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Margaret M. Russell

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Cover Page Footnote

Associate Professor, Santa Clara University School of Law. A.B., Princeton University, 1979; J.D., Stanford Law School, 1984; J.S.M. Stanford Law School, 1990.

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MCLAURIN'S SEAT: THE NEED FOR RACIAL INCLUSION IN LEGAL EDUCATION

Margaret M. Russell[*]

One of the groundbreaking predecessor cases to *Brown v. Board of Education*[1] was *McLaurin v. Oklahoma State Regents for Higher Education*,[2] in which G. W. McLaurin, an African-American college professor, sought admission to the racially segregated Graduate School of Education of the state of Oklahoma. Before the case's appeal to the high Court, Oklahoma decided to admit McLaurin but to require him to sit in a cordoned-off alcove outside of the classroom and at a separate "table-for-one" in the library and cafeteria.[3] A well-known photograph of McLaurin from that era starkly conveys the tragedy of exclusion in pre-*Brown* educational institutions: a well-dressed black student sits in forced isolation in the hall outside of a large lecture hall, exiled from white students and professors as he seeks a graduate education.[4] The Supreme Court ultimately held that the state of Oklahoma could not segregate students within the Graduate School once it had admitted them. Undoubtedly, the de facto racial segregation of McLaurin as a "class of one" took longer to dissipate.

I first saw this photograph of McLaurin when I was a law student at Stanford Law School in the early 1980s, and it affected me deeply. Some thirty-plus years after McLaurin's case, I was one of approximately a dozen African-American students—including four African-American women—in a class of one hundred and seventy. Despite this small number, I remember having both a sense of belonging and a relatively sanguine view of the prospects for racial

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* Associate Professor, Santa Clara University School of Law. A.B. Princeton University, 1979; J.D. Stanford Law School, 1984; J.S.M. Stanford Law School, 1990. With gratitude to Deborah Rhode for her conscientious criticism of the legal profession, and to LaDoris H. Cordell for her tireless efforts for diversity in the legal profession.

1. 347 U.S. 483 (1954).

2. 339 U.S. 637 (1950).

3. *See* Constance Baker Motley, Equal Justice Under Law: An Autobiography 65 (1998).

4. The photograph is part of William A. Elwood's film documentary about Charles Hamilton Houston and his legal strategy leading to the demise of the "separate but equal" doctrine. *The Road to* Brown*: The untold story of "the man who killed Jim Crow"* (California Newsreel 1990).

diversity in the legal profession. From my vantage point, law school minority recruitment efforts were vigorous, the public defense of affirmative action policies was forthright, and my classroom experiences (thanks to teachers such as Deborah Rhode) tended toward the positive. McLaurin's exclusion seemed but a relic of long-faded ignominy.

Now, some fifty years after *McLaurin* and twelve years after I entered law teaching, I find that the image of McLaurin in his roped-off seat returns to my mind's eye far more frequently than I would like. The years (roughly 1975-1985) in which I received my undergraduate and graduate education coincided with a watershed era of affirmative action and other diversity outreach initiatives in higher education. As documented and analyzed by Derek Bok and William Bowen in *The Shape of the River*,[5] these policies resulted in a striking increase of black professionals who are now leaders in their fields, particularly law, medicine, and business; moreover, the Bok-Bowen study reveals, black graduates from the relevant time period (1976-1989) were more likely than their white counterparts to be leaders in politics, community service, and other areas of civic life.[6] However, since the late 1980s, years of political and legal backlash against affirmative action have completely transformed the legal educational landscape. The "culture wars" have resulted in battle scars and casualties that are tangible and far-reaching. For black students today, McLaurin's seat is no longer officially cordoned off, but the pernicious effects of being one of a dwindling number remain.

At the beginning of each semester, as I take my place at the podium and scan large classes of law students, I see increasingly small numbers of students of color, particularly African-American and Latino students.[7] I wonder if legal education for these students will mean an even higher and more intense degree of isolation, distress, and self-doubt than are experienced by law students generally.[8] In

5. William G. Bowen & Derek Bok, The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions (1998).

6. *Id.* at 168-69.

7. For further discussion of the admissions decline of racial minorities in legal education, see ABA Comm'n on Minorities in the Profession, Miles to Go 2000: Progress of Minorities in the Legal Profession (2000); William C. Kidder, Affirmative Action in Higher Education: Recent Developments in Litigation, Admissions and Diversity Research (January 2001), *at* http://www.scu.edu/law/salt/affirmative/affirmative.html.

8. *See* Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession 197 (2000). Rhode notes:

> Although the psychological profile of entering law school students matches that of the public generally, an estimated 20 to 40 percent leave with some psychological dysfunction including depression, substance abuse, and various stress-related disorders. These problems are not inherent by-products of a demanding professional education; medical students do not experience similar difficulties.

Id.

addition, I worry that the legal education of all of my students will suffer immeasurably because of the lack of racial diversity in the classroom. Over the past decade of teaching, I have observed that the de facto re-segregation of law schools has had at least two starkly noticeable effects on classroom environment: first, an increasing difficulty with and reluctance to engage in classroom discourse about race and racial justice; and second, a sense that the dream of diversity in legal education was a high-minded experiment that failed and must now give way to the inevitable "normalcy" of black and brown tokenism. With each passing year, I see less and less concern—not to mention outrage—over the fact that the decline of racial diversity in law school classrooms has had vivid and inevitable effects on classroom environment, the quality of legal education, and the prospects for meaningful reform in the legal profession. Each year, McLaurin's seat seems less and less a remnant of the distant past.

Fortunately, Deborah Rhode has remained vigilant and vociferous about the need for racial diversity in legal education to effect true reform in the legal profession. In her cogent and insightful new book, *In the Interests of Justice: Reforming the Legal Profession*,[9] Rhode scrutinizes the hypocrisies and failed potential of the legal profession as an instrument for social justice. She does not hesitate to identify and critique aspects of legal educational structure, methods, and priorities that foster alienation in nearly all law students and particularly in racial minorities, gay and lesbian students, and women. She dissects the "overly authoritarian and competitive dynamics" of many classrooms and the "scramble for status" that these methods encourage.[10] Without engaging in generalizations or assumptions about the learning styles of women, people of color, or sexual minorities, she astutely describes pedagogical methods and curricular priorities that usually ignore the realities of the legal problems faced by these communities.

In considering what it means to practice law in the interests of justice in the twenty-first century, legal educators would do well to heed Rhode's warnings about the increasingly anachronistic structure of legal education today. With regard to the possibilities for the legal profession as a vehicle for social justice, we need to recognize that our classrooms and our curricula are in a state of crisis. We cannot continue to assume that we can provide competent professional training to any student—whether white or non-white—in the interests of justice unless we openly acknowledge racial injustice within legal education and within the legal profession itself. Our graduates will be ill-equipped to challenge racial inequality on behalf of their clients if

9. *See id.*
10. *Id.* at 197.

they have failed to recognize the racial inequalities that undergird their existence in law school and their entry into the profession.

How can we as legal educators seek to ameliorate the damage caused by the increasing lack of racial diversity of which Rhode writes? The first and most obvious solution is to continue to press vigorously toward racial inclusion through the recruitment, admission, and retention of students of color. Beyond admissions and retention reform, however, there is much that we can do in the classroom to encourage a climate of greater racial inclusion and awareness. Rather than skirt issues of race and racial justice because of the embarrassing realities of racial tokenism in the classroom, we should find ways to encourage students to discuss those realities and particularly to understand the institutional and societal dynamics underlying them. Most students, and certainly all students of color, take note of the racial composition of their classes; it is a risk well worth taking to find ways to discuss generally how the lack of racial diversity affects legal professional training without putting individual students "on the spot."[11]

Finally, law schools should consider adding a required unit of materials about diversity in the legal profession as a permanent part of the law school curriculum. Law students (as well as law professors and practicing lawyers) would benefit from an intellectual structure within which to examine the history of discrimination in the legal profession, the present demographics of the legal profession, and how the lack of racial diversity in the profession affects not only their future as lawyers but the future of their clients as well. Among the topics that could be covered in such a unit would be: the history of access of women and minorities to legal education and to the profession; individual narratives of pioneering lawyers in the area of racial justice in the profession; political, legal, and philosophical perspectives on affirmative action; the role of the American Bar Association and other bar associations (particularly minority bar associations) in racial justice initiatives; the role of the American Association of Law Schools, the Society of American Law Teachers, and other legal educational organizations in racial justice initiatives; and other proposed initiatives and reforms. Of the many required hours described as "professional training" of our law students, not one is devoted to analyzing the strengths and weaknesses of the legal

11. For example, in the November 2001 Fordham symposium discussion upon which this volume is based, Professor Rhode and Professor Russell Pearce described an in-class exercise that they used in their seminar on "Ethics in the Public Interest." In this exercise, each student was asked to draw a sketch of how s/he viewed himself or herself in the Fordham Law School community. According to Rhode and Pearce, race emerged as a subtext in many students' sketches in terms of where they located themselves in the community (center, margins, insider, outsider, etc.) and how they felt about their position. The sketches in turn led to an illuminating discussion of the role of race and gender in the law school community and in legal education generally.

profession with respect to racial diversity. Students deserve to know more about the behemoth of legal professional socialization that is about to dominate their lives.

In *In the Interests of Justice*, Rhode paraphrases former Yale Law School professor Fred Rodell in noting that "there are only two things wrong with conventional law school teaching. One is style; the other is content."[12] Inextricably linked to style and content is the quality of learning environment in which teachers try to do their work. Particularly with regard to the prospects for true "justice" under the law in the twenty-first century, re-segregated classrooms will cause perhaps even more harm than they did pre-*Brown* because the de facto segregation will remain unchallenged and officially nonexistent. If our law school classrooms continue to lack racial diversity, no amount of style or content will remedy the hollowness of such an environment.

12. Rhode, *supra* note 8, at 196.

Notes & Observations