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On the Path to Inclusion

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On the Path to Inclusion

John D. Feerick

John D. Feerick, former Dean of Fordham Law School, delivered the keynote address at the annual luncheon of the Committee on Recruitment and Retention of Lawyers, April 26, 2002.

It is an honor for me to be invited to address you at this Annual Luncheon. You have worked hard to bring opportunities to members of the minority community. You have made possible the realization of many aspirations while continuing the struggle toward equal opportunity for all people.*

Thirty-nine years ago, Martin Luther King, Jr., spoke to the soul of the nation, sharing his vision of an America that would “one day . . . rise up and live out the true meaning of its creed—‘We hold these truths to be self evident, that all [persons] are created equal.’”¹

His idea and the opportunity it offers is sometimes referred to as the “American Dream.” Broadly defined, it is—in the words of novelist Thomas Wolfe—“a chance [which is given to every person] regardless of ... birth, [a] shining golden opportunity—[which allows individuals] the right to live, to work, to be [themselves], and to become whatever [their] vision can . . . make [them].”²

This promise has been embraced by individuals in every sector of our society, from statesmen and philosophers to writers, teachers, lawyers, and

*I acknowledge the invaluable assistance of my friend and colleague at Fordham Law School, Robert Cooper, Esq.

1. Delivered on August 28, 1963 at the Lincoln Memorial in Washington, D.C.

2. Thomas Wolfe, *You Can't Go Home Again*, Chapter 31, p. 508 (1940).

firefighters. Implicit is the idea that no one will be denied a chance to compete to the best of his or her ability because of race, ethnicity, heritage, gender, or for any other reason not bearing on that person's qualifications. Or to put it in other words, we all are to be treated equally, and with the respect that we deserve as human beings.

The concept of the American Dream is not found in any official document. Its hopeful philosophy has been expressed—in one form or the other—throughout 2,500 years of history. As a concept, it is embodied in our Constitution, as amended, in writings of historical importance, and in the actions of people on a daily basis. Its roots can be traced to ancient Greece, which established the world's first democracy.

Nowhere, however, has the Dream been so well-realized, and by so many people, as it is in our nation in the present day. And yet, as we all know, the Dream is only partially complete. Indeed, it does not reach every corner of the land and touch every person equally. It does not reach to every corner of the legal profession. There is still much more to do before the Dream can become a reality for all.

Those of us here today come from different backgrounds, but we are all joined in the common purpose of seeking a better life for ourselves and our families while simultaneously pursuing our own personal vision of what that life should be. And—I suspect—the opportunity that we enjoy has been earned through the labors of our families and many generations of people whose names we might not even know, but whose courage and integrity gave us an opportunity to do our best.

As Justice Thurgood Marshall once noted, "None of us got where we are solely by pulling ourselves up by our bootstraps. We got here because somebody—a parent, a teacher, an Ivy League crony or a few nuns—bent down and helped us pick up our boots."³

So many of us are inheritors of the American Dream. We are also its keepers, with a special responsibility to pass it along to make sure it lives for the next generation, where its flame can burn more brightly than it does now, where it can open itself to all people in every walk of life.

As we look at our own profession, we can see that it needs the same vision and courage to create change and opportunity for all citizens as with any other area of society. Fundamental change, of course, is not easy to achieve.

Some forty years ago, when I graduated from law school, "the total number of black lawyers and judges was only 2,012, out of a total of

3. Quotation from the Internet website:Brainyquote. See, <http://www.brainyquote.com>.

205,515⁴ lawyers and judges” nationwide—less than one percent. By 1990, due to the Civil Rights movement, the number of African American attorneys had risen to 25,704, but this was out of a total of 777,119 lawyers, or 3.3%.⁵ Today, according to a recent study by the American Bar Association, minorities, in general, continue to be under represented in the legal profession, with “African Americans and Hispanics [making] up only 7.5% of all attorneys.”⁶

This figure is in stark contrast to the minority presence in our law schools, among “accountants (14.3%), college and university teachers (9.7%), and all professions (12.5%).”⁷ At the same time, it is important to note that the overall figures for minority hiring by law firms between 1993 and mid-2001 rose from 8% to 13%.⁸

The *National Law Journal* has reported in a survey of the nation’s 250 largest firms, covering the two-year period ending in December of 1998, that overall associates grew in numbers by 20%, with Black associates increasing by 27.5%, Hispanics by 50%, and Asian Americans by 72%.⁹

Part of this success is due to the work done by this Committee. You have laid the ground work for professional development and assessment through your Minority Fellowship Program, Attorney Retention Tracking Program, and other initiatives.

The Fellowship Program has been an outstanding success for the last decade, and I know that a review of past Fellows indicates that many have gone on to build strong and successful legal careers. Such support cannot be overestimated, a fact illustrated by a recent *Virginia Law Review* article. It found that while “people of color with fewer lawyers in their families are disadvantaged” in their knowledge of legal careers, “50% of white law students have at least one relative in the legal profession who exposes them to the occupation and its culture....”¹⁰

4. Legal Education and Professional Development—An Educational Continuum: A Report of The Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association Section of Legal Education and Admissions to the Bar (1992), p. 25. (See note 44.)

5. *Id.*

6. Elizabeth Chambliss, *Miles to Go 1998: Progress of Minorities in the Legal Profession*, ABA Comm. On Opportunities for Minorities in the Profession, Report (1998).

7. Elizabeth Chambliss, *Miles to Go 2000: Progress of Minorities in the Legal Profession*, ABA Comm. On Opportunities for Minorities in the Profession, Report (2000).

8. *National Jurist*, March 2002, vol. 11, no. 6, pp. 21-22.

9. *National Law Journal*, December 14, 1998 at A1.

10. Camille A. Nelson, “Toward a Bridge: The Role of Legal Academics in the Culture of Private Practice,” *Journal of Law and Policy*, Vol. 10, No.1, p. 117, citing Daria Roithmayr, “Barriers to Entry: A Market Lock-in Model of Discrimination,” 86 *Va. L. Rev.* 727, 785.

The Fellowship Program, of course, grew out of the Association's adoption in 1991 of the Statement of Goals of New York Law Firms and Corporate Legal Departments for Increasing Minority Hiring, Retention and Promotion. The work then set in motion continues today, and I applaud the members of the Committee and those signatories who have pledged to implement specific steps and programs toward increasing the numbers of minority attorneys in their firms.

The placement and retention of minority lawyers remains among one of the most admirable and elusive goals in our profession. The goal is exceedingly important because it sends out the message that if you can make it at the major firms, you can make it anywhere.

Adding to the challenge in achieving the goal is the high attrition rate of newly hired associates in general.

For example, a survey of 154 firms—published by the National Association for Law Placement in March 1998—showed that of the more than 10,300 associates from the Classes of 1988 through 1996, “nearly 1 in 11 associate hires left their firms within the first year of employment,”¹¹ and 43% left after three years.¹² Within five years, 64.6% had left.¹³

Given this extraordinary loss of newly hired lawyers of all backgrounds, it comes as no surprise that the retention of minorities requires a special understanding of various factors relating to the legal workplace, and what the law firm offers or fails to offer to those who practice there. These statistics also underscore the critical relationship between retention and recruitment. They strongly indicate that the success of the former is related to the success of the latter, with greater recruitment ultimately producing a greater continuing minority presence, a fact which is well-known to many here today.

While law firms continue to struggle with recruitment and retention of members of minority groups, some areas of our profession have made highly successful strides in the last forty years. The area which I know best is the field of legal education.

There are, of course, many differences between a law firm and a law school, something I appreciate as having once been a hiring partner at a major firm. At the same time, I believe that there are enough similarities between the two in regard to recruitment and retention that I would like

11. The NALP Foundation for Law Career Research and Education, March 1998. Available online at <http://www.nalp.org/foundation/keepers.htm>

12. *Id.*

13. *Id.*

to take a few moments to suggest some ideas which could expand on programs already in place at firms or which might suggest new approaches for addressing the subject at hand.

Part of the success for the diversity of law schools is due to the vast storehouse of information which helps schools to be more effective in their recruitment efforts. This information involves material supplied by prospective students of all backgrounds. It includes a detailed application form, references from college professors who evaluate an applicant's suitability for law study, and a personal statement which is both a self-portrait and a writing sample that demonstrates a student's skill and logical reasoning. Added to these diagnostic tools are grade point averages and results of law school admission tests.

While grades and LSAT scores remain important indices, the other information often plays a crucial role in the final determination. In addition, law schools have standing admission committees, whose collective experience comprises decades of involvement with recruitment and determining which students are best suited to stay the course. Also important to an applicant's success are counselors at the undergraduate level, including pre-law advisors, class deans, and student support groups which bring together students of similar interests allowing them to pool their knowledge so they can better understand what legal education is all about.

All of these factors combine to give students valuable information about many aspects of the law admission process, while preparing them psychologically for the competition, long hours, and demanding course load which they will have to accept if they are to successfully meet the challenge of legal education.

In addition, my law school, as well as many others, has developed academic enrichment programs to help minorities and other students make a successful transition from college to law school and achieve a success rate that is comparable to non-minorities.

All of these activities at American law schools have produced remarkable results in achieving the goal of diversity in the student population. Twenty-five years ago, for example, Fordham was typical of many around the country, with little more than 2% of the total student population drawn from minority groups. Today, thanks in part to a general increase in the applicant pool, special affirmative action programs on the undergraduate level, and our own resolve to see that the School becomes as diverse and selective as it can possibly be, self-identified members of minority groups constitute almost 25% of every JD class. Nationally, out of a total of 127,610 JD students enrolled in fall 2001, 26,257 (or approxi-

mately 21%) were members of minority groups,¹⁴ showing the tremendous results of the efforts of America's law schools.

How then to build on the successful recruitment of minorities to our law schools to assure their success in the practice of law?

First of all, I would like to emphasize the importance of commitment by leaders of institutions. Commitment involves a persistence, perseverance and an almost missionary kind of zeal. Law firm leaders, bar presidents, and chief judges must constantly speak to the subject, prodding, pushing, and engendering in our minds and hearts the spirit of inclusion. Particularly in bad economic times, we need the energy and vision of leaders so that those seeking careers will not find additional barriers to their success which are heaped on top of an already difficult struggle.

As a legal educator, I have experienced first hand how someone in a position of leadership can help along change. When I entered my position in 1982, I was jarred when a white student, in his first year at the School, caught me completely by surprise—and gave me much to think about—when said to me, "I'm disappointed that there aren't more minority students at the School." I resolved at that moment that no student at Fordham should ever be able to say that again and to make minority presence a central part of my tenure.

Also indelible in my conscience was the lament expressed in opinions of Justice Thurgood Marshall, concerning the historical treatment of African-Americans. As he began his *Bakke* dissent:

Three hundred and fifty years ago, the Negro was dragged to this country in chains to be sold into slavery. Uprooted from his homeland and thrust into bondage for forced labor, the slave was deprived of all legal rights. It was unlawful to teach him to read; he could be sold away from his family and friends at the whim of his master; and killing or maiming him was not a crime. The system of slavery brutalized and dehumanized both master and slave.¹⁵

He then went on to lay out the historic discrimination in America against African American from colonial times up to the present.

Another incident at my school a few years later stirred me a similar way. It involved an African American student who was part of a group

14. American Bar Association statistics for students enrolled in ABA approved law schools in fall 2001. Available online at <http://www.georgiajuris.com/private-cgi-bin/Content/FULL1017513109.cfm>

15. *University of California Regents v. Bakke*, 438 U.S. 265, 387-88 (1978).

seeking more support from the School. After listing to several complaints, I looked at him and said, "What is it that you and our other minority students really want." Without hesitation, he answered, "I want to be like you, have the same opportunity as you, to live where you live, to own a home, to send my children to the same schools, to have a good job, etc."

Even though I do not remember the names of these students, their words have resonated with me over the years, and helped frame the way I defined my responsibilities toward building a strong minority presence at Fordham. I can't say enough about the importance of leaders being accessible and having conversations with young people.

Second, mentoring cannot be over emphasized as an important means of cultivating success. As Justice Marshall remarked, none of us got where we are solely through our own efforts. We can all think of countless acts of kindness and caring which were extended to us over the course of our lives which pointed us in the right direction. We can remember advice which steered us in the right direction, which gave us hope when the light seemed to fail, which made us believe in ourselves when we had begun to doubt our own abilities.

Sometimes these mentors are part of our family. At other times they are someone we meet along the way. But whatever their status, their true worth can never be overestimated, for without them, some of us—perhaps, even most of us—would not have become who we are.

Here at the Association, about two years ago, Justice Ruth Bader Ginsburg described getting her first job: "Gerry Gunther, who was my teacher at Columbia Law School [and] in charge of getting clerkships ... for students [contacted] a particular judge in the Southern District who hired only Columbia clerks.... Gerry called the judge and said, 'I have selected Ruth Bader Ginsburg for you.' The judge responded, 'Are you out of your mind? Not only is she a woman, but she has a four-year old child, and I sometimes work late and on Sundays....' Well, Gerry said, 'If you don't give her a try I will never refer another Columbia clerk to you. But as insurance, if you take her and she doesn't work out, I have an agreement with a young man in her class. He will take leave from his Wall Street firm and fill in for Ruth."¹⁶

Without a mentor, just think of how different her life—and American legal history—might have been.

The importance of mentoring was underscored to me in a very recent conversation I had with a Hispanic woman graduate of Fordham, one of

16. "A Conversation with Ruth Bader Ginsburg," *The Record of the Association of the Bar of the City of New York*, Winter 2001, Vol. 56. No. 1, pp.10-11.

the most talented students I have ever met, who responded to my inquiry of why she didn't pursue a career in a large firm as follows:

"I worked in a major firm as an intern and summer associate and could not find anyone like myself, who was understanding of my culture and background, leaving me with the impression that there was no long-term fit for me in such a firm."

I responded to that, "We need people like you to start that precedent, else we will make no progress at all." I sensed that all she needed was a few mentors in that firm and she would have been on her way.

Mentors are important to every human being. But they are critically important, I believe, to those who find themselves on the other side of the glass looking in. It is quite one thing to grow up knowing how the system works. It is something else entirely to have to struggle to learn the ropes which others have already learned through the presence of some significant role model in one's family. It has to be very frustrating to be handicapped by the lack of such mentoring, particularly in the competitive world of legal practice.

I therefore strongly encourage the members of firms seeking to retain minority attorneys to adopt and incorporate strong mentoring programs as an integral part of their practice. From my personal experience at a major firm and as dean at a school having over 100 minority and non-minority alumni serving as mentors to our students, I have come to learn of the value of a wise word at the right time and the importance of knowing that someone who has made it sees potential in you and is there for you.

A good mentor must be compassionate, motivated, empathetic, accessible, and possessed of a strong sense of ethics. Good judgment is another key element, and a good mentor should be someone who knows when to reassure and when to challenge the person being mentored.

Law firms, bar associations, and law schools have—with all their creative abilities—the opportunity to create here in New York the nation's finest mentoring programs. At a time of great challenge, we often find our greatest opportunities.

As important as mentoring is in achieving a significant minority presence, however, its overall institutional success depends fundamentally upon the commitment which is made to the area of recruitment. This is a principle which has been well-demonstrated in the field of legal education, and, I feel, should have resonance in legal practice.

If there is one thing that characterizes the evolution of American law schools over the last two decades—other than the steep rise in tuition

and the rapid development of computerized learning tools and clinical education—it is the way in which students are recruited and the efforts which are made to cultivate an academic environment which is truly representative of the diversity of society and nurtures and promotes the success of all.

Schools go to great lengths to reach out to all areas of the local and national community to seek students from all backgrounds. Admissions offices send representatives to a number of venues each year, including admissions fairs, minority student assemblies, and various undergraduate institutions. Our admissions committee and many faculty members work collectively and individually to recruit highly talented students, keeping in touch with them through an extended program of correspondence. The School holds an accepted students day for students and their families, which features short talks by faculty and administrators and tours given by volunteers from the student body. All of these efforts have made our School and others much stronger because of the presence of many minority students.

A call for higher standards in recruiting by law firms was recently made by the New York County Lawyers' Association Task Force to Increase Diversity in the Legal Profession. Some of their suggestions parallel the ongoing efforts to recruit minorities at the nation's law schools, while others are unique to the profession. Among the many ideas put forth, the Task Force encouraged firms to "initiate, or participate in committees, programs or projects that involve diverse individuals [,while] expand[ing] their search efforts for a diverse group of potential employees...."¹⁷ They also advised that "[l]awyers ... be recruited from a broad range of law schools to increase the pool of lawyers from which to hire, and recruited laterally from the public sector to work in private firms and corporations."¹⁸ In addition, they urged potential employers to "be proactive in reaching out to a diverse group of legal talent, and network with individuals and organizations with access to a broad range of candidates, such as minority bar associations and job fairs."¹⁹ Further suggestions included listing job opportunities on "employers' websites so that information about such opportunities will be available to the widest possible audience."²⁰

17. "Report of the Task Force to Increase Diversity in the Legal Profession," The New York County Lawyers' Association, January 2002, p. 31.

18. *Id.*

19. *Id.*

20. *Id.*

With respect to this latter idea, I would note the Internet has become a great source of information and a wonderful means of reaching a vast and diverse audience. At present, at most schools, 90% of applicants apply by downloading application forms, and thousands of prospective students visit their sites each week.

And now I conclude by noting that the Committee on Recruitment and Retention marks yet another year of accomplishment and dedication to seeing that the promise of the American Dream is open to all who seek it. Your efforts have opened doors that once were closed and have recognized, as President Theodore Roosevelt once noted, “[f]ar and away the best prize that life offers is the chance to work hard at a job worth doing.”²¹ Your efforts also remind us that there is still much to do before this goal is achieved, recalling the words of Justice Thurgood Marshall, who in one of his famous dissents declared: “For far too long, the doors ... have been shut... If we are ever to become a fully integrated society, one in which the color of a person’s skin will not determine the opportunities available to him or her, we must be willing to take steps to open those doors.”²²

In honoring the words of President Roosevelt and Justice Marshall, I would suggest that we honor the truest meaning of the American Dream—that we want for others the same opportunities that we want for ourselves and our families and friends.

Thank you.

21. Labor Day Address, Syracuse, New York, 1903.

22. Bakke at 401-2.