colleague, Gina Warren, for sharing her copy of this *Presumed Incompetent* book with me to review. Also, as you will see, the title of this Article comes from my own personal experience. While researching for this Article, I discovered an enriching story about a young black female from the Chicago area who won an award for writing a paper with a similar title and a similar focus as the one of this Article, overcoming obstacles presented by your environment. See *Chicago girl’s essay, Just Another Black Boy, wins national prize*, ASSENNA (May 15, 2013), <http://assenna.com/chicago-girls-essay-just-another-black-boy-wins-national-prize> [<http://perma.cc/68KF-3F8D>]; see also James O’Dell, *Just a Kid from the Southside*, CHI. NOW (July 19, 2014), <http://www.chicagonow.com/chicago-bulls-madhouse/2014/07/just-a-kid-from-the-southside> [<http://perma.cc/>]

my personal development as an only child and male in a family of mostly black women struggling through the socioeconomic challenges of being poor and black. To add to that predicament and the narrative discussing it, I lived and grew up in one of this country's most racially segregated cities in a community permeated with deadly criminal activities and hard core gangs. As an elementary school student, I lived on a block where people were stabbed, beaten, and killed. I saw people robbed and someone attempted to rob me at knifepoint in a violent confrontation. And those experiences still shape me today.

Second, I decided to reflect on how core parental dedication helped to make sure that despite those surroundings I would be given a foundation to recognize that I could succeed and transcend the demoralizing pitfalls being observed on a daily basis in my neighborhood. Third, I must highlight how a lack of resources to adequately guide choices limits the pipeline possibilities even for those few like me who have the abilities to go forward. This discussion involves a lack of knowledge and financial support to even consider an Ivy League education and its benefits despite having the academic qualifications as a National Merit Finalist in high school.² It also involves a discussion of being pushed to pursue a

B6V2-P7ZE] (describing NBA basketball player Derrick Rose and how he grew up in the Englewood area).

2 In using the 2001–2002 Association of American Law Schools Directory of Law Professors, Professor Brian Leiter compiled data identifying the law school where every then-current tenure-track faculty member first obtained a law degree. See Brian Leiter, *Where Tenure Track Faculty Went to Law School, 2000-02*, BRIAN LEITER'S LAW SCHOOL RANKINGS, http://www.leiterrankings.com/faculty/2000faculty_education.shtml [<http://perma.cc/9DKS-GW85>] (last visited Apr. 29, 2015). In this study of data from 2001–2002, Professor Leiter found that out of all law faculty “who started in a tenure-track position since roughly 1996—in total, about 730 faculty” approximately “one-third of these faculty earned their J.D. from just three law schools: Yale, Harvard, and Stanford.” *Id.* Professor Leiter also noted that “it is unsurprising that placement in law teaching is typically much higher out of LL.M. or SJD programs than out of the JD program.” *Id.* These numbers further highlight the challenges for faculty of color in breaking into the academy without having an Ivy League or Stanford law school degree, even if they later pursued LL.M. degrees. Leiter’s study identifies me as being the only law school tenure-track faculty member who received a first law degree from Loyola Chicago. *Id.* The benefit in obtaining an LL.M. to supplement credentials, along with previous publications, represent probably the best ways to break in to law school teaching if you do not have an Ivy League or Stanford law degree. See Lawrence Solum, *More on Law Teaching*, LEGAL THEORY BLOG (Mar. 4, 2005, 09:21 AM), http://lsolum.blogspot.com/archives/2005_03_01_lsolum_archive.html [<http://perma.cc/EL7G-UMWD>]. In discussing law schools to attend to become a law professor, Professor Solum stated that:

[g]oing to Harvard, Yale, or Stanford—if you can—is clearly a good move. Chicago, Berkeley, Columbia, Georgetown, Michigan, Penn, Virginia, and Texas also place significant numbers of graduates in entry-level positions. . . . There are lots of exceptions. I have several friends in the legal academy who went to second or third tier law schools, and who became very successful legal academics, but they faced more challenges getting their first academic job. . . . If your JD is from an institution that does not place significant numbers

career in engineering when further reflection might have suggested development of other educational interests leading to a more traditional path in the law.

Fourth, I have to bring forward my experience in recovering from a somewhat ill-advised engineering educational focus by going to law school which culminates with me obtaining a position in the academy as a law professor despite not having Ivy League credentials. The most important part of this discussion must include the support and the validation I received in my quest to join the professoriate that I gained by becoming a Hastie Fellow at the University of Wisconsin Law School.³ Finally, as an African American male who practiced employment discrimination law, worked at large law firms, a boutique, and a union law firm, and who now teaches and writes about issues of race and workplace discrimination, I believe that my personal experience adds a unique perspective especially given the dearth of African American male law professors who teach and write in an area of law so important to African American males.

However, given the three minute timeframe during the actual presentation I only discussed the first two areas of focus: 1) the initial aspect of growing up in the Englewood neighborhood; and 2) how important parental involvement and activism was in pushing me forward despite the burdens of my surroundings. At the end of my presentation, I couched that discussion by asserting why I believed my story highlights how the lack of black male law professors who teach workplace law and discrimination supports the overall narrative of ongoing discrimination in the academy. The presentation and this Article reflect what it meant for me growing up under certain circumstances that presented barriers to becoming a law professor, and how that initial experience as shown by my personal narrative further indicates why discrimination in the academy continues.

of graduates in entry-level academic positions, then writing is all the more significant. Of course, really excellent academic writing requires time and a supportive environment; that is why I . . . recommend various options--the Bigelow program at Chicago, LLM programs, SJD programs, Visiting Assistant Professorships--as alternatives to the more traditional clerkship, prestigious law firm route.

Id.

3 The Hastie Fellowship has paved the way for more than thirty lawyers of color, including me, to become full-time, tenure-track law professors. See *William H. Hastie Fellowship Program*, U. Wisc. L. SCH., http://www.law.wisc.edu/grad/fellow_hastie.html [<http://perma.cc/PRB6-3STW>] (last visited Jan. 4, 2015). The list of Hastie Fellows includes some of the most prominent law faculty members in the academy, not just law faculty members of color, and I am extremely proud and fortunate to be a Hastie Fellow. *Id.*

INTRODUCTION

Problems for black males in our society have reached a fever pitch. In 2012, a group of commentators reviewed circumstances reflected in Professor Michelle Alexander's 2010 book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*,⁴ which documented how "nearly one-third of black men are likely to spend time in prison."⁵ With this image of black males incarcerated at such disproportionate rates in our society, it is not surprising that almost any position in America presents limited options for black males. However, with the ascendancy to the position of President of the United States by a black male, Barack Obama, some have claimed that we have become a post-racial society where policy concerns about discrimination no longer matter as a result of our broad acceptance of racial differences.⁶ Professor Michael Selmi explained this post-racial phenomenon as follows: "The election of Barack Obama as the forty-fourth President of the United States gave pause to all who study discrimination . . . as a sign that discrimination had receded and was now only to be found among a few bad apples."⁷ This view of a post-racial society arose even though more racial harassment incidents occurred as a result of his presidential election.⁸ If you can accept the overwhelming data presented by Alexander, then you have to recognize that the typical path for a young black boy in our society is to go to jail rather than succeed in school, much less obtain a job as a law professor.

4 See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010), *excerpts and reviews available at* NEW JIM CROW, <http://newjimcrow.com/> [<http://perma.cc/WB8D-GX7X>] (last visited Apr. 16, 2015).

5 See *Young, Black, and Male in America*, ROOM FOR DEBATE, N.Y. TIMES (Mar. 12, 2012), <http://www.nytimes.com/roomfordebate/2012/03/12/young-black-and-male-in-america> [<http://perma.cc/PQ77-BLN3>].

6 See Stephen M. Rich, *One Law of Race?* 100 IOWA L. REV. 201, 264 (2014); see also Mario L. Barnes et al., *A Post-Race Equal Protection?*, 98 GEO. L.J. 967, 968 (2010); Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1594 (2009).

7 Michael Selmi, *Understanding Discrimination in a "Post-Racial" World*, 32 CARDOZO L. REV. 833, 833 (2011).

8 See Angela Onwuachi-Willig & Mario L. Barnes, *The Obama Effect: Understanding Emerging Meanings of "Obama" in Anti-Discrimination Law*, 87 IND. L.J. 325, 334–35 (2012) (describing various racial harassment incidents including the use of President Obama's name or image during his election campaign and even at the time of his inauguration); see also Terry Smith, *Speaking Against Norms: Public Disclosure and the Economy of Racialization in the Workplace*, 57 AM. U. L. REV. 523, 525 (2008) (describing comments by then-Senator Joseph Biden referring to candidate Obama as the "first mainstream African American who is articulate and bright and clean and a nice-looking guy" suggesting the discriminatory assumption of "Blacks as inarticulate, not bright, dirty, and ugly").

In the public debate on the implications from Alexander's book and what perils still await black males in our society, several commentators offered their opinions.⁹ Two black male law professors weighed in on this matter as well. Paul Butler, a former prosecutor and law professor at George Washington University Law School, noted that unconscious application of race has led to having "one million black people in prison."¹⁰ Butler also lamented that this issue of addressing the plight of black male incarceration rates in our society would not be remedied because racial preference plays more of a role with policy makers than their own self-interest in reducing crime.¹¹ Shavar Jeffries, a law professor from Seton Hall, decried the fact that "black men find themselves disproportionately subject to criminal punishment" and our educational system subjects "[b]lack boys . . . to disproportionate tracking to remedial classes or to special-education classification" and listed his concern that these issues still require "intentional . . . engagement" to be overcome in our society.¹²

If you take the figures presented by Professor Alexander, the comments from Professor Butler and Professor Jeffries, and the narrative from my path to becoming a law professor, it is clear that young black males face tremendous obstacles preventing them from breaking into the law professor academy with any reasonable measures of success. In my situation, several factors converged to help me narrowly make it through the window into becoming a successful law professor. Those factors include a strong parental involvement with the determination to make sure that I would rise above the crime-infested environment in which I grew up. That strong parental support also demanded the development of strong educational support and mentoring to take a little black boy and help him believe that he could learn and develop rather than assuming he would be another statistic. And once that foundation was built, the next step was to provide sufficient counseling and financial support to help that little black boy continue to develop academically and make informed educational choices that would maximize his further development. With some of that counseling lacking, it became crucial for that little black boy, now a black man, to find special resources and a unique program, the Hastie Fellowship, to help cultivate those

9 See Young, *Black, and Male in America*, *supra* note 5.

10 See Paul Butler, *Obama Should Talk About Race*, ROOM FOR DEBATE, N.Y. TIMES (Mar. 12, 2012), <http://www.nytimes.com/roomfordebate/2012/03/12/young-black-and-male-in-america/obama-should-talk-about-race> [http://perma.cc/HQS7-YPLP].

11 *Id.*

12 Shavar Jeffries, *Black Men: Stigma, Status and Expectations*, ROOM FOR DEBATE, N.Y. TIMES (May 9, 2014), <http://www.nytimes.com/roomfordebate/2012/03/12/young-black-and-male-in-america/black-men-stigma-status-and-expectations> [http://perma.cc/4YEF-R8XC].

initial glimmers of educational development, and to finally pursue the path of becoming a law professor. Even now, with levels of success as a law professor, the real loss to all of us are the many other black males with similar backgrounds who do not have all the support systems that I had to make it through the pipeline to obtain success.

I. Growing Up in the Hood of Englewood in Chicago

This narrative starts with my initial upbringing. I was raised by a single mother with no siblings in a community on the south side of Chicago called Englewood. Englewood is a predominantly African American neighborhood¹³ less than ten miles from downtown Chicago.¹⁴ Although the city of Chicago is a global economic city offering many high-paid opportunities, the residents in Englewood live a starkly different reality. The Englewood neighborhood is largely characterized as one of the poorest and most crime-ridden areas in Chicago¹⁵ with high unemployment and low median income.¹⁶ Englewood has such an infamous history that it ranks among Chicago's five most violent neighborhoods.¹⁷ The community has received such notable descriptions as being called a part of CHI-RAQ, essentially a battle zone.¹⁸ Certainly it is known for producing some high-profile residents

13 Steven A. Drizin, *The Lee Arthur Hester Case and the Unfinished Business of the United States Supreme Court to Protect Juveniles During Police Interrogations*, 6 NW J. L. & SOC. POL'Y 358, 367 (2011) (discussing the immigration of blacks into the Englewood neighborhood, and the departure of whites shortly thereafter).

14 Don Babwin, *Hudson Deaths Shine Light On South Side Violence*, HUFFINGTON POST CHIC. (Nov. 30, 2008), http://www.huffingtonpost.com/2008/10/30/hudson-deaths-shine-light_n_139200.html [<http://perma.cc/T3R5-3JDD>].

15 Bruce Wilson, *The Relationship Between A "Criminalgenic" Community and Continued Juvenile Crime Rates*, 2004 J. INST. JUST. INT'L STUD. 118, 119.

16 Joseph Erbentraut, *Don't Believe Everything You've Heard About Chicago's Most 'Dangerous' Neighborhood*, HUFFINGTON POST BLACK VOICES (May 23, 2014), http://www.huffingtonpost.com/2014/05/23/whats-good-in-englewood_n_5360688.html [<http://perma.cc/WMJ7-U3HB>].

17 *Id.*

18 Prominent African American director and writer, Spike Lee, is even working on a movie describing the Englewood community with the tentative title, "Chiraq," which has led to some resistance as a challenge to the controversial title. See Michael Martinez & Ryan Young, *'Chiraq': Working title of new film ignites firestorm in Chicago*, CNN (July 25, 2015), <http://www.cnn.com/2015/06/06/entertainment/chiraq-chicago-spike-lee-movie-controversy/index.html> [<http://perma.cc/SPF6-5HKV>]; Nina Metz, *Spike Lee to shoot a movie in Chicago called 'Chiraq'*, CHI. TRIB. (Apr. 9, 2015), <http://www.chicagotribune.com/entertainment/chi-spike-lee-filming-in-chicago-chiraq-column.html> [<http://perma.cc/7TF5-QGPM>].

as well, such as singer Jennifer Hudson¹⁹ and basketball player Derrick Rose.²⁰

My key reflections from that time living in Englewood through my pre-teen years include at least two shootings of young black men who were killed on my block. I have an undying memory of being an eight-year-old seeing the older brother of an acquaintance, who lived on the next block over, attacking an elderly woman who lived on my block to get her purse, and the violent confrontation as she fought to keep hold of her purse as he threw her to the ground. I also remember being at a professional baseball game as an eleven-year-old and having a teenager approach me with a knife and try to take my money, in what resulted in a lesser but still violent encounter as well. Those memories and my neighborhood shape me as a black man in America.

II. A Parent That Would Not Allow Me to Give in to the Streets and Insisted on Academic Performance

My mother's involvement in building a good foundation started with her scraping up the funds to send me to a private school on the south side of Chicago in the first grade, while working as an entry-level factory worker. At that school, as I started first grade, my immediate memory is of my first grade teacher, Mrs. Robinson. She was an African American woman probably in her 60s. And she was just one of the harshest persons I ever met, never a smile or a happy thought, and always discouraging. Her hair was jet white, and there was never a hair out of place. She was always wearing stockings with sandals and carried rulers rolled up by a rubber band to smack your hand when you said something she didn't like.

According to my mother, I brought home some unacceptable grades, and she tried to discuss it with Mrs. Robinson. But Mrs. Robinson's initial response was, "He's just another

19 Mary Schmidt, *Hudson Family Home Stands in a Neighborhood of Despair*, CHI. TRIB. (Apr. 25, 2012), http://articles.chicagotribune.com/2012-04-25/news/ct-met-schmich-0425-20120425_1_jennifer-hudson-william-balfour-mother-and-brother [<http://perma.cc/LF5A-HS5L>]; Babwin, *supra* note 14.

20 O'Dell, *supra* note 1 (referring to Rose growing up in Englewood). Others popular figures grew up in that neighborhood as well. See Linnea Crowther, *We Still Miss Bernie Mac*, LEGACY.COM (Aug. 2, 2013), <http://www.legacy.com/news/legends-and-legacies/we-still-miss-bernie-mac/1489/#sthash.EV2diRJ8.dpuf> [<http://perma.cc/YU3V-QJ7J>] (remembering comedian Bernie Mac, who was "born in Englewood on Chicago's south side (a neighborhood Chaka Khan, Derrick Rose and Jennifer Hudson have also called home)"); Dorothy Tucker, *There's More To Englewood than Violence*, CHI. CBS LOCAL NEWS (last visited Mar. 1, 2015), <http://chicago.cbslocal.com/2013/07/23/residents-say-theres-more-to-englewood-than-violence> [<http://perma.cc/L8X2-65YV>] (pointing out that Englewood is also home to Kennedy King College and celebrities who grew up there include Jennifer Hudson, Chaka Khan, and Derrick Rose).

little black boy from the south side of Chicago,” and what should my mother expect from me? But my mother said she challenged Mrs. Robinson constantly by complaining to the Principal, Mrs. Ford, about Mrs. Robinson’s lack of caring. And my mother kept fighting about this matter until I went to second grade. Then things changed. The school lost its second grade teacher shortly before the beginning of school that year. Mrs. Ford took over my second grade class and got me hooked on phonics well before that phrase became popular. She made learning fun, as we played Scrabble and other word games, and reading comprehension was necessary to advance to more word games. I remember how much I started to enjoy words and spelling.

III. From Engaged Pupil to a Career Focus Limited By Economic Circumstances

From that point in second grade, I became an A-student primarily. In high school, I received A grades in almost every class and graduated in the top five of my class. The only classes where I received grades of less than an A were in science classes, such as Biology and Chemistry. Nevertheless, my B grades in those classes, along with my overall grade performance, led my counselors to encourage me to pursue a degree in electrical engineering, despite my love of English Literature and American History. I was told that there was no real financial incentive in a career studying those subjects, and was pushed to pursue engineering given the lack of minorities in the field and my overall positive math and science grades.

What really motivated me in pursuing that major in college, especially given my socioeconomic background, was the fact that engineering was probably the highest paying industry for someone with a bachelor’s degree. Despite receiving a National Merit scholarship for my outstanding high school performance and attending the University of Southern California in Los Angeles, I would still need to pay back loans without any financial support from my family. After going to engineering school and struggling with all of the science courses, I again had straight A grades in the few classes that I could take that were not math and science-related, including History and a class on Contract Specifications that was essentially an introductory law course. At that point, and even more in hindsight, I realized that the field for me was law. But it was too late by then, as I had already gone down this engineering path.

With the financial inability to go to graduate school and the opportunity to start working as an engineering manager, I forgot about pursuing a law career. Unhappy spending my time in a technical-oriented field and developing an increasing interest in workplace law issues as a supervisor of several employees, I decided that I would apply to law school. By

now, I had been working a couple of years and had some savings. But, I knew that going to law school would represent a major financial burden. My mother was living back in Chicago, and it became important to me to return to Chicago to be closer to her.

So with the primary goal being an opportunity to go to law school to eventually become a lawyer addressing workplace matters, and in Chicago where I could return to support my mother, I applied to several law schools. When I was accepted into the dual degree program at Loyola Chicago to obtain a juris doctorate degree along with a master's degree in Human Resources and Industrial and Labor Relations, I knew that was the perfect calling for my economic and family situation.

IV. From Law School to Law Professor: Economic Limitations and a Search for Mentoring to Navigate the Law Faculty Hiring Process

There is a long history of discriminating in the law school faculty hiring process based upon race.²¹ Although several articles have identified information kept by the Association of American Law Schools ("AALS") as a major source for the data on minority law faculty hiring, the data is no longer being provided by the AALS.²² As Professor Meera Deo recently noted, "[f]or reasons that have not been made public, the AALS stopped publishing this data in 2009."²³ One may speculate that the AALS has decided to limit this capture of data after talk of reaching a post-racial period²⁴ suggests a climate that does not value this

21 See Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action Law Faculty Hiring*, 97 COLUM. L. REV. 199, 296–97 (1997) (discussing the discrimination prevalent involving minority law applicants as "[c]ompiling the stellar credentials demanded for a law faculty position is a Herculean task under the circumstances" and inability of law schools to take into account "biases or indignities they suffered long ago at the hands of others").

22 See Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352, 355 (2014):

Unfortunately, there are few contemporary statistics on . . . color in legal academia. In the past, the Association of American Law Schools (AALS) regularly released data on race, gender, age, title, and security of position of American law faculty. Though AALS currently provides data regarding faculty who entered legal academia in 2008 and before, no statistics are available for more recent years.

Id.

23 *Id.* at 356.

24 See Rich, *supra* note 6 and accompanying text discussing post-racial beliefs.

information, and instead supports so-called reverse discrimination claims by white male professors seeking a theory to support that claim.²⁵

In a 2000 article, Professor Leland Ware described a prior study by Professor Charles Lawrence that discussed the key barriers to hiring minority law faculty members:

Professor Lawrence identified the obstacles that exclude minorities in the hiring process. These included a degree from a top-ranked law school, high class rank, service as an editor on a law review, a judicial clerkship, or an association with a prestigious law firm. . . . Minority law school graduates rarely possess all of the attributes that Lawrence identified.²⁶

I note that I probably excelled in every one of the criteria listed except that I did not graduate from a top-ranked law school. Although I am a proud graduate of Loyola Chicago University, its law school has never been in the list of top fifty law schools in the country as reported by *U.S. News* during and since my matriculation. Although not in the top fifty, Loyola Chicago has consistently placed in the top-hundred law schools as a second-tier school in the country during that time period. I graduated *cum laude* with a high class rank (top fifteen percent), served as the Chief Articles Editor for a law review, albeit a specialty journal, and became associated with several large and prestigious law firms. As mentioned in the previous Part, when I decided to attend law school, I chose a school located in my hometown as I needed to return to support my mother. Also, I knew that I was interested in labor and employment law, and I was admitted into a dual degree program where I could also obtain a Master's degree in Human Resources and Industrial & Labor Relations. No other law school in the Chicago area could provide me with this type of an educational experience, where I could develop mastery in the labor and employment field and obtain two degrees.

25 See Michael Stokes Paulsen, *Reverse Discrimination and Law School Faculty Hiring: The Undiscovered Opinion*, 71 TEX. L. REV. 993, 996 (1993) (suggesting a hypothetical judicial opinion regarding a claim by a white male law professor suing law schools and a "defendant Association" for "policies of the Association, in encouraging and actively pressuring (through formal and informal sanctions) member law schools to give preferential treatment to minorities and women in their faculty hiring decisions" as a "conspiracy between the Association and the named defendant law schools (and others) to deprive [the plaintiff] of federally protected rights to freedom from discriminatory treatment on the basis of race . . .").

26 Leland Ware, *People of Color in the Academy: Patterns of Discrimination in Faculty Hiring and Retention*, 20 B.C. THIRD WORLD L.J. 55, 62 (2000) (citing Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429, 432-34 (1986) (footnotes omitted)).

When I accepted the offer to go to Loyola Chicago Law School, I had also been placed on the wait list at the law school for the University of Southern California, the school where I had received my undergraduate degree in Electrical Engineering. If I had known that I would desire to become a law professor, would it have been better for me to wait to see about the possible attendance at the University of Southern California,²⁷ or even forego pursuing law school until I could obtain an Ivy League law school education, if possible? But, my family and economic needs to return to Chicago to help support my mother became the highest priorities. Should that decision make me a lesser candidate for a law school faculty position? Even in hindsight, I would not have changed my mind about where I chose to go to law school.

However, after graduating and beginning to teach labor law as an adjunct in the Master's program at my alma mater, Loyola Chicago, I decided that I enjoyed teaching and desired to become a full-time law professor. I registered to attend the Association of American Law Schools Faculty Hiring conference, without understanding fully all the parameters of that process, despite getting some guidance from my mentor law professors at Loyola Chicago. I ended up obtaining two call-backs, one at a top-fifty law school that encouraged me to become a clinical law professor, and another from a historically black college law school looking for a labor law professor.

Although that process was a bittersweet one, as I did not obtain either position, I learned a lot about law faculty hiring especially for a doctrinal position which I decided was my preference in comparison to a clinical faculty position. Anecdotal comments informed me that one of the limits to my entry into law school teaching was primarily based upon not graduating from a top-tier law school and more preferably an Ivy League law school. Also, despite having already published one article from my law school's specialty law review about arbitration, it would have been better for me to have published more articles to establish my commitment to a scholarly agenda. Additionally, because I had practiced law for five years by this time, I was informally told there was some concern that I was not committed to full-time doctrinal teaching and might need to pursue the route of clinical or legal writing teaching, given the amount of practice experience I had already obtained.

27 In a study of the top sixteen law schools in terms of prestige based on U.S. News academic reputation and median LSAT scores, the University of Southern California was among the top sixteen schools. See Merritt & Reskin, *supra* note 21, at 214 n.42 ("We chose 16 schools for our category of 'elite' law schools because we discovered remarkable consistency among academic raters in identifying these 16 schools as among the 'top' U.S. law schools" and "the University of Southern California; Cornell University, and the University of Texas (tied for fifteenth).").

Because of my previous results at the AALS hiring conference, I realized that I was very close to obtaining a position, and I investigated options that might enhance my opportunities to achieve my goal of becoming a doctrinal law professor.²⁸ Many candidates who attended the AALS hiring conference the same year that I attended had not received a single callback for a university visit. Being unaware of the process, I had not even submitted my application to the AALS hiring conference until its third distribution of candidates, immediately placing me in a disadvantaged position because many schools had filled up most of their interview slots by that time. Nevertheless, I still received a few interviews and two callback interviews.

After some investigation, I became aware of the Hastie Teaching Fellowship at the University of Wisconsin Law School. Seeing the impressive list of Hastie Fellows such as Dan Bernstine, who was then the Dean at Wisconsin Law School and currently serves as President and Chief Executive officer of the Law School Admissions Council, Kimberlé Crenshaw, from UCLA, Robin Barnes, from Connecticut, and Winnie Taylor, then at Cornell and now at Brooklyn, inspired me to apply. I also noted that despite not having Ivy League law school pedigrees, both Taylor and Barnes were thriving as doctrinal faculty members at top law schools after becoming Hastie Fellows. I was hoping that with an LL.M. degree from a top-tier law school like Wisconsin and the opportunity for mentoring by Wisconsin faculty, along with law school teaching opportunities as a Hastie Fellow, I would be able to enhance the areas of my background that did not fit the historical requirements for hiring as a law professor. The ability to research and write in the intellectual and supportive environment at Wisconsin Law School as part of the Hastie Fellowship provided an immense opportunity to obtain excellent feedback in crafting the final version of my paper required to obtain my LL.M. Also, I had the privilege of having my thoughts and analysis reviewed by outstanding experts in the field of labor and employment law, Wisconsin Law Professors James Jones and Carin Clauss.

I entered the AALS hiring process again in my first year as a Hastie Fellow, a somewhat unusual decision given that the Hastie Fellowship is historically a two-year program with the Fellow typically entering the AALS hiring process after completing a year as a Fellow. But my advisors supported this decision given that I had already participated in the AALS process previously. This time I was prepared by being involved in the first distribution and

28 See Meera E. Deo, Dorothy H. Evensen & Carla D. Pratt, *The End of the Pipeline: A Journey of Recognition for African Americans Entering the Legal Profession*, 62 J. LEGAL EDUC. 640, 641–42 (2013) (book review) (“Many of those who successfully navigate blockages at all stages of the pipeline do so through use of facilitators, or ‘routers’ who provide the information, support, and other resources necessary to continue on the path. . . .”).

had more than twenty interviews. Those interviews resulted in seven callback interviews. Although every school identified as looking for a labor and employment law professor interviewed me, my scholarship, which had at that time been addressing arbitration of workplace disputes, also appealed to schools looking for faculty to teach and write about alternative dispute resolution. However, not a single school interviewing me was in the top tier. My advisors discussed with me the possibility of finishing my paper and vetting it through the law journal editing process and then re-entering the AALS hiring process the next year under the typical route for a Hastie Fellow. While I understood their rationale, I was also starting to experience financial difficulties after leaving a prestigious law firm position and receiving a very much appreciated, but relatively meager, sum as my income while a Hastie Fellow. Again, socioeconomic limitations affected my decision-making.

In 1999, I took an offer as an entry-level faculty member at a relatively new law school, which was not yet fully accredited. That law school promised me the opportunity to teach employment discrimination and labor and employment law, while immediately entering the law school academy with a regular paycheck. It was a tough and emotional decision to forego my second year as a Hastie Fellow. Financially, I just could not risk waiting another year and hoping that there would be better offers and opportunities while foregoing an offer, albeit from an unranked law school with an uncertain future. Without any other financial support, I took the money in hand rather than pursuing the financial opportunity and growth as a law professor that waiting on possibilities from the future might offer.

While I was betting on myself, I was also probably cutting off my opportunities to move to better positions. And there has been some data suggesting that law professors of color who start at lower-tier schools rarely transition to top-tier law schools.²⁹ Nevertheless, I did receive offers to join other law school faculties within a couple of years. In deciding among three offers, including an offer from a state flagship university and second-tier law school in *U.S. News* listings, I joined the faculty of Texas Wesleyan Law School (now Texas A&M School of Law) in 2003. In 2008, I received a lateral offer from a law school in the top 60 in *U.S. News* listings at that time and ranked number 50 overall in the 2015 *U.S. News* rankings. Yet, I stayed the course and kept developing as a labor and employment law scholar and teacher.

Now that I am a part of Texas A&M University, one of the most financially supported

29 Professor Brian Leiter keeps a list of lateral moves on a yearly basis and rarely do you see any faculty of color leave a third or lower-tier school to go to a top seventy-five school. See *Lateral Hires with Tenure, 2014-15*, BRIAN LEITER'S LAW SCHOOL REPORTS (June 24, 2015), <http://leiterlawschool.typepad.com/leiter/2015/06/lateral-hires-with-tenure-2014-15.html> [http://perma.cc/NQ83-U5SZ].

universities in the country,³⁰ as a tenured full professor at its law school, I feel fortunate to have made moves resulting in my current status as a black male law school faculty member. Yet, I wonder if my opportunities could have been better if I had not had some of the socioeconomic and environmental barriers that narrowed my educational and career opportunities. As I look at the current status of black male professors who teach and write about labor and employment discrimination law, I believe that discrimination in the hiring of black male law faculty still occurs.

V. Lack of Black Male Labor & Employment Discrimination Professors

In what was my final piece of the narrative in the open mic session, and fifth area of focus in this Article, I argued my belief that discrimination in the legal academy is quite prevalent, as exhibited by the small percentage of labor, employment discrimination, and employment law professors who are black males.³¹ In a field where you have to explore the issue of discrimination on the basis of race, I find anecdotally very few black male professors who are full-time tenure track professors engaged primarily in the subject of teaching and writing about workers and race discrimination.³² A 2009 empirical study of the make-up of labor and employment professors by Richard Bales showed a significant increase in women and teachers of employment law over the prior ten years and a decrease

30 See TEXAS A&M UNIV., TEXAS A&M FACTS, <http://marcomm.tamu.edu/documents/tamuFacts.pdf> [<http://perma.cc/7989-3LYN>] (noting that Texas A&M University “[r]anks 3rd among U.S. public universities and 12th overall with an endowment of more than \$5 billion”) (last visited Apr. 16, 2015). The Texas A&M Law School is also well-supported financially as indicated by its recent hiring of twelve new faculty members despite a contracting environment for growth in law schools. See *Meet Our New Team Members*, TEX. A&M SCHOOL OF LAW, <http://law.tamu.edu/media/news-media-resources/story/meet-our-new-team-members> [<http://perma.cc/J6VE-7BLM>] (last visited Aug. 17, 2015).

31 In a review of data captured in 2009 by AALS, Professor Meera Deo noted that black males constituted only 5% of the entire group of male law faculty members, or 344 out of a total of 6,819. See Deo, *supra* note 22, at 358. This total of 344 black males also represented 3.1% of the total number of all faculty members or 344 out of a total of 10,965. Deo, *supra* note 22, at 358.

32 Because there is little data capturing this information about race, I explore my anecdotal encounters over fifteen years as an active labor and employment professor and scholar. In 2005, when the workplace prof blog was in its initial stages, it attempted to create a list of all labor and employment professors that is still helpful in supporting my anecdotal comments herein. See *Employment Law Profs: By Name*, LAW PROFESSOR BLOGS, <http://www.lawprofessorblogs.com/labor/linkdocs/emplprofbyname.pdf> [<http://perma.cc/3VV9-XESV>] (last visited Aug. 17, 2015); *Labor Law Professors, By Name*, LAW PROFESSOR BLOGS, http://www.lawprofessorblogs.com/labor/laborprofs_name.pdf [<http://perma.cc/HWA5-RZKG>] (last visited Aug. 17, 2015). There is, however, information about gender of labor and employment law professors that I will also draw upon in support of my claims herein. See Richard Bales, *A Data-Driven Snapshot of Labor and Employment Law Professors*, 56 ST. LOUIS U. L.J. 231, 243 (2011).

in men and teachers of labor law.³³ A major increase in the number of employment law professors teaching women and the law has occurred as well.³⁴ While this may reflect more women, and potentially more white women, who are becoming employment law and employment discrimination professors, the indicators for the numbers of black male professors in these subject areas seems bleak.

After more than fifteen years in the academy and heavy involvement in various programs and labor and employment sections of the academy, including AALS sections, I have found the dearth of black male law professors in this field to be shocking. If you just limit the discussion to black male law professors who teach and write about labor law, I can probably count on one hand the number of black male law professors I have encountered who have entered the academy within the last twenty years.³⁵ There are some black male law professors who were hired within the last twenty years who have a race-based focus in their scholarship and also teach or write about employment discrimination law. However, they tend to have a much broader focus than workplace matters and usually have pursued broader constitutional law, family law, sports law, or critical race perspectives in their scholarly agendas, with little, if any, focus on labor matters.³⁶

As a result, I am left with the conclusion that this lack of black males as labor and employment discrimination law professors, while alarming, may have also helped me in

33 Bales, *supra* note 32, at 236, 241–43.

34 Bales, *supra* note 32, at 243.

35 Individuals who fit this profile other than me include Michael Duff at Wyoming University College of Law, Harry Hutchinson at George Mason University School of Law, and Ronald Turner at the University of Houston Law Center. I note that this issue is not limited to African American males, as anecdotal information suggests an even smaller group of African American females who fit this profile, including Cynthia Nance at the University of Arkansas School of Law. Latino male professors who fit this profile are part of a very small group as well, with Roberto L. Corrada at Sturm College of Law at the University of Denver, Ruben Garcia at William Boyd School of Law at UNLV, Rafael Gely at the University of Missouri School of Law, and Christopher Cameron Ruiz at Southwestern Law School fitting that profile. I recognize that this personal and anecdotal account may not represent the full and comprehensive picture of the law faculty of color who teach and write about labor law; but I also recognize that if you write enough in the field, you tend to know who the other key contributors are.

36 Examples of individuals who tend to fit this profile include Ralph Richard Banks at Stanford Law School, Mario Barnes at UC Irvine Law School, Devon Carbado at UCLA School of Law, Henry Chambers, Jr., at Richmond University School of Law, Jeremi Duru at American University Washington College of Law, Richard Thompson Ford at Stanford Law School, and Stephen Rich at the University of Southern California School of Law. Terry Smith at DePaul University College of Law also fits this profile in some aspects with his work on voting rights, but Smith also teaches and comments on labor law.

getting through the door because of the added value my experience as a black man teaching and writing in this field could offer. I can probably not even count on two hands the number of black male law professors I know who are dedicated to teaching and writing about labor and employment discrimination issues in the workplace. And despite the importance of black union leaders such as A. Phillip Randolph in developing rights for black workers, the number of black male or female labor law professors who can address this predicament is just as important.³⁷ These factors continue to suggest the discrimination that goes on in the academy. Workplace matters including labor law, employment law and especially employment discrimination represent such an important concern for black males in our society. Yet, those teaching these classes and writing about these subjects as law professors are overwhelmingly not black males.

CONCLUSION

Is there an answer to address this ongoing discrimination against black males who teach and write about employment discrimination and labor law? We need to continue to push pipeline programs to increase the critical mass of black males provided the opportunity to pursue employment discrimination and labor law careers and then careers as law professors. And I return to my childhood community of Englewood in Chicago, where a college preparatory program that opened in 2006 became the country's first all-boys public charter high school.³⁸ The Urban Prep Charter Academy for Young Men has been successful in taking some of the most poverty-stricken black males in Chicago with test scores behind their grade levels and pushing those young black males to achieve success by getting into college.³⁹ According to a CNN article highlighting Englewood's Urban Prep

37 See Michael Z. Green, *Finding Lawyers for Employees in Discrimination Disputes as a Critical Prescription for Unions to Embrace Racial Justice*, 7 U. PA. J. LAB. & EMP. L. 55, 105 n.235 (2004) (describing the importance of black leaders' voices in addressing concerns of black workers). Because black workers already have little help from the legal profession, finding a way for more black law professors to address their plight is an important concern. See Amy Myrick, Robert L. Nelson & Laura Beth Nielsen, *Race and Representation: Racial Disparities in Legal Representation for Employment Civil Rights Plaintiffs*, 15 NYU J. LEGIS. & PUB. POL'Y 705, 712 (2012) (discussing findings from an empirical study using "statistical analysis to show that minority plaintiffs in employment discrimination lawsuits—in particular African Americans—are much more likely than white plaintiffs to file without a lawyer").

38 See URBAN PREP ACADEMIES: HISTORY, <http://www.urbanprep.org/about/history-creed> [<http://perma.cc/D4GT-B8HM>] (last visited Apr. 29, 2015).

39 See Amanda Paulson, *All-Boys School Succeeding in Tough Chicago Neighborhood*, CHRISTIAN SCI. MONITOR (Apr. 23, 2010), <http://www.edweek.org/ew/articles/2010/04/23/30prep.h29.html> [<http://perma.cc/3T9H-3KMT>]. Other programs are also trying to feed the pipeline by providing opportunities for black youth to attend college. See Lucy McCalmont, *Lebron James Will Pay for 1,100 Kids to Go to College*, HUFFINGTON

Charter Academy for Young Men, only one in forty African American males in Chicago will finish college, and fifty percent will drop out of high school.⁴⁰ As a result, the Urban Prep Charter Academy for Young Men, which is not part of the Chicago public school system, is on a mission to prepare young African American males for success.⁴¹

But breaking through the college completion barrier should not be the end of the story. Pipeline programs need to stick with these black males and continue to mentor and advise them to obtain the best credentials possible to enter various professions as black men. And then pipeline support programs to foster success at the law professor level, such as the prominent Hastie Teaching Fellowship, can continue to help those seeking to enter the law teaching profession. This push at every level of the pipeline can add important voices and numbers to an underrepresented demographic group, black male law professors, and especially those who teach labor, employment discrimination, and employment law.

Overall, policymakers need to recognize the distinct barriers that help prevent breaking through this wall of discrimination. The increasing societal detriment that black males face from growing up in crime-infested neighborhoods with gangs and lesser educational commitments and expectations plays a key factor. Also, those few that make it through these initial barriers face another barrier in lacking resources and economic support to guide and help protect those black males in the pipeline in achieving the best possible credentials to stop the increasing discrimination at every stop on the way to becoming a law professor. While I am in awe that I was able to navigate these minefields to become a successful black male law professor in labor, employment discrimination, and employment law at a major university, I still believe that systemic barriers prevented me from receiving more accolades and achievements. And it is a sad story for others with similar backgrounds who have not reached their potential levels of success, because we all have lost out from not being able to hear the powerful voices that these individuals could have contributed to the academy.

POST (Aug. 14, 2015), http://www.huffingtonpost.com/entry/lebron-james-scholarships-i-promise_55cde2f6e4b07addcb429cc3 [http://perma.cc/JXY8-HHSL] (describing efforts by professional basketball player, LeBron James, to fund four-year scholarships for more than 1,000 African American youth to attend the University of Akron starting with the class of 2021 whose members meet requirements of his I Promise program).

40 See Maria Dugandzic, *Against All Odds: School Offers Hope, Opportunity for Young Men*, CNN: BLACK IN AMERICA 2 (Jun. 25, 2008), <http://www.cnn.com/2008/US/06/25/bia.urban.prep/index.html> [http://perma.cc/Q7CA-2LQW].

41 *Id.*

Being black and male and a law professor may sound like a combination of adjectives that do not seem to fit together, like an oxymoron. When law schools seek diversity in hiring, they historically claim that they cannot find a qualified person of color to diversify the law faculty. Even in my own experiences I note that not having an Ivy League law school pedigree represented a key barrier to entering the law professoriate. Too many institutional and societal barriers make it difficult for black males to obtain the pinnacle credentials that might resemble those necessary to become the first black President.⁴²

However, these barriers do not prevent law schools from discovering many successful faculty of color if they want to find them. As mentioned at the beginning of this Article, the Hastie Teaching Fellowship at Wisconsin represents a program where law schools could find, and have found, black males and other persons of color who have become successful law professors. Despite my own experience with overcoming societal barriers, some of those barriers still limit what I can do today. Very few faculty members of color have transitioned from lower-tier law schools to top-tier law schools where they can obtain more financial support and intellectual growth opportunities. This suggests that the initial entry

42 Several years ago, Derrick Bell stepped down from his faculty position at Harvard Law School because of poor results in diversity hiring, and specifically in response to a failure to hire a woman of color on its faculty. See Adrienne Katherine Wing, *Derrick Bell: Tolling in Protest*, 12 HARV. BLACKLETTER L.J. 161, 162 (1995) (reviewing DERRICK BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994)). President Obama was also the first black person to lead the Harvard Law Review and his Ivy League education hopefully prepared him to become President. See Bernice B. Donald & N. Chase Teeples, *Not Your Father's Legal Profession: Technology, Globalization, Diversity, and the Future of Law Practice in the United States*, 44 U. MEM. L. REV. 645, 661–62 (2014). Although there is nothing to indicate how necessary an Ivy League education is to become a successful law professor, this elitist approach to credentialing in selecting law professors plays out in all forms of legal hiring including at law firms and even in Supreme Court Justices. See David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CALIF. L. REV. 493, 526–27 (1996). Most Supreme Court law clerks, a prime position in preparing for entry into a law professor position, tend to come from only ten elite law schools. See Christopher R. Benson, *A Renewed Call for Diversity Among Supreme Court Clerks: How a Diverse Body of Clerks Can Aid the High Court as an Institution*, 23 HARV. BLACKLETTER L.J. 23, 27 n.28 (2007). Today it is unlikely that a Supreme Court Justice will not have attended an elite law school such as Yale or Harvard or Stanford. See Benjamin H. Barton, *An Empirical Study of Supreme Court Justice Pre-Appointment Experience*, 64 FLA. L. REV. 1137, 1139, 1173 & n.1 (2012) (finding that members of the Roberts Supreme Court have “spent the most time in elite undergraduate and law school settings” and defining elite institutions as “Ivy League universities and Stanford”). In discussion of and criticism of President George W. Bush’s announcement of his Supreme Court appointment of Harriet Miers, a graduate from Southern Methodist University Law School, a top-tier law school in U.S. News, some questioned her qualifications before she withdrew because she was not from “an elite group of individuals.” See David D. Kirkpatrick, *Nominee Gets First Chance to Counter Critics*, N.Y. TIMES (Oct. 17, 2005), http://www.nytimes.com/2005/10/17/politics/politicsspecial1/17miers.html?_r=0 [<http://perma.cc/28B4-4D3C>] (comments from Republican Senator Charles Hagel criticizing Miers as not part of an elite group of individuals needed to be on the Supreme Court).

barriers that force faculty of color into lower-tier law school positions or to non-doctrinal faculty positions continue to limit those faculty members no matter how successful they become. My story helps capture this problem, while also highlighting an overall success story in triumphing over circumstances that could have made it impossible, or at least unlikely, for many others to become a law professor.