

7-1-1999

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Recommended Citation

Lyra Logan Esq., *Florida's Minority Participation in Legal Education Program*, 53 U. Miami L. Rev. 743 (1999)

Available at: <https://repository.law.miami.edu/umlr/vol53/iss4/6>

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Florida's Minority Participation in Legal Education Program

LYRA LOGAN, ESQ.

I am Lyra Logan, and I run Florida's Minority Participation in Legal Education Scholarship Program which I administer from Miami. So, welcome to sunny Miami-Dade County, Florida, a racial and ethnic melting pot the likes of which you will rarely have the pleasure of visiting. Here each day over two million people from approximately 140 countries speak all major and various other languages. But that's Miami-Dade County, Florida, ladies and gentlemen. Get in your rental car and head north on I-95. Look around, and you will quickly realize that you have left 56% of the State's Latino population behind. Keep driving, and it won't be long before it becomes crystal clear that you're in a State that still is very much a part of the Deep South, where Blacks and whites still mostly keep to their own separate and unequal sides of the railroad tracks; a State in which no racial minority has ever won a statewide election; a State whose official song refers to Blacks as "darkeys" and where thousands protest angrily at attempts to change that song; a State where, in 1991, despite a population consisting of roughly 26% minorities, the State Bar had a membership consisting of only 6% minorities and where, in 1998, those numbers still have not risen all that much.

How did this State, the Florida I just described, become the only State in the union to establish a Minority Participation in Legal Education Program, that is, a statewide state-funded affirmative action scholarship program designed to increase the numbers of Blacks, Latinos and other minorities practicing law? The answer: Black and Latino members of the Florida Legislature retreated from a bitter battle over control of a new minority law school and coalesced to meet their common goal of increasing the number of minority attorneys in the State.

I will use my time this afternoon first to detail the historical background that led to forming this coalition and establishing the unique Minority Participation in Legal Education Program (the "MPLE Program"). That description will make clear the point of divergence between the two groups as well as the theory and realities that bind them. Then I'll talk about the changing political landscape in Florida which in its various mutations has supported the coalition. That discussion will lead me to talk about the dangers the coalition and Program

face in the future and the lessons progressives should draw from this entire experience.

Now, I will provide some necessary historical background. Many would say that this story began over thirty years ago when the State closed the law school at historically Black Florida A&M University (FAMU). In June 1964, Florida's State University System examined legal education in Florida and determined that three actions would help the University System meet an anticipated increase in demand for lawyers. Those three actions were: (1) to expand the size of the all white University of Florida Law School; (2) to close the all Black FAMU Law School, purportedly for failure to graduate a significant number of students who would later be admitted to the Bar; and (3) to create instead a law school at predominantly white Florida State University (FSU).

In keeping with that plan, in 1965, the all-white Florida Legislature transferred the FAMU Law School funds to FSU to begin the law school there.¹ Needless to say, many Blacks and others called the move racist, unjustified, and unfair. Notwithstanding those expressed sentiments, FSU's law school began operating in 1966, and FAMU's law enrollment was phased out by 1968.

The next relevant action took place when the State University System reviewed statewide public legal education again in 1985 and 1990. In both reviews, the State University System found that Florida had a sufficient number of lawyers to meet its needs but that minority participation in legal education and in the legal profession was seriously limited: the Board estimated that 4% of lawyers were minorities; 3% Latino and 1% Black. Due to other more pressing public university concerns, however, the Board listed minority under-participation in legal education as a lower overall priority for the 1990's and beyond, but did commit to seek options for addressing the shortage.

The next relevant event occurred when Florida's Supreme Court formed a Racial and Ethnic Bias Study Commission. In 1990, that Commission published the first part of its study entitled *Where the Injured Fly for Justice*,² a report and recommendations focusing on the broad issue of reforming practices which impede the administration of justice. The study listed the critical shortage of minority law students, attorneys and judges as a major impediment to the fair dispensation of justice to minorities in Florida.

In response to these various findings of low minority participation in law, the Florida Legislature, in 1991, required the State University

1. S. 346, 1965 Legis. Sess., Chapters 65-309, in *Laws of Florida*, 1065.

2. FLORIDA SUPREME COURT RACIAL AND ETHNIC BIAS STUDY COMMISSION, PART I, *Report and Recommendations* (December 11, 1990).

System to study the feasibility of reestablishing the FAMU law school.³ The State University System presented the results of the study in a December 1991 report.⁴ The report determined that the new law school would cost more than \$25 million to start and \$8 million to run each year. The report further found that, once begun, the new school would not graduate candidates who could sit for the Florida Bar Exam for several years. The report, therefore, also suggested more immediate options to respond to the under-representation of minorities. One of those options was creation of the MPLE Program.

Little else happened until the State Legislature's 1993 session, during which Florida International University (FIU), regarded by some as the State's "Hispanic" university, began its own campaign for control of the proposed new minority law school. The resulting competition between FIU and FAMU spurred a racially tinged fight between Black and Latino legislators.

FAMU, which is 90% Black, argued that in fairness it should get its law school back and pointed to its successes at educating Black professionals. The State's Black legislators, who are approximately 1/4 of the Legislature's Democrats, supported FAMU and leaned heavily on white Democrats to do the same.

FIU, which is 50% Latino and 11% Black, argued that because of the large minority population in Miami-Dade County, the law school should be located on its Miami campus and pointed to its record of graduating the most minority students in the State University System. All Latino legislators but one, all of whom were from Miami and made up approximately 13% of the Legislature's Republican party, supported FIU and had the backing of most other Republicans. Thus the partisan and racially divisive battle raged but was left unresolved.

A major event occurred in September 1993, when the State University System adopted its 1993-1998 Five Year Master Plan, a great portion of which dealt with legal education. In the Plan, the University System rejected the new law school proposal, noting that the State already had six accredited law schools, with applications down at five of them, and also had one of the highest lawyer-to-population ratios in the nation. It decided though, that, while Florida's taxpayers should not be asked to pay to produce more lawyers *via* a new school, the State needed more minority lawyers and judges. To meet that need, the University System officially proposed the MPLE Program, which would be

3. S. 1314, 1991 Legis. Sess., Chapters 91-272, in *Laws of Florida* 2567.

4. Board of Regents, Florida State University System, *Feasibility Study for a Third Public Law School under the Auspices of Florida Agricultural and Mechanical University*, December 13, 1991.

designed eventually to fund enrollment for 200 minority law school students and 134 undergraduate pre-law students each year.

Finally, during the State Legislature's 1994 session, even while FIU and FAMU continued to bicker over a school few actually thought the State needed or could afford, a Black legislator in the House and a Latino Senator sponsored a bipartisan, biracial compromise bill to create the MPLE Program and begin immediately to address the shortage of minorities in law.⁵ The bill passed the Senate and the House and the Governor signed it into law.

What I have just described for you is an experience that began as divisive competition but eventually resolved itself through a dual community coalition that positively affected the making of social policy. The legal education coalition between Florida's Latino and Black communities successfully launched and survives for at least three main reasons.

One reason the Black/Latino coalition succeeds is that the two groups found common ground. They temporarily put aside individual desires and began to work toward a shared and widely supported ultimate goal that lends itself to joint attainment. That goal is to use the State to help increase the numbers of minorities in the legal profession.

Another reason the Black/Latino coalition succeeds is that, for at least 1993-98, the State could not justify giving either group the law school it initially sought. The State University System rejected a new law school as unnecessary and too costly, recommending instead that the State direct its scarce resources to more pressing undergraduate educational concerns.

I should note that, despite the University System's rejection, at any time the Legislature could have forced the issue, approved a school and sent the matter to the Governor for review. But, since Governors rarely approve education expenditures the University System has not requested, Governor Lawton Chiles likely would have vetoed plans for a new law school, particularly in view of the cost.

If the State had decided to give a school to one group, the coalition obviously would not have been necessary; one group simply would have triumphed, perhaps to the detriment of the other. The State's refusal to give either community a school forced the groups to work together or each walk away with nothing as they had done in 1993.

Another reason the Black/Latino coalition succeeds in maintaining the Program is that the coalition and the Program have existed in a sup-

5. H.R. 1309, 1994 Legis. Sess. (Comm. Substitute), Chapters 94-145 in *Laws of Florida* 887.

portive, though dynamic, political climate. The Program was created in 1994 by affirmative vote of a Democratic controlled House and an even split Senate, with the support of a Democratic Governor who has recommended the Program in his proposed budget every year since.

Each year since creation, the Program has had to endure the Legislature's budget review process in order to receive continued funding. The interesting part of the story is that the reviewing Legislature has changed twice since initial approval, after the elections every other year. During the 1995 and 1996 Legislative sessions, Democrats retained control of the House, but Republicans took the lead in the Senate. In 1997 and 1998, Republicans controlled both the Senate and the House.

Naturally, questions arose about the Program's fate after Republicans took control, since, as we know, the Republican Party generally disfavors affirmative action. The Program has survived, though, in the midst of this change of control largely because of the support of Florida's most powerful Latino group, Cuban Americans, most of whom, again, are Republican. They currently are 13% of the Republicans in the State Senate and 14% of the Republicans in the House. To maintain Cuban support, Republicans in Florida often must tolerate ideas, solutions, coalitions they quickly condemn and combat in other states. For that reason, the Program still could thrive even if, in November 1998, the State elects a Republican Governor to serve with the Republican controlled Legislature, as long as Cuban legislators continue to support the Program.

That brings us to possible future threats to the Black/Latino coalition for legal education. There are at least three.

One springs from the two groups' main point of divergence: each still wants its own law school. Both FAMU and FIU have told the State University System that a law school is among its top priorities for the five year period from 1998-2003. If the State decides in the future to add a new school, the coalition will fail if the groups again divide and fight fiercely for control. If that battle reheats and intensifies, chances for future alliances on any issue will become more and more remote. Also, if one group gets a school, the other group may well find its underrepresentation left inadequately addressed.

Another future threat to the Black/Latino coalition is the Florida Civil Rights Initiative, Florida's version of Prop. 209. Proponents have sought to amend the State Constitution to end preferential treatment in public education, employment, and contracting, through both the citizen's initiative and the Constitution Revision Commission processes. A newspaper recently opined that the Republican party asked the proponents to table the issue so that it will not be a part of the 1998 gubernato-

rial campaign. Many feel they will revive the crusade shortly after the governor's race concludes. If they succeed in winning a constitutional preferential treatment ban, the MPLE Program as presently operated will likely end.

Another future threat to the Program is a possible federal constitutional challenge. Many in higher education say Florida is ripe for legal challenge because of its demographics and its numerous race-based programs. As we all know, the *Podberesky*⁶ and *Hopwood*⁷ cases make race-based programs hard to defend. The holdings in those cases already have caused the Florida Bar Foundation to modify a program which provided law school scholarships to Black students. After *Hopwood*, the Foundation reviewed its program and decided no longer to limit the program to Blacks. If the MPLE Program is challenged, a court may find that it violates constitutional law.

To conclude, I simply will note that the story of the Minority Participation in Legal Education Program in Florida has been a model lesson in coalition building and maintenance. It shows how two minority groups can stop fighting over limited resources, can acknowledge a common goal and then can pool their power to attain it. It also demonstrates the strategic importance of minorities maintaining considerable presence in both major political parties so that changes in control will less likely jeopardize a minority coalition's work.

Today, Florida is a State, and indeed America is a nation, made up mostly of various minority groups. We in those groups must find ways to put differences aside, to pool our strength and to work together more to guarantee that all institutions, including our legal system and our courts, reflect the society in which we live.

6. *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994), *cert. denied*, 514 US 1128 (1995).

7. *Hopwood v. State of Texas, et al.*, 78 F.3d 932 (5th Cir. 1996).