INTRODUCTORY REMARKS

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It was in 1964 during the Annual Meeting of the AALS when its proceedings carried a statement that its member schools were admitting students without regard to race, color, religion or national origin. This was probably the first collective and public notice that the law schools had taken of their exclusionary practices against Black Americans and some other non-majority people. It is also a fact that judicial decisions, in which several law schools had been found guilty of engaging in blatant, affirmative and unlawful discrimination, had given impetus to a need for some positive act or decision by the legal education community.

The law schools, however, followed the age old trend of speak now, act later. Consequently, it was not until the 1968-69 academic year - then after much civil concern and turmoil in our cities and institutions; and the association of Rev. Martin Luther King, Jr. - that one could begin to discern some significant change in the racial composition of the law school student bodies around the country. Even then some schools were unable to throw off too many years of a program built on exclusivity, indifference, inertia or just plain insensitivity. Regardless of the reason for inaction, many schools just did not provide an opportunity for minority students to obtain a legal education.

After concentrated effort in 1969, 1970 and 1971 one could note a handsome change in the enrollment statistics for the academic year 1971-72. The number of minority students had grown from approximately 700 in 1964-65 to 4,717 in 1971-72. But before we commence a celebration, the record shows that there was a substantial increase in the number of all law students during the period. Statistics reveal that the number of all law students grew from 65,000 in 1964-65 to 94,468 in 1971-72. But one could view this record with some projected hope, and with a belief that Black-Americans, Asian-Americans, Chicanos, Native Americans and some other Spanish speaking Americans were going to be afforded much greater measures of opportunity. And indeed, that by 1975-76 with much of the same effort, the enrollment of minority students should reach 12,000-14,000. A not unreasonable figure, and it bears little relationship to population ratios, particularly when one considers that more than 22% of this Country's population is not Caucasian.

But something happened in 1971. The Law School of the University of Washington, which had graduated 12 Black students and 3,800 White students in its 67 year history, was accused of discriminating against a White applicant and in favor of Black applicants. Marco DeFunis charged, inter alia, that he was denied admission because the school has a preferential policy toward minority-group students. The claim was so absurd that a number of sensible people laughed at it and dismissed it as a tempest in a teapot. But many of us who study the American scene and its negative attitude toward

minorities rightly perceived this as one more step toward the end of the Second Reconstruction. The mood of the Nation was ripe for a *DeFunis Case.*

We now know that this matter was destined to become the meat of too many debates. The case was to serve as justification for some schools to do less and for others to continue doing nothing. Moreover, the infectious side effects were realized. *DeFunis* helped to rekindle the shopworn, tainted and discredited views of those who preach racial and ethnic superiority. The last three years have experienced an avalanche of oppressive and racist theories and writings akin to the 1880's and the 1890's. Some of this fall-out is why we are in this session today.

We look again at the record and whether because of *DeFunis* or not we note that the great stride of 1965-1971 was reduced to a near crawl between 1971-74. In 1972-73 the number of Black students was 4,423 and in 1973-74 that number was 4,817. And we should note that the number of all law students rose to 101,707 in 1972-73 and then to 106,102 in 1973-74. Put another way - while the number of minority students was growing from 700 in 1965 to 6,298 in 1974; during that same period the number of places held by White students grew from 64,300 in 1965 to 99,804 in 1974; a net increase of 36,504.

Can any reasonably sensible person look at these data, prepared by the AALS, and conclude that minority students, particularly Black students have been the recipients of preferential treatment?

We know some of the causes for this:

1. Several schools have developed and maintained *negative quotas* with respect to Black and other minority students. They have a policy and a practice of accepting *only* a certain number of minority students, irrespective of qualifications and regardless of the number of such students in the *pool.*
2. Some schools have decided that their special efforts should be aimed toward "Women" instead of minorities.
3. There is the myth of reverse discrimination. We know that the only way reverse discrimination can become a reality is for minorities and for women to suddenly take control of the reins of power and the decisional apparatus of the Nation and then discriminate against White men in much the same way that White men have discriminated against us.

Personally, I do not see that happening for a long, long time. In the meantime we will continue about the business of reversing the age-old forms of discrimination and toward broadening the pool of competition.

The present posture of the *DeFunis* matter prompts several questions. But before I put these queries, I want to pay tribute to the *DeFunis* strategists.

First, *DeFunis* and his people were able to take a *nothing* case and ride an emotional tide of subtle Black-enmity all of the way to the highest court in the land.

Second, *DeFunis* and his promoters have been able to cause some of the Country's best legal minds to earnestly debate whether the active recruitment and admission of minority students, because these students are identified as minority, though possessing the skills and talents to deal with the intricacies

of legal education, constitute discrimination against white students and thereby deprive them of the Equal Protection Clause guaranties.

Third, they have succeeded in compelling lawyers, law professors, institutions and organizations to ponder whether there should be a positive race-conscious factor in the allocation of resources. In a Nation, which admittedly takes race into consideration in its negative response to about 22 percent of its population, should we not change that to a positive one.

Fourth, they have lawyers, law professors and members of the judiciary joining sociologist and psychologists to declare that more than 300 years of racial exclusion because of negative race-consciousness, means nothing. And that this Country (Black people included) must join in a great internment ceremony and declare race and racial discrimination dead, moreover; that from this day onward we are all declared equal in every aspect of American life; just as if last year and the past 300 years did not happen.

Now, I ask you, can any law professor who has been exposed to even a scintilla of American History, Human History or Legal History seriously consider supporting the proposition that the privileges, rights and status of minority-group people—particularly, Black people— have been the same as for other groups in this Nation?

Unfortunately, this thesis has been raised to the level of respectable academic debate. On the side of the debate— the pro *DeFunis* elements says that they support an admissions which considers such factors as family economic background, deprived family back ground, inadequate schooling or other circumstances which translate into cultural or economic deprivations. The only criterion which may not be used, they agree, is race.

The question that begs for an answer is: why not race? Is it not a fact that any unbiased reading of history reveals that, in this country, the position of Black people, and other minorities, is due primarily to race and racism? Why are Black people being told that their rights and privileges must be measured by the relative position of "poor Appalachian Whites"? Who ever heard of a White person in this country being deprived and poor because he or she was white?

Why must all Black people and other minorities now have to suffer this additional obstacle, yet another assault, on their efforts. They have watched the power brokers attempt to declare everyone a "Minority". Italian-Americans, Polish-Americans, Irish-American, Jewish-American, Greeks, Slavic groups, people of Eastern Middle and Southern European Ancestry; American White Women and all of the so-called disadvantaged and otherwise handicapped persons have been maneuvered under the general umbrella of minority.

It should be clear to any reasonably prudent persons that this is either a conspiracy to so overload the vehicle, rendering it inoperative for any group; or that there is an inestimable amount of stupidity in very high places.

I would urge the law school Deans, and others here assembled, to recapture the leadership role for which you are particularly trained and to which you are peculiarly suited. Why must someone in the State Legislature; or in Washington, or even the Supreme Court have to tell you what this

Nation's educational needs and objectives ought to be. Why should minority students have to show the relevance and substantial worth of their presence to the whole of legal education before there is some positive movement?

It pains me deeply to see men whom I admire in a sort of wilderness of uncertainty on this matter—one of the great moral issues of our day. I have great fear for legal education, other strong disciplines and educational institutions if they sit back and repeat in parrot-like fashion the slogans, schemes and shibboleths of the pre-digested and narrowly articulated private agenda of other agencies, groups, organizations and politicians.

Finally, I invite you to remember the Words of Eugenio Hostos, I paraphrase and quote some of his writings: "When one cannot be just through virtue, then let one be just through pride. If one would know what justice is, let one be persecuted by injustice."

"There are complete men and incomplete men. If one would be a complete man, put all the strength of one's soul into every act of one's life." There is something high "than being a great man in the eyes of history, and that is to be a man useful to one's time. The thoughtless world and history itself have preferred the so-called great men to those who are useful: one of the innovations the New World is called upon to introduce is putting the second ahead of the first."

It is my hope that if we will make ourselves useful people, the world may then make us great.