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**Experiencing Life on Both Sides of the Color Line:  
The Need for Affirmative Action in Higher  
Education**

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I am truly pleased to add my congratulations to Professors Deborah Merritt and Barbara Reskin for organizing this outstanding conference. Their research and their work on affirmative action is widely noted and deeply respected across the country. They have been able to attract a truly remarkable range of people to talk about the future of affirmative action for this Symposium.

There is much we can learn from the field research of these social scientists, the experiences of these litigators, and the thoughts of those who have considered the social and political aspects of diversity and affirmative action.

As we all know, many efforts to create racial diversity on college campuses are under attack. I must confess that it is disheartening to me that a mere twenty years after affirmative action issues were considered to be resolved in *Regents of the University of California v. Bakke*<sup>1</sup>, we are once again confronted with the issue of minority admissions to professional schools; in fact, minority representation in all of higher education. This is certainly not what I had hoped for or expected when I began my career in legal education shortly before *Bakke* was decided.

Nonetheless, I am as firmly convinced today as I was twenty-one years ago that opening doors to higher education for all people is of great importance to this nation. America simply cannot deny opportunities to large numbers of its citizens and hope to be both a great economic force and a true moral leader in the world. Countries that seek to be economic and moral leaders strive to find ways to support and nurture talent from all segments of their societies.

My frustration over the recent attacks on diversity and affirmative action arises

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<sup>1</sup> 438 U.S. 265 (1978).

from the failure of those who challenge it to confront the facts regarding the significant and substantial absence of racial minorities from America's mainstream. Rather than focus on inclusion of people from all segments of society, many people speak of America's white majority being excluded from positions of power and influence. This claim persists despite the fact that white Americans still dominate the profession and in fact make up approximately 97% of senior level managers in fortune 500 companies.<sup>2</sup>

Unfortunately, reverse discrimination claims are likewise abound despite the fact that often a college-educated person of color earns less than white males with only high school diplomas. Even in the university world, cries of exclusion are heard although white men constitute 80% of tenured university faculty.<sup>3</sup> To my mind, the true tragedy is that we have made so little progress in minority representation in education and the professions in the twenty years since *Bakke*.

Now some may say that the limited gains we have made are ample reason to abandon efforts at affirmative action. My response is that the woefully inadequate gains show that discrimination and resistance to change is so ingrained in our society that significant long-term efforts must be undertaken to keep avenues of opportunity open.

The great contribution of this Symposium is that it provides accurate information about the impact and effect of affirmative action and its legal and legislative underpinnings. Hopefully, these data and findings will guide us as we think about affirmative action.

We all have different reasons and different motivations that draws us to this conference. What draws my interest is a concern that, as a nation, we are perilously close to returning to the divided society that existed in my youth.

My memories of America in the 1950s and 1960s are vivid. In the world of my youth, there were few opportunities for minorities to pursue higher education or to move into positions of leadership. It was a time of clear and unmistakable separation of races. In fact, one of the reasons for writing my book, *Life on the Color Line*, was to help others remember those times as well. I wanted to paint a clear picture of the racism and prejudice my brother and I faced at the age of ten and nine when our racial identity literally changed overnight. Also, I wanted to show that life on one side of the racial divide is very different than life on the other.

At age ten, I had no desire to be a lone subject of a great sociological experiment. Nor did I care very much about the legal segregation that existed during my early childhood in the state of Virginia. In fact, until age ten, my life was a comfortable one. As the son of a wealthy, white, Virginia restaurant owner,

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<sup>2</sup> See Frank McCoy, *Shattered Glass Ceilings*, BLACK ENTERPRISE, Sept. 1995, at 22.

<sup>3</sup> See June Jordan, *Justice at Risk: Affirmative Action*, THE PROGRESSIVE, Apr. 1996, at 18.

I thought very little about race. Then the secret of my family was revealed as my brother and I sat at the back of a Greyhound bus making its way from Washington D.C. to Muncie, Indiana in January, 1954.

My brother and I were simply two bewildered boys on a long, arduous bus trip, trying to grapple with the disintegration of our family caused by abuse, alcoholism, and divorce. As I naively thought there could be nothing more painful than the loss of my mother, sister, and brother, I quickly learned there would be a more significant influence on my life.

On the six-hundred mile trip from Washington, D.C. to Muncie, I heard for the first time that my father was in fact black: he was not Greek or Italian, as I had been told for the first ten years of my life—and I was not who I thought I was. In less than twenty-four hours, I had a complete and total racial identity switch: from white to black.

I remember my father's words the afternoon he revealed my true racial identity according to the laws and customs of this country. He said in the vernacular of the times, "Life is going to be different from now on. In Virginia you were white boys. Now you're going to be colored boys. But I want you to remember that you aren't any different today than you were yesterday. Still, people in Indiana will treat you differently."

To the people who naively say there is no difference in the way blacks and whites are treated in this country, I would offer the painful experience of a ten-year-old boy who learned that race and color did make a difference—in the job his father had, in the place his family lived, and in how he was treated when his racial identity was discovered by his elementary school teachers and classmates.

As my father prophesized, I was treated differently. Once my identity was discovered, I was classified, I was labeled, and I was excluded from the privileges and benefits of white society. At the age of ten, I learned a most difficult lesson: if you are black or a person of color in this country, you are on the wrong side of the color line. There were two factors that sustained me through the adversity of my youth. First, there was my father's belief that in spite of all the obstacles of race, class, and poverty facing me, I could change the circumstances of my life. The second factor was that education was the only way for me to achieve my goals.

Though I was only ten-years old when I had to confront the greatest upheaval of my life, my father and I had countless conversations about how I must shape my future. As I reflect on those talks now, especially in the cold, hard analysis of statistics, sociology, and demographics, one would likely characterize the conversations between my father and I as absolute fantasy. Almost as if it were yesterday, I can recall him standing on the railroad tracks in front of my grandmother's three-room shack at 601 1/2 Railroad Street in Muncie, Indiana. Although my father was surrounded by clear and convincing evidence of the poverty, of the discrimination, and of the prejudice directed against the black

community of my hometown, he had the vision to look beyond the harsh reality of our day-to-day lives and encourage me not to retreat from my dream for an education.

I pursued education with a vengeance, and while I take great pride that I was able to earn five college degrees and have a career as a law professor, I often think about the other children from my neighborhood who were lost along the way. There were many who had more talent and skill than I possessed. Some did not take advantage of the sparse opportunities available, but others did all they could and were unable to open the doors.

I have often thought about the contributions my contemporaries from the black housing projects of Muncie, Indiana could have made in a world that invited their intelligence and wisdom. Those reflections have been a strong career motivation for me to find ways to help make colleges and universities more open and accessible than they were during my student days. But in the last few years, I have often wondered if people with dreams like mine find their way into law schools under the California referendum. I have wondered if they find their way to law school under the new wave of anti-affirmative action legislation cropping up in the state legislatures.

What about the merits of the anti-affirmative action talk? I often hear a plea for the creation of a so-called “true meritocracy.” The argument goes that a “true meritocracy” would be exclusively based on grades and test scores for admission. But if we truly seek to provide opportunity only for the “best,” then we need something that predicts who will be the best. Those that seek to rely solely on grades and test scores fail to recognize their inherent limitations and, in fact, inability to broadly predict success. A true meritocracy looks to the contribution that a person can make to society. Grades and test scores are important, but so are life experiences and background.

A true meritocracy asks the questions: What do you bring to the educational enterprise and what can you take from it? Background, experience, persistence, and dedication are important factors in developing the best in our society. That in fact is the law of the land. *Bakke* recognized that in 1978. But in California and Texas, doors that were open to us in the past are closing.

Supporters of the California referendum claim to want true equality. In fact, one of the drafters was from my home state—Indiana. When speaking in favor of the initiative, he talked wistfully of a desire to return to the time of his youth—Indiana in the 50s—where everyone was treated the same. In that same Indiana of my youth, the 1950s, I did not witness everyone treated the same. In fact, there was little opportunity if you were black, if you were Hispanic, or if you were Asian American.

Today, we often conveniently forget about this past history of closed doors and prefer to wring our hands about the so-called lack of qualified women and minorities. In my college days, the amorphous and constantly changing

“qualifications” criteria were much less subtle and much more direct. If you were black, if you were Hispanic, or if you were Native American, you were simply told you “didn’t belong in higher education.” If the truth be told, those messages did have some effect on me as they no doubt affect minority students today as they are bombarded with challenges to their presence in the nation’s classrooms.

I know firsthand the effect of unabashed and uninformed challenges to one’s intellect and abilities. As a college student, I became a self-doubter. I wondered if my detractors were right about my ability. I wondered if I was smart enough to compete with the white students who daily challenged my right to further my education. Their derision made me wonder what I could offer to the educational enterprise. It was a painful and wrenching process, but I pressed on because I truly wanted to create opportunities for myself. I wanted an education.

In the final analysis, despite the doubters and detractors who surrounded me in my classes, I felt I had as much to offer to the educational enterprise as they did. I realized few of my classmates—or teachers for that matter—had stood in the places I had stood or had seen the things that I had seen. And I realized that my experiences were of value and merit in the discussion of public policy and the search for wisdom that is the goal of higher education.

Despite my eventual personal evolution, the continual, insidious chanting of the term “unqualified” in today’s world worries me greatly. The chant that minorities do not belong in higher education is having an impact. It is clear that minority applications and enrollments are declining even in places where courts and legislatures have not barred affirmation action.

It has given me great pride to know that over the forty-plus years since I daily confronted racism in my home state of Indiana, we have also battled and opened many doors of opportunity. Nonetheless, I am troubled that now there are those who call for a halt to efforts to make the American dream available to everyone. There is a call for a halt when many Americans are still closed out of this system. As a nation, we cannot have citizens closed out of society. As Dr. Martin Luther King eloquently said so many years ago, “there is nothing more dangerous than to build a society with a large segment of people in that society who feel they have no stake in it; who feel that they have nothing to lose.”<sup>4</sup>

My childhood experiences in Indiana changed my outlook on life. I went from the white boy in Virginia who took everything for granted to the black boy in Muncie who learned few doors would swing open for me.

America is a great place and over the span of my life I have seen many positive strides toward ending racism and discrimination. But education has been critical to my success. Unfortunately, educational opportunities were not always available to my family. My father’s mother, my black grandmother, had no formal schooling.

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<sup>4</sup> JANET CHEATHAM BELL, *FAMOUS BLACK QUOTATIONS* 60 (1995).

There was no desire or effort even to encourage young black women in turn-of-the-century Kentucky to learn to read and write, and she was never able to read or write her own name.

My father had a thirst for knowledge and pursued every opportunity for education. Yet, in high school, he was still assigned to the vocational track—carpenter training—although he wanted to prepare for college. His senior year in high school, he was assigned, as were all black male students, to build a house while his white classmates wrote term papers and developed research and writing skills for college.

As for myself, I was denied the opportunity to take honors classes in high school, though I was always in the top 10% of my class. But life did improve. Who would have ever thought that a little boy raised in the black housing projects of Muncie, Indiana, who lived on welfare, who wore tattered clothes and run-down shoes, would go to college? Who would have thought? Who could have predicted that the woman who signed her name with a “x” would have a grandson who signed his name as Dean of the Ohio State University College of Law? According to the sociologists, psychologists, criminologists, and population demographers, I was not supposed to be here. And many of you were not supposed to be here. But we were here and we made a difference in this place and in our time. Now our greatest challenge is to make sure that the doors are open for others to follow us.

As this Symposium reviews diversity and affirmative action, I urge us not to forget there is a great deal at stake if we turn back the clock—many lives and futures hang in the balance.