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LECTURE

DIVERSITY AND LEGAL EDUCATION*

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Thank you for inviting me to participate in this distinguished lecture series. And thank you, Jim White, for your remarkable service to the American Bar Association. As most of you know, Jim was a consultant to the ABA Section of Legal Education and Admissions to the Bar for twenty-six years. As you might imagine, a lot has happened in legal education during that time; in fact, we at the ABA credit Jim with being instrumental to many of the things that make legal education what it is today. Your service to the profession has been invaluable.

I wanted to talk today about some issues that are close to my heart, dealing with the legal profession and where we are today.

First, I must begin by saying how very elated I was when the Supreme Court this summer decided in favor of the University of Michigan Law School's admissions policy. It was a great statement from the Court, and one which I believe speaks to who we are as a country. I also believe it has profound implications for legal education and the future of the profession.

Without question, the American Bar Association applauds the upholding of Michigan Law School's flexible affirmative action approach that ensures the effective participation by all segments of society.

The ABA had filed an amicus brief in the Michigan case. In fact, some sixty-eight corporations, including some of the largest in the nation—General Motors, Microsoft, Nike—filed supportive briefs. The four military academies filed amicii as well, stating that diversity is essential to the nation's officer corps. Retired military officers filed a brief. Twenty-two states filed—more than 100 universities—psychologists—labor unions—civil rights groups. One brief, supporting the university, was filed by nearly 14,000 law students.

As I said, the decision was momentous—and not only for the legal profession, which of course is the immediate stakeholder, but for the future of affirmative action in this country. It is the first time the high Court has taken up the question of the constitutionality of affirmative action as a factor in higher education admissions decisions since the Bakke decision twenty-five years ago.

We at the ABA feel strongly that race can and *should* be taken into consideration in law school admissions. We *strongly* believe that the full participation of all racial and ethnic groups in the legal profession is a compelling

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state interest. It preserves the legitimacy of our legal system and safeguards the integrity of our democratic government. We are not alone in our beliefs. As I said, more than 100 briefs were filed in the case—most of which agreed with us.

I was there on April 1 when the cases were heard. I was not alone there either. The courtroom was packed. It was impossible to get a seat. Thousands of students, civil rights leaders, and others were outside. The lawyers' lounge was filled to overflow; more than 100 reporters were in the gallery.

The ABA's position is that law schools should demonstrate "commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups, notably ethnic and racial minorities, which have been victims of discrimination in various forms." That quote is from our Standards for Approval of Law Schools. In her opinion in the Michigan case, Justice O'Connor wrote, "Effective participation by members of all racial and ethnic groups in the civic life of our nation is essential if the dream of one nation, indivisible, is to be realized."

She also wrote that she expected that "racial preferences will no longer be necessary in 25 years." In August, at our annual meeting in San Francisco, we did a poll to see what the American people thought on that question. In fact, 70% agreed with the Madame Justice, saying they do not believe that, twenty-five years from now, we should need to take race into account in university admissions in order to achieve diversity in higher education. I think they are right.

Part of the *reason* they are right is the changing demographics of this country. Over two decades ago, social scientists and demographers began writing about the "browning of America;" the fact that the majority population in the United States in the year 2056 will be people of color. It follows that more law students, and more lawyers, will be from minority populations. Admissions policies will change as race becomes less and less a factor in our everyday lives.

But admissions decisions are only part of the equation that determines who can attend law school, and who cannot. Another factor that is becoming more and more crucial every year is cost. In the short span from 1992 to 2002, tuition cost for law students in public schools has risen 134% for residents and 100% for non-residents. For those students in private schools, the cost has gone up by 76%. As of the 1999-2000 academic year, fully 87% of law students had to borrow to finance their education.

And these students are taking on enormous debt burden. The ABA estimates that the median amount borrowed by 2002 private law school graduates was \$70,147. A private lender estimated the median law school debt for 2001 graduates even higher—\$84,400.

That clearly is an onerous burden for any law student. But a survey in my own state of Michigan reported in 2000 documented that the burden of debt falls even more heavily on Hispanic and African American students than on Caucasians. Caucasian law school graduates in Michigan were graduating with a median total debt of just under \$50,000. African American graduates in Michigan faced a debt load of \$60,000, while Hispanics finished law school with \$62,000 in loans to repay. That stands to reason, because Black and Hispanic students are twice as likely as others in law school to come from the lowest

socioeconomic groups.

Anecdotally, we at the ABA are seeing the results of this in the applicants for our legal education opportunity scholarship program. Among those applicants, from the time the program started under my predecessor, Bill Paul, loans have always been a part of the financial package. But now, loans represent a higher proportion of their financing, and for many of the applicants, it is nearly all.

Assuming the very best for these students, their career choices will be limited by their debt. They will only be able to consider positions in corporate service law firms paying the highest available salaries—and that assumes those firms will have jobs for them. That means that fewer lawyers of color will be able to return to their communities where they can succeed serving middle-class Americans, and serving as role models for children of color to aspire to practice law.

Assuming the worst, we are, by allowing law student debt to continue to grow, pushing students from every demographic to the brink of bankruptcy, and in some cases, over the edge. To the extent law student debt impacts students of color more heavily than white students, we are pushing students of color into bankruptcy after they have overcome unbelievable challenges just to get into and complete law school.

But realistically, not all of them will find jobs paying sufficient amounts to service their debt. We face the spectre of defaults on student loans and possible bankruptcies for these newly minted lawyers standing at the brink of their careers in law, in a profession that desperately needs them.

And make no mistake about it—the legal profession does need more lawyers of color.

Any profession that intends to do business in this century must reflect racial and ethnic diversity. The client base, both domestically and in world markets, demands it.

Corporate America has come to understand this much more quickly than many of us in the legal profession. Corporations have developed vendor and employee affirmative action programs and changed the content of their advertising to appeal to broader audiences and constituencies. They know that their bottom line will be affected, if they do not reach out to reflect the ever-changing consumer demographic.

The American Bar Association estimates that there are about 1,050,000 lawyers in the United States. (Fortunately, not all of them practice.) Presently, over 89% of the legal profession and 80% of enrolled law school students are white. Lawyers of color represent only just over 10% of the profession. They include over 19% of recent graduates, but not quite 4% of partners in the nation's major law firms. While there has been improvement in the numbers of lawyers of color since the 1990s, they remain woefully under-represented in the legal profession. Clearly, we have failed to promote diversity throughout our profession.

We need more lawyers of color. We need them on our courts in all jurisdictions. We need more judicial law clerks for judges and justices. This is very important. For recent law school graduates, serving as a judicial law clerk can significantly advance their career opportunities. Former law clerks generally

have an advantage when pursuing careers in academia, in government as high level appointees, as litigators in prestigious areas of the private sector, and in securing appointments to the bench. Without fair access to judicial clerkships, both law schools and their graduates lose opportunities.

I want to express my appreciation for the work of the ABA Minority Judicial Clerkship program, led by one of your very own—Indiana Supreme Court Justice Frank Sullivan. Thanks to his great work, and that of the members of the ABA Judicial Division and ABA Commission on Racial and Ethnic Diversity, more law students of color have the opportunity to work and build relationships with judges.

We need more aggressive minority recruiting in law schools, and then we need to address the reasons why 10% of those minority students who are accepted into law school never matriculate, and 20% of those who actually do enroll drop out without finishing. We need to address issues like increasing faculty diversity, so that minority students do not feel isolated, and so that law school culture fosters understanding and experiences that promote growth for everyone. We can't afford to lose the broad range of talent, perspective and experience that people of diverse backgrounds can bring to our profession.

The ABA pledges to continue working with law schools across this nation to help them sustain and increase diverse law school enrollment in compliance with the University of Michigan ruling.

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As you may know, I am the 127th President of the American Bar Association—and the first president of color. You may also know that the association did not admit people like me until 1943. Our association missed out on the great contributions we might have had from some of the legal scholars of an entire generation: William Hastie, Leon Higgenbotham, Charles Hamilton Houston, Damon Keith, Justice Thurgood Marshall and others. And we missed out on the contributions of committed and dedicated and creative people who never had the opportunity to become lawyers. I think about how far ahead we would be now, if they could have been involved in the great debates that took place at the ABA. They would have contributed—and moved forward—our dialogue on race relations.

But this is a new day.

Coming right behind me is another president of color, Robert Grey, Jr. Together we make a major statement about the American Bar Association's commitment to serve the public good, to help improve the administration of justice, and to provide access and opportunities to those members of our society who are or have been denied an equal opportunity to compete.

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I wanted to mention a few things that I am focusing on during my year as president of the ABA. Last week, I hosted a conference in Washington, D.C. to look at increasing diversity in the profession. We had top-level speakers who

addressed issues of establishing a pipeline for lawyers of color. Educators talked about how to interest more students of color in the law; how to get to kids in elementary and high school, to let them know what's great about being a lawyer. We also focused on what happens after law school; how do we open the pipeline for lawyers of color to get into good firms, corporate counsel positions, law school deanships and other areas. We talked about opening doors and mentoring for lawyers of color at all levels.

I have appointed an ABA Commission chaired by Harvard Professor Charles Ogletree, Jr. to focus on the fiftieth anniversary of *Brown v. Board of Education*. The Commission is reviewing the current state of *Brown's* goals and its effect on civil rights; it will also honor the heroes of this historic decision. Our Public Education Division is working with high schools across the country, to create dialogues on *Brown v. Board* so that young people can learn about what the decision means, and how it is at work today.

I will be holding a summit in May to look at the advancement of women, and women of color, into the top ranks of organizations and law firms. We will discuss how to get beyond the glass ceiling, and the work that needs to continue so that women reach the highest levels of the legal and other professions.

As the world's largest professional organization, representing the nation's lawyers, we are always working to improve the administration of justice and to ensure that our rights are upheld and protected. I could talk about other programs we have underway, but I would be here all night. And I would rather hear from you, if you have any questions about anything I have said or what the ABA is doing. So I will open the floor now to your questions.

Thank you.