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Law Review Masks Diversity in a New Admission System

By LISA ANDERSON

In the competitive world of law school, where students scramble to distinguish themselves from their peers, admission to a law review is an honor that can enhance a career.

Now the editorial board of a prestigious law review has changed its selection process, making it harder to determine who is admitted on merit alone and who is selected partly on the basis of race or ethnicity.

The change, said members of the editorial board of The University of Pennsylvania Law Review, is an effort to maintain the publication's affirmative action program by insuring that qualified students -- most of them white -- are not displaced by black and Hispanic students.

"We were actually displacing candidates with affirmative action candidates," said Katherine Kelly, the review's editor in chief. The policy, Ms. Kelly said, upset some law students who failed to win admission to the law review and stigmatized the black or Hispanic students who did.

"You would hear rumors circulating around the class that so-and-so made it because of affirmative action," she said. "With something so competitive as law review, people are going to give all kinds of reasons why they didn't make it." Nine of the nation's top 20 law school reviews, including those at Cornell, Harvard, New York University and the University of Virginia, have affirmative action policies or diversity plans, according to documents made public last February at a conference of the publications' editors at Stanford Law School.

At the University of Pennsylvania, as at most other selective law schools, the

majority of first-year students compete for law review. Gary Clinton, the dean of students, said last year that 83 percent of the first-year students tried out. Only 20 percent were accepted, said Mr. Clinton who, following the dictates of the editorial boards, selects students for the law review and for two other student-run academic journals on campus.

Under the system in place last year, editorial board members said, the review accepted 44 first-year students, who will join as associate editors in their second year. All 44 had to meet certain minimum requirements. According to the conference documents, those requirements last year consisted of scoring in the top 60 percent on the editing part of a two-part written test and in the top 90 percent on the essay part.

From this select group, 18 students were chosen for the law review on the basis of their combined score on the written test. Eighteen others were accepted on the basis of their test score and grade point average.

Editorial board members of the review would not say whether those 36 reflected the ethnic and racial makeup of the class that was applying. If they did not, then the minority students who had the highest scores would have been chosen to fill as many of the eight remaining slots as was needed to mirror the makeup of the class. If the review still had places available, it would have admitted the next best candidates on the basis of their written test scores and grade point averages, without considering race or ethnicity.

The key to the new system seems to be keeping secret newly established numerical goals, so that law students will not be able to determine who is an affirmative action appointment.

Later this month, when the law review chooses its new associate editors, it will first select the number of students needed to run the publication -- but that number will be kept secret. After those members have been chosen, the review will accept an unstipulated number of affirmative action candidates on the basis of their written test scores.

"We could either decide how many associate editors we wanted and reserve some for affirmative action, or we could pick how many associate editors we wanted and then pick some for affirmative action," Ms. Kelly said, describing the policy shift. "It seems like a minor technical change but it isn't, because people aren't being replaced because of affirmative action."

Although the old policy covered Asian-American students, she said the new

policy would apply only to groups that the law school considers historically underrepresented -- black and Hispanic students.

"It really didn't make any difference at all in terms of the numbers," said Laura Boschken, one of the review's five executive editors, referring to the new policy. "It was more a perception. We just wanted to make things appear fair."

Last year, from the university's 231-member first-year class, which included 9 Asian-American students, 9 Hispanic students and 22 black students, the review admitted 3 Asian-American students and 2 Hispanic students.

Ms. Kelly attributed the absence of black students in part to the low number who participated in the competition; Mr. Clinton said only 11 tried out for the law review. By contrast, virtually all of the Hispanic students and all of the Asian-American students applied.

Ms. Kelly said she met several months ago with members of the Black Law Students Association to try to encourage a higher turnout of law review applicants. The TimesMachine archive viewer is a subscriber-only feature.

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