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# Guess Who's Coming to Stanford:

## *The Battle for the Desegregation of an Elite Law School*

The 1960s were a time of dramatic change for elite law schools. There still had not been much progress in racial diversity at the graduate school level after the *Brown* decision,<sup>1</sup> in part because of the time required for Black students to trickle through the educational system and attain the prerequisite credentials for graduate study. In fact, nearly 60 percent of students—of any race—did not even graduate from high school in 1960, and only roughly 11 percent of those who had graduated went on to college.<sup>2</sup> Indeed, only 3.5 percent of Black Americans held a bachelor's degree in 1960.<sup>3</sup> In short, at that time, many students did not complete high school or college, and those who did were often white and/or wealthy.

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<sup>1</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>2</sup> National Center for Education Statistics, "Rates of High School Completion and Bachelor's Degree Attainment among Persons Age 25 and Over, by Race/Ethnicity and Sex: Selected Years, 1910 through 2023," *Digest of Education Statistics*, Table 104.10.

<sup>3</sup> National Center for Education Statistics, "Rates of High School Completion," Table 104.10.

However, the 1960s ushered in a period of major development, spurred by student protests of the Vietnam War and Martin Luther King Jr.'s assassination, which began the process of truly desegregating American law education. This article will examine how one law school in particular went about this process and the challenges it faced in the early years.

In 1962, approaching its seventieth birthday, Stanford Law School was still housed in the main quadrangle of campus with a faculty of twelve white men. Still viewed as a regional university at the time, Stanford was considered adequate, yet average, when compared to Ivy League schools such as Harvard and Yale. Downtown Palo Alto was nothing like the commercialized Silicon Valley town that we know today; only a single city block had been developed at that point, with miles of orchards covering the rest of the land down to San Jose. The law school would see significant growth during the early 1960s, with eight members added to the faculty who brought fresh ideas and new attitudes about the future of the school, paving the way for the integration of Black students.<sup>4</sup>

This article represents an initial attempt to create a cohesive narrative of desegregation at Stanford Law School.<sup>5</sup> By weaving together disparate archival threads, I will demonstrate the complexity and difficulty of building a Black community at an elite institution—an institution that sought to structurally exclude Black students and faculty. I echo a question posed by Audre Lorde: “Can the master’s tools dismantle the master’s house?”<sup>6</sup> Or, as Kenneth Mack puts it, “Can socially subordinated groups contest their subordination using the same social structures and ideologies that define those groups as inferior?”<sup>7</sup> At Stanford Law, Black students and faculty simultaneously grappled both with and within the exclusionary power structures of academia. In doing so, they reconstructed the gaps in these power structures into channels not only for “contesting their subordination,” but also for the acquisition of their own power as Black lawyers and educators.<sup>8</sup>

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<sup>4</sup> Michael Wald, interview with author (May 16, 2024). Professor Wald has been a member of the Stanford Law faculty since 1967 and has had a distinguished career as an academic researcher, teacher, and public official.

<sup>5</sup> Due to limits of space and time, as well as archival access restrictions, this narrative will not be exhaustive. Additionally, many documents were lost when the law school moved to its current location or were never created at all, due to fear of litigation and/or a drop in alumni support. Instead, the dean would give an in-person report to the faculty each year. This article will focus primarily on Black students at the law school, and additional forthcoming research will expand upon many of the issues raised here.

<sup>6</sup> Audre Lorde, *Sister Outsider: Essays and Speeches* (Berkeley, CA: Crossing Press, 1984), 110. As paraphrased in Kenneth Walter Mack, “A Social History of Everyday Practice: Sadie T. M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925–1960,” *Cornell Law Review* 87, no. 6 (2002): 1472.

<sup>7</sup> Mack, “A Social History of Everyday Practice,” 1472.

<sup>8</sup> Mack, “A Social History of Everyday Practice,” 1411.

There is much to be learned from the story of integration at Stanford. This is a story that cannot be told neutrally; in constructing such a narrative, any author will reveal what Jerome Culp calls “mythic assumptions about race.”<sup>9</sup> But for as long as this story goes untold, it is impossible to truly understand either the full history or the present state of Stanford Law School and its interactions with the American legal system.<sup>10</sup> Chronicling the struggle of integration is a crucial step toward dismantling the socioeconomic structures that served to gatekeep universities like Stanford.

### The Early Years: The Beginnings of Integration

Sallyanne Payton finished her undergraduate degree in English at Stanford in 1964 and spent the following year working as a social caseworker in her native Los Angeles.<sup>11</sup> Payton had plans to attend a master’s program at Harvard when she learned of a fellow Stanford English alumna, Brooksley Born. Born had just graduated from Stanford Law in 1964 after serving as editor of the *Stanford Law Review*.<sup>12</sup> Payton began considering law school for herself, and “[n]oting an increased susceptibility to the two occupational diseases of social workers—cirrhosis and cynicism—she returned to law school (the diseases are the same but the pay is better).”<sup>13</sup>

Back at Stanford, Payton excelled as the law school’s first Black graduate, despite her description of class as “infallibly soporific.”<sup>14</sup> She, too, was selected for the *Stanford Law Review*, shocking many of her peers and mentors, many of whom viewed her abilities through a lens of racial prejudice.<sup>15</sup> Payton later recalled: “You could hear the jaws drop all the way down the steps of the law school . . . My favorite professor said to me, ‘When I turned over the paper and found that you had written it, I nearly had a stroke.’ This was during the

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<sup>9</sup> Jerome McCristal Culp, Jr., “Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy,” *Virginia Law Review* 77 (1991): 545.

<sup>10</sup> Jerome McCristal Culp Jr., “Toward a Black Legal Scholarship: Race and Original Understandings,” *Duke Law Journal* (1991): 76.

<sup>11</sup> Stanford University, *Stanford Law School Yearbook 1968* (Palo Alto, CA: Stanford University, 1968).

<sup>12</sup> Sharon Driscoll, “Sallyanne Payton: A Groundbreaking Legal Career,” *Stanford Lawyer* 102 (Spring 2020).

<sup>13</sup> *Stanford Law School Yearbook 1968*.

<sup>14</sup> *Stanford Law School Yearbook 1968*. There were earlier Black students at the law school, but Payton was Stanford Law’s first graduate. I have been unable to positively identify these earlier students.

<sup>15</sup> *Stanford Law School Yearbook 1968*. Payton “protestingly toiled” in her work for the law review. At the time, law reviews were staffed based on grades, so any students on law review were necessarily at the top of the class.

time of ‘social Darwinism.’ And I didn’t fit the stereotype.”<sup>16</sup> Yet despite the stereotype, Payton flourished.

In her second year, Payton was joined by other Black students at the law school. Leroy Bobbit, a native of Mississippi, came to Stanford from Michigan State University after working for two years with the Office of Economic Opportunity.<sup>17</sup> Vaughn Williams arrived immediately after finishing his studies in American History and Literature at Harvard and eventually became the president of the *Stanford Law Review* for its twenty-first volume before going on to clerk for Judge McGowan at the D.C. Appeals Court.<sup>18</sup>

Many of these early students were unique, crossing the Mississippi for law school long before it was commonplace to do so. Many of them had been excellent students throughout their academic careers, granting them plenty of options for their legal education. They were well positioned to be competitive when it came to grades and the job market and accordingly, excelled at Stanford. This was especially clear for students like Vaughn and Sally, who served on the law review at a time when the selection was based solely on grades—only those students who ranked in the top twenty in the class were chosen for positions.<sup>19</sup> They had both been first-rate students as undergraduates, had parents who had sat on the bench, and attended private schools.<sup>20</sup>

Yet, the pool of students like Vaughn and Sally was small. This problem would persist for many years and was especially significant at law schools, where both admissions and hiring took a largely credentials-based approach.<sup>21</sup> More than a decade after *Brown*, the number of Black students earning college degrees was growing, but still modest, and the number of those students who attended undergraduate institutions considered satisfactory for admission to Stanford was even smaller.

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<sup>16</sup> Driscoll, “Sallyanne Payton.” “Doomed by an unsought success, [Payton] . . . reluctantly abandoned her life goal of becoming a blues guitarist in favor of a less penurious future in the law.” *Stanford Law School Yearbook* 1968. After graduating with her LL.B. in 1968, Payton forged an illustrious career in Washington D.C., beginning at the firm of Covington & Burling; continuing as a member of the White House Domestic Council during the Nixon administration in 1971; serving as the chief counsel to the Urban Mass Transportation Administration in 1973; and ultimately becoming the first Black woman to join the faculty of the University of Michigan Law School in 1976, where she spent nearly forty years. She was elected to Stanford’s Board of Trustees not once, but twice—initially as a “young alumni under 35” in 1972. Driscoll, “Sallyanne Payton.” *See also* Sallyanne Payton, “Reflections on Being a Lawyer,” *Stanford Lawyer* 12, no. 1 (Spring 1977).

<sup>17</sup> *Stanford Law School Yearbook* 1968.

<sup>18</sup> *Stanford Law School Yearbook* 1968.

<sup>19</sup> Wald interview, May 16, 2024.

<sup>20</sup> Wald interview, May 16, 2024.

<sup>21</sup> Wald interview, May 16, 2024. Robert Gordon, interview with author, January 17, 2024.

The “pipeline problem” was particularly important at Stanford Law, where the administration was pushing for the school to improve its status nationally. Bayless Manning had been appointed dean in 1964 and had set his sights on transitioning from a regional law school, attended primarily by young men from wealthy West Coast families, to a top contender with Ivy League schools.<sup>22</sup> He had been hired by President J. E. Wallace Sterling, who sought to build a “first-rate national university” in part by building out graduate programs like business, law, medicine, and engineering.<sup>23</sup> Seeking to compete with schools like Harvard, Yale, and Columbia, Sterling looked to the faculty of these schools to find new leadership for his own university. Indeed, Manning himself came to Stanford from Yale.<sup>24</sup> As dean, Manning pushed for the expansion of the faculty and new, independent buildings for the law school with a better library.<sup>25</sup> The emphasis on attaining prominence within the rankings of legal education meant an increased focus on admitting only the best students. However, this focus, combined with the “pipeline problem,” meant that the number of Black students at Stanford Law in the late 1960s remained quite small.

In the spring of Payton’s final year at Stanford, the political climate on campus became turbulent. Tensions peaked on April 3, 1968, when a group of students seized a university building in protest of the Vietnam War and the “imperialistic oppression of the peoples of the Third World.”<sup>26</sup> The following day, Martin Luther King Jr. was assassinated in Memphis, Tennessee.<sup>27</sup> As the news of his murder spread, riots broke out across the country.<sup>28</sup> Just one week later, the Academic Council of the Faculty Senate adopted a resolution intended to quell the unrest on campus. This resolution had several goals: (1) to double the enrollment of minority students within two years through “accelerated recruitment and financial aid programs”; (2) to double the employment of minority workers within one year; (3) to establish a pilot program in the upcoming academic year for ten minority students who would not otherwise be admitted; and (4) to create supplementary educational opportunities to ensure

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<sup>22</sup> Letter from Dean Manning to President Sterling, February 3, 1964, SC216, box A39, folder 10, Sterling (J. E. Wallace) Papers, Green Library Special Collections, Stanford University.

<sup>23</sup> Manning to Sterling, February 3, 1964.

<sup>24</sup> Manning to Sterling, February 3, 1964.

<sup>25</sup> Manning to Sterling, February 3, 1964.

<sup>26</sup> Unlabeled memo to Assistant Provost Simmons, n.d., SC0154, box 1, folder 10, Black Affairs Records, Green Library Special Collections, Stanford University. Executive Committee of the Black Student Union, “BSU Statement,” *The Colonist* 1, no. 1 (1969): 2.

<sup>27</sup> *King Encyclopedia*, s.v., “Assassination of Martin Luther King, Jr.,” accessed June 25, 2023.

<sup>28</sup> *King Encyclopedia*, “Assassination of Martin Luther King, Jr.”

the pilot program's success.<sup>29</sup>

A new committee was created to oversee the new admissions criteria for “disadvantaged youth” and to coordinate the tutoring programs.<sup>30</sup> The committee was also asked to consider the addition of Black history to the standard curriculum. A memo addressed to the Faculty Senate stated: “The activities of the last ten days concerned with racial problems at the University have mainly involved the students and the administration of the University. The result has been a commitment by the administration, endorsed by the faculty, to make a large increase in the minority group population at Stanford.”<sup>31</sup> The provost, Richard Lyman, also sent a memo to the Senate's Academic Council, in which he confirmed the school's commitment to a “systematic and sustained effort” to address racial issues on campus, both through the creation of the new pilot program and by increasing recruitment efforts and financial aid opportunities for minority students.<sup>32</sup> Lyman wrote:

We have had brought home to us the deep and bitter alienation of our black students from the University, as from society at large. It would have been easy to respond to the outward signs of that alienation with resentment and rigidity . . . We have much to learn from our black students and much to teach them. We face a challenge to the capacity for growth of each member of the University, young and old, black and white. We must find ways to move with the urgency required for these times. We must do so without impairing those values that are essential to the maintenance of a true university at any time. . . Stanford is entering a new era. It will not be easy. It will require extraordinary financial efforts and it will force all of us to reevaluate intellectual and educational positions we have long taken for granted. The one point on which I have complete confidence is that as we succeed we will be building an even greater University.

Enrollment of minority students did begin to increase, albeit slowly. By the end of the fall quarter of the following academic year, 1968–69, university-wide enrollment of Black and Mexican-American students had grown to 291 from 175 (nearly halfway to the goal set in the previous academic council resolution), and eleven students had been admitted to the pilot program—

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<sup>29</sup> Resolution of the Academic Council, April 11, 1968, SC0193, box 1, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

<sup>30</sup> Proposal for the Creation of a Committee of the Academic Council on Racial Problems, April 16, 1968, SC0193, box 1, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

<sup>31</sup> Proposal for the Creation of a Committee, April 16, 1968.

<sup>32</sup> Letter from Provost Lyman to Members of Academic Council, April 17, 1968, SC0193, box 1, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

eight Black and three Latino.<sup>33</sup> Provost Lyman made it clear that the goal of increasing minority enrollment was to be pursued at both the undergraduate and graduate levels, and that each school or department should be proactive in recruiting students.<sup>34</sup> Accordingly, the law school established its own minority program, which allowed students to take four years (rather than the usual three) to earn their LL.B., and had already enrolled three students.<sup>35</sup> Leroy Bobbit was among the first to take part in the four-year program.

The university administration, including Lyman, was not—and could not—be a neutral actor. The university's leadership was comprised of white men who directly profited from the institution's reputation and prestige.<sup>36</sup> They relied on donations from alumni as well as respect from the academic and professional community for survival. But the political unrest and social tensions on campus also tarnished the school's reputational value. Realpolitik calculations of the 1960s, especially following the murder of Martin Luther King Jr., required a public realization of the homogeneity and gatekeeping that dominated educational institutions, especially elite ones. Otherwise, Stanford risked losing its standing as an enlightened and sophisticated university. Still, the proposal for increasing minority presence on campus proved inadequate. The small steps taken by the administration failed to appease the student body and calls for increased diversification continued.

In February 1969, at a noon rally in White Memorial Plaza with approximately six hundred “quiet, attentive” attendees, Lyman was presented with a list of demands made by the Black Student Union, which had been established two years prior in 1967.<sup>37</sup> The demands included increased admission of minority students—with Black students serving as admissions

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<sup>33</sup> Stanford University News Service, December 3, 1968, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

<sup>34</sup> Letter from Provost Lyman to Members of the Stanford Faculty, January 27, 1969, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

<sup>35</sup> Lyman to Members of the Stanford Faculty, January 27, 1969. See more on the establishment of this program below.

<sup>36</sup> Deborah Rhode, *In Pursuit of Knowledge: Scholars, Status, and Academic Culture* (Redwood City, CA: Stanford University Press, 2006), 6. Rhode has explained why reputation is so important to administrators and faculty at elite institutions: “Desires for recognition shape much human behavior, but they are particularly pronounced in American academic settings. The nation’s competitive culture reinforces a preoccupation with rankings. And higher education attracts individuals with especially strong needs for achievement. Those who end up in faculty and administrative leadership positions are individuals who, by definition, have done well in competitive educational settings and who value the form of recognition that academic reward structures provide. By the same token, once these high achievers become academics, their status is in part derivative; their standing depends to some extent on the prestige of their employers. Almost nine out of ten surveyed faculty report that the reputation of their institution or department is ‘important’ or ‘very important to them personally.’ There are tangible as well as psychological reasons for that concern; faculty salaries are higher and teaching loads are lower in prestigious institutions. The vast majority of academics are understandably invested in their schools’ rankings, however imperfectly measured.”

<sup>37</sup> Stanford University News Service, February 5, 1969, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

coordinators for each graduate school—and the addition of Black history to the curricular offerings.<sup>38</sup> Students attended rallies off campus too. In nearby San Francisco, “Free Huey” rallies were being held by the Black Panther Party in support of their leader Huey Newton, who was serving a fifteen-year prison sentence after being convicted of voluntary manslaughter.<sup>39</sup>

On April 4, 1969 (the first anniversary of Martin Luther King Jr.’s assassination), Provost Lyman offered his remarks to the community: “On this day last year, forces were set in motion which accelerated the movement of this University down a road along which it had barely begun to walk. . . . The progress Stanford has made in minority group relations brings tension in direct proportion to its success. In the short run, at least, it will be very hard to tell victory from defeat.”<sup>40</sup> Lyman would become the university’s president the following school year, in the fall of 1970.<sup>41</sup>

### **The Late 1960s: Thelton Henderson, the Minority Program, and the Manning Plan**

It was 1968 when Thelton Henderson stepped into this situation, with the hope of increasing minority admissions nearly fourteen years after *Brown*.<sup>42</sup> Henderson had moved west from Louisiana to attend the University of California at Berkeley, where he earned a degree in political science in 1956 and his LL.B. in 1962.<sup>43</sup> He had served as the head of the Legal Aid Office in East Palo Alto since 1966, where he employed Stanford students who spoke often of Sallyanne Payton.<sup>44</sup> Henderson was “aghast” after learning that Stanford Law had not graduated any Black students until 1968.<sup>45</sup> Henderson scheduled a meeting with Bayless Manning and Keith Mann (Associate Dean), respectively. Manning and Mann offered Henderson a position as an associate dean, with the intent of diversifying the student body. Dean Manning was under considerable pressure from white students to bring Black students and faculty to the law school; several of the students personally advocated for

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<sup>38</sup> Ray Davis, “BSU’s Unanswered Demands,” *The Colonist* 2, no. 1 (1969): 2.

<sup>39</sup> *Encyclopedia Britannica*, s.v., “Huey P. Newton,” accessed June 25, 2023. Newton’s conviction was overturned in 1970. “Rally a Success,” *The Colonist* 1, no. 4 (1969): 1.

<sup>40</sup> Stanford University News Service, April 4, 1969, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

<sup>41</sup> “History of Stanford Presidents,” Office of the President, Stanford University, accessed June 25, 2023.

<sup>42</sup> Thelton Henderson Interviews, 2012, SC0932, Stanford Historical Society Oral History Program, Green Library Special Collections, Stanford University.

<sup>43</sup> Henderson was one of only two Black students in his class at Berkeley Law.

<sup>44</sup> Henderson Interviews, 2012.

<sup>45</sup> Henderson Interviews, 2012.



Henderson to be hired.<sup>46</sup> Henderson accepted the offer, albeit on a half-time basis so that he might continue his work at Legal Aid.<sup>47</sup> Yet, Henderson quickly “realize[d] there’s no such thing as two half-time jobs, and [he] was sort of working, killing [him]self trying to do both jobs.”<sup>48</sup> After one year, he left his job at Legal Aid and came to Stanford full time.

Henderson’s duties as associate dean included implementing a recruiting program aimed at Black, Latino, and Native American students; he was also the Dean of Student Affairs, overseeing the budgets and activities of student organizations, and served on the Minority Employment Committee.<sup>49</sup> In addition to these duties, Henderson found time to do courtroom supervision for an eight-unit course on Juvenile Law, offer a seminar on the defense of the criminally insane, and teach civil procedure.<sup>50</sup>

Henderson was officially responsible for the law school’s “legal education opportunity programs,” but played many roles on campus.<sup>51</sup> When a Puerto Rican student from New York came to Henderson and said he was considering dropping out, Henderson “got him drunk and started loosening up, and took him home, and by that time, he was feeling a little better.”<sup>52</sup> He wrote letters to prospective students, such as a note written to Miss Lilia Nolina, who had requested information about the school’s minority program: “Unfortunately we have no written information about our program for minority students, but if I can answer any specific questions, please feel free to contact me.”<sup>53</sup> According to one of his students, Tyrone Holt, Henderson “was the entire recruitment program. . . Thelton was responsible for me getting here.”<sup>54</sup> Henderson was a source of comfort for his students, a task he would later remember fondly: “I felt I’d been through some things that you younger people hadn’t, and wanted to share it, about how you deal with racism and feelings of alienation. And I loved sharing that with you, and I loved helping you get through those

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<sup>46</sup> Wald interview, May 16, 2024.

<sup>47</sup> Henderson Interviews, 2012,

<sup>48</sup> Henderson Interviews, 2012.

<sup>49</sup> Henderson Interviews, 2012, Letter from Thelton Henderson to President Pitzer, May 16, 1969, SC0154, box 2, folder 28, Black Affairs Records, Green Library Special Collections, Stanford University.

<sup>50</sup> Henderson, Stanford Historical Society Oral History Program. Juvenile Law became the foundation of Stanford Law’s clinical program as it exists today, pioneering the eventual ubiquity of clinical education at law schools across the country. Henderson later served on the first board of the Community Law Clinic.

<sup>51</sup> Stanford Law School Student Handbook (1968).

<sup>52</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>53</sup> Letter from Thelton Henderson to Lilia Nolina, August 12, 1970, SC0154, box 1, folder 29, Black Affairs Records, Green Library Special Collections, Stanford University.

<sup>54</sup> Henderson, Stanford Historical Society Oral History Program.

psychological motions and trying to do things to counteract it and trying to be creative about it. I'd never done it before, so I was learning as I went."<sup>55</sup>

Because of Henderson's efforts, Stanford Law was, in many ways, more successful than other elite schools in building a Black community. Henderson went out of his way to take personal care of everyone and was, by far, the most integral player in the desegregation of Stanford Law. His students and colleagues alike remember him as soft spoken, but extremely persuasive and well respected.<sup>56</sup> He was empathetic and caring, and extremely supportive of every Black student, often interceding on their behalf with the financial aid office or a professor. One student recalled, "We always knew we always had a friend in Thelton . . . he treated us like family."<sup>57</sup> Henderson was also unusually effective, maneuvering with the faculty and Dean Manning to implement important changes, usually so smoothly that others were happy to go along with his plans.<sup>58</sup> Henderson had considerable support from several members of the law school faculty, especially those who had been appointed in the early to mid-1960s.

Having set his sights on increasing minority enrollment, Henderson faced several challenges: increasing the number of applicants, determining the proper admissions standards, convincing admitted students to enroll, and ultimately ensuring that those students succeeded once they got to Palo Alto. As a recruiter, Henderson used his contacts around the country to find candidates—a difficult task because "those who did come down the pipeline, especially if they were from the East, were also eligible to go to Harvard and Yale, and that was their preference."<sup>59</sup> Other students were reluctant to attend Stanford due to the lack of fellow minority classmates. Henderson would fly to various schools around the country to conduct interviews with potential Black admits "with the profile that [he] thought would allow them to succeed in a school like Stanford with its rigorous courses."<sup>60</sup> Henderson's "biggest recruiting ploy" was to invite students from the East Coast to visit Stanford's campus in April, when cities like New York, Boston, and Washington D.C. were still cold and snowy, and "walk them down Palm Drive with all the palm trees

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<sup>55</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>56</sup> Wald interview, May 16, 2024. Harold Boyd, interview with author, March 10, 2024. Dianne Millner, interview with author, April 30, 2024.

<sup>57</sup> Millner interview, April 30, 2024.

<sup>58</sup> Wald interview, May 16, 2024.

<sup>59</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>60</sup> Henderson, Stanford Historical Society Oral History Program.

and sit out in the sun.”<sup>61</sup> The substantial travel costs required for recruiting were funded by two law school alumni, Miles L. Rubin and Victor Palmieri, who gave roughly \$500,000 to support Henderson’s recruiting commitments in addition to a third-year student’s tutoring salary.<sup>62</sup>

Henderson examined every application, considering people who could succeed in a variety of ways beyond grades and test scores. Looking for abilities such as leadership and adaptability, Henderson often weighed unusual criteria, such as community organizing or prior work experience. Manning had granted Henderson a great deal of latitude to build a more diverse class. However, Henderson was acutely aware that many of these students would face exams at Stanford Law School that would be different than anything they had ever encountered before. Accordingly, Henderson sought not only to get Black students into Stanford Law, but also to make sure that they thrived there. He knew that they would be competing with classmates who had attended elite undergraduate institutions and considered it part of his duties to make sure the Black students whom he admitted would be equipped to do so.<sup>63</sup>

Thus, Henderson also played a critical role in the creation of the abovementioned four-year minority program, which he proposed to the dean and law faculty almost immediately after his arrival. Meant to offer “access to an increased number of minority students within the law profession,” the program provided “disadvantaged candidates” with an extra year of study and the chance to “avoid undue pressure” while completing their coursework.<sup>64</sup> The idea for the program came from Henderson’s own personal experience at Berkeley, where he had turned in a “disastrous” exam.<sup>65</sup> Henderson attributed his own failure to inadequate previous education at all-Black schools and a lack of academic support during his first year at college. He believed the four-year program would benefit Black law students “by breaking the first year into two years, slowing it down. . . They may not have [had] the background to get it immediately.”<sup>66</sup> During the first two years, students would receive tutoring and “get the hang of it,” with the opportunity to graduate in three years by

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<sup>61</sup> Henderson, Stanford Historical Society Oral History Program. This tactic is still quite successful today.

<sup>62</sup> Henderson, Stanford Historical Society Oral History Program. The same two alumni gave a large donation to start the Spaeth fund (see below).

<sup>63</sup> Wald interview, May 16, 2024. Professor Wald worked closely with Thelton Henderson on these issues and had even worked with him in East Palo Alto prior to his hiring.

<sup>64</sup> Affirmative Action Program, n.d., SC0154, box 1, folder 9, Black Affairs Records, Green Library Special Collections, Stanford University.

<sup>65</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>66</sup> Henderson, Stanford Historical Society Oral History Program.

attending summer school.<sup>67</sup> The program received national attention when it was introduced in 1968, and by September 1969, four students were enrolled in the minority program.<sup>68</sup>

In the end, only three classes of students went through the law school's four-year program. Although Henderson believed the program did achieve its goals, "it was psychologically bad for the students. They didn't like it. We worked very hard to construct it in a way that they weren't identified and the people that went through it weren't personally identified, but within the minority community, they didn't like it. They felt second-class citizens. They resented it. They thought they didn't need it."<sup>69</sup> The social and psychological stigma attached to the program only reinforced the negative perception of minority students on campus and further disconnected them from the campus community.<sup>70</sup> The program had procedural disadvantages, too; students could be forced to drop classes halfway through the semester if their grades were not up to par, and could not opt out of the program in the first two years.<sup>71</sup> Henderson anticipated that the students' "gratefulness for getting into Stanford would outweigh their resentment for getting in this way. That was our hope. It turned out not to be that balance that we hoped for."<sup>72</sup> At the same time, minority recruitment was gaining momentum, "more students were coming through the undergraduate pipeline," and students were being admitted that did not require the transition period.<sup>73</sup> The four-year minority program was abolished in the spring of 1971.<sup>74</sup>

Indeed, more minority students were coming to Stanford, with 152 Black students applying to Stanford Law for entry in the 1970–71 academic year.<sup>75</sup> Of these, thirty-two were admitted (a figure "based largely on budgetary considerations"); nineteen accepted enrollment; and eleven ultimately registered to attend.<sup>76</sup> At that time, the application did not have any questions about a student's race, so Henderson identified Latino students primarily by their names and Black students through their extracurriculars or undergraduate

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<sup>67</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>68</sup> Bob Johnston, "Ill-Fated Minority Program Abolished," *Stanford Law School Journal* 1, no. 10 (1971): 1, 9. "September 1969 Registration," *Stanford Lawyer* 5 (Spring 1970).

<sup>69</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>70</sup> Johnston, "Ill-Fated Minority Program Abolished," 9.

<sup>71</sup> Johnston, "Ill-Fated Minority Program Abolished," 9. The inability to opt out of the program was Henderson's idea.

<sup>72</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>73</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>74</sup> Johnston, "Ill-Fated Minority Program Abolished," 9.

<sup>75</sup> Bob Johnston, "Minority Admissions," *Stanford Law School Journal* 1, no. 2 (1970): 1.

<sup>76</sup> Johnston, "Minority Admissions," 1.

institution.<sup>77</sup> The law school still had the least number of Black entering students of any graduate school at Stanford, compared with sixty-two students in the humanities and sciences, twenty-two at the business school, twenty each at the education and engineering schools, and fifteen at the medical school.<sup>78</sup> Nonetheless, graduate programs were accepting more minorities: “Black and [Latino] students are coming to Stanford in greater numbers for graduate work and have a lower ‘drop out’ rate from the University than whites.”<sup>79</sup>

Henderson confessed that he “didn’t feel too good” about the number of minority students enrolled until he contacted other schools for comparison figures.<sup>80</sup> Chicago had admitted ten minority students total; Yale, twenty; and Harvard, sixty.<sup>81</sup> The comparison did not assuage everyone; one student, Ed Hayes, proclaimed the number was “still deplorable” and “not significant enough to represent any commitment or particular interest on the part of the Administration in making legal education possible to non-white students.”<sup>82</sup> By the end of the year, some students were threatening to leave the school and transfer elsewhere, citing inadequate admissions policies leading to only sixteen Black students in total enrolled in the 1971–72 school year.<sup>83</sup> Minority students demanded the administration establish a quota of at least thirty minority students in the entering class.<sup>84</sup>

Although Dean Manning rejected the quota, he agreed to institute a new admissions policy whereby a minimum predicted GPA (PGPA) would be established. The PGPA concept had been first considered a decade earlier. In a 1958 memo from the previous dean, Carl Spaeth, to the law faculty, Spaeth had inquired whether it would be “feasible to develop probability tables, combining LSAT and [undergraduate] GPA figures which would furnish a basis for predicting law school success of a particular student from a particular

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<sup>77</sup> Johnston, “Minority Admissions,” 8.

<sup>78</sup> Stanford University News Service, December 3, 1970, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University. Minority Graduate Enrollment, 1968–70, March 9, 1971, SC0770, box 2, folder 4, School of Law Faculty Minutes and Committee Records, Green Library Special Collections, Stanford University.

<sup>79</sup> Minority Graduate Enrollment, 1968–70, March 9, 1971, SC0770, box 2, folder 4, School of Law Faculty Minutes and Committee Records, Green Library Special Collections, Stanford University.

<sup>80</sup> R.P.J., “20 Minority Students to Enter,” *Stanford Law School Journal* 2, no. 1 (1971): 1.

<sup>81</sup> R.P.J., “20 Minority Students to Enter,” 1. Harvard’s enrollment numbers were proportionally similar to Stanford’s.

<sup>82</sup> R.P.J., “20 Minority Students to Enter,” 1.

<sup>83</sup> R.P.J., “20 Minority Students to Enter,” 1.

<sup>84</sup> “Minority Admission Problem Brewing a Long Time,” *Stanford Law School Journal* 2, no. 15 (1972): 2.

school.”<sup>85</sup> Dean Manning thereafter introduced a bar for admission based on the lowest PGPA of the previous year’s admits; any minority applicants above this minimum PGPA would be “substantially automatically” admitted. Significantly, he also removed the institutional limits placed on minority scholarships and financial aid.<sup>86</sup>

The idea for this new policy was also Henderson’s (although it would later come to be known as the Manning plan). In a prior conversation with Dean Manning, who took the position that the law school didn’t discriminate against any candidate, but “welcome[d] any minority student, any student who has a 3.7 GPA and a 90-something percentile LSAT score,” Henderson asked to see the lowest scores and GPA of those students already admitted—suspecting that some “legacy” admits would have less than ideal figures.<sup>87</sup> In his later recollections, Henderson said, “I think their hearts were in the right place. They just didn’t know quite how it should be done. There weren’t any models out there to tell them.”<sup>88</sup> The Manning plan was adopted, deemed successful, and has remained in place for decades, albeit in varying forms.<sup>89</sup>

Yet, the four-year minority program at the law school perpetuated prejudice against minority students as intellectually inept and academically inadequate. The program left its primary assumption unsaid: that minority candidates could not handle the “pressure” of law school like white students. The program vindicated those among the university’s administration who believed that Black students were unqualified or incompetent. Furthermore, the program’s procedural deficiencies put minorities at an even further disadvantage. Still, Henderson’s personal background was certainly a strong influence on the structure of the program and his experience may have resonated with some students.

But even if the program was intended to aid these students, in effect it isolated and discredited them. Henderson’s belief that the students would be so grateful for their admission to Stanford that they would not be insulted by the aftermath was not only shortsighted, but deeply misguided. Nonetheless, Henderson’s tireless efforts to increase diversity were critical to the integration of the law school. Like so many other Black educators at elite institutions, Henderson was overworked, functioning not only as “the entire recruiting

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<sup>85</sup> Memo from Carl Spaeth to Law School Faculty, October 2, 1958, SC0770, box 2, folder 4, School of Law Faculty Minutes and Committee Records, Green Library Special Collections, Stanford University.

<sup>86</sup> Bob Johnston, “Minority Students Threaten to Leave School,” *Stanford Law School Journal* 1, no. 10 (1971): 1, 10.

<sup>87</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>88</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>89</sup> It is unclear if this policy is still used today.

program,” but also as a professor, administrator, negotiator, and confidant.<sup>90</sup> Dedicated as ever, Henderson continued to take on duties in his quest to provide adequate support for Black students.

The implementation of the Manning plan solidified the role of statistics in minority admissions at Stanford. The use of data points in the law school's admissions process allowed the administration to claim its policies were neutral and meritocratic, preserving Stanford's reputation as a first-rate institution.<sup>91</sup> But in reality, the Manning plan allowed the university to quell tensions while comprising no more than necessary—that is, [more than it already had for the children of important donors and alumni. While “substantially automatic” admission was a device used only for minority students, the minimum PGPA mirrored the lowest qualifications seen among legacy admits, matching the law school's threshold for students deemed suitable for Stanford Law. The policy may have been facially meritocratic, but the university failed to acknowledge that its statistical approach could not divorce educational attainment from socioeconomic status. In a practice that persists to this day, Stanford admits students who test well and then boasts its “cosmetic diversity.” The Manning plan amounted to what Lani Guinier has described as an admission policy that “merely mimic[ked] elite-sponsored admissions practices that transform[ed] wealth into merit, encourage[d] over-reliance on pseudoscientific measures of excellence, and convert[ed] admission into an entitlement without social obligation.”<sup>92</sup>

### The Early 1970s: Affirmative Action and BLSA

As the Manning plan was introduced, a newly created university-wide affirmative action program sought to increase the number of minority faculty. An affirmative action report at the time identified several key areas for improvement: the racial composition of the workforce, the racial composition of applicant flow, the employment and selection process, promotion practices, termination and layoff procedures, apprenticeship and training programs, and

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<sup>90</sup> Rhode, *In Pursuit of Knowledge*, 105. This phenomenon has been examined by many scholars, including the prolific Deborah Rhode: “[A] small proportion of faculty members perform the vast majority of service. Women and minorities are disproportionate among them. For commendable reasons, institutions want diversity of backgrounds on any important decision-making body. But in many fields, a shortage of diversity among those eligible to serve leaves women and minorities deluged with service obligations. These groups find it particularly difficult to evade the draft because they lack ready replacements and are sympathetic to the argument that decision-making bodies should not be all-white or all-male. But no good deed goes unpunished. . . . When such burdens are coupled with the disproportionate advising and mentoring obligations that fall to underrepresented groups, the price is often paid in scholarly productivity. Yet academic institutions seldom adjust teaching and research expectations for those who provide exceptional service.”

<sup>91</sup> Rhode, *In Pursuit of Knowledge*, 9. Rhode argued that in a phenomenon known as “upward drift,” institutions with less prestige are under a great deal of pressure to achieve “legitimacy” and as a result, tend to “imitate rather than innovate and to replicate the priorities of more prestigious universities rather than to develop distinctive strengths.” Thus, Stanford's policies have the potential to impact not only students on its campus, but also at schools who look to these institutions for guidance.

<sup>92</sup> Lani Guinier, *The Tyranny of the Meritocracy: Democratizing Higher Education in America* (Boston: Beacon Press, 2016), 23.

overall faculty representation.<sup>93</sup> The report admitted: “The data supplied on minority faculty can be summarized by saying that the numbers have grown but are still small. The prospect for the future is that the numbers will grow further, but slowly and unevenly, and that in the immediately foreseeable future they will remain small.”<sup>94</sup>

At the law school, there was only a single Black professor out of thirty-eight total faculty; the only other Black employees were a technician, a clerical worker, and an office manager.<sup>95</sup> This small figure was attributed to a low number of eligible candidates “trained for university teaching,” a problem declared especially troublesome for “the relatively small number of colleges and universities at the apex of educational quality.”<sup>96</sup> Although the law school did submit a minority hiring plan in December 1970, claiming to be willing to “work in any way possible to meet affirmative action goals although no openings are anticipated due to budget conditions,” the hiring plan itself was left blank.<sup>97</sup>

Nevertheless, the growing presence of Black students and faculty led to the creation of Black organizations. The Black Law Students Association (BLSA) was established in the 1970–71 academic year, “formed to meet the special needs of Blacks attending the Law School as well as the needs of the surrounding Black community. These needs inter-relate because, as it presently exists, the traditional white educational apparatus tends to overlook illiterate Blacks and to train literate Blacks to ignore the problems of their own people.”<sup>98</sup> James Ware became its first president.<sup>99</sup> Students on campus began to openly discuss the prejudice and homogenization they were experiencing. Willie Newberry, a graduate student in sociology and cochairman of the BSU, declared: “Stanford University is racist to the core.”<sup>100</sup> Another student wrote in the Black newspaper:

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<sup>93</sup> Affirmative Action Program, n.d., Black Affairs Records.

<sup>94</sup> Affirmative Action Program, n.d.

<sup>95</sup> Work Sheet for Minority Hiring Plans, December 15, 1970, SC0154, box 1, folder 9, Black Affairs Records, Green Library Special Collections, Stanford University. I was unable to positively identify the name of this Black professor.

<sup>96</sup> Affirmative Action Program, n.d.

<sup>97</sup> Work Sheet for Minority Hiring Plans, December 15, 1970.

<sup>98</sup> Stanford University, Stanford Law School Student Handbook (1970).

<sup>99</sup> Stanford Law School Student Handbook (1970). That same year, James Ware won the moot court competition, which was judged by Justice Thurgood Marshall. “Jim Ware Sweeps Kirkwood Competition,” *Stanford Law School Journal* 1, no. 10 (1971): 1. In 1990, Ware was nominated by President George H. W. Bush to the bench for the Northern District of California, on which he served until 2012. His daughter, Carlie, is now a beloved member of the Criminal Defense Clinic at Stanford Law, where she works as a supervising attorney.

<sup>100</sup> Stanford University News Service, May 12, 1971, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.



Stanford without question is an instrument of oppression. Hence, Black people at Stanford must recognize that this University will at every point of our stay attempt to reinforce the notion of individuality. It will in the same breath reinforce the denial of our peoplehood, our Blackness. Stanford supports the values and experiences of White America. It does not, nor can it, support the Experimental Communitarity of Blackness. . . . Make no mistake about it, part of Stanford's job is to get our Blackness. Also, recognize that, if the University believed it could not destroy the Experimental Communitarity supportive of our Blackness (a process they mistakenly call education), there wouldn't be a single Black here. What I'm trying to say is, if Stanford did not believe that it could control and reshape our minds to the point where we really believed that (evidenced by our presence here) we must be the smartest niggers in the country, i.e. the Black intellectual elite, which by the oppressor's psychology means we are "unique" and "different" from all those other Black people, we would not be here. Once we believe this, that is, once our Stanford education is accomplished, Stanford will have stolen our Blackness.<sup>101</sup>

The campus was, at times, physically unsafe for minority students as well. According to a newspaper that served as "The Organ of Black Students of Stanford University," in April 1970 the police arrested Black students on campus because the university "felt that its property was in danger and chose to defend it with guns, mace, and sticks."<sup>102</sup> The Black student who authored the article warned: "Anyways bloods should watch out for these motherfuckers, they all have the same piggish mentality. They don't think we belong here and you never know what kind of humbug might go down with all these racist fools with guns running around this campus."<sup>103</sup> In 1971, William Shockley, a Stanford physics professor and Nobel laureate, openly advocated for the sterilization of illiterate Blacks.<sup>104</sup> Thus, BLSA became an important source of community for students who felt isolated or endangered at Stanford. Furthermore, BLSA was "dedicated to ending the isolation between Black law

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<sup>101</sup> Wade Nobles, "Stanford's Gonna Steal Your Blackness," *The Colonist* 2, no. 15 (1970): 4. Lani Guinier, Michelle Fine, and Jane Balin, *Becoming Gentlemen: Women, Law School, and Institutional Change* (Boston: Beacon Press, 1997), 100–1. Guinier spoke eloquently on this same concept and the importance of narrative in overcoming homogenization: "I began to comprehend once again what W. E. B. DuBois eloquently described at the dawn of this century as the twoness, the double identity of being black and American. For me, there was a threeness because I also was a woman. As an outsider 'within the veil,' I, like DuBois, saw myself revealed through the eyes of others. . . . Ours is a story about imprisoned and silenced by the status quo. Ours is a story of being admitted into Wonderland but only on condition that we for all practical purposes become something we are not. Our stories, though, are not monolithic. Nor are they monotone or monologue. Our stories help form a conversation in which we can define and redefine the world in terms that accommodate different perspectives and experiences . . . . Legal education is strengthened by including those who were once left out."

<sup>102</sup> Cinque, "The Season of the Pigs," *The Colonist* 2, no. 17 (1970): 1.

<sup>103</sup> Cinque, "The Season of the Pigs," 1.

<sup>104</sup> Stanford University News Service, May 12, 1971, Academic Council Records.

students and Black ghetto residents.”<sup>105</sup> In February 1970, a Berkeley man was indicted for manslaughter after shooting a Black youth for “stepping on his lawn”; a San Francisco police station was bombed.<sup>106</sup> The general unrest in the Bay Area and across the country made community engagement a priority for Stanford Law students.

The university administration recognized the gravity of racial issues during this time; President Lyman proclaimed that “[r]ace remains America’s most important domestic problem,” and called it “dangerous and insidious” to equate the effort to diversify the student body with lower admissions standards.<sup>107</sup> He went on to add: “If we’re going to mean business about education for black [and other minority] people, we’re going to have to mean business at every level of education. . . . This kind of institution in particular should be concerned about postgraduate and professional education to enable disadvantaged minority people to get into the professions and get their fair share of the skills and equipment to deal with their problems.” Lyman blamed a lack of funding for minority students to account for the slow increase in minorities and pushed to continue limiting admissions to only those students who could be financially supported—a policy Lyman claimed was reflected by the high retention rates for minority students at Stanford.<sup>108</sup> Moreover, the president saw increased tensions on campus as a catalyst for improvement: “This is fourth consecutive academic year in which we have found ourselves in often angry discord over issues raised by minority members of the Stanford community. This discord may actually signify progress: as the number of minority students, staff, and faculty continues to grow, so does the number of persons who perceive the ways in which Stanford might do better.”<sup>109</sup>

While Lyman claimed to “mean business,” his attempt to explain away the very real threats Black students faced as no more than productive dissent

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<sup>105</sup> Stanford Law School Student Handbook (1970).

<sup>106</sup> The Tasmanian Devil, “Bulletin Board,” *The Colonist* 2, no. 13 (1970): 4.

<sup>107</sup> Stanford University News Service, January 6, 1971, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University. Not everyone saw race as a serious issue, however. A Board of Visitors survey sent to law school alumni in 1971 reported: “The typical graduate is male, married, white and Protestant. He grew up in California, probably in Los Angeles County. He is a Republican and considers himself moderately liberal. His father was either in one of the professions or in business management and sales.” Thirty-three percent of responding alumni said they would give no weight to ethnic or racial diversity in the admissions process; only 16 percent thought diversity merited considerable weight as a factor. When asked for the “single most responsible cause of student unrest,” less than 1 percent selected “racism in America.” Most respondents chose “students perceive actual defects in American society, not necessarily on the campus,” at 38 percent. Indeed, many at Stanford saw the campus as utopia, free from worldly, mundane issues like racial violence and discrimination. “Responses to the Board of Visitors Survey of the Stanford Law School Alumni,” *Stanford Lawyer* 11 (Spring 1972).

<sup>108</sup> Stanford University News Service, January 6, 1971.

<sup>109</sup> Stanford University News Service, July 8, 1971, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.

intentionally ignored the danger presented by their mere presence on campus. Furthermore, Lyman looked to Black people to bear the burdens of integration and suffer the costs of overcoming the university's discriminatory structures, including admissions practices that disproportionately benefited white and/or wealthy students, underrepresentation in faculty and leadership, and inadequate academic and social support systems. This challenge was intensified by the necessity of battling these larger systemic issues while simultaneously grappling with their day-to-day impacts, striving to effect change from within the system as they sought to transform it entirely. The administration turned to excuses that would become familiar—a lack of funding and a lack of candidates. The affirmative action report's allegation that the latter was especially problematic “at the apex of educational quality” revealed the underlying assumption that even those candidates who were qualified were often still inadequate for elite universities like Stanford. While the law school professed to be willing to “work in any way possible” to diversify, the blank squares of its minority hiring plan would become a perfect metaphor for the empty promises of Stanford's affirmative action program in the 1970s—pretensions of equality and opportunity that remained illusory and unsubstantiated. Organizations like BLSA must have been incredibly important to Black students during these times, offering fora for discussion and the support of a community in the face of mental, emotional, and physical violence. These organizations allowed Black people to look out for one another, on and off campus.

Despite many other changes in the university's administration, Dean Henderson stayed on at the law school. Henderson hoped to institutionalize his diversity efforts, which were finally beginning to succeed, and feared a potential drop in the admission and enrollment statistics if he were to leave.<sup>110</sup> Henderson was still facing resistance from some of the law school faculty, too. When approached by a small group of professors and asked about the increasing percentage of minorities in the entering class, Henderson expected to be congratulated. Instead, they asked: “Well, don't you think that's enough? That's about there. . . Let's not keep going.”<sup>111</sup> While Henderson recognized that he may not be able to increase the proportion of minorities further (students of color in the class of 1975 comprised roughly 22 percent), he sought to prevent a backslide in admissions policies.<sup>112</sup>

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<sup>110</sup> This prediction would ultimately prove correct, with a backslide beginning when Henderson left his position.

<sup>111</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>112</sup> Henderson, Stanford Historical Society Oral History Program. People of color make up approximately 44 percent of the author's class at Stanford Law (class of 2025).

In the spring of 1972, minority students demanded again that the administration establish a quota system. This time the students pressed for fifty minority students in the entering class, which would contain 160 students in total.<sup>113</sup> This quota was to be comprised of twenty Black students, twenty Latinos, and ten Native Americans.<sup>114</sup> The faculty again refused to establish a quota, instead favoring the continuation of the Manning plan—which guaranteed “substantially automatic” admission for any minority applicant with a PGPA above that of the lowest nonminority student admitted in the prior year.<sup>115</sup> The faculty also rejected the students’ demands for an outside consultant to evaluate the utility of the PGPA statistic and increased financial aid for minority students. Instead, a special committee was appointed, chaired by Professor William Cohen, to study and oversee Henderson’s discretion in administering the admissions process.<sup>116</sup> The students believed the faculty created the special committee because they feared too many minority students would be admitted.<sup>117</sup>

While the class of 1975 did substantially increase minority representation at the law school by 53 percent over the previous year’s class, and 164 percent from the class of 1973, no quota was established.<sup>118</sup> Four hundred and seventy-eight minority students applied; sixty-one were admitted; and twenty-nine enrolled in the fall.<sup>119</sup> Dean Henderson was very pleased with this peak in admissions data, citing an increased number of minority applicants (one hundred more than the previous year) and a more flexible admissions formula.<sup>120</sup> But students like LaDoris Cordell, who gave a statement on behalf of BLSA, were “extremely, extremely dissatisfied with the number.”<sup>121</sup>

And the university was still ill equipped to offer sufficient support to these minority students once they arrived. The responsibility of challenging and dismantling discriminatory power structures—such as admissions policies, racism and violence on campus, housing discrimination, a limited number of institutional advocates, and social exclusion—often fell to minority students. By transferring the burden of activism to students and colleagues of color, white

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<sup>113</sup> “Minority Admission Problem Brewing a Long Time,” *Stanford Law School Journal* 2, no. 15 (1972): 2.

<sup>114</sup> “Minority Admission Problem,” 2.

<sup>115</sup> “Minority Admission Problem,” 2. By this time, the PGPA was accompanied by another admissions statistic known as the LQI.

<sup>116</sup> “Minority Admission Problem,” 2. Cohen was one of the most conservative members of the faculty at that time (see below).

<sup>117</sup> “Minority Admission Problem,” 2.

<sup>118</sup> R.P.J., “Minority Admissions Greater Than Past Years,” *Stanford Law School Journal* 3, no. 1 (1972): 1.

<sup>119</sup> R.P.J., “Minority Admissions,” 1.

<sup>120</sup> R.P.J., “Minority Admissions,” 1.

<sup>121</sup> R.P.J., “Minority Admissions,” 1.

men in power allowed themselves the privilege of a recess from the discomfort and difficulties of Stanford's racial strife. They could publicly announce their achievements, asking: "Well, don't you think that's enough?" while claiming there were "no pressing problems" at a place like Stanford.

The law school's dean at the time, Thomas Ehrlich, had witnessed the development of diversity on campus. Appointed to the faculty in 1965, Ehrlich had arrived the same year as Sallyanne Payton.<sup>122</sup> After only three years, Ehrlich gained tenure, and after another three years, was selected to succeed Bayless Manning as dean.<sup>123</sup> He had served on the Faculty Senate since 1968 and experienced the chaotic and politicized environment of Stanford's campus in the late sixties and early seventies.<sup>124</sup> Ehrlich saw a pressing need to diversify not only the student body but also the faculty, which was still all-white and all-male when he became dean in the autumn of 1971.<sup>125</sup> He declared: "[the] first priority [was] that we had to have at least a woman faculty and an African-American faculty before we went further."<sup>126</sup>

In May 1971, Ehrlich (at that time still dean-designate) met with the Committee on Minority Affairs to discuss the "restrictive nature of the screening processes used by law faculties when choosing new colleagues."<sup>127</sup> Ehrlich was joined by Professor John Barton, who brought a list of forty prospective Black candidates for faculty positions, but emphasized "the minuscule body of lawyers from minority communities, much less academic lawyers from minority communities."<sup>128</sup> Barton remarked that many of the best candidates had other opportunities that may have greater appeal.<sup>129</sup> Ehrlich and Barton advocated for the creation of a Minority Faculty Leverage Fund, which would offer funding for the hiring of more diverse faculty at the law school and elsewhere

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<sup>122</sup> Ehrlich, Stanford Historical Society Oral History Program. Dean Ehrlich had a fascinating life. After graduating law school, he clerked with Learned Hand. During his move to Stanford, "[he] camped in Yosemite next to a guy with a beard who was taking a lot of pictures and taught us how to make tacos, who turned out to be Ansel Adams." He went on to be the provost of the University of Pennsylvania and the president of Indiana University. He was also the first president of the Legal Services Corporation in Washington, D.C. He is author, coauthor, or editor of fourteen books and holds five honorary degrees. Bill Gould remembers Thomas Ehrlich as one of the best deans Stanford Law has ever had, along with Paul Brest.

<sup>123</sup> Ehrlich, Stanford Historical Society Oral History Program. Ehrlich recalled that Manning announced at a faculty meeting that he was divorcing his wife and leaving the Law School at the same time—before he told his wife, who "never forgave him for this, understandably." Manning "went off to be the head of the Council on Foreign Relations in New York, left his wife, took up with a student from Stanford."

<sup>124</sup> Ehrlich, Stanford Historical Society Oral History Program.

<sup>125</sup> Ehrlich, Stanford Historical Society Oral History Program.

<sup>126</sup> Ehrlich, Stanford Historical Society Oral History Program.

<sup>127</sup> Committee on Minority Affairs Minutes, May 3, 1971, SC0154, box 1, folder 10, Black Affairs Records, Green Library Special Collections, Stanford University.

<sup>128</sup> Committee on Minority Affairs Minutes, May 3, 1971.

<sup>129</sup> Committee on Minority Affairs Minutes, May 3, 1971.

on campus, and discussed recruitment strategies.<sup>130</sup> The Fund was eventually created (furnished with \$75,000) once the university administration conceded that “increasing the number of minority and women faculty members is a virtual precondition for durable success in many of our educational and other institutional goals.”<sup>131</sup>

### **The Mid-1970s: William B. Gould IV and the Spaeth Fund**

Such was the state of affairs when Professor William Gould was invited to join the law school faculty in 1972.<sup>132</sup> He had been a visiting professor at Harvard during the year prior.<sup>133</sup> Gould was hired at the same time as Barbara Babcock, Stanford Law’s first woman professor; both had the full support of Dean Ehrlich, who described them as “just splendid, first rate, extraordinarily capable people.”<sup>134</sup>

Professor Gould didn’t know anyone at Stanford when he received a call “out of the blue” inviting him to visit the campus and meet with Associate Dean Mann as well as an alum.<sup>135</sup> Gould was “put off. . . and surprised by [the] rough-cross examination” he experienced during his interview, although he was later told it was simply “par for the course.”<sup>136</sup> Furthermore, during a lunch with Dean Ehrlich and a tax law professor, there was a confrontation about an article Gould had written in 1962.<sup>137</sup> But his excellent reputation as a labor lawyer and extensive body of written work spoke for itself, and “very quickly thereafter” Gould received an offer from Dean Ehrlich to join the faculty as a fully tenured professor.<sup>138</sup> Gould later recalled that the law school administration was under a great deal of pressure to hire a Black professor and

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<sup>130</sup> Committee on Minority Affairs Minutes, May 3, 1971.

<sup>131</sup> Memo from William Miller to Deans of Schools, Directors of SLAC and the Food Research Institute, and the Dean of Undergraduate Studies, September 30, 1971, SC0154, box 1, folder 10, Black Affairs Records, Green Library Special Collections, Stanford University. This would be equivalent to approximately \$575,000 today. Bureau of Labor Statistics, CPI Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl>.

<sup>132</sup> “News of the School,” *Stanford Lawyer* 10 (Spring 1972).

<sup>133</sup> Bob Johnston, “School Names First Black and Woman Profs,” *Stanford Law School Journal* 2, no. 7 (1971): 1.

<sup>134</sup> Johnston, “School Names First Black and Woman Profs,” 1. Barbara Babcock was a renowned expert in the study of women in the legal profession and was the first woman appointed to the permanent faculty at Stanford Law School. Before joining the Stanford faculty, she served as the first director of the Public Defender Service in Washington, D.C. (where she worked with Professor Wald, who initially recruited her to teach at Stanford). She also served as assistant attorney general for the Civil Division in the U.S. Department of Justice during the Carter administration and played a critical role in the appointment of many women and minorities to the federal bench, most notably the late Ruth Bader Ginsburg. Professor Babcock was the Judge John Crown Professor of Law, emerita, until her death in April 2020.

<sup>135</sup> William Gould Interviews, 2018, SC0932, Stanford Historical Society Oral History Program, Green Library Special Collections, Stanford University. William Gould, phone call to author, April 20, 2023.

<sup>136</sup> Gould, Stanford Historical Society Oral History Program.

<sup>137</sup> Gould, phone call to author, April 20, 2023.

<sup>138</sup> Gould, Stanford Historical Society Oral History Program; Gould, phone call to author, April 20, 2023.

a woman professor in the fall of 1972.<sup>139</sup> In his view, Stanford Law was “late to racial desegregation—no doubt about it” and the lack of minority faculty made the law school “inhospitable for Black and Latino students.”<sup>140</sup>

Gould was not unfamiliar with the isolation of being the only Black lawyer in his community, however. He was the only African American student while in law school at Cornell and had grown up in an all-white neighborhood.<sup>141</sup> Professor Gould was “relatively light-skinned,” which sometimes led to comments that would not otherwise be made in his presence, and posed a quandary for those at Stanford who wanted to hire a professor that “looked Black.”<sup>142</sup> Dean Henderson, who became close friends with Professor Gould, noted: “Bill had a little different problem, because I think the word had to get out that he was, in fact, black, because visually it wasn’t that clear. I think some of the students weren’t quite sure what that meant, but very, very quickly, they knew that Bill was the real deal.”<sup>143</sup>

On one occasion, at a meeting with the Board of Visitors that Professor Gould and some other faculty attended, a law school alum began to discuss the “superiority of the Indo-European people” and “opined emphatically that he felt Blacks were an inferior race” over dinner.<sup>144</sup> Gould “went out after him,” and the two men had a “very emotional back and forth confrontation.”<sup>145</sup> Dean Ehrlich championed Gould’s position and declared that “he wouldn’t tolerate” such racist views.<sup>146</sup> Ehrlich called a meeting of the faculty where he made a public statement reprimanding the discriminatory remarks.<sup>147</sup>

At other times, it was fellow faculty members who were hostile. Professor William Cohen, who had chaired the special committee overseeing Henderson’s

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<sup>139</sup> Gould, phone call to author, April 20, 2023.

<sup>140</sup> Gould, phone call to author, April 20, 2023. Stanford hired its first Latino professor, Miguel Mendez, in 1977. Professor Mendez came to Stanford following a public interest litigation career as a public defender in Monterey County, deputy director of California Rural Legal Assistance Inc., and staff attorney for the Mexican American Legal Defense and Educational Fund. He played a crucial role as a trailblazer of clinical legal education, which began at Stanford in the 1970s (cf. note 48). He was well known as a leading authority on both the federal and California rules of evidence. After retiring in 2009, Professor Mendez joined the law faculty at the University of California, Davis, School of Law. He continued to serve as the Adelbert H. Sweet Professor of Law, emeritus, at Stanford until his death in May 2017.

<sup>141</sup> Gould, phone call to author, April 20, 2023. Bob Johnston, Ed Firestone, Pete Shapiro, and Jim Tune, “William Gould: A Labor Lawyer, A Black, A Boston Red Sox Fan,” *Stanford Law School Journal* 3, no. 7 (1972): 5.

<sup>142</sup> Gould, phone call to author, April 20, 2023.

<sup>143</sup> Henderson, Stanford Historical Society Oral History Program.

<sup>144</sup> Henderson, Stanford Historical Society Oral History Program. Gould, phone call to author, April 20, 2023. Professor Gould recalls the dinner occurring in 1973 or 1974.

<sup>145</sup> Gould, Stanford Historical Society Oral History Program. Gould, phone call to author, April 20, 2023.

<sup>146</sup> Gould, phone call to author, April 20, 2023.

<sup>147</sup> Gould, Stanford Historical Society Oral History Program.

admissions decisions, commented to Professor Gould that the administration “got [him] from a very special list.”<sup>148</sup> Other law professors “approached [Gould’s] appointment begrudgingly,” or “had backward views” in his opinion. For example, Gould remembers Charlie Meyers, whom he considered to be an antagonistic, right-wing Texan, as “backsliding in [his] attitudes about desegregation of the law school.”<sup>149</sup> And in some situations, Gould “felt [his] views were not taken into account as much as other professors would,” such as when he wanted to invite a South African graduate student to attend the law school.<sup>150</sup> It wasn’t until Gould had written letters to the *New York Times*, the diocese, and others that the student was admitted.<sup>151</sup>

And yet, Gould also had many positive experiences at Stanford. He enjoyed access to the school’s vast resources, especially the law library; he had many more opportunities to research his ideas on labor and civil rights issues, rather than being called from crisis to crisis; he taught the school’s first employment discrimination seminar to enthusiastic students; and he was able to pursue “pure litigation” and appellate work on a pro bono basis, funded by the American Civil Liberties Union of New York City, among others.<sup>152</sup> Gould advocated for the administration to hire more diverse faculty members, and asserted that “[i]n order for most faculties to have black law professors, they are going to have to go out looking for them.”<sup>153</sup> Unfortunately, according to Gould, his proposal to revise—not lower—the hiring standards was met with an “unenthusiastic” response.<sup>154</sup>

Professor Gould’s appointment as a fully tenured professor was warranted by his many achievements in practice and his record as a brilliant educator. But even more than that, Gould had what Stephen Carter calls “the right

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<sup>148</sup> Gould, Stanford Historical Society Oral History Program. This was perhaps the same list Ehrlich took to the Committee on Minority Affairs in May 1971.

<sup>149</sup> Gould, phone call to author, April 20, 2023. Meyers would eventually become dean (see below).

<sup>150</sup> Gould, phone call to author, April 20, 2023.

<sup>151</sup> Gould, phone call to author, April 20, 2023. This experience did push the administration to create a formal graduate program.

<sup>152</sup> Gould, phone call to author, April 20, 2023.

<sup>153</sup> Johnston et al., “William Gould,” 5.

<sup>154</sup> Gould, phone call to author, April 20, 2023. Gould, Stanford Historical Society Oral History Program. Professor Gould had a long and distinguished global career as an academic and labor rights lawyer. A prolific scholar of labor and discrimination law, he is the critically acclaimed author of eleven books and more than sixty law review articles, as well as the recipient of five honorary doctorates. He has served as Secretary of the Labor and Employment Law Section of the American Bar Association, Chairman of the National Labor Rights Board during the Clinton administration, Chairman of the California Agricultural Labor Relations Board, and most recently as Independent Reviewer on Equal Employment Opportunity for the mayor of San Francisco. Professor Gould has been a member of the National Academy of Arbitrators since 1970. He has arbitrated and mediated hundreds of labor disputes and continues to do so as of this writing. He is currently the Charles A. Beardsley Professor of Law, emeritus, at Stanford Law School and a dear mentor to the author.



paper record.” In his memoir, Carter reflected: “One might have thought, and I suppose I thought it myself, that someone with my credentials would have no trouble landing a teaching job. But what people told me was that any school would be happy to have a black professor with my credentials.”<sup>155</sup> Stanford, like many of its fellow law schools, was under immense pressure to diversify not only its student body but also its faculty. Nevertheless, the unwillingness of Gould’s colleagues to reevaluate the criteria for faculty hiring clearly revealed their reluctance to fully commit to an increase in minority law professors.

Despite the dispassionate attitudes at the law school, the presence of minority professors and students continued to grow across the campus. In January 1973, a minority faculty report noted that “women and ethnic groups have accounted for more than a third of Stanford’s new appointments to professorial rank.”<sup>156</sup> Out of ninety appointments, nine Black professors joined the faculty, including one Black woman, bringing the total number of Black faculty to twenty (with four tenured).<sup>157</sup> Another report, sent to the Faculty’s Senate Academic Council that October, commented:

While these numbers represent no dramatic advance in the representation of blacks on our faculty, they should be viewed in the context of a representation of less than one percent by blacks in our national PhD pool. The numbers do make me believe that we can anticipate a steady flow of blacks to our faculty, with an acceleration when the large increase in black undergraduate and graduate students leads to a significant increase in the number of black PhDs.<sup>158</sup>

A new subcommittee was established at the law school in the fall of 1973 with orders to create a similar report for the law faculty on minority admissions. The subcommittee’s report advocated for a “preferential admissions program” to “further the legitimate and desirable aim of ameliorating the inequality of legal representation” and “educationally enrich” the law school.<sup>159</sup> Six more years would pass before the faculty eventually rejected this proposal.

At the law school, a minority scholarship fund had been established in the same year that Professor Gould was hired, 1972. The fund honored Carl

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<sup>155</sup> Stephen L. Carter, *Reflections of an Affirmative Action Baby* (New York: Basic Books, 1992), 58–59.

<sup>156</sup> Unlabeled news release, January 26, 1973, SC0193, box 27, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

<sup>157</sup> Unlabeled news release, January 26, 1973. Report to the Senate of the Academic Council on Faculty Affirmative Action, October 2, 1973, SC0193, box 39, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.

<sup>158</sup> Report to the Senate of the Academic Council on Faculty Affirmative Action, October 2, 1973, Academic Council Records.

<sup>159</sup> Report from Law School Minority Admissions Subcommittee to Faculty, Fall 1973, SC0193, box 39, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.

Spaeth, who had been dean of the law school from 1946 until 1962.<sup>160</sup> The project was spearheaded by two alumni, Victor Palmieri and Miles Rubin, who (again) made a generous donation of \$225,000 to establish the fund.<sup>161</sup> The money was to be allocated as a grant on the basis of need, with a preference for minority students.<sup>162</sup> Despite the issuance of several grants to students in its founding years, the fund continued to grow through pledges and contributions; by the summer of 1974, its coffers had increased by \$30,000.<sup>163</sup> In a sponsorship booklet (presumably meant for potential donors), Dean Ehrlich wrote that the fund “has been vital to Stanford’s ability to attract qualified students for careers in law. . . Without such funds, most qualified minority applicants cannot attend Stanford Law School. The School is eager to provide the best legal education to all qualified minority students.”<sup>164</sup> Ehrlich went on to declare: “Now that the initial barrier of attracting applicants has been overcome, there is no shortage of qualified minority applicants.”

### **The Late 1970s: Minority Enrollment Decline and LaDoris Cordell**

Regardless of the growth in funding at Stanford, minority enrollment at the law school began to decline. The decline was accompanied by a change in administration in 1976, with Henderson leaving (after a year of only half-time duties) and Charlie Meyers succeeding Ehrlich as dean.<sup>165</sup> At the same time, “[s]harp cutbacks in federal funding” contributed to a nationwide decrease in enrollment of minority students.<sup>166</sup> In a vicious cycle, lower numbers of minorities at the law school led fewer students to apply and if admitted, enroll at Stanford.<sup>167</sup>

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<sup>160</sup> Spaeth Memorial Scholarship Fund Booklet, n.d., Crown Library Special Collections, Stanford University. “Spaeth Fund to Benefit Minorities,” *Stanford Law School Journal* 2, no. 15 (1972): 3.

<sup>161</sup> “Spaeth Fund to Benefit Minorities,” 3. Palmieri and Rubin were the same two alumni who had given a large sum to support Henderson’s recruiting efforts.

<sup>162</sup> Spaeth Memorial Scholarship Fund Booklet, 3.

<sup>163</sup> Spaeth Memorial Scholarship Fund Booklet. The fundraising effort for the Spaeth Fund paled in comparison to the money raised for the construction of the new law school buildings, which totaled \$11,900,000. “Crown Quadrangle,” *Stanford Lawyer* 10, no. 2 (Fall 1975).

<sup>164</sup> Spaeth Memorial Scholarship Fund Booklet.

<sup>165</sup> Henderson, Stanford Historical Society Oral History Program. Ehrlich, Stanford Historical Society Oral History Program. Judge Henderson went on to be the first black attorney in the Civil Rights Division of the U.S. Department of Justice and has served as a federal judge in the Northern District of California since 1980. During his time on the bench, he blocked enforcement of Proposition 209, although his decision was later overturned by the Ninth Circuit. Proposition 209 instituted a ban on discrimination or preferential treatment on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting, which remains in effect today and governs, among other things, admissions policies at public institutions in California, like U.C. Berkeley (Henderson’s alma mater).

<sup>166</sup> Report to the Senate of the Academic Council on Faculty Affirmative Action, October 2, 1973, Academic Council Records.

<sup>167</sup> Bob Laursen, “Women, Minorities Continue to Decline,” *Stanford Law School Journal* 8, no. 2 (1977): 1.

The Manning plan was still the law school's primary minority admissions policy, although by this time the minimum PGPA was calculated by averaging the five lowest nonminority LSAT scores and GPAs from the previous year.<sup>168</sup> Any minority candidate within fifty points of this minimum PGPA was "substantially automatically" accepted.<sup>169</sup> The fifty-point margin was meant to compensate for the LSAT's "cultural bias," and students outside of this range could still be considered under "exceptional circumstances."<sup>170</sup>

Although Henderson was still technically in charge of the minority admissions program until his departure, the special committee (previously assigned to oversee Henderson's decisions) had assigned Assistant Dean William Keogh and Professor William Baxter to approve any candidate Henderson admitted.<sup>171</sup> And Baxter and Keogh were giving "concurrence less and less" to students outside of the requisite point spread.<sup>172</sup> This growing reluctance had a significant impact, considering that only half of the minority students admitted were within the "substantially automatic" range.<sup>173</sup> Any applications outside of this range were placed on hold until every other application had been reviewed; thus, admittances from this group were typically sent out late, with the unfortunate result that they reached the candidates after they had accepted offers at other schools.<sup>174</sup> Keogh remarked that he would approve only the "best intellectually-equipped minority" students, and Baxter admitted that he was not "looking for particular kinds of students except insofar as they have particular kinds of numbers."<sup>175</sup>

Henderson still felt that the law school was "headed in the right direction, but it's slow as hell" and that "Stanford [was] very good about minority admission in comparison to other schools."<sup>176</sup> Henderson continued to devise plans for increased recruitment, including personalized letters to admitted students written by members of BLSA.<sup>177</sup> However, students felt the extra responsibility of recruiting would only put them at a further disadvantage, and

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<sup>168</sup> Stephen Samuels, "Minority Admissions Faces Questions," *Stanford Law School Journal* 6, no. 10 (1976): 4.

<sup>169</sup> Samuels, "Minority Admissions Faces Questions," 4.

<sup>170</sup> Samuels, "Minority Admissions Faces Questions," 4.

<sup>171</sup> Samuels, "Minority Admissions Faces Questions," 4.

<sup>172</sup> Samuels, "Minority Admissions Faces Questions," 4.

<sup>173</sup> Samuels, "Minority Admissions Faces Questions," 4.

<sup>174</sup> Jan Chichester and John Lewis, "Minority Admissions Under Fire," *Stanford Law School Journal* 7, no. 5 (1976): 1.

<sup>175</sup> Samuels, "Minority Admissions Faces Questions," 4.

<sup>176</sup> Samuels, "Minority Admissions Faces Questions," 4. Yale enrolled 23 minority students in a class of 170; Harvard enrolled 64 among a class of 546.

<sup>177</sup> Samuels, "Minority Admissions Faces Questions," 4.

petitioned the administration to hire a full-time recruiter.<sup>178</sup>

The number of minority students at the law school continued to drop after 1974: enrollment fell from twenty-eight students in 1974, to twenty in 1975, to fifteen in 1976, to thirteen in 1977 (18 percent, 12 percent, 8 percent, and 7 percent of the student body, respectively).<sup>179</sup> The percentage of minority admits who chose to accept offers of admission declined as well; while the figure was relatively high at 45 percent in 1975, it dropped to 37 percent in 1976 and fell again to 22 percent in 1977.<sup>180</sup> While Henderson believed this drop was at least partially due to a declining interest in the study of law, he admitted that it could also be attributed to “less initiative on his part.”<sup>181</sup>

After Henderson’s departure, Professor Baxter became the sole member of the law school’s admissions committee in 1977, and “was essentially responsible for the selection of the class of 1980,” which certainly played a role in the abysmal minority admission and enrollment rates.<sup>182</sup> In response, Dean Meyers issued a statement in which he declared that he was “concerned about the number of minority persons—Blacks, Chicanos, and Native Americans—who enrolled in the first-year class in September 1976”; but he also said that there was a lack of “qualified applicants” and the number of admitted students had already reached the necessary “critical mass.”<sup>183</sup> Meyers justified the administration’s decision not to hire a replacement for Henderson because, in his view, “it would be irresponsible to appoint a full-time administrator of such a program. It would be unfair to the person appointed and it would be an unwise use of resources to make such an appointment while the decision in *Bakke* is pending.”<sup>184</sup>

That was a reference to *Regents of the University of California v. Bakke*, 438 U.S. 265, ultimately decided by the U.S. Supreme Court in 1978. The *Bakke* decision was on the mind of the law faculty as well. Paul Brest, still a professor at the time, wrote an article in which he postulated that the use of “nonracial admissions standards” may be preferable to avoid the “dirty business” of racial inquiries and “blunt the psychological impact of being rejected—or

<sup>178</sup> Jan Chichester and John Lewis, “Minority Admissions Under Fire,” 1. This demand was never met.

<sup>179</sup> Samuels, “Minority Admissions Faces Questions,” 4. Chichester and Lewis, “Minority Admissions Under Fire,” 1. Laurenson, “Women, Minorities Continue to Decline,” 1. “The Class of 1978: A Statistical Profile,” *Stanford Lawyer* 10, no. 2 (Fall 1975). The class of 1978 was the largest entering class in the last five years, yet minority enrollment continued to decline.

<sup>180</sup> Laurenson, “Women, Minorities Continue to Decline,” 1.

<sup>181</sup> Samuels, “Minority Admissions Faces Questions,” 4.

<sup>182</sup> Laurenson, “Women, Minorities Continue to Decline,” 1.

<sup>183</sup> Chichester and Lewis, “Minority Admissions Under Fire,” 1.

<sup>184</sup> Chichester and Lewis, “Minority Admissions Under Fire,” 1.

accepted—under a racial criterion.”<sup>185</sup> Yet, Brest expressed doubt that any substantial minority enrollment would occur under such standards. He wrote:

Why should a minority’s claims to compensation for past discrimination be preferred to the claims of other persons—many of them white—whose present position results from past economic exploitation and other social injustices? . . . If preferential treatment based on race is not required, or is even disfavored, by principles of justice, should an institution nonetheless retain a preferential program to avoid erroneous perceptions of injustice and their harmful consequences? These difficult questions of policy and justice are as much the concern of Stanford as they are of the University of California.<sup>186</sup>

By 1978, Meyers had acquiesced to the demand for Henderson’s replacement, and LaDoris Cordell—still a fairly recent graduate—was selected to fill the position.<sup>187</sup> After graduating from Stanford Law in 1974, Cordell had become the first person outside of the South to be awarded an Earl Warren Fellowship by the NAACP Legal Defense Fund, which granted her the funds to start her own practice.<sup>188</sup> Cordell used the money to start the first private legal practice in East Palo Alto, at the time a predominantly Black and Hispanic community.<sup>189</sup> Much like Henderson, Cordell shifted from East Palo Alto to campus after being appointed assistant dean; however, Cordell successfully maintained her private practice throughout her four-year tenure at Stanford.<sup>190</sup>

Yet, in some ways Cordell found herself in more difficult circumstances than Henderson had been. On the one hand, she had the benefit of the strong foundation laid by Henderson in the early to mid-1970s. On the other hand, Henderson had operated with the support of several faculty members and a great deal of latitude from the dean. Cordell, on the other hand, faced the challenge of working with Meyers, as well as Baxter and later Cohen, some of the most conservative members of the faculty at the time.<sup>191</sup> Nonetheless, Cordell successfully revived minority admissions and established Stanford Law as national leader in the enrollment of Black students.<sup>192</sup> She brought a fresh set of skills and a great deal of tenacity to the job, succeeding even in this precarious context.

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<sup>185</sup> Paul Brest, “Preferential Admissions After *Bakke*,” *Stanford Lawyer* 12, no. 1 (Spring 1977): 2–4. Brest wrote this article before the case reached the United States Supreme Court.

<sup>186</sup> Brest, “Preferential Admissions After *Bakke*,” 2–4.

<sup>187</sup> LaDoris Cordell, interview with author, March 8, 2024.

<sup>188</sup> Cordell interview, March 8, 2024.

<sup>189</sup> Cordell interview, March 8, 2024.

<sup>190</sup> Cordell interview, March 8, 2024.

<sup>191</sup> Adrien Wing, interview with author, January 11, 2024.

<sup>192</sup> Cordell interview, March 8, 2024.

In March 1979, Professor William Cohen took over as the “one man show” in admission.<sup>193</sup> Brest proposed to Cohen that he aimed to diversify the student body by adjusting the admissions standards, and Cohen agreed to do so—albeit only for a single year. As a result, the admission of minorities increased by 55 percent, with thirty-one students enrolled in the following year,<sup>194</sup> largely due to Cordell’s increased recruiting efforts. She recruited even more widely than Henderson had, traveling to historically Black colleges and universities in addition to the University of California system and the Ivy League schools.<sup>195</sup> In the fall of 1979, Cohen stepped down as the chair of admissions after “taking much heat,” and was replaced by Professor Jack Friedenthal.<sup>196</sup> Friedenthal supported increased diversity at the law school and was open to changes in the admissions formula:

I do feel strongly that we must maintain very high academic standards. But at the same time, within the broad range of good people out there who clearly qualify, there is flexibility. There is room for flexibility for trying to get a balance, an interesting group of people, based on what they have done and who they are and where they come from. That includes of course minorities. It’s certainly not the only criterion. I do believe in the critical mass theory. For recognized minority groups I think it is helpful to them to have enough people here so that they feel they have their own community available. I think it makes people more comfortable.<sup>197</sup>

At the same time, an ad hoc committee on admissions policy was formed, comprised of Professors Paul Goldstein, William Baxter, Gerald Gunther, Brest, Friedenthal, and Gould. The committee met several times over the summer and interviewed students and organizations at Stanford as well as other law schools.<sup>198</sup> The committee recommended that the law school formally adopt an admissions policy evaluating students for diversity and not aptitude.<sup>199</sup> But when faculty took a vote in November 1979, they did not adopt the committee’s recommendation, favoring the continuation of the Manning plan.<sup>200</sup> The vote was justified based on concerns that the program would not be meritocratic

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<sup>193</sup> Julie Saulnier, “Committee Changes Admissions Policy,” *Stanford Law School Journal* 9, no. 6 (1979): 1.

<sup>194</sup> Saulnier, “Committee Changes Admissions Policy,” 1. Geoffrey L. Bryan, “Minority Enrollment Increases by Half,” *Stanford Law School Journal* 10, no. 1 (1979): 1. Cohen initially opposed the lower standard, “citing fear that minorities would form an identifiable bottom layer.”

<sup>195</sup> Cordell interview, March 8, 2024.

<sup>196</sup> Bryan, “Minority Enrollment Increases by Half,” 1.

<sup>197</sup> Bryan, “Minority Enrollment Increases by Half,” 1.

<sup>198</sup> Bryan, “Minority Enrollment Increases by Half,” 1.

<sup>199</sup> Bryan, “Minority Enrollment Increases by Half,” 1.

<sup>200</sup> Janice Rhodes, “Faculty Rejects Admission Plan,” *Stanford Law School Journal* 10, no. 2 (1979): 1.

and its implementation would generate costs (especially in terms of the faculty's time).<sup>201</sup> Professor Baxter was the sole dissenter on the committee, and voted with the majority of the faculty based on similar considerations: "Thinking about diversity is not a change . . . The difference in this report is what we'd be willing to pay for diversity—even sacrificing intellectual horsepower."<sup>202</sup>

The faculty's vote revealed tacit assumptions about their "meritocratic" system. The Manning plan was understood as a fair and neutral method of determining which students deserved admission to Stanford. Scholars then and now have questioned whether a test, like the LSAT or a law school exam, is even capable of measuring "functional merit," or the ability to do the work of a lawyer.<sup>203</sup> Yet, the faculty feared that abandoning the Manning plan would allow students to "cheat the meritocratic system," a criticism the late Lani Guinier criticized as problematic and circular: "It blames the canaries for the poisonous air in the defective mine we have built. In the defective, poisonous mine that is our current meritocracy, 'merit' is defined by a set of characteristics that primarily mirror wealth. And affirmative action adapts to and operates within this meritocracy without disturbing its fundamental assumptions."<sup>204</sup> Henderson also recognized this issue as early as 1970. He believed that "while law schools generally didn't set out to discriminate against minorities, using the same criteria for judging minority and non-minority applications—especially the heavy emphasis on the LSAT—produced the same result."<sup>205</sup>

The late seventies were, in many ways, a troubling time for Black students at Stanford Law. The appointment of Dean Meyers and the power granted to Professor Baxter and Assistant Dean Keogh resulted in an initial sharp decline in the enrollment of minority students. The shift to a single-member admissions team, combined with the persistence of the Manning plan, resulted in a self-perpetuating cycle of decreasing diversity. Meyers's refusal to hire a full-time recruiter in the year after Henderson's departure also revealed a continuing reliance on student labor and an unwillingness to provide the necessary support

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<sup>201</sup> Rhodes, "Faculty Rejects Admission Plan," 1.

<sup>202</sup> Rhodes, "Faculty Rejects Admission Plan," 1. Baxter was not a supporter of affirmative action programs.

<sup>203</sup> Guinier, *The Tyranny of the Meritocracy*, 39.

<sup>204</sup> Guinier, *The Tyranny of the Meritocracy*, 39–40. Ironically, Guinier herself came from an elite family. Lawrence Graham explains: "Guinier is one of those Brooklyn names that are heard at gatherings of socialites, businesspeople, educators, and old families." Guinier's mother, Doris, had "all the right credentials. . . but her credentials are Brooklyn ones—not Harlem ones. . . She was on the board of directors of the Y, she went to all the right schools, belonged to the right church, married the right husband, summered in the right place. She even had the right relatives." Her father attended Harvard (as its only Black student at the time) and later taught at both Harvard and Columbia. Lawrence O. Graham, *Our Kind of People: Inside America's Black Upper Class* (New York: Harper, 1999), 265–66. Guinier became the first woman of color to be tenured at Harvard Law School and remained on the faculty there until her death in 2021. Her son, Nikolas Bowie, is the Louis D. Brandeis Professor of Law at Harvard.

<sup>205</sup> Johnston, "Minority Admissions," 1.

for diversity to flourish. Instead, the administration relied on its familiar excuses: lack of applicants, lack of funding, and Stanford's apparent superiority over other elite schools in affirmative action progress. The *Bakke* decision became a new rationalization for the stagnation of minority enrollment. Brest's rumination about the utility of a preferential program "to avoid erroneous perceptions of injustice and their harmful consequences" echoed the underlying message of the minority hiring plan left blank in 1970; both were proclamations merely intended to preserve the image and reputation of the institution, rather than functionally and practically improving the lives of its Black students. Indeed, if it were not for the work of LaDoris Cordell during these years, the presence of a Black community at Stanford Law would have been at best insignificant and at worst nonexistent. Her tireless efforts to recruit and support Black students, much like Henderson had before her, were instrumental during this difficult time and ensured that minority enrollment not only continued but flourished.<sup>206</sup>

### **Black Women on the Faculty: The Long Road to Diversity at Stanford**

The efforts made throughout the 1970s to desegregate Stanford Law School represented significant progress toward a more diverse student body and faculty; yet, the inclusion of Black women on the faculty was particularly delayed. Twenty-five years after Sallyanne Payton started at the law school, Stanford appointed a Black woman to its permanent faculty for the first time: Kim Taylor Thompson was the first woman of color to be appointed to a tenure-track position at the law school in 1991.<sup>207</sup> Two years later, Professor Taylor Thompson was joined by Linda Maybry.<sup>208</sup>

In October of 1998, Professor Tom Heller and Paul Brest (dean at the time) asked Maybry to meet with Coca-Cola representatives to secure a grant for a program in international business law, Maybry's specialty.<sup>209</sup> Yet when the grant was secured, not only was Maybry not asked to be a part of the program, she wasn't even notified the grant had been awarded.<sup>210</sup> At the next faculty

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<sup>206</sup> In 1982, Cordell became the first Black woman to serve as a judge in Northern California. She spent nineteen years on the bench, and later served on the Palo Alto City Council following a grassroots campaign that accepted no monetary donations. She has long played an important role in local politics and has spent much of her career making real changes for the people in her community. She is a talented artist, musician, and cartoonist.

<sup>207</sup> Kim A. Taylor Thompson, interview with Mary Murphy (Pembroke Center Archivist), Brown University, September 21, 2018. Professor Taylor Thompson's appointment came at the same time as the Anita Hill hearings and Clarence Thomas's nomination to the Supreme Court. She later reminisced: "It's funny, I'm now remembering that Anita had called me during the summer and was saying, you know, 'Are you ready? Are you feeling ready for teaching?' Because she was teaching then. And I said, 'Yeah I think so.' And she said, 'You know, I just really am envious of you beginning this thing that's new.'"

<sup>208</sup> Linda Maybry, *Falling Up to Grace: A Memoir* (Palo Alto, CA: Faultline Press, 2012), 66. Taylor Thompson left Stanford shortly after Maybry's arrival. She is currently an emerita professor at New York University School of Law.

<sup>209</sup> Maybry, *Falling Up to Grace*, 85–88.

<sup>210</sup> Maybry, *Falling Up to Grace*, 88.



meeting, Maybry gave the following statement:

I want this faculty to think about the history of faculty of color at the law school and what it says about how we have been treated—how we have been marginalized, excluded and demeaned. How we have been invisible. You know, it takes 250% of who we are to do this job well—and we don't all do it well. You can't ask someone to give that much and then treat them this way. Some of you have told me that what happened to me had nothing to do with my race or my gender—that some white men also have been marginalized and excluded. My position is that this should not happen to anyone on faculty. But it does. And it happens consistently to people of color. And when it happens to those of who are hanging on at margins by the skin of our teeth, the consequences are devastating.<sup>211</sup>

Maybry resigned two months later. Her resignation was followed by student protests and press interest.<sup>212</sup>

Another three decades would pass before a Black woman would actually obtain tenure. In 2023, Professor Rabia Belt became the first Black woman to receive tenure as a law professor at Stanford. That such a development did not occur until now, fifty-five years after the law school's first promises of diversity, is both startling and concerning. And yet, it also inspires hope that as the world continues to evolve, so too will Stanford Law School.

I must acknowledge that the conclusion of this article is abrupt. Indeed, there is much more to be said about each of these women and the intervening years for which this article does not allow adequate space. In mentioning their stories, I intend to expose the gaps in both historical coverage and the deeper experiences of these women (in addition to others not included here). There is much more to explore about the journeys of Black students, as well as other minority students—at the law school, on the broader campus, and at other law schools across the country. These gaps merit further attention, and I look forward to expanding on the narratives introduced here (and those yet to be discovered) as this research progresses.




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<sup>211</sup> Maybry, *Falling Up to Grace*, 89.

<sup>212</sup> Michael Moline, "Stanford Students Protest Professor's Departure—Officials Decline to Comment on the Resignation of Lone Black Woman," *Stanford Daily* (1999). Professor Maybry would later join a class-action complaint against Stanford for alleged discrimination, but the suit remained unresolved upon her death in 2007.