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FOREWORD: PRESIDENT BARACK OBAMA LAW & POLICY SYMPOSIUM

KEVIN BROWN*

In 1959, at the age of twenty-three, President Obama's father, Barack Senior, arrived at the University of Hawaii to study econometrics as the school's first African student.¹ He met Ann Dunham in a Russian language course when she was an eighteen-year-old freshman.² The two were married and Barack Hussein Obama was born on August 4, 1961, in Honolulu, Hawaii as the only child of this union.³

Two years after Obama was born, his father left to pursue a Ph.D. at Harvard.⁴ Barack Senior had won a scholarship that would support his education, however, it was not enough to allow him to bring along his new family.⁵ When Barack Senior finished his Ph.D., he headed back to Kenya. After his father left for Harvard, Obama saw him on only one more occasion, which occurred when Obama was ten and Barack Senior visited him in Hawaii for five weeks.⁶ Ann's father, who served in General Patton's army, and her mother, who worked her way up from the secretarial pool to middle management at a bank,⁷ helped to raise Obama during the time that he spent growing up in Hawaii.⁸ In 1967, when Obama was six, his mother married Lolo Soetoro, an Indonesian student who she also met at the University of Hawaii.⁹ A few months later, Obama and his mother joined his stepfather in Jakarta, Indonesia.¹⁰ Obama would live in Indonesia for the next three years,¹¹ returning to Hawaii where he initially lived with his grandparents until his mother returned.¹² Upon his return, he enrolled in Punahou Academy, a prestigious prep school for elite Hawaiians.¹³ It

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1. BARACK OBAMA, *DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE* 9 (Three Rivers Press 2004).

2. *Id.*

3. *Id.*

4. *Id.* at 9.

5. *Id.* at 10.

6. *Id.* at 63-71.

7. See Barack Obama Biography,

http://www.whitehouse.gov/administration/president_obama/ (last visited Sept. 19, 2009).

8. See OBAMA, *supra* note 1, at 25-26.

9. *Id.* at 31.

10. *Id.*

11. See *id.* at 30.

12. OBAMA, *supra* note 1, at 75.

13. *Id.* at 58.

took intervention by his grandfather's boss to get him into the school.¹⁴ In his autobiography, *Dreams from my Father*, Obama noted that this was his first experience with affirmative action.¹⁵

After high school, Obama studied at Occidental College in Los Angeles for two years.¹⁶ As a junior he transferred to Columbia University in New York—at least in part to be in a community with black neighbors¹⁷—graduating in 1983 with a degree in political science. Obama worked for a company that provided international business information to corporate clients,¹⁸ before moving to Chicago in 1985 to become a community organizer.¹⁹ In Chicago, he worked to organize black low-income residents, including in places like Altgeld Gardens Public Housing Project²⁰ and Roseland Community. Obama enrolled in Harvard Law School in 1988 where in February 1990, he was elected the first black president of the Harvard Law Review.²¹ Obama graduated from Harvard in 1991 and returned to Chicago working as a civil rights lawyer.²² He also taught constitutional law at the University of Chicago Law School.²³

In 1992, Obama helped to lead a voter registration campaign in Illinois that added 150,000 voters to the role.²⁴ These additional votes helped Carol Moseley Braun become the first black woman elected to the United States Senate.²⁵ In 1996, Obama was elected to the Illinois Senate.²⁶ However, he lost his bid for the congressional seat held by former Black Panther Party member, Bobby Rush, in 2000.²⁷ In 2004, Obama ran for the United States Senate seat vacated by the retirement of Republican Senator Peter

14. OBAMA, *supra* note 1, at 58.

15. *Id.*

16. *Id.* at 96.

17. *Id.* at 115.

18. *Id.* at 135.

19. *Id.* at 133-34, 141-43.

20. OBAMA, *supra* note 1, at 164.

21. See Barack Obama Biography,

<http://bioguide.congress.gov/scripts/biodisplay.pl?index=O000167> (last visited Sept. 24, 2009).

22. OBAMA, *supra* note 1, at 143.

23. See Barack Obama Biography, *supra* note 21.

24. See *The Presidency of Barack Obama*, N.Y. TIMES, Sept. 10, 2009, http://topics.nytimes.com/top/reference/timestopics/people/o/barack_obama/presidency/index.html#law (last visited Sept. 24, 2009) [hereinafter Presidency of Barack Obama].

25. See *id.*

26. See Barack Obama Biography, *supra* note 21.

27. See Presidency of Barack Obama, *supra* note 24.

Fitzgerald.²⁸ After winning the Democratic primary, Obama's Republican opponent, Jack Ryan, a millionaire investment banker, withdrew because of several embarrassing disclosures that became public in divorce papers filed by his wife.²⁹ After several Illinois politicians refused to replace Ryan on the ballot, the Illinois Republican Party recruited Alan Keyes, a conservative black commentator, to run against Obama.³⁰ Obama trounced Keyes in the November election, winning seventy percent of the vote,³¹ to become just the fifth black person elected to the United States Senate in history.³²

The black community could debate whether Obama is truly a member because he does not have the blood of descendants of slaves. However, before seriously taking up such a debate the first question to address is, why should such a debate occur in the first place? At the time that Obama was born, racism prevented all but a few black/white intermarriages. There were only 51,000 black/white married couples in the United States³³ and interracial marriage between blacks and whites was still illegal in over twenty states.³⁴ The use of the "one-drop" rule was part of the collection of official racial statistics.³⁵ In addition, racism also prevented many foreign-born blacks from either wanting to come to the United States or being allowed to enter even if they wanted to come. At the time Obama was born, foreign-born blacks constituted less than one percent of the black

28. See Barack Obama Biography, *supra* note 21.

29. See Associated Press, *Obama Wins Senate Race to Become 5th Black U.S. Senator in History*, USA TODAY, Nov. 2, 2004, http://www.usatoday.com/news/politicselections/vote2004/2004-11-02-il-ussenate_x.htm (last visited Sept. 24, 2009) [hereinafter *Obama Wins Senate Race*].

30. See Associated Press, *Keyes Assails Obama's Abortion Views*, MSNBC, Aug. 9, 2004, <http://www.msnbc.msn.com/id/5654128/>.

31. For a report of the election results see Election 2004 Illinois Results, <http://www.usatoday.com/news/politicselections/vote2004/SenateHouseResultsByState.aspx?sp=IL&rti=G&cn=1&tf=1> (last visited Sept. 24, 2009).

32. See *Obama Wins Senate Race*, *supra* note 29.

33. G. REGINALD DANIEL, *MORE THAN BLACK?: MULTIRACIAL IDENTITY AND THE NEW RACIAL ORDER* 98 (Temple Univ. Press 2001).

34. "Twenty-two states, including many Northern states, still had anti-miscegenation laws in the early 1960s." F. JAMES DAVIS, *WHO IS BLACK?: ONE NATION'S DEFINITION* 68 (Pa. State Univ. Press 1991).

35. Instructions for the 1960 census continued the 1930 change, which required that "[a] person of mixed White and Negro blood was to be returned as Negro, no matter how small the percentage of Negro blood." See C. Matthew Snipp, *Racial Measurement in the American Census: Past Practices and Implications for the Future*, 29 ANN. REV. SOC. 563, 568 (2003).

population, totaling just 125,322 individuals.³⁶ Thus, when Obama was born, for most Americans—black and white³⁷—mixed-race blacks and foreign-born blacks were simply indistinguishable from monoracial or native blacks.

The election of President Barack Obama must fill the black community with a tremendous sense of hope and a well-deserved feeling of pride in its stunning accomplishments. There are racial hurdles and obstacles that American society still has to overcome and the journey to true racial equality is far from complete. Nevertheless, only the most obstinate person would argue that blacks in America have not travelled a remarkably long way on the road of racial equality since Abraham Lincoln signed the Emancipation Proclamation or the Supreme Court struck down segregation statutes. Black Americans like Robert Johnson and Oprah Winfrey are on the list of the wealthiest Americans. Black Americans have run or run some of the most powerful corporations in the world, including Merrill Lynch, Time Warner, American Express, Aetna, Xerox, and Darden restaurants.³⁸ A black Miss America is no longer a major news item in this country.³⁹ Black athletes like Michael Jordan and LeBron James are among the highest paid marketing personalities in American history. Black music is not only played on the most popular radio stations in our country, but is

36. Campbell J. Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850-1990*, at tbl.8 (United States Census Bureau, Working Paper Series No. 29, 1999), available at <http://www.census.gov/population/www/documentation/twps0029/tab08.html> (excluding the 1960 population of Alaska and Hawaii).

37. According to the 1960 census, for example, whites constituted 88.8% of Americans with an additional 10.6% classified as black. See Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States*, at tbl.1 (United States Census Bureau, Working Paper Series No. 56, 2002) available at <http://www.census.gov/population/www/documentation/twps0056/twps0056.html#intro>.

38. For additional heads of corporations run by blacks see *The 2009 Ebony Power 150 List*, EBONY, May 2009, at 74.

39. There have been seven black Miss Americas, Vanessa Williams was the first one in 1984. The other six were Suzanne Charles (1984); Debbye Turner (1990); Marjorie Judith Vincent (1991); Kimberly Aiken (1994); Erika Harold (2003); and Erica Dunlap (2004). "THERE SHE IS, MISS AMERICA": THE POLITICS OF SEX, BEAUTY, AND RACE IN AMERICA'S MOST FAMOUS PAGEANT 107 (Elwood Watson & Darcy Martin eds., Palgrave Macmillan 2004); see also Elwood Watson, *Miss America's Racial Milestones*, DIVERSE, Jan. 14, 2009, <http://diverseeducation.wordpress.com/2009/01/14/miss-americas-racial-milestones/> (last visited June 23, 2009). There have also been five black Miss USAs: 2008 - Crystle Stewart; 2007 - Rachel Smith-half black and half white; 2002 - Shauntay Hinton; 1995 Chelsi Smith- half black and half white; and 1993 - Kenya Moore.

used to sell everything from a McDonald's hamburger to investment advice. There is simply no other group in human history that has travelled so far in so short a time.

For the black youth of my generation the question that bound us together was, "Where were you the day Reverend Martin Luther King, Jr. was assassinated at the Loraine Motel in Memphis, Tennessee?" Now we have a new question that binds all descendants of sons and daughters of the soil of Africa committed to the continuing struggle against racial oppression in America together. Go back with me, now, to that moment. Remember what it was like, when you experienced a racial impossibility become reality. Recall with me right now where you were at the precise moment when you realized for the very first time that Obama had been elected the forty-fourth President of the United States of America!

Though Obama does not have the blood of the descendants of slaves, he is a self-proclaimed African-American⁴⁰ married to an extraordinary and exceptional black woman who is a descendant of slaves. In his autobiography, Obama notes that he ceased to advertise his mother's race by the age of twelve or thirteen because he realized that he was doing so to ingratiate himself with whites.⁴¹ As he was quoted in one interview during the campaign,

If I was arrested for armed robbery and my mug shot was on the television screen, people wouldn't be debating if I was African-American or not. I'd be a black man going to jail. Now if that's true when bad things are happening, there's no reason why I shouldn't be proud of being a black man when good things are happening, too.⁴²

Anyone who reads Obama's autobiography, *Dreams from my Father*, cannot help but come away with the realization that, despite his lack of blood relation to descendants of slaves, he clearly identifies with and sees himself as one with these descendants. Yet it is also clear that Obama loved his white mother and loved, respected, and admired his white grandparents. Obama also clearly respected his father and felt a strong attachment to his

40. This is clear from reading his autobiography, *Dreams from my Father*. In fact, in the very first page to the preface of the 2004 edition of the book he states "the opportunity to write the book came while I was in law school, the result of my election as the first African-American president of the *Harvard Law Review*." OBAMA, *supra* note 1, at vii.

41. *Id.* at xv.

42. Monica Davey, *The Speaker; A Surprise Senate Contender Reaches his Biggest Stage Yet*, N.Y. TIMES, July 26, 2008, at A1.

Kenyan heritage as well. He does not reject his white heritage, nor does he reject his Kenyan heritage. The important facet about Obama for the black community in the United States is that he embraces it and its historical struggle against racial oppression.

In his autobiography, President Obama distinguishes himself from a black multiracial girl who rejects her connection to the black community.

That's how Joyce liked to talk. . . . She was a good-looking woman, Joyce was, with her green eyes and honey skin and pouty lips. We lived in the same dorm my freshmen year, and all the brothers were after her. One day I asked if she was going to the Black Students' Association meeting. She looked at me funny, then started shaking her head like a baby who doesn't want what it sees of the spoon. "I'm not black," Joyce said. "I'm multiracial." Then she started telling me about her father, who happened to be Italian and was the sweetest man in the world; and her mother who happened to be part African and part French and part Native American and part something else. "Why should I have to choose between them?" she asks me. Her voice cracked, and I thought she was going to cry. "It's not white people who are making me choose. Maybe it used to be that way, but now they're willing to treat me like a person. No—it's black people who always have to make everything racial. They're the ones making me choose. They're the ones who are telling me that I can't be who I am . . ." ⁴³

We all know Joyces, the black multiracials who do not identify with the collective struggle of the black community in the United States against its racial oppression. In fact, estimates from the 2000 census suggest that multiracials constitute at least ten percent of the black population under the age of eighteen.⁴⁴ We also know black immigrants and their children who

43. OBAMA, *supra* note 1, at 99.

44. According to the 2000 census, for blacks between the ages of five to nine (who are now fourteen to eighteen) 8.1% of the black population was black in combination with another racial group. There were 285,205 blacks in combination with another race out of 3,490,717 blacks of that age ($285,205/3,490,717=8.1\%$); for under the age of five (who are now between the ages of nine and fourteen) they were 362,073, 3,166,859 ($362,073/3,166,859=11.4\%$). Thus, blacks in combination with another race constitute approximately 9.72% of the blacks currently between the ages of nine and eighteen ($(285,205 + 362,073)/(3,490,717 + 3,166,859)$). See UNITED STATES CENSUS BUREAU, CENSUS 2000 PHC-T-8, RACE AND HISPANIC OR LATINO ORIGIN BY AGE AND SEX FOR THE UNITED STATES: 2000 tbl.3 (2002) <http://www.census.gov/population/www/cen2000/briefs/phc-t8/tables/tab03.pdf> (last visited Mar. 3, 2009). Assuming that the percentage of blacks born

express disdain for those blacks born and reared in this country and refuse to identify with the historic struggle of blacks in the United States. The Census Bureau estimated that eight percent of the black population in 2005 was foreign-born.⁴⁵

Obama identified with the struggle to eradicate oppression of blacks in the United States long before applying to college and continues to fight against racial oppression in the United States. Remember Obama's remarks during this past July during his critical press conference on health care reform when he was asked about the arrest of the black Harvard professor, Henry Louis Gates for disorderly conduct at Gate's own home?⁴⁶ Obama stated, "What I think we know, separate and apart from this incident, is that there is a long history in this country of African-Americans and Latinos being stopped by law enforcement disproportionately. And that's just a fact."⁴⁷ In this regard, Obama is analogous to many of the most significant leaders of the black struggle in the United States who were biracial/multiracial individuals, including Crispus Attucks, Hallie Berry, Frederick Douglass, Prince Hall, Pickney Benton Stewart Pinchback, Robert Smalls, Bishop Henry McNeal Turner, Booker T. Washington, and Walter White. He is also analogous to Marcus Garvey, Malcolm X, Colin Powell, Shirley Chisholm, and Harry Belafonte, black leaders in the struggle against racial oppression in the United States with at least one foreign-born black parent. Obama embraces his white heritage and he also embraces his Kenyan ancestry. However, the important consideration that explains why Obama received ninety-five percent of the black vote during

since 2000 who are now under the age of nine are at least as multiracial, then approximately ten percent of black children under the age of eighteen are currently multiracial.

45. The percentage of foreign-born blacks in the United States also has risen significantly over the past thirty-five years from less than 1.1% in 1970, to 4.9% in 1990, to 6.1% in 2000, to 8% in 2005. For 1970 and 1990 percentage see CAMPBELL GIBSON & EMILY LENNON, U.S. CENSUS BUREAU, RACE AND HISPANIC ORIGIN OF THE POPULATION OF NATIVITY: 1850 TO 1990 (1999), available at <http://www.census.gov/population/www/documentation/twps0029/tab08.html>. For 2000 see JESSE D. MCKINNON & CLAUDETTE E. BENNETT, UNITED STATES CENSUS BUREAU, WE THE PEOPLE: BLACKS IN THE UNITED STATES, CENSUS 2000 SPECIAL REPORTS 7 fig.5 (2005), available at <http://www.census.gov/prod/2005pubs/censr-25.pdf>. For 2005 see Mary Mederios Kent, *Immigration and America's Black Population*, 62 POPULATION BULLETIN 4 (2007), available at <http://www.prb.org/pdf07/62.4immigration.pdf>.

46. Katharine Q. Seelye, *Obama Wades into a Volatile Racial Issue*, N.Y. TIMES, July 23, 2009, <http://www.nytimes.com/2009/07/23/us/23race.html> (last visited Sept. 24, 2009).

47. *Id.*

the presidential election⁴⁸ is that Obama committed himself to struggle with other blacks against the racial oppression they face in the United States.

What we should take away from Obama's example is not the issue of whether he is a member of the black community. Rather his example should be the model for determining who the members of the black community are. Today, with so many black multiracials, foreign-born blacks and children of foreign-born blacks, there are many people with African ancestry who do not wish to identify with the collective struggle of blacks in the United States. They desire to exercise a choice regarding their affiliation with this community. Harvard Law School professor Lani Guinier, herself the product of a Jewish father and black mother, addressed this notion in the context of affirmative action. She stated, "Some students' decisions to 'check the boxes' in order to gain admission under affirmative action is purely instrumental in that a small but growing number of these beneficiaries privately express disdain for the group with which they have temporarily identified."⁴⁹

We should take Obama as the example. The determination of who is a member of the black community and entitled to what benefits may accrue there from should not be based purely on ancestry. Rather it should also be based on a conscious commitment to engage in the continuing struggle to eradicate racial oppression in the United States.

48. See Presidential Election 2008 Exit Polls, <http://www.cnn.com/ELECTION/2008/results/polls/#USP00p1> (last visited Sept. 24, 2009). According to U.S. News & World Report, Obama received ninety-six percent of the black vote. See also *Five Voting Demographics Where Barack Obama Made Headlines*, U.S. NEWS & WORLD REPORT, Nov. 6, 2008, <http://www.usnews.com/articles/opinion/2008/11/06/5-voting-demographics-where-barack-obama-made-headlines.html>.

49. See Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of our Democratic Ideals*, 117 HARV. L. REV. 113, 114-15 (2003).