Arkansas Democrat-Gazette | Sunday, December 25, 2022

OPINION

Exposing race-hustling fraud

ROBERT STEINBUCH

I've written previously about the need for the Legislature to eliminate preferences in contracting, hiring, and admissions at public institutions. Today, I discuss how the Diversity, Equity, and Inclusion (DEI) industry's defining characteristic—racial preferences in higher-education admissions—doesn't serve the purported goals of its proponents, in addition to being morally wrong discrimination.

Advocates of racial preferences in higher education assert that: 1. diversity enhances the learning of all students 2. preferences counter so-called implicit bias that disadvantages minorities in the admissions process, and 3. set-asides remedy historic discrimination by both universities and the country.

While the first is permitted under Supreme Court precedent, it's largely unseemly tokenism. The second is illegal, and—along with part of the third justification—is irrelevant, because there is no implicit bias that disadvantages minorities in the higher-education admissions process today. Indeed, there is no historic discrimination still in need of remediation at these leftist cathedrals.

It's exactly the opposite. Preferred minorities are given exceedingly large preferences in admissions and faculty recruitment. In hiring for a position at my school, all but one of the candidates presented by the administration-chosen DEI-driven screening committee were minority. That's a staggering influence of race.

And remedying national-historic discrimination as a justification for affirmative action is properly illegal under Supreme Court precedent; you don't fix discrimination by discriminating, as Chief Justice Roberts stated.

Mismatch analysis further counters the already debunked justifications of race hustlers by demonstrating that large racial preferences not only don't serve their stated purposes, but actually hurt their intended beneficiaries by undermining minority-student learning and performance on average.

In our forthcoming article in the Journal of Legal Education from which this column draws, co-author Richard Sander and I studied this phenomenon in legal education. As far back as 2005—my first year as a full-time academic—Sander was already presenting research supporting this conclusion.

Sander argued that since professors tend to direct teaching to the middle ability in the classroom, dramatically lower-skilled students, as reflected in their admissions metrics, are left behind in the current, if not torrent, of the presented material.

The devastating results on academic performance of being downwardly mismatched are even more dramatic in law schools, because on average they're more intense and difficult than college. These bad

outcomes further manifest after law school through significantly increased difficulty passing the bar exam.

Sander demonstrated that Black law students—who on average receive the largest admission preferences—tended to have low grades in law school and were far more likely than whites to fail the bar. Both of these phenomena were due to racial preferences, not race.

Without set-asides, Blacks attending appropriately matched schools would earn grades comparable to Whites on average, and the bar-passage gap would substantially narrow. This would increase the number of Black lawyers in the community. Racial preferences hurt Blacks.

In our forthcoming article, Sander and I study student performance in three law schools: two in California (UCLA and Davis) and one in Arkansas (Little Rock-Bowen). Our analysis shows that the relative position in one's law-school class (in terms of credentials) matters more than the absolute level of one's credentials.

That is, students with relatively weak incoming academic indicators on average have a better chance of passing the bar exam by going to a lower-ranked school. Therefore, contrary to race-grievance hucksters' claims that students with lesser qualifications are handicapped when precluded by merit considerations from attending top-tier schools, students with weak academic credentials are advanced when precluded by merit considerations from attending top-tier schools.

Some students from the California schools would do much better by attending school in Arkansas. The recruiting poster practically writes itself.

When I enrolled in a French-language class specializing in business communication, my modest facility with conversational French was no match for the technical knowledge necessary for the course. After attending the class for a week and speaking with the professor, I dropped it. That was the right thing to do. I would have learned virtually nothing had I stuck it out, regardless of whether I passed the course.

I was negatively mismatched. Luckily, nobody tried to hide this critical fact from me, as is often the case with racial preferences in admissions. Not only do many negatively mismatched minority students not know the dramatic costs of being mismatched, often these students affirmatively are misled into believing that they're equally capable of succeeding in a mismatched environment as their properly matched peers. They are not, perpetually promoted progressive propaganda notwithstanding.

Affirmative action is the biggest dirty little secret in academia. Virtually nobody in authority tells its recipients that they're regularly being set up to fail.

When a colleague had the temerity to offer students in his class the opportunity to apply privately for a small bonus on an exam based on race—any race, as it turned out—all Hades broke out. Yet his notion was simple: The rationale for affirmative action doesn't stop at the admissions-committee doorstep.

His idea was not well received. How dare he even suggest to the purveyors of preferences that students significantly downwardly mismatched—who were admitted nonetheless—might need adjustments on exam-scoring?

Logic, that's how.

Part of the problem is that advocates of racial set-asides have built a race-hustling industry of highly paid DEI administrators. This army of self-interested advocates perpetuate the fiction that affirmative action is an unmitigated good, and they must occupy their privileged perches to confer the benefits of racial preferences on under-represented minorities.

In reality, these charlatans parasitically benefit from the coveted tuition dollars of students with relatively poor chances of success that these gatekeepers admitted in the first instance, all along smugly claiming credit with the virtue-signaling assertion that "we are helping." The "we" taking credit for this fraud conveniently are not accepting any of the responsibility. Public higher-education institutions operate on tuition and taxpayer subsidies. And, perhaps obviously, law schools keep that income irrespective of whether any individual student passes the bar exam—as long as the schools meet the minimum overall-threshold bar-passage rate required for continued accreditation and operation. There's little incentive to give up set-asides.

So let me offer a proposal to force accountability: Require law schools to refund tuition to graduates who were admitted with incoming metrics two or more standard deviations below the class' mean who fail the bar exam or drop out.

Thereafter, mandate—this is critical—that those refunds be deducted from the salaries of application-evaluating administrators and policy-creating deans who authorized the admission of those students at high risk of failing. Then, for the first time, the "we" will truly be helping.

It's time for these Bolshevik bureaucrats to start putting their money where their other-people's income-spending mouths are. You'll be surprised how quickly leftist ideology melts away when conservative notions of personal accountability are applied to the actions of progressive petty potentates picking the public's pockets. Or maybe already enlightened readers won't.

This is your right to know.

Robert Steinbuch, professor of law at the Bowen Law School, is a Fulbright Scholar and author of the treatise "The Arkansas Freedom of Information Act." His views do not necessarily reflect those of his employer.