

*REFLECTIONS ON
RACIAL STIGMAS AND STEREOTYPING*

by

JUDGE HARRY T. EDWARDS

PAPER PRESENTED AT THE
2017 AFRICAN AMERICAN ALUMNI REUNION
UNIVERSITY OF MICHIGAN LAW SCHOOL

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REFLECTIONS ON RACIAL STIGMAS AND STEREOTYPING

*by Harry T. Edwards**

I have been a member of the bar for over 50 years. When I graduated from law school, blacks were denied access to most meaningful positions in private firms, corporations, government jobs, the judiciary, and the academy. Today we can point to significant numbers of African Americans in prominent positions in every arena in which lawyers serve our society. Yet, with all the progress we have seen, we are still plagued by the pernicious effects of racial stigmas and stereotyping. And racial injustices still stain the landscape of our country.

So today I would like to reflect on our ongoing quest for racial justice. I want to respond to those who suggest that our pursuits are fruitless. I also want to ponder whether we too often label ourselves victims and, consequently, internalize stigmas and stereotypes that become self-fulfilling prophecies.

* * * *

In 1961, James Baldwin said: “[T]o be a Negro in this country and to be relatively conscious, is to be in a rage almost all the time. So that the first problem is how to control that rage so that it won’t destroy you.”¹ Although Baldwin’s comment is an overstatement, it remains a poignant reminder of the exasperating situations that many of us experience when we encounter slights because of our race.

One of my former law clerks, who is white and genuinely concerned with the plight of African Americans in our society, recently wrote an article for the *San Francisco Chronicle* in which she said:

Anticipating the uptick in hate crimes that has recently been reported, I turned to my husband on the night of the [2016 presidential] election and confessed, “I feel awful, but right now I’m so glad our kids are white.”²

This sentiment seems to coincide with some of the views expressed by Ta-Nehisi Coates in his powerful book, *BETWEEN THE WORLD AND ME*.³ Coates focuses on what he sees as the permanence of racial injustice in America and the futility of believing that we can achieve change for the better.

How do we feel about these matters? Think about it for a minute. Suppose you could start life over again knowing what you know about racial injustices in the United States, and you could opt to come back as black or white. What would you do? And why? (And would any white person opt to come back as black?) For any of you who are black and would opt to come back as white, I think you must ask yourself whether the pernicious effects of racial stigmas have taken too great a toll on your life. This is a very important question – especially for those of us

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who are members of the legal profession – because we have too much to do and can ill-afford to be plagued by self-doubts.

* * * *

What is the truth today about the status of African Americans in the legal profession? Let's look at some of the history.

When I graduated from the University of Michigan Law School in 1965, I was the only black student in the school, and there were no African Americans on the faculty.⁴ I had a very strong academic record, but that did not help me when I interviewed for jobs. The recruiting partners from major law firms in a number of large metropolitan areas openly told me that their firms would not hire a "Negro."⁵ It was only after my mentor, Professor Russell Smith, interceded on my behalf that I was finally hired to practice labor law at Seyfarth Shaw in Chicago.⁶

During the 1965-66 academic year, after I had graduated, the faculty instituted an "affirmative action" program to increase minority admissions at Michigan Law School.⁷ Other law schools did the same. However, these programs did not come without controversy. In 1970, about the time when I joined the Michigan Law School faculty, Clyde Summers, a Yale Law School professor, published an article asserting that affirmative action programs were a waste of resources when instituted at elite law schools.⁸ In his view, black students should have been relegated to schools with less demanding standards. Summers' argument completely ignored the point that the top law schools served as pipelines to the best positions in the legal profession and that graduates of the elite law schools made lifelong connections that served them well as they advanced in the profession. The positions routinely filled by graduates of the top law schools were the positions that traditionally had been closed to African Americans – positions of power and prestige in every facet of the profession. Despite the opposition to affirmative action expressed by Summers and others, law schools across the country succumbed to political pressure and embarked on campaigns to diversify.⁹

The affirmative action initiative at Michigan started slowly, and black enrollment remained low until 1970.¹⁰ However, by the 1970-71 school year there were 77 black law students at Michigan, making it second only to Harvard in total number of enrolled African Americans.¹¹ Although the number of black law students increased during the early 1970s, there were very few African Americans on law school faculties. It was only after law students demanded change that a small number of us were invited to join the academy.¹²

So what happened when the racial barriers started to fall during the 1970s? Two things are noteworthy. First, the African Americans who entered the elite law schools in the 1970s made it clear that qualified blacks are fully able to perform in any law school and excel in positions of significance in the legal profession and the legal academy.

Second, our successes confirmed that graduation from elite law schools matters a great deal. There is no doubt in my mind that blacks would not have made significant advancements in the legal profession if we had not gained admission to *all* law schools, including those ranked as "elite." Claims made by folks like Professor Summers – that blacks were categorically unqualified to attend the elite schools – have been proven absurd. One need only consider the successes achieved by African Americans who have graduated from elite law schools during the past five decades.¹³

* * * *

By now, 50 years after the advent of affirmative action, one might reasonably think that diversity would simply be a way of life in the legal profession. Unfortunately, current statistics on law school admissions and job placements are at best mixed.

From 2010 to 2015, law school applications declined 38 percent.¹⁴ Interestingly, African American applications declined by only 20 percent during this time.¹⁵ And, overall, black enrollment is up. African Americans comprised 6.5 percent of all law students in 2005, and that number rose to 8.6 percent in 2016.¹⁶ But the data are deceiving.

At the fourteen law schools that have consistently remained at the top of the *U.S. News and World Report* rankings,¹⁷ the enrollment of blacks has declined steadily from 1999 to the present. In 1999, African American students made up 8.2 percent of students at these elite schools.¹⁸ Today the percentage is 6.5 percent.¹⁹ In real terms, there were 1,056 African American law students at the top schools in 1999, and today there are 880.²⁰

Like other top ranked law schools, Michigan Law School has also experienced a drop in the enrollment of black students. Between 1986 and 2001, the average number of black students in each entering class was 31, and the average percentage of blacks in each entering class was 8.7 percent.²¹ Since 2002, however, the average number of black students in each entering class has dropped to 19.5, and the average percentage has dropped to 5.6 percent.²²

This is not to suggest that law schools outside of the elite group do not produce outstanding graduates. Indeed, I do not want to minimize the significance of the increase in the overall number of blacks now in law schools. Law schools outside of the top group fulfill important needs in training lawyers to serve markets that graduates from the elite law schools do not routinely serve, and this matters. All I mean to say is that it is worrisome that black enrollment in the highest ranking law schools is declining.

What explains declining black enrollments at the top ranked law schools? Although enrollments generally have declined in recent years, black enrollment at the top schools has declined at a greater rate than white enrollment. Some Deans have told me that the number of highly qualified African American applicants – *i.e.*, those with high LSAT scores and GPAs – is now down. So the elite schools may claim that they are looking at a smaller pool of highly qualified black applicants. There are also data indicating that the enrollment of blacks in business schools has risen over the past decade.²³ This, too, may explain the decline of blacks in the elite law schools.

In addition, the state constitutions in California and Michigan ban public schools from giving preferential treatment to individuals on the basis of race.²⁴ These enactments certainly explain some of the decline in black admissions in these two states. But they do not explain the drop in black enrollment in schools in other states and in private schools.

Some have suggested that top law schools are increasingly concerned with the *U.S. News* rankings, which emphasize the LSAT scores of admitted students. Fewer black applicants with high LSAT scores means that fewer are admitted to the top schools. But this may be a facile excuse. *U.S. News* rankings are based on median LSAT scores.²⁵ A standard based on a median gives schools room to admit well-qualified students whose scores are below the median

without adversely affecting the school's ranking. And LSAT scores tell you very little about how much a graduate from a top law school will achieve once in practice.²⁶

Apart from law school enrollments, it is also noteworthy that the numbers of African Americans serving as law clerks in federal courts and working as associates in law firms have remained low. In 2013, only 4.5 percent of all federal law clerks were black.²⁷ And in 2016, blacks represented only 4.1 percent of the associates in law firms.²⁸

There are, however, a few bright spots that are worth noting. Let me offer just a few examples. In 1970, there were approximately 4,000 black lawyers in the United States, which was less than 1.5 percent of the total 300,000 lawyers.²⁹ In 2010, however, there were about 59,000 African American lawyers, representing almost 5 percent of all lawyers nationwide.³⁰

And the federal judiciary is more diverse than ever. On January 1, 1970, the number of blacks serving on the Supreme Court, the federal courts of appeals, and the federal district courts totaled 13.³¹ This represented about 2.5 percent of all federal jurists.³² Today, the number has risen to 11 percent, with 149 blacks out of a total of 1,313 judges serving on these federal courts.³³ There are also four African Americans serving as Chief Judges of federal courts of appeals; and seven serve as Chief Judges of federal district courts.³⁴

* * * *

We undoubtedly have made some important gains in the legal profession over the past five decades. But these gains offer little solace to protestors who march under "Black Lives Matter" banners, decrying racial injustices that persist in American society. Indeed, commentators like Mychal Denzel Smith insist that there is a long way to go before we can say that racism has been ameliorated in our society. Smith recently wrote:

We continue to be told we've won enough. Emancipation was supposed to be enough. "Separate but equal" was supposed to be enough. *Brown v. Board of Education* was supposed to be enough. The Civil Rights/Voting Acts were supposed to be enough. Affirmative action was supposed to be enough. A black president [was] supposed to be enough. Yet, here we are, facing mass incarceration, food insecurity, chronic unemployment, the erosion of the social safety net, income inequality, housing discrimination, police brutality and the seemingly unending deaths of our young people at the hands of police and armed vigilantes.³⁵

Ta-Nehisi Coates' critique of our society cuts deeper. In *BETWEEN THE WORLD AND ME*, Coates writes to his son warning him about the plight of being black in the United States. Equating life to a mountain, Coates says there always must be "someone down in the valley because a mountain is not a mountain if there is nothing below."³⁶ He goes on to explain:

You and I, my son, are that "below." That was true in 1776. It is true today. . . . It is truly horrible to understand yourself as the essential below of your country. It breaks too much of what we would like to think about ourselves, our lives, the world we move through and the people who surround us. . . . [But son,] [y]ou have been cast into a race in which the wind is always at your face and the hounds are always at your heels.³⁷

My problem with Coates' message is that it seems to endorse the idea that we should label ourselves as victims and tell our children that there is no real hope that they will ever achieve a meaningful place in American society. I don't buy it.

In her review of Coates' book in the *New York Times*, Professor Michelle Alexander notes that, "[r]ather than urging his son to awaken to his own power, Coates emphasizes over and over the apparent permanence of racial injustice in America."³⁸ I shared her reaction and, for me, it was a cause for concern. I think our children must understand the realities of racial injustice, and they must learn to navigate in a world that is not always fair. But I do not think our children should be told that it is hopeless for them to have big aspirations. If we see ourselves as victims, that becomes a self-fulfilling prophecy. And our children may come to believe that there is no difference between who we are and what a racist would have us be.

Coates tells his son that our "need to be always on guard" results in "an unmeasured expenditure of energy."³⁹ I agree that we learn to "be on guard," but not for every minute of every day. I also agree that having to face racial stigmas and stereotyping can be draining. But there is now no reason to assume that an African American inevitably will be overwhelmed by racial stigmas and stereotyping.

In his address to Howard University graduates last year, President Obama reminded us that "race relations are better" than when he graduated from college in 1983.⁴⁰ And race relations certainly are much better now than when I graduated from law school in 1965. As the President explained:

Today, former Bull Michael Jordan isn't just the greatest basketball player of all time – he owns the team. When I was graduating, the main black hero on TV was Mr. T. Rap and hip hop were counterculture, underground. Now, Shonda Rhimes owns Thursday night, and Beyoncé runs the world. We're no longer only entertainers, we're producers, studio executives. No longer small business owners – we're CEOs, we're mayors, representatives, Presidents of the United States. I am not saying gaps do not persist. Obviously, they do. Racism persists. Inequality persists. . . . [But] it's important to note progress. Because to deny how far we've come would do a disservice to the cause of justice [and] to the legions of [people] . . . who marched and toiled and suffered and overcame to make this day possible.⁴¹

Our progress is now vividly on display at the National Museum of African American History and Culture.⁴² The Museum beautifully documents our lives, history, and culture; amplifies our resilience and courage; shows our many extraordinary contributions to American society; and shines a bright light on the many heroes who have worked to secure racial justice in the United States.

It is true that the 2016 presidential campaign unearthed some regrettable expressions of racial intolerance from people who seemed threatened by America's racial diversity.⁴³ Should this bother us? Yes, of course. But the other side of the issue is that there are a lot of people in this country – of all races – who are basically good, decent, and fair-minded. We certainly have seen evidence of this with the marches and protests that have occurred across the nation following the 2017 presidential inauguration.

I have always told my African American students that we have no time for aimless whining. We need to focus on our work and not waste emotional energy worrying about small-minded people who appear intent on maligning, stigmatizing, and stereotyping African Americans. We cannot be distracted from making our place in American society. This means that we must take full advantage of all opportunities that come our way, and perform with confidence and skill. And those of us who are privileged because of family support, education, professional placements, or social connections must continue our pursuits in ways that help those who come after us to thrive. As lawyers, we certainly understand the need to be vigilant in continuing to press for racial justice in this country. If we do this while modeling integrity, confidence, resilience, and success, the generations that follow will be better positioned to enjoy the fruits of what this country has to offer.

* * * *

The one thing that we cannot afford to do is label ourselves as victims and thereby internalize stigmas that become self-fulfilling prophecies. Decades ago, social critics began to decry the harm that internalized victimization can have, particularly on children. Professor Gordon Allport, a pioneering psychologist, wrote in 1954: "One's reputation, whether false or true, cannot be hammered, hammered, hammered, into one's head without doing something to one's character. A child who finds himself rejected and attacked on all sides is not likely to develop dignity and poise as his outstanding traits. On the contrary, he develops defenses."⁴⁴

In the 1990s, the prominent behavioral psychologist, Professor Claude Steele, studied what he called the "stereotype threat."⁴⁵ Steele tested the hypothesis that negative stereotypes about a group cause members of that group to perform worse on certain tasks – in other words, his thesis was that group members internalize and come to believe attitudes that others hold about them. In a seminal study, Steele and his colleagues showed that African American students performed significantly worse on a standardized test when told that the test was "diagnostic of intellectual ability" than when told that the test was a non-intellectual exercise.⁴⁶ By controlling for all other measures of aptitude, Steele's research demonstrated that when triggered by a stereotype, groups conform to that stereotype.⁴⁷

Steele's explanation for why the stereotype threat is so debilitating is illuminating:

When we're at risk of confirming a stereotype that we don't like, and it's about something we care about, our minds race. [Our minds are] doing all sorts of things: arguing against the stereotype; denying its applicability to us; disparaging anyone who could ever think that of us; feeling sorry for ourselves; trying to buck ourselves up to disprove the stereotype. We are defending ourselves and coping with the threat of being stereotyped. We're probably aware of some of this defending and coping. But much of the time we may miss it, unless we try very hard to listen. A big implication of [this] is that a mind trying to defeat a stereotype leaves little mental capacity free for anything else we're doing.⁴⁸

Steele's findings should not surprise us. I certainly dealt with some of what he describes when I became a law professor in 1970. The challenge for the handful of African Americans who started teaching law in the 1970s was our knowledge that many nonminority law professors did not believe that we had the intellectual horsepower to serve on elite law school faculties. Fortunately, most of us were confident and resilient, and we supported one another, so we were able to ward off the stereotype threat that Steele warned against.

Unfortunately, the stereotype threat remains a concern. A few years ago, I was invited to speak at a program sponsored by the African American students at an elite law school. During the question and answer session, black students told me that when they were admitted to the law school, they were told that they had to arrive early so they could get “acclimated.” They said that “early arrival” was not voluntary and it did not include white students. I was incredulous. The school had given a clear message to the admitted black students that they were not as good as the white students, so much so that they needed a “blacks only” orientation. After my speech, a black student drove me to the airport, and we talked about what I had heard. The student was quite candid in telling me that she was very surprised when she received her letter of admission. She laughed and said something like this: “I have grown up with strong family support; I have always gone to good schools; I have always earned good grades and high standardized test scores; and I am a pretty self-assured person. So I could not imagine why law school officials thought I needed a mandatory, *blacks only* orientation before I started my legal education.”

Even today, African American students in elite schools have told me that they sometimes feel that they are not taken seriously by some nonminority professors. Some have complained about disparaging remarks addressed at or about black students by nonminority professors. Their complaints are not fanciful. I moderated a panel in September 2016 that included Deans from seven law schools in New York City.⁴⁹ I asked the Deans whether any of their white faculty had openly disparaged black students. As I recall, every Dean confirmed that some of their African American students had indeed faced regrettable situations with some nonminority professors.

It is deplorable that racism and stereotyping still affect the lives of some of our young people in these ways. As Steele explained:

The problem is that the pressure to disprove a stereotype changes what you are *about* in a situation. It gives you an additional task. In addition to learning new skills, knowledge, and ways of thinking in a schooling situation, or in addition to trying to perform well in a workplace . . . you are also trying to slay a ghost in the room, the negative stereotype and its allegation about you and your group. You are multitasking, and because the stakes involved are high — survival and success versus failure in an area that is important to you — this multitasking is stressful and distracting.⁵⁰

Given the serious problems that racial stigmas and stereotypes present, we can ill-afford to embrace the message of futility that Coates delivered to his son. Professor Randall Kennedy got it right when he reminded us that

Hope is a vital nutrient for effort; without it, there is no prospect for achievement. The belief that we can overcome makes more realistic the possibility that we shall overcome. Optimism gives buoyancy to thinking that might otherwise degenerate into nihilism, encourages solidarity in those who might otherwise be satisfied by purely selfish indulgence, invites strategic planning that can usefully harness what might otherwise be impotent indignation, and inspires efforts that might otherwise be avoided due to fatalism.⁵¹

Those of us who have the benefit of experience must make sure that our young people understand the importance of optimism and effort.

In his final public address as President, Barack Obama was refreshingly forthcoming when he said:

After my election, there was talk of a post-racial America. And such a vision, however well-intended, was never realistic. Race remains a potent and often divisive force in our society. . . . I've lived long enough to know that race relations are better than they were 10, or 20, or 30 years ago. . . . You can see it not just in statistics, [but] . . . in the attitudes of young Americans across the political spectrum. But we're not where we need to be.⁵²

However, the overarching message in President Obama's final speech was hopeful. He acknowledged that "our progress has been uneven"; that "[t]he work of democracy has always been hard," "contentious," and "[s]ometimes . . . bloody"; and that "[f]or every two steps forward, it often feels we take one step back."⁵³ "But," he reminded us, "the long sweep of America has been defined by forward motion, a constant widening of our founding creed to embrace all and not just some."⁵⁴

I strongly subscribe to the forward-looking and uplifting messages delivered by Professor Kennedy and President Obama. I certainly am not going to give up my birthright merely because there are some who would denigrate it or take it away. And I certainly am not going to tell my children, grandchildren, and students to give up on their birthrights. As James Baldwin said, "I never have been in despair about the world[.] I'm enraged by the world. . . . [but] I can't afford despair . . . [And] you can't tell children there's no hope."⁵⁵

Professor Derrick Bell wrote elegantly about racism in America, which he believed was an indelible blemish on our society.⁵⁶ When he was writing *FACES AT THE BOTTOM OF THE WELL*, his publisher expressed concern that the book was "unremittingly despairing."⁵⁷ Professor Bell responded: "No, you don't understand. For a black person in this society, the truth is never despairing."⁵⁸ In an interview that he gave when he was teaching at NYU, he said that when he discussed his views with black groups, he heard "laughter and applause of recognition." "It reaffirm[ed] that it is not their fault," he said. "It [was] an affirmation of themselves and not a basis for despair."⁵⁹ I smile every time I read this because it rings so true.

Racial stigmas and stereotypes are not impairing unless we internalize them. And there is no reason for us to do that when we know that the history of black culture in America is rich and reaffirming. We may live in a society that will only grudgingly and inconsistently acknowledge our equality, but that does not mean that we must live as if we are victims. I understand that avoiding the effects of racial stigmas and stereotyping is not always easy because many studies have shown that most people harbor implicit biases and even well-intended people unknowingly act on racist attitudes.⁶⁰ However, this merely confirms that we alone cannot carry the burden of ameliorating racism in our country. This responsibility must be assumed by all good people without regard to race, sex, and ethnicity.

I do not much care whether progress in the years ahead comes only grudgingly, so long as we keep moving forward. And I truly believe that we will continue to keep moving forward because the place of African Americans in the United States can no longer be denied. I also

have great faith in the young people of our country because so many comfortably embrace, appreciate, and enjoy the beauty of diversity.

We certainly have some challenges ahead. Addressing the plight of young black men in this country should be at the forefront of our efforts.⁶¹ But, as we have done in the past, we will deal with the problems and keep moving forward. We must encourage more bright, young African Americans to pursue careers in the law; we must work together with other people of good will to protect what has been gained over the past 50 years and continue to pursue racial justice in this country; and, most importantly, we must show the young people who are following us – our children, grandchildren, students, and others who look to us as role models and for guidance – how to avoid the shackles of racial stigmas and stereotyping.

ENDNOTES

- ¹ James Baldwin et al., *The Negro in American Culture*, 11 CROSSCURRENTS 205, 205 (1961).
- ² Gail Cornwall, Opinion, *How White Supremacy Lifts Liberal Whites*, S.F. Chron. (Dec. 22, 2016), <http://www.sfchronicle.com/opinion/openforum/article/How-white-supremacy-lifts-liberal-whites-10812043.php>.
- ³ TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* (2015).
- ⁴ I discuss some of my experiences in more detail in Harry T. Edwards, *Personal Reflections on Thirty Years of Legal Education for Minority Students*, 37 MICH. L. QUADRANGLE NOTES, Summer 1994, at 38; see also Harry T. Edwards, *The Journey from Brown v. Board of Education to Grutter v. Bollinger: From Racial Assimilation to Diversity*, 102 MICH. L. REV. 944 (2004) [hereinafter Edwards, *The Journey from Brown*].
- ⁵ Edwards, *The Journey from Brown*, 102 MICH. L. REV. at 955–56.
- ⁶ *Id.* at 956.
- ⁷ Terrance Sandalow, *Minority Preferences Reconsidered*, 97 MICH. L. REV. 1874, 1874 (1999) (reviewing WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998)).
- ⁸ Clyde W. Summers, *Preferential Admissions: An Unreal Solution to a Real Problem*, 2 U. TOL. L. REV. 377 (1970).
- ⁹ Edwards, *The Journey from Brown*, 102 MICH. L. REV. at 954–55.
- ¹⁰ Harry T. Edwards, *A New Role for the Black Law Graduate – A Reality or An Illusion?*, 69 MICH. L. REV. 1407, 1429 (1971).
- ¹¹ *Id.* at 1441 app. H.
- ¹² Edwards, *The Journey from Brown*, 102 MICH. L. REV. at 956; see also Edwards, *Personal Reflections on Thirty Years of Legal Education for Minority Students*, 37 MICH. L. QUADRANGLE NOTES at 38.
- ¹³ See Danielle C. Gray & Travis LeBlanc, *Integrating Elite Law Schools and the Legal Profession: A View from the Black Law Students Associations of Harvard, Stanford, and Yale Law Schools*, 19 HARV. BLACKLETTER L.J. 43, 46 (2003) (“Alumni of the BLSAs rank among the most distinguished graduates of their institutions, and are currently serving as respected litigators, judges, law professors, legislative officials, and principals of major corporations and nonprofit organizations.”); see also Richard O. Lempert et al., *Michigan’s Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395, 401 (2000) (“Michigan’s minority alumni are professionals fully in the mainstream of the American economy. They are well represented in all sectors of the legal profession.”).
- ¹⁴ *Data – Applicants by Ethnicity & Gender/Sex (2010–2015 Archive)*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/lisacresources/data/ethnic-sex-applicants/archive-1> (last visited Jan. 31, 2017). To calculate the percentage decline in applications, I subtracted 54,500 applications in Fall 2015 from 87,900 applications in Fall 2010, and divided that number (33,400) by the number of applications in Fall 2010.
- ¹⁵ *Id.* To calculate the percentage decline among African American applicants, I subtracted 8,310 applications in Fall 2015 from 10,330 applications in Fall 2010, and divided that number (2,020) by the number of applications in Fall 2010.

¹⁶ To calculate the percentage of African American law students in 2005, I obtained the African American enrollments in 2005 from *African American J.D. Enrollments 1971 – 2010*, AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_13.authcheckdam.pdf and the total enrollments from *Enrollment and Degrees Awarded 1963 – 2012 Academic Years*, AM. BAR ASS'N, <http://goo.gl/iTiV1G> (last visited Jan. 31, 2017). The total J.D. enrollment was 140,298 and the African American enrollment was 9,126, which is 6.5 percent of the total. For the 2016 data, I obtained both the total enrollments and African American enrollments from *2016 J.D. Enrollment and Ethnicity*, AM. BAR ASS'N, <http://www.abarequireddisclosures.org> (last visited Jan. 31, 2017). To generate that report, I selected “2016” and “J.D. Enrollment and Ethnicity (academic year).” Tallying the columns “#Total Total” showed 111,327 J.D. enrollments; tallying the column “#Black or African American Total” showed 9,596 enrollments, representing 8.6 percent.

¹⁷ These schools are commonly referred to as the “Top 14” (or “T14”). My reference to this group does not reflect my qualitative judgment of law schools. The Top 14 simply provides a useful baseline because all of the schools on the Top 14 list are very highly regarded in the legal academy.

¹⁸ *The Progress of Black Students and Faculty at the Nation’s Highest-Ranked Law Schools*, 26 J. BLACKS IN HIGHER EDUC. 48, 48 (1999-2000). To calculate the percentage of black students at the Top 14 law schools in 1999, I totaled the “Black Students” column for the Top 14 schools and divided by the sum of the “Total Students” column for those 14 schools.

¹⁹ To calculate the percentage of African American students at the Top 14 schools today, I generated a report from *2016 J.D. Enrollment and Ethnicity*, AM. BAR ASS'N, <http://www.abarequireddisclosures.org/> (last visited Jan. 31, 2017). I selected “2016” and “J.D. Enrollment and Ethnicity (academic year),” and tallied the columns “#Total Total” and “#Black or African American Total” for the Top 14 schools. Then, I divided the sum of “#Black or African American Total” by the sum of “#Total Total.”

²⁰ The 1999 number was obtained by totaling the numbers for the Top 14 law schools in the “black students” column found in *The Progress of Black Students and Faculty at the Nation’s Highest-Ranked Law Schools*, 26 J. BLACKS IN HIGHER EDUC. at 48. The 2016 number was obtained from *2016 J.D. Enrollment and Ethnicity*, AM. BAR ASS'N, <http://www.abarequireddisclosures.org/> (last visited Jan. 31, 2017) by selecting “2016” and “J.D. Enrollment and Ethnicity (academic year),” and tallying the column “#Black or African American Total.”

²¹ Data provided by the admissions office of the University of Michigan Law School (on file with author).

²² *Id.*

²³ *Compare Digest of Education Statistics 2015*, NAT'L CTR. FOR EDUC. STATS., 641 tbl. 323.30, <https://nces.ed.gov/pubs2016/2016014.pdf> (reporting 27,494 African American students receiving MBAs in 2013-14), *with Digest of Education Statistics 2005*, NAT'L CTR. FOR EDUC. STATS., 460 tbl. 265, https://nces.ed.gov/pubs2006/2006030_3b.pdf (reporting 14,574 African American students receiving MBAs in 2003-04).

²⁴ CAL. CONST. art. I, § 31; MICH. CONST. art. I, § 26.

²⁵ Robert Morse, *Methodology: 2017 Best Law School Rankings*, U.S. NEWS (Mar. 15, 2016, 10:00 PM), <http://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

²⁶ See Lempert et al., *Michigan’s Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY at 459 (“[W]e find no significant relationship between the LSAT or [undergraduate GPA] and . . . the achievement of students after graduation.”).

²⁷ *Increasing Diversity of Law School Graduates Not Reflected Among Judicial Clerks*, NAT'L ASS'N FOR LAW PLACEMENT (Sept. 2014), <http://www.nalp.org/0914research>.

²⁸ NAT'L ASS'N FOR LAW PLACEMENT, 2016 REPORT ON DIVERSITY IN U.S. LAW FIRMS 8 tbl. 2 (2017), <https://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf>.

²⁹ See Edwards, *A New Role for the Black Law Graduate – A Reality or An Illusion?*, 69 MICH. L. REV. at 1409 (citing 116 CONG. REC. E. 7996 (daily ed. Sept. 2, 1970)).

³⁰ *ABA Lawyer Demographics*, AM. BAR ASS'N, https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.authcheckdam.pdf (last visited Jan. 31, 2017).

³¹ I identified these judges using the database available at FED. JUD. CTR., *History of the Federal Judiciary*, http://www.fjc.gov/history/home.nsf/page/research_categories.html (last visited Jan. 31, 2017). To identify the number of African-American federal judges on January 1, 1970, I selected “Court Type,” “Confirmation Date,” “Termination Date,” and “Race or Ethnicity.” Then, I selected “Supreme Court,” “U.S. Court of Appeals,” and “U.S. District Court,” and searched for African American judges who were confirmed before January 1, 1970 and terminated after January 1, 1970. This search resulted in 13 judges.

³² To calculate the total number of federal jurists on January 1, 1970, I ran the same search as described above, but omitted “Race or Ethnicity” as a category. This yielded 504 judges. To calculate the percentage, I divided the 13 African American judges by the total 504 judges.

³³ To calculate the number of African American judges sitting today, I used the data set *History of the Federal Judiciary*, FED. JUD. CTR., http://www.fjc.gov/history/home.nsf/page/research_categories.html (last visited Jan. 31, 2017). I selected “Court Type,” “Race or Ethnicity” and “Limit Query to Sitting Judges.” Then, I selected “Supreme Court,” “U.S. Court of Appeals,” and “U.S. District Court,” chose “African American,” and limited the search to “All Sitting Judges.” On January 31, 2017, this yielded 149 judges. To calculate the total number of sitting today, I ran the same search as described above, but omitted “Race or Ethnicity” as a category. This yielded 1,313 judges on January 31, 2017.

³⁴ I tallied the number of chief judges using the data set FED. JUD. CTR., *History of the Federal Judiciary*, http://www.fjc.gov/history/home.nsf/page/research_categories.html (last visited Jan. 31, 2017). I selected “Chief Judges,” “Court Type,” “Race or Ethnicity,” and “Limit Query to Sitting Judges.” Then, I sorted by “African American,” “Active Judges” and “U.S. Court of Appeals” or “U.S. District Court” to determine the number of current sitting chief judges. The results listed included both currently serving and former chief judges; clicking each judge’s name revealed whether they are an emeritus chief judge or are currently serving.

³⁵ Mychal Denzel Smith, *The Function of Black Rage*, THE NATION (Apr. 1, 2014), <https://www.thenation.com/article/function-black-rage>.

³⁶ COATES, BETWEEN THE WORLD AND ME 105.

³⁷ *Id.* at 105–07.

³⁸ Michelle Alexander, *Ta-Nehisi Coates’s “Between the World and Me,”* N.Y. TIMES, Aug. 17, 2015 (Sunday Book Review).

³⁹ COATES, BETWEEN THE WORLD AND ME 90.

⁴⁰ President Barack Obama, Remarks at Howard University Commencement Ceremony (May 7, 2016), <http://www.politico.com/story/2016/05/obamas-howard-commencement-transcript-222931>.

⁴¹ *Id.*

⁴² See ROBERT L. WILKINS, *LONG ROAD TO HARD TRUTH: THE 100-YEAR MISSION TO CREATE THE NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE* (2016).

⁴³ See Alan Neuhauser, *Racist Outbursts in U.S. in Wake of Trump's Election*, U.S. NEWS (Nov. 10, 2016, 6:30 PM), <http://www.usnews.com/news/national-news/articles/2016-11-10/after-donald-trumps-election-racist-outbursts-in-us>.

⁴⁴ GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 142 (1954).

⁴⁵ Steele first used the term “stereotype threat” in an article in 1995. See Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797 (1995); see also Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOL. 613 (1997).

⁴⁶ See Steele & Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. at 799.

⁴⁷ See *id.* at 800–02. Stereotype threat has been extensively examined among other groups. See, e.g., Jean-Claude Croziet & Theresa Claire, *Extending the Concept of Stereotype Threat to Social Class: The Intellectual Underperformance of Students from Low Socioeconomic Backgrounds*, 24 PERSONALITY & SOC. PSYCHOL. BULL. 588 (1998); Thomas M. Hess et al., *The Impact of Stereotype Threat on Age Differences in Memory Performance*, 58 J. GERONTOLOGY 3 (2003).

⁴⁸ CLAUDE M. STEELE, *WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO* 123 (2010).

⁴⁹ See *December 2016 Newsletter*, FRANKLIN H. WILLIAMS JUD. COMM'N, <http://www.nycourts.gov/info/FHW/Newsletters/2016/Fall/index2.html> (last visited Jan. 31, 2017) (highlighting the panel “Legal Education and the Law School of 2016: Marketplace Challenges to Diversity – What Happens to Students of Color?”).

⁵⁰ STEELE, *WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO* 110–11.

⁵¹ Randall Kennedy, *Black America's Promised Land: Why I Am Still a Racial Optimist*, 25 AM. PROSPECT 22 (2014).

⁵² President Barack Obama, Farewell Address (Jan. 10, 2017), <https://obamawhitehouse.archives.gov/farewell>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Jonathan Scott Holloway, *The Right Kind of Family: Silences in a Civil Rights Narrative*, in *THE NEW BLACK: WHAT HAS CHANGED – AND WHAT HAS NOT – WITH RACE IN AMERICA* 100, 100 (Kenneth W. Mack & Guy-Uriel E. Charles eds., 2013) (quoting James Baldwin, *The Price of the Ticket*).

⁵⁶ See, e.g., DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987).

⁵⁷ See Linda Greenhouse, *The End of Racism, and Other Fables*, N.Y. TIMES, Sept. 20, 1992, at 7 (reviewing DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992)).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See, e.g., MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013); R. Richard Banks, et al., *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CAL. L. REV. 1169 (2006); Jennifer L. Eberhardt, et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 PSYCHOL. SCI., 383 (2006); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945 (2006).

⁶¹ See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); Floyd Weatherspoon, *The Status of African American Males in the Legal Profession: A Pipeline of Institutional Roadblocks and Barriers*, 80 MISS. L.J. 259, 277–95 (2010).