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THE VIEW FROM THE PODIUM† SPEECH TO THE 1992 CONVENTION OF THE WASHINGTON, D.C. BAR ASSOCIATION‡

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Thomas Jefferson once said, "it is the trade of lawyers to question everything, yield nothing, and to talk by the hour."¹ Tonight I want to bear out at least some of Jefferson's assumptions.

I will question whether the organized bar has fulfilled its responsibility and its potential to fully reflect our diverse society. I will yield nothing to the notion that the very limited progress made by the legal profession has been sufficient. My message will be as succinct as I can make it. It can be summed up quite briefly.

America is becoming more diverse. The legal profession does not reflect that diversity. Unless it does, it will damage both itself and the society it serves.

In the short term, we can make some great strides in hiring and retaining more minorities and in creating business opportunities for minority lawyers. But a small improvement in the currently abysmal numbers, or a modest increase in mainstream business for minority lawyers, will not be enough. We need to be equally com-

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‡ This speech was delivered on June 25, 1992, and has been slightly edited. All footnotes were added by the editors of the *Boston College Law Review*.

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¹ THOMAS JEFFERSON, AUTOBIOGRAPHY (1821), reprinted in THOMAS JEFFERSON: WRITINGS 53 (1984).

mitted to long-term efforts that increase the pool of minority lawyers and to creating the conditions that make equality of opportunity a reality and not a distant goal.

Few among us would disagree with the goal of equal opportunity. But I am not sure all of us fully understand its urgency. Unfortunately, the experiences of most people in the legal profession are limited to the minority of the American population that is white, male and relatively affluent.

America is becoming blacker and browner. According to Census Bureau estimates, fifty-nine million Americans—almost one of every four—is black, Asian, Hispanic or Native American.² And the non-white share of the total population is rising. Between 1980 and 1989, the white population grew by almost 7 percent.³ But the numbers of blacks increased by over 14 percent,⁴ and the numbers of people of other races increased by over 80 percent.⁵ Those non-white minorities make up over a fourth of today's workforce and almost a third of new workers. Their share will grow dramatically in the coming years.⁶

Deep-rooted discrimination and stereotyping have prevented America from making full use of its minorities. White males have become a minority in the workforce, but old stereotypes linger on. Many employers still sing a song that says a woman's place is in the home and a minority's place is in the basement.

Today, however, women and minorities form the majority of the workforce. They rightly expect to have equal access to all job categories, to function in a workplace as hospitable to them as it is to white males, and to be free from all forms of discriminatory practices.

The degree to which a law firm satisfies those very reasonable expectations will largely determine whether that firm will make it into the twenty-first century. There are three major reasons.

First, there is more competition for a shrinking talent pool. Total workforce growth is slower than in the past, and a larger percentage of that workforce will be made up of women and minorities. Firms can no longer limit their professional and support

² BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1991, at 17.

³ *Id.* at 14.

⁴ *Id.*

⁵ *Id.*

⁶ Michael Kramer, *Straight Talk About Race*, TIME, June 1, 1992, at 36 ("By the year 2000, ... only 57% of people entering the work force will be native-born whites.").

staffs to the vanishing breed of white males. They must open themselves to diversity.

Second, diversity is becoming a competitive tool. Two decades of civil rights laws and affirmative action programs have led to growing numbers of women and minorities in corporations and government. The Voting Rights Law and demographic changes have brought a degree of political power to minorities who now hold important elective and administrative positions, especially in our large cities.

In other words, our clients and the institutions in our society are becoming more diverse. I find that situation ironic, because lawyers of my generation could not expect to work for a white firm, as it was assumed that their clients would not be "comfortable" with black lawyers. That excuse is still alive and well, even though many clients have become more diverse themselves and their comfort level is a lot higher. In fact, many insist on dealing with firms that have significant female and minority participation.

Third, a firm's diversity is becoming a valid measure of its integrity. I believe that we are moving into an era in which all institutions and professions will be held to more demanding standards of behavior and ethical accountability. This may, in part, be a reaction to the high-rolling, speculative environment of the 1980s. In the 1990s we can expect stricter scrutiny and greater accountability. The impact of the savings and loan failures on some law firms and accounting firms is one example of the new mood.

A diverse society will view a firm's diversity as a barometer of its character. It will quite correctly assume that a firm that does not have reasonable female and minority participation at all levels is a firm whose integrity is questionable. It is obvious to me, then, that law firms have to become more diverse, whether they like it or not. Unfortunately, the evidence indicates that too many do not like it.

None of our society's institutions reflect the diversity of our population, but the legal profession is among the worst offenders. In January, the *National Law Journal* reported the employment statistics for the largest law firms—the ones with the most lawyers, the most prestigious clients, the highest billings.⁷ They are the firms that the profession should be able to look to for leadership—the firms that should set the standards for diversity.

⁷ Claudia MacLachlan & Rita Henley Jensen, *Progress Glacial for Women, Minorities*, NAT'L L.J., Jan. 27, 1992, at 1.

If you look at the numbers, though, you have to be disappointed. Blacks are only 2 percent of lawyers at those firms; Hispanics, 1.2 percent.⁸ Only 2.7 percent of associates are black.⁹

It is hard to find a more segregated group than the partners of America's law firms. Fully 97.6 percent are white.¹⁰ Blacks are barely 1 percent of the more than 25,000 partners in the largest 251 firms.¹¹ Forty-five of those top firms did not have a single minority partner;¹² sixty-one had only one.¹³ The number of minority associates at the typical large firm is as dismal.¹⁴

I suspect the picture at corporate legal departments is not very much better. While there may be proportionately more minorities on staff, very few are at senior levels. That tells us that our profession has its work cut out. I am optimistic because the concern is obviously present. But, as T.S. Eliot once wrote:

Between the idea
And the reality
Between the motion
And the act
Falls the Shadow.¹⁵

Many of us understand that the future belongs to firms that have had the vision to diversify their legal force, that recruit tomorrow's partners today, that make diversity a strategic goal. But between that understanding and actually fulfilling the goal of diversity lies the shadow of complacency, inertia and fear of change. The shadow is apparent to me as I hear some of my colleagues in the profession express satisfaction at the glacial progress that has been made, when others tell me of how hard it is to recruit and train minorities, and when still others think that hiring more women somehow makes it less necessary to hire more minorities.

It is a fact of life that most of the white men who dominate America's leading law firms are most comfortable with white men like themselves, less comfortable with women lawyers, and uncom-

⁸ *Id.* at 31.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 31-39.

¹³ *Id.*

¹⁴ *Id.* at 31. Only 6.8% (2,493 of 36,867) of associates at the largest law firms are black, Hispanic, Asian-American or Native American. *Id.*

¹⁵ T.S. ELIOT, *The Hollow Men*, in *COLLECTED POEMS: 1909-1935*, at 104 (1958).

fortable with black men. Senator Bill Bradley recently said something worth repeating:

[M]any white Americans resist relinquishing the sense of entitlement skin color has given them throughout our history. . . . Unless we remind each other of our common humanity, too many of us will continue to think of ourselves as islands of privilege and comfort.¹⁶

Any honest observer has to conclude that Senator Bradley is right, and that those of us in America's most influential profession should be working hard to overcome that ugly legacy of custom and history. After the tragedy that unfolded in Los Angeles, it has become a moral imperative for every profession and every sector of American life to re-examine its openness to diversity and to equality of opportunity.

Of all professions, it is the legal profession that has the greatest responsibility. The legal profession has been in the vanguard of affirming our fundamental constitutional rights, including the concept of equal opportunity. And it is the legal profession that is the core of a justice system that has been called into question in the aftermath of the Rodney King verdict.¹⁷ For just as the Los Angeles riots shattered the myth that we can continue to ignore racial tensions and growing inequality, the King verdict shattered the complacent myth that American justice is colorblind.

It would be too easy—and too dangerous—to dismiss that verdict as an accident, a freak occurrence that should not indict the entire justice system. But in fact, in the eyes of the outraged people who took to the streets, the verdict accurately reflected an unjust system they perceive as hostile to their rights and interests. Whether that assessment is accurate may be open to argument.

What is not open to argument is that they believe it to be true, and that any society is in deep trouble when a significant segment of the population believes the law is arrayed against it. Further—whether one shares their belief in the system's injustice or not—we have to be concerned about the way the justice system operates to relegate blacks and minorities to the role of victims of crime or defendants in criminal cases while whites take on the role of judges, prosecutors and lawyers.

¹⁶ Kramer, *supra* note 6, at 36.

¹⁷ In April 1992, four white Los Angeles police officers were acquitted of assault in their videotaped beating of Rodney King, a black motorist. The verdicts touched off rioting and looting in Los Angeles.

That means we must also be concerned about the poverty, the chaotic living conditions and the unequal opportunities that characterize life in so many inner-city communities. It means we have to be concerned that the justice system we are sworn to serve and uphold is more reflective of society's racial prejudices than it is of society's stated belief in equality.

Twelve percent of the population is black, but barely 3 percent of all lawyers are black.¹⁸ In 1986, nine states had *no* black judges in their state courts.¹⁹ That same year, only eleven judges on state supreme courts were black.²⁰

Jimmy Carter appointed thirty-seven blacks and sixteen Hispanics to the federal bench in his four years as President.²¹ Between them, Ronald Reagan and George Bush appointed sixteen blacks and seventeen Hispanics in twelve years.²²

Put bluntly, we as a profession must confront the fact that blacks and other minorities are largely excluded from full participation in our profession and in our legal system that holds itself up to the world as the exemplar of justice, fairness and equality. This is an issue that is central to what it means to be a lawyer in a democratic society and in a legal system that demands the full confidence of the citizenry.

The writer-president of Czechoslovakia, Vaclav Havel, recently wrote a very eloquent statement on the interaction of society, freedom and politics. I want to quote from him, changing the word "politics" to the words "legal profession," because his statement reflects my view of our responsibilities in a democratic society.

Those who find themselves in [the legal profession] therefore bear a heightened responsibility for the moral state

¹⁸ BUREAU OF THE CENSUS, *supra* note 2, at 12, 395.

¹⁹ Barbara Luck Graham, *Judicial Recruitment and Racial Diversity on State Courts: An Overview*, 74 JUDICATURE 28, 30 (1990). Alaska, Hawaii, Maine, Montana, New Hampshire, North Dakota, South Dakota, Vermont and Wyoming lacked black judges on their state benches. *Id.*

²⁰ *Id.* at 30.

²¹ Sheldon Goldman, *The Bush Imprint on the Judiciary: Carrying on a Tradition*, 74 JUDICATURE 294, 299, 303 (1991).

²² See *id.* at 299, 303. The tables show that, as of April 1991, President Reagan and President Bush had appointed 9 blacks and 17 Hispanics to the federal bench. *Id.* at 299, 303. The tables do not reflect more recent appointments of blacks and Hispanics by President Bush, such as the appointment of Clarence Thomas to the Supreme Court in the fall of 1991.

of society, and it is their responsibility to seek out the best in that society, to develop and strengthen it.²³

That suggests to me that we must measure our success by higher standards than winning lawsuits, closing real estate deals, writing legislation, or taking companies in or out of bankruptcy, takeovers and mergers. It suggests to me that we, as lawyers, must be concerned with the larger issues that imperil our society: issues such as discrimination, poverty, homelessness, crime, education, housing and a host of others. Unless we labor to help others achieve a reasonable stake in society, we may find ourselves losing the society in which we have so great a stake.

Each of us will seek and find different ways to serve, but all of us must be committed to making our profession lead by example. We must therefore, at a minimum, address the structural barriers that screen blacks out of the legal profession. We must also address the attitudinal barriers that stand in the way of fully integrating our law firms and legal departments.

While I do not underestimate the difficulty of radically changing long-standing behavior patterns, I do know that America and the legal profession can change. I have seen extraordinary changes in my lifetime, in all aspects of life and the law.

I stand before you tonight as a senior partner in a great law firm who had to leave his hometown to get a legal education because I was not allowed—by law—to enroll in any of Georgia's segregated law schools. After graduation in 1960, I studied alone for the Georgia Bar Exam because none of the three schools in Atlanta that taught the bar review course would admit blacks. It was a different world then, a world that has seen many extraordinary changes. Three personal experiences help measure how radically the world has changed.

The first: as a teenager I worked in the kitchen at the prestigious, segregated Lawyers' Club dinners in Atlanta, catered by my mother. I was awed and impressed by the leading lights of the Atlanta Bar, but I knew I would never be allowed to join them even if I fulfilled my burning ambition to be a lawyer, because color would keep me out.

The second: as a practicing lawyer, I was invited in 1986 to address that same, although no longer segregated, Lawyers' Club.

²³ VACLAV HAVEL, *SUMMER MEDITATIONS* 4 (Paul Wilson trans., 1992).

I said to them, "The view from the podium is better than the view from the kitchen."

The third: in 1977, I was present when my friend and former colleague, Horace T. Ward, was sworn in as a judge of the United States District Court in Atlanta. That was the same court that twenty-seven years earlier upheld the exclusionary racial practices that refused him admission to the University of Georgia Law School.

So I have faith in America's ability to change. I have faith in the legal profession's ability to change. I have faith that the same people who once said, "No, not one," can ultimately change to say, "Yes, we can."

Oliver Wendell Holmes once wrote, "the most important thing in the world is not so much where we stand as in what direction we are moving."²⁴ However painfully slow it may be, the direction we are moving is toward greater inclusion, greater integration, greater pluralism.

It is a journey that has met many roadblocks, snares and pitfalls. But change we can and change we must if the legal profession is to maintain its integrity and prosperity. And you, my colleagues in the legal profession, have to help it change. Our personal fates, our firms' futures, our nation's future, depend on removing the barriers of race and poverty and opening opportunities for all of our diverse people.

The struggle for civil rights and human dignity did not end with the March on Washington. It did not end with the passage of the Civil Rights Laws of the 1960s. It has merely entered a new phase and it has become enmeshed with the future of the legal profession and its role in a changing society.

We are beginning to understand that every child that grows up hungry or homeless, every child that grows up uneducated, every young adult denied training and job opportunities, represents precious human resources America cannot afford to lose. We need to continue that long journey of understanding to realize that every black refused a promotion because he cannot join or be invited to a client's private club, every woman denied a job because she might have children who could get sick at inconvenient times, every minority denied a partnership because our partners have always been white, represents precious human resources our firms cannot afford to lose.

²⁴ OLIVER WENDELL HOLMES, *THE AUTOCRAT OF THE BREAKFAST TABLE* ch. IV, 82 (The Heritage Press 1955).

I believe that America and its legal profession are evolving to become more inclusive, more effective, more positive forces in the world. Our role is to help speed that evolution along, to bring the promise of diversity to the one profession above all that should embody the principles of freedom, justice and opportunity for all Americans of all colors, races, genders and backgrounds.

It is up to us to desegregate America's most prestigious, influential—and segregated—profession. Past progress does not mean it is time for self-congratulation. It is a time for resolve. It is a time to recall the words of the great English adventurer Sir Walter Raleigh, who, four hundred years ago, wrote, "It isn't the beginning of the task, but the continuing of the same until it be well and truly finished wherein lies the true glory."

Let us then well and truly finish the great adventure of demonstrating the wisdom and moral capacity of our profession by making minorities fully at home in the temple of the law, sharing equally in a profession boasting equal access and equal opportunity for all. This is our charge to keep, our calling to fulfill, our rendezvous with destiny. And to that end, let us neither stumble nor falter. Rather let us mount up with wings as eagles, let us run and not be weary. Let us walk—black, brown and white together—to the promised land of equal opportunity for all.