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The Value of Diversity: What the Legal Profession Must Do To Stay Ahead of the Curve

Dennis W. Archer*

It is wonderful to be here among you to celebrate the life of a great man—a great American. A man who dared expose the wrongs of this nation and helped deliver so many from injustice. Like Mahatma Ghandi, Dr. Martin Luther King Jr. espoused non-violent protest, preached passive resistance to racial injustice, fought darkness with light, and engulfed hate with love.

Dr. King became the unquestioned leader of civil justice in this country when he came to the aid of an Alabama black seamstress who, tired from a long day of hard work, refused to give her seat to a white man on a segregated Montgomery bus. Rosa Parks had the audacity to say “no” to an unjust law. Back then, Black Americans knew very well that in breaking that law they would face subjugation and degradation by not only the police, but the legal system as well. Over and over again, those who defied the “system” were beaten, imprisoned, and sometimes even killed.

Ms. Parks’s simple and courageous act of defiance brought Dr. King by her side to lead a revolution. Think about that the next time you witness or experience an injustice. Your refusal to perpetuate, participate in, or stand idly by something you know is not right—be it the law or not—could inspire a champion who might change the world because of your tiny action. You may even become that champion. It is a great risk, and though it may bring great costs, the alternative is far costlier. Indeed, I would not be standing before you as the first lawyer of color to head the American Bar Association in its 125-year history had it not been for Rosa Parks’s exhaustion and Dr. King’s audacity, leadership, and courage. As Dr. King once said, “I refuse to accept the idea that an individual is mere flotsam and

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jetsam in the river of life unable to influence the unfolding events which surround him.”¹

As law students here at Washington University, you have a unique opportunity to influence the events around you. You are offered a first rate education at this great institution—one that encourages you to grapple with the ethical issues you will encounter in your work with the law. For example, a course offered in the Civil Rights and Community Justice Clinic provides you with hands-on experience with cases involving alleged discrimination based on race, religion, sex, national origin, and age. This represents Washington University’s commitment to the legacy of Dr. Martin Luther King Jr.

Further, Dr. King also said that “[t]he ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.”² Where diversity within the legal profession is concerned, right now is a time of challenge.

As lawyers and lawyers-to-be, we must acknowledge that while we have one calling, the diversity of our cultures and backgrounds may often divide us. In this way, we affirm that we have not yet reached complete unity and equality within our profession or within the justice system. Our challenge is to recognize that barriers still remain to the advancement of lawyers of color, whether erected consciously or unconsciously. We must embrace the fact that in today’s world, public confidence in our profession—and the justice system as a whole—is largely tied to whether law firms and practicing lawyers will reflect the full diversity of our society.

Much like Dr. Martin Luther King Jr., the legal giants who came before us have blazed a trail on all levels of the legal system, both at the bar and on the bench: William Hastie, Leon Higgenbotham, Charles Hamilton Houston, Congresswoman Patsy Mink, Damon J. Keith, Juanita Kidd Scott, Wade McCree, Judge Cruz Reynoso, and Justice Thurgood Marshall to name a few. Their groundbreaking contributions have paved the way for us all.

1. Dr. Martin Luther King, Jr., Nobel Prize Acceptance Speech (Dec. 10, 1964).

2. DR. MARTIN LUTHER KING, JR., STRENGTH TO LOVE 20 (1963).

But when we look around us today, we realize that we still have a long way to go. The American Bar Association estimates that there are about 1,050,000 lawyers in the United States.³ Presently, over eighty-nine percent of the legal profession and eighty percent of enrolled law school students are white. Lawyers of color represent just over ten percent of the profession.⁴ They include over nineteen percent of recent graduates, but not quite four percent of partners in the nation's major law firms.⁵ While there has been improvement in the numbers of lawyers 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 as judges in all jurisdictions. We need them as judicial law clerks, law professors, general counsels, and partners in large law firms. We need more corporate work assigned to law firms of color.

Any profession that intends to do business in this century must reflect the diversity of our society; the client-base demands it. Corporate America has come to understand this much more quickly than the legal profession. In the 1980's, after learning about what social scientists and demographers termed the "browning of America," corporations began embracing cultural diversity. When they heard that people of color would constitute a majority of the U.S. population by 2056, corporations developed vendor and employee affirmative action programs and changed the content of their advertising. Corporations knew that their bottom-line would be affected if they did not reach out to the changing consumer demographic.

Corporate America has made progress in diversifying its ranks. According to the Directorship Search Group, the number of minorities serving on the corporate boards of America's largest companies has increased by seventy-nine percent in five years. Sixty-five percent of Fortune 1000 companies have at least one member of

3. Bureau of Labor Statistics, Current Population Survey (2002).

4. *Id.*

5. Nat'l Assoc. for Law Placement, Women and Attorneys of Color at Law Firms (2001), available at <http://www.nalp.org/nalpresearch/mw01sum.htm> (last visited Mar. 16, 2003).

an ethnic minority on their board of directors.

Of course, the numbers are not all good. We know that only five Fortune 500 companies have African American CEOs, and that Hispanics hold less than two percent of Fortune 1000 board seats. Often, minority employees get stuck at lower levels of corporations, and that needs to change.

We in the legal profession also need to change. We have fallen woefully behind in diversifying our ranks. Indeed, we should be taking the lead in diversifying the workplace by providing greater economic opportunities for people of color. Our professional and moral commitment to justice and fairness demands nothing less. The largest and most prestigious law firms must offer lawyers of color a comfortable working environment, training, and access to clients so they will thrive and be promoted in dramatically increased numbers.

Right now, the National Association of Law Placement statistics show that men and women of color constitute just over seventeen percent of summer associates at law firms across the country. Among associates and partners, the percentage falls to 13.7 percent and 3.5 percent, respectively.⁶ What happens to those summer associates who work at firms when they are young, but then are not represented later in their careers as they mature in the profession? Where do they go? Why do we not retain them in firms?

When the corridors of our leading law firms begin to look like the streets of our cities' business districts, and minority partners are no longer a rarity, we will know that diversity has taken hold within the collective culture of our profession. At that point, the ideal of a marketplace and society that sees talent, skill, and performance instead of color, race, or ethnicity will begin to take shape.

We need more aggressive minority recruiting in law schools as well as mentoring and development programs for minority lawyers once they join firms. We cannot afford to lose the broad range of talent, perspective, and experience that people of diverse backgrounds bring to our profession.

Our profession requires diversity because lawyers not only speak for the legal rights of citizens, but also for the Constitution, the

⁶ *Id.*
http://openscholarship.wustl.edu/law_journal_law_policy/vol12/iss1/3

judicial system, and the rule of law—the regulations and problem solving mechanisms that make our heterogeneous democracy possible. As representatives of the third branch of government, we are responsible for ensuring the checks and balances that our founding fathers deemed necessary for a just society. Accordingly, we must be vigilant that all citizens receive full and equal rights.

In 1999, under the aegis of its former President, Phil Anderson, the ABA commissioned a study to determine how people felt about their system of justice.⁷ Overall, the results indicated a strong support for the justice system, the courts, and judges. Eighty percent of respondents agreed that “in spite of its problems the American justice system is still the best in the world.”

Disturbingly, however, the study found that nearly half of those surveyed believe that the courts do not treat all ethnic and racial groups the same. Moreover, those surveyed do not believe that our system provides equal justice for racial minorities. The National Center on State Courts conducted a similar survey later that year, with strikingly similar results. Nearly half of those surveyed said that both blacks and Hispanics are treated worse than whites in the system. In response, Justice Sandra Day O’Connor cited both studies and called for ‘concrete action’ to erase racial bias.

That same year, the ABA Journal and National Bar Association magazine did a survey of their own, and asked attorneys whether they saw bias in the justice system.⁸ The results indicated that lawyers do observe evidence of racial and ethnic bias in the legal system. Lawyers’ views, however, tended to differ based on their racial backgrounds.

Of those surveyed, more than half of the black lawyer members said that there is “very much” bias in the justice system, while only six percent of the white lawyer members said that there was “some,” but not “very much.” Further, nearly seventy percent of black lawyers said there was the same amount of racial bias in the justice system as in society at large. Among white lawyers, however, only forty percent said that the bias mirrored society. In fact, most said that bias in the justice system was less than in society as a whole.

7. American Bar Ass’n, *Perceptions of the U.S. Justice System* (1999).
Washington University Open Scholarship

8. *Race and the Law*, A.B.A. J. (Feb. 1999).

One way to address the bias in the system is to increase the number of minority lawyers who are selected for judicial clerkships. One source of employers who we should look to for change is the U.S. Supreme Court justices. I do not believe that they discriminate, but it is still disturbing that they hire few law clerks of color. This sends a clear message to other judges who are seeking to hire judicial law clerks.

We have many leaders and active participants in the organized bar here today. As students of law, no doubt, a big part of your motivation to become lawyers is not only to make a difference in both our profession and justice system, but in our communities and the world as well. Washington University has been active—and proactive—on issues of concern to lawyers and the community. It is important that you are active in the community while you are here, as well as when you mature in the profession. In doing so, it is important to become a member of your state and local bar association. Furthermore, it is also important to become a member of the ABA.

The American Bar Association plays a great role in speaking on behalf of lawyers nationwide, and in promoting issues on the rule of law wherever possible. This includes our efforts on Capitol Hill and with the Administration. I encourage you to get involved with the ABA, to participate in both our section and committee activities, and to join the bar in making lawyers' voices heard on issues of national and international policy.

While serving as the president of the Wolverine Bar Association, the National Bar Association, and the State Bar of Michigan, I was still an active member of the American Bar Association. I did this during my years as a practicing lawyer, a state supreme court justice, and as the Mayor of Detroit. I found the time to play an active role in the ABA, and so can you.

Lawyers have never been more important to society than they are today, and your work in both the law school and your local and state bar associations can only support and complement our work at the ABA. I urge you to join us in our common mission to make further advancements in increasing the racial and ethnic diversity in our profession.

As Dr. Martin Luther King Jr. stated as he accepted the Nobel Peace Prize in 1964, “I refuse to accept the idea that the ‘isness’ of man’s present nature makes him morally incapable of reaching up for the ‘oughtness’ that forever confronts him.”⁹

Godspeed and God Bless.

Thank you.

9. Dr. Martin Luther King, Jr., Nobel Prize Acceptance Speech (Dec. 10, 1964).