

THE **RECORDER**

Blum's Attack on Diversity: Forcing BIPOC Attorneys to 'Show Their Papers'

By **Shandyn Pierce**

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"I don't think I've ever met a Black appellate attorney."

It was a bold but honest statement, uttered by a non-Black attorney at a recent litigation conference. The sentiment behind it was so genuine I found it hard to be offended. Besides, it was hardly the first time an attorney or other legal professional has been surprised by my presence. This is an acknowledged problem. The ongoing lack of diversity in this profession isn't new. But now, Edward Blum and his supporters have launched an assault on the fragile progress we have made.

Blum's suit is premised on the idea that firms have been discriminating against non-diverse applicants for decades by maintaining diversity fellowships. There will be many discussions and analyses of the merits of the suit, and still more about the value and efficacy of DEI programs. This isn't one of them.

To be sure, there's a reasonable discussion to be had about the efficacy, as well as the performative aspects, of diversity initiatives. These conversations and the related legal analyses will be interesting and important. But ultimately, they'll miss the point. That's important to say because it calls out the insidious nature of the racial gaslighting that has led us here.

The logic of inclusion is simple. We exercise it readily in other areas of our lives: A vitamin C deficiency calls for a change in diet to stave off negative



Shandyn H. Pierce of Hanson Bridgett.

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consequences. The choice to incorporate more vitamin C does not necessarily mean you'll be excluding another vitamin. Say, B12. Thus, an argument that paints inclusion of a necessary and deficient vitamin as discrimination would seem absurd. The same applies to diversity.

Blum disagrees and asks to debate the point. But this is more than a mere difference of opinion. It's an attempt to intellectualize and argue the presence of a non-existent problem based on ignorance or an ulterior motive. The architect of *Students for Fair Admissions v. President and Fellows of Harvard College* hardly seems ignorant. So, what then of motive? Blum's targets are telling.

He began by choking off access to higher education, which is the gateway to success for so many BIPOC students. This success often provides access to the middle class and the ability to

cultivate generational wealth. Of course, it is also a necessary stop for most on the way to law school.

After their victory in *Students for Fair Admissions*, Blum and his supporters have set their sights on diversity initiatives in law. Those who interpret and apply the language of justice stand close to the wellspring of power. As a result, few professions are as consequential to our individual lives and national consciousness.

There will be valiant attempts to explain the purpose and value of diversity in law. The data is there. As a BIPOC attorney and former diversity fellow, I'm intimately familiar with much of it. I'm also starkly aware of the stunning dearth of BIPOC attorneys and that the vast majority of those which currently exist are often possessed of uncommon talent.

But these facts will remain unpersuasive because Blum's project isn't about reality. It's about perception.

Blum's efforts make the unfounded yet persistent whispers of white displacement equal to the actual lived reality of millions of BIPOC. As a result, firms and BIPOC will be put in the position of proving that placement of diverse candidates is not the result of the displacement of white applicants. Put differently, the default assumption will be that a white person should have gotten the job. The few—very few—BIPOC candidates that exist will be subject to advanced scrutiny. And it won't just be disgruntled white candidates that will challenge hiring decisions. There is undoubtedly a cadre of associates

and partners who have long tired of diversity efforts. This will give them the cover they have been waiting for. Cobble together the words "financial" "risk" and "profits" and ChatGPT can likely generate the rationalizations to be uttered in weekend partner meetings.

Equally concerning, more pressure will be placed upon current BIPOC associates. Their work and presence will be subject to unofficial review by partners and peers alike. In other words, they'll have to "show their papers" to prove their presence is justified.

Blum's strategy and effectiveness may suggest a keen legal mind. However, Blum's growing validity is not based upon the legal veracity of his arguments or appeal to some previously unknown logic which supports them. It's whiteness—something which historically has provided the ultimate cover for bad ideas.

And, while we may not have enough evidence to say Blum's effort is malicious, we can certainly conclude it is malignant. Sadly, but perhaps predictably, firms have already begun to fold.

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