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TOWARD A BRIDGE: THE ROLE OF LEGAL ACADEMICS IN THE CULTURE OF PRIVATE PRACTICE

*Camille A. Nelson**

INTRODUCTION

There is much debate in the academic literature about the proper role of the law school and that of the law school professor in best preparing students for careers in law.¹ Law school is a

* Assistant Professor, St. Louis University School of Law; LL.B., University of Ottawa, Canada; LL.M., Columbia Law School; J.S.D. Candidate, Columbia Law School. The legal education seminar at Columbia Law School has provided a wonderful forum for discussion of these issues. Professors Peter Strauss and Deborah Livingston assisted greatly in the formulation of my thoughts about the proper role of a law professor. As my thoughts developed, I was particularly grateful to the University of Ottawa for allowing me to present this paper at a conference entitled Critical Appraisals: The Future of Legal Education. I additionally wish to express my gratitude to the participants in the 2001 Mid-Atlantic People of Color Legal Scholarship Conference held at Dickinson School of Law and, in particular, to the student participants who had the courage to articulate, before a lecture hall full of their professors, their concerns about the practice and study of law. Your comments certainly did not go unheeded.

¹ See John S. Applegate, *A Beginning and Not an End in Itself: The Role of Risk Assessment in Environmental Decision-making*, 63 U. CIN. L. REV. 1643, 1670 (1995) (advocating his belief that exposure to diversity of students in terms of ethnicity, age, gender, and religion fosters better legal training and educating); Sarah Berger et al., *"Hey! There's Ladies Here!!"*, 73 N.Y.U. L. REV. 1022, 1061-62 (1998) (suggesting that law schools need to change their curriculum to respond less to gender differences and more to the deep gap between what students learn in law school and what they need to learn in order to be successful legal professionals); Ross I. Booher, *Constitutional Law-*

professional school, the existence of which is justified mainly in terms of producing a body of lawyers ready and willing to practice. It can be viewed as a university faculty, like many others, whose mission is the furtherance of enlightened debate and progressive intellectual discourse. In this vein, law school professors indoctrinate students so that they are capable of participating in professional legal dialogue. Alternatively, the professors in a law school teach the language and science of the law such that students may navigate their own way in the lexicon of the legal profession. Maybe the role of the law professor is not even to teach at all. Instead, the Socratic method² used by

Fourteenth Amendment Equal Protection Clause-Racial Preferences in College and University Admissions, 64 TENN. L. REV. 497, 513 (1997); Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REFORM 51, 75-80 (1994) (theorizing that, while law schools claim that they do not treat minority students differently than other students, they in fact send messages that make African American students feel inferior); Charles R. Lawrence, III, *Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 846-47 (1995) (advocating the use of a transformative, substantive approach to racial problems that would focus on eradicating inequality on a group level and would enable affirmative action programs to be useful tools, as opposed to the current liberal model which focuses on racial equality as an individual right thus hampering the use of group-based affirmative action programs); Harlan A. Loeb, *Equal Opportunity in Higher Education: An Affirmative Response*, 17 PACE L. REV. 27, 28 (1996) (advocating the use of alternative, race-neutral admissions programs by colleges and universities). See also Stephanie E. Straub, *The Wisdom and Constitutionality of Race-Based Decision-making in Higher Education Admission Programs: A Critical Look at Hopwood v. Texas*, 48 CASE W. RES. L. REV. 133, 170-72 (1997) (arguing that affirmative action needs to be retained in higher educational facilities in order to quell racism in law schools and society overall); L. Darnell Weeden, *Yo, Hopwood, Saying No to Race-based Affirmative Action Is the Right Thing to Do from an Afrocentric Perspective*, 27 CUMB. L. REV. 533, 535 (1996-97) (proposing that race-based programs should be replaced with affirmative action programs that are race-neutral and based instead on socio-economic status).

² This is a familiar technique used in legal education in which an instructor questions an individual student with each question building off the preceding answer. This method is designed to teach students to think about legal issues rationally and deductively. BLACK'S LAW DICTIONARY 1396 (7th ed. 1999).

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professors can be interpreted as a pedagogic device employed to encourage students to discover the law and, by so doing, educate themselves.³ Enveloped in these different perspectives is the question of whether the law school should hold a mirror to the legal profession in order to replicate its image and supply its educational demands or whether, instead, legal educators should seek to innovate and infuse the bar with a diversity of thoughts and professionals. The most reasonable inquiry into the proper role of the law school, and law professors specifically, would likely involve a discussion of the different perspectives surrounding this debate.

Certainly one aspect of the role of the law professor is to mentor law students and assist in aspects of career planning. All students, and students of color in particular, benefit from closer contact with the practicing bar. Professors are in a crucial position to foster such contact and to ease the transition of graduates into legal practice. One area of practice has proven particularly challenging for recent law school graduates and graduates of color in particular. Private practice, particularly elite firm practice, has suffered from high attrition rates for women and persons of color.⁴ The causes of attrition are

³ See LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL & INSTITUTIONAL CHANGE* 50 (Elizabeth Garrett ed., 1997) (discussing the effect of the Socratic method on women law students and stating that the method is almost universally used in first-year courses); Paul Bateman, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 7 *QUINNIPIAC L. REV.* 397, 401 (1997) (describing generally the goals of the Socratic method); Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate over Teaching Method Continues*, *BYU EDUC. & L.J.* 1, 5 (1998) (describing generally the goals of the Socratic method); Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 *S. CAL. REV. L. & WOMEN'S STUD.* 37, 40 (1997) (observing that the Socratic method remains the prevalent pedagogical tool utilized by law professors).

⁴ I recognize and respect that these terms are not mutually exclusive. See generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Facts: A Black Feminist's Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. CHI. LEGAL F.* 139 (1989). Indeed, women of color and black women in particular, suffer from some of the

manifold, but one reason cited by black⁵ associates is a racial “culture-shock” of sorts that results in unease, isolation and a corresponding lack of work.⁶

This article recognizes some of the consequences of this

highest attrition rates in large firms. Generally, the reality for women of color in elite firms is particularly stark. According to the 1998 American Bar Association Report, *Miles to Go: Progress of Minorities in the Legal Profession*, 85% of minority women leave predominantly white firms before their seventh year of practice. This is compared to approximately 75% of all associates who similarly leave. *See Miles to Go: Progress of Minorities in the Legal Profession*, A.B.A. J. Apr. 2000, at 56 [hereinafter *Miles to Go*].

Black women in elite firms face the same challenges as their black male and white female counterparts—difficulty generating business, lack of mentoring and isolation. *Id.* These problems are reflected in the statistics that indicate only “47% of minority women law graduates enter firms, compared with about 52% of minority men, and 57% of whites.” *Id.*

⁵ The focus of this article is largely on black students and lawyers. Accordingly, I do not treat the issues discussed as merely a subset of the problems affecting minority lawyers, persons of color and women generally. While there are numerous similarities, there are also differences that necessitate recognition and careful scrutiny. As such, I have attempted to use terminology most appropriate to my message. *See generally* ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 61-62 (Charles Scriber’s Sons 1992); Elizabeth Chambliss, *Organizational Determinants of Law Firm Integration*, 46 AM. U. L. REV. 669 (1997).

⁶ *See Miles to Go, supra* note 4, at 55. “Many blacks who have made it to partner in predominantly white firms leave for minority firms where they feel more comfortable.” *Miles to Go, supra* note 4, at 55. “There does appear to be a problem in terms of black lawyers coming and those who stay. The percentage is lower than it is for white lawyers. There are problems of retention.” *Miles to Go, supra* note 4, at 55 (quoting Ned. B. Stiles, the managing partner at Clearly Gottlieb Steen & Hamilton in New York City and Chairman of the city bar’s Committee to Enhance Diversity in the Profession). A good part of this stems from a “culture clash” that has also been described as simply “not fitting into a predominantly white law firm.” *Miles to Go, supra* note 4, at 55 (quoting Ned. B. Stiles). Although the attrition rates from corporate firms are significantly higher for black lawyers than they are for their white counterparts, many of those who leave private firms go to work in corporate legal departments. *See* Fredrick H. Bates & Gregory C. Whitehead, *Do Something Different: Making a Commitment to Minority Lawyers*, A.B.A. J., Oct. 1990, at 82 (noting the “extraordinarily high turnover rate for minority lawyers in large firms”).

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“culture-shock” and explores avenues that law professors might consider to assist in the alleviation of law graduate displacement. Part I examines the exclusion of persons of color from elite firm practice and considers the pressures that lead blacks, and other persons of color, into and out of elite firm practice. Part II explores options that law professors may consider in order to ease the transition of their students into large firm private practice. These suggestions are based upon the assumption that diversification of elite firms is a desirable outcome.⁷ All of these suggestions are pointless, however, if students of color are not mentored. Accordingly, Part III addresses this need and suggests uncomplicated methods to assist with this chronic problem.

I. THE EXCLUSION OF PERSONS OF COLOR FROM ELITE PRIVATE PRACTICE

The question of whether the legal profession should mirror the law school or whether the law school should mirror the profession reveals a perplexing dilemma. The heart of this dilemma is best explored by examining the existing cultural disparity between law schools and elite private practice. In so doing, one should consider the culture of the legal profession today and ask if that culture is a reflection of those most visible within it.

Both law schools and law firms have espoused a belief that increased diversity enhances the professional lives of lawyers.⁸

⁷ *Evaluating Diversity*, MINORITY L.J., at <http://www.minoritylawjournal.com/fall01/texts/management.html> (stating that some large firms, such as St. Louis based Bryan Cave and Denver based Holland & Hart, are asking partners filling out their self-evaluation forms at compensation time to state what they have done to further diversity, and noting that both firms say that partners' answers have had an impact where they'll notice it—their wallets).

⁸ In a recent study asking 1000 faculty members from each of the 183 ABA accredited law schools about their views on classroom diversity, nearly three-quarters considered classroom diversity to be important to the missions of their law schools, and less than 10% found it unimportant. Richard A. White, *Recent American Association of Law Schools Diversity Study* (May 2000), available at http://www.aals.org/diverse_news.html.

The literature, however, indicates that the legal profession—especially the most powerful within it—is still predominantly white and male.⁹ In recent decades, law school graduates have become increasingly representative and reflective of an integrated society, while law firms have remained undiversified and

⁹ See Michael St. Patrick Baxter, *Black Bay Street Lawyers and Other Oxymora*, 30 *CDN. J. BUS. L.* 267, 270 (1998) (citing statistics indicating that in 1997, of 3,117 lawyers employed by Toronto's twenty-three elite corporate law firms, only approximately twenty were black, and only one of these firms had a black partner); Chambliss, *supra* note 5, at 696 (finding that "at the partnership level, elite law firms still are predominantly male and almost exclusively white"); Lewis A. Kornhauser & Richard Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 *N.Y.U. L. REV.* 829, 848-65 (1995) (citing statistics indicating that by 1991, women accounted for only 20% of American lawyers and constituted 11.1% of elite law firm partners and 6.9% of senior government attorneys, and finding that "African Americans and Latinos continue to be considerably underrepresented in important sectors of [the legal] profession, such as in elite law firms"); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 *CAL. L. REV.* 493, 502 (1996) (stating that "although there has been a significant growth in the absolute number of black lawyers in corporate firms, the percentages remain microscopically small"); *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession: Report to the Bicentennial Convocation*, reprinted in *THE LAW SOCIETY OF UPPER CANADA* ¶ 33 (May 1997) [hereinafter *Bicentennial Report*] (finding that, as of 1996, "[w]omen [in the Ontario Bar] continue[d] to confront major barriers in their advancement in legal profession," and "sizeable gaps . . . remain[ed] between men and women in attainment of partnership, ownership of legal practices, input into policy decision making in the workplace, autonomy in work, responsibility for supervising others, and earnings"); Jonathan D. Glater, *Law Firms are Slow in Promoting Minority Lawyers to Partnerships*, *N.Y. TIMES*, Aug. 7, 2001, at A1 (noting that, although by 1993, at least 8% of starting associates belonged to minority groups, any hopes that these increasingly diverse classes of young lawyers have produced an increasingly diverse class of young partners, remain largely unfulfilled); Alan Jenkins, *Losing the Race*, *AMERICAN LAWYER*, Oct. 2001, at 90 (finding that, from 1989 to 1996, Cleary Gottlieb hired more than thirty black associates—none of whom remain); Special Report, *Race and the Law*, *A.B.A. J.*, Feb. 1999, at 43 (finding discrepancies in how white and black lawyers view the American legal system, with black attorneys perceiving a greater bias against women and minorities).

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unrepresentative of the multiethnic legal community.¹⁰ The difference in cultural diversity that exists between law schools and what has been referred to as “elite” law firm practice is most striking.¹¹ Elite firms are large “consumers” of law students.¹² As such, their role in the quest for diversity must be considered.

In order to achieve any semblance of true diversity, all

¹⁰ Given the pool of law school graduates, there can be little doubt that blacks are under represented in elite firms. Since the mid-1970's, blacks have consistently constituted more than 6% of the students enrolled in American law schools. Camille A. Nelson, *Out of Sync: Reflections on the Culture of Diversity in Private Practice*, 19 CANADIAN WOMAN STUDIES 199, 199 n.4 (1999) [hereinafter Camille Nelson, *Out of Sync*]. Even adjusting for the amount of time it takes to enter the legal profession, this percentage is much higher than the current percentage of black associates and partners in elite firms. For instance, as of 1995, there were more than 1,641 (2.4%) blacks working in the largest 250 law firms in America. See Ann Davis, *Big Jump in Minority Associates, But . . .*, NAT'L L.J., Apr. 29, 1996, at A1. Only 351 were partners (just over 1%). *Id.* In 1981, the percentages for black associates and partners were 2.3% and .47% respectively; in 1989, 2.22% and 0.91%; in 1991, 2.0% and 1.1%. *Id.*; see also ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 131 (1988) [hereinafter NELSON, PARTNERS]; Kornhauser & Revesz, *supra* note 9, at 860 (reporting that students of color accounted for 8.4% of all students in ABA approved J.D. programs in 1977, 8.8% in 1980, 10.4% in 1985, 11.8% in 1988, 13.6% in 1990, and 17.9% in 1993); Robert L. Nelson, *The Future of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 379 (1994) (reporting that among the 250 largest law firms only 2.2% of associates and 0.9% of partners were black); Wilkins & Gulati, *supra* note 9, at 502, 504 (showing that large corporate law firms lag behind other legal employers in the hiring and retaining of black lawyers).

¹¹ Wilkins & Gulati, *supra* note 9, at 503-04 (referring to a 1988 study by Robert Nelson reporting that the number of minority students attending the leading law schools from which corporate firms generally recruit is considerably higher than the proportion of minorities among even the youngest cohorts of lawyers in firms).

¹² See Elizabeth Chambliss & Christopher Uggen, *Men and Women of Elite Law Firms: Reevaluating Kanter's Legacy*, 25 LAW & SOC. INQUIRY 41, 49 n.15 (2000) (noting that the “most elite law firms recruit nationally as well as regionally”); Wilkins & Gulati, *supra* note 9, at 545 (stating that “[f]irms now expend enormous resources (in dollars and time) on interviewing second, third, and even some first year students for summer and full time positions”).

participants in the legal system must be involved in its reform. Accordingly, the role of law schools, law societies, bar associations, law students, attorneys/lawyers and the judiciary must be examined contemporaneously with an examination of the role of the law firm in promoting or hindering diversity.

A. The Lack of Racialization¹³ in Elite Practice

Elite practice deserves particular attention, as it has been the most resistant to diversity gains and has remained relatively

¹³ The term “racialized” recognizes that “race” is not of a scientific origin. Rather race is a manufactured social and cultural construct with structural and personal ramifications and implications. The socio-cultural construction of race highlights that there is no biological reality to these descriptions. Ironically, the necessarily practical adoption of “race-speech” and “racial-identification” creates a tension between denying the validity of race, while at the same time seeking “universal,” or at least “translatable” conceptions to convey the information. The term racialized is used to refer to persons from communities that have been traditionally marginalized due to “racial characteristics.” Such communities are also commonly referred to as “people of color,” “visible minorities” or “racial minorities.”

For further information on the construction of race, *see generally* THEODORE ALLEN, *THE INVENTION OF THE WHITE RACE* 1-2 (1997); CRITICAL WHITE STUDIES: *LOOKING BEHIND THE MIRROR* (R. Delgado & J. Stefancic eds., 1997); IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); TOMMY L. LOTT, *THE INVENTION OF RACE: BLACK CULTURE AND THE POLITICS OF REPRESENTATION* (1999); MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (1994); DAVID ROEDIGER, *TOWARDS THE ABOLITION OF WHITENESS* (1994); DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (1999); ALEXANDER SAXTON, *THE RISE AND FALL OF THE WHITE REPUBLIC* (1990); Christopher A. Ford, *Administering Identity: The Determination of “Race” in Race-Conscious Law*, 83 CAL. L. REV. 1231 (1994); Neil Gotanda, *A Critique of “Our Constitution Is Color-Blind,”* 44 STAN. L. REV. 1 (1991); Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109 (1998); Tanya Kateri Hernandez, *“Multiracial” Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence*, 57 MD. L. REV. 97 (1998); George A. Martinez, *The Legal Construction of Race: Mexican Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997).

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impervious to the concept of racialization.¹⁴ For instance, the percentage of black lawyers hired by elite firms lags behind the percentages of black lawyers in both the public and the private sectors.¹⁵ With less diversity, these firms are ill equipped to deal

¹⁴ See, e.g., Wilkens and Gulati, *supra* note 5, at 502 (arguing that the under representation of blacks in corporate law firms is due in part to the way corporate law firms are structured, which affects choices of black lawyers at those firms); Jeffrey Ghannam, *Making Diversity Work: Law Firms Must Explore Innovative Strategies to Enhance Opportunities for Lawyers of Color*, A.B.A. J. Mar. 2001 at 63 (attributing the inability of law firms to retain minority lawyers in part to the lack of mentoring minority associates once the emphasis on minority recruitment has been accomplished); Steven Keeva, *Unequal Partners: It's Tough at the Top for Minority Lawyers*, A.B.A. J., Feb. 1993, at 50 (reporting that an exodus of black partners from major Chicago law firms was due to social and behavioral characteristics of society, including a reliance on white, corporate America to generate clients, a lack of contacts and networking opportunities needed to generate new business expected of a partner, and a level of comfort amongst white lawyers that is not shared with members of other racial or ethnic groups); Jonathan D. Glater, *Law Firms Are Slow in Promoting Minority Lawyers to Partnerships*, N.Y. TIMES, Aug. 7, 2001, at A1 (noting that there is a large gap between diversity levels at the associate level and at the partner level and the lack of minority promotion to partner may be attributed to the fact blacks are "less likely to have relationships with important clients or to have landed a significant amount of business for the firm").

¹⁵ See *supra* notes 4, 9 (providing statistics regarding the number of black lawyers in elite firms); see also 4 REPORT OF THE N.Y. STATE JUDICIAL COMMISSION ON MINORITIES, LEGAL PROFESSION, NONJUDICIAL OFFICERS, EMPLOYEES AND MINORITY CONTRACTORS 27 (1991) [hereinafter N.Y. COMMISSION ON MINORITIES] (noting that in 1989, only 1.7% of the lawyers in the top corporate firms were black); Kornhauser & Revesz *supra* note 9, at 862-63:

[W]hile African Americans and Latinos were 7.0% of the eligible pool, they constituted only 2.9% of the associates in elite law firms. This under-representation decreased slightly during the next decade. Between 1981 and 1991, the proportion of African-American and Latino associates in elite firms increased by 48.2%. This increase was greater than the increase in the eligible pool (the moving average of African Americans and Latinos in law school), which rose only 24.3%. Nonetheless, in 1991, African Americans and Latinos were still only 4.3% of associates at elite firms, even though they comprised 8.7% of individuals graduating from law school between

with the issue of racialization.

Not uncommonly, students of color voice concerns about the climate they encounter upon entrance into private practice. Recently, at a conference I attended,¹⁶ a junior associate of color employed by a large firm expressed dismay because she felt law school had not properly prepared her for the non-substantive aspects of her corporate practice. She felt that her law school education had not prepared her to address issues of racialization within her law firm. Moreover, the firm had not been capable of dealing with her non-doctrinal issues of racialization. As this concern is an inevitable reality of elite practice today, it behooves

1984 and 1990.

Kornhauser & Revesz *supra* note 9, at 862-63. "For example, minorities constitute 17.2% of the lawyers employed by federal, state, and local government agencies in the Chicago metropolitan area, as compared to the 3.6% of the minority attorneys employed in large Chicago firms." Kornhauser & Revesz *supra* note 9, at 863. Further, "[m]inority lawyers occupy 19.5% of the supervisory positions in these government offices as compared to 1.6% of minorities in partnerships at large Chicago firms. . . . Additionally, [b]lacks occupy 2.5% of all of the executive or management level jobs in private sector industries." See Wilkins & Gulati, *supra* note 9, at 503. Indeed, "one might ask whether there continues to be a 'glass ceiling' that prevents blacks from attaining high-status positions within the corporate bar." David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981, 2026 (1993), citing Doreen Weisenhaus, *White Males Dominate Firms: Still a Long Way to Go for Women, Minorities*, NAT'L L.J., Feb. 8, 1988, at 1, 48 [hereinafter Wilkins, *Two Paths*].

The statistics show that few black law school graduates go into or remain in corporate practice. Nevertheless, reports claiming that "the top Black students from the Ivy League law schools . . . get dozens of offers," while perhaps exaggerated, do underscore the fact that black law students from elite schools are going into corporate law practice in fairly significant numbers. See Alexander Stille, *Little Room at the Top for Blacks, Hispanics*, NAT'L L. J., Dec. 23, 1985, at 1, 9. Stille goes on to report that 72% of Columbia's minority students took jobs in corporate law firms. *Id.* at 3. See also ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* 47-50 (1992) (reporting that the overwhelming majority of Harvard Law School graduates enter corporate law practice).

¹⁶ This was the Mid-Atlantic People of Color Legal Scholarship Conference, Dickinson School of Law held Feb. 1-3, 2001.

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law professors to consider seriously how we may assist in minimizing the “culture clash” between the two entities, law school and elite practice. Law professors are in a position to ease this transition and to facilitate the success of all our students—particularly our students of color.

B. The Societal Pressures Leading Blacks and Persons of Color Away from Elite Practice

One of the major contributions to the lack of racialization in elite practice is the societal pressure facing students of color to steer away from elite private practice. Understandably, many people are concerned that some—if not much—of the work done by elite firms is “on the backs of oppressed people.”¹⁷ By joining such firms, some believe that persons of color participate knowingly in the suppression and oppression of their own communities.¹⁸ While understandable, this perspective fosters societal tensions that tend to push lawyers of color toward certain practice areas such as welfare, criminal defense, and immigration.

¹⁷ See Wilkins & Gulati, *supra* note 9, at 509, 577-79 (arguing that “firms ‘construct’ their use of labor” in a way that disadvantages blacks as part of “institutional racism” and that a large number of black associates work in litigation departments that often involves a “substantial amount of routine low visibility work”). When I presented these comments at *The Future of Legal Education* conference, held in Ottawa, Ontario, Canada, an articling student used this expression to convey her reluctance to work for a large firm. She felt that by joining an elite firm, she would be complicit in the oppression of her own people as such institutions are inherently oppressive.

¹⁸ While this perspective is understandable, it is naïve to think that other types of legal practice do not similarly and disparately affect our communities. Wilkins & Gulati, *supra* note 9, at 497 (providing two explanations for why blacks refrain from elite practice: (1) shortage of qualified black applicants; and (2) racism within corporate firms and among their clients); see also David B. Wilkins, *Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. STUDY OF LEGAL ETHICS 15, 15 (1999) [hereinafter Wilkins, *Partners Without Power?*] (observing that, although now firms hire more black associates, the number of black partners is relatively the same).

All too frequently, white professors have gently chastised black graduates or students for taking positions in private firms. Well-intentioned white professors have subtly accused black graduates and students of being “sell-outs” because they were either prosecutors, attorneys in large law firms, or held elite firm aspirations. Admittedly, these comments are often made in jest. Such statements, however, made by law school professors, are wholly inappropriate—not just because they operate along a power dynamic of a professor versus a student or recent graduate, but because they tend to confine black candidates to certain areas of practice deemed appropriate for lawyers of color. Moreover, they suggest that truly committed, equality-seeking black attorneys should necessarily practice in certain government or public interest arenas.¹⁹ Meanwhile, the same accusation of being a “sell-out” is certainly not levied at white students. “Why are you practicing corporate law?” is a question seldom posed to white men. Since we should all share a concern for justice and equality, this question, posed mainly to lawyers of color, is disconcerting, and it places yet another burden on minorities—to seek to right wrongs alone. This essential element of choice reveals the double standard implicit in the streamlining of students of color away from private practice and toward areas that are seen as more traditionally suitable for persons of color.

In addition to pressuring lawyers of color into specific areas of practice, this pervasive sentiment creates internal conflict for black lawyers, and graduates generally, strapped with law school debt.²⁰ In the absence of significant loan forgiveness, many

¹⁹ Those spheres are already over-populated by lawyers of color, as many “ghettos” are over-populated with persons of color. I use the language of “ghettoization” advisedly as numerous scholars have expressed dismay at the concentration of lawyers of color in certain areas of practice. These areas are often the least prestigious, lowest paying, and most challenging positions.

²⁰ See Kornhauser & Revesz, *supra* note 9, at 860; John R. Kramer, Symposium, *Legal Education in an Era of Change: Will Legal Education Remain Affordable, by Whom, and How?*, 1987 DUKE L.J. 240, 268 (1987); Richard O. Lempert et al., *Michigan’s Minority Graduates in Practice: The River Runs Through Law School*, LAW & SOC. INQUIRY 395, 401 (2000) (charting the progress of minority law graduates from the University of

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students are driven to income maximizing strategies that clearly preference elite firm practice. Likewise, many students of color are driven away from less lucrative opportunities toward the highest short-term option to pay off student loans.²¹ As professors, we must be concerned with the role of educational debt concomitantly with the practice options open to our students upon graduation.

C. The Reasons for Diversification of Elite Practice

The lack of diversity in elite practice harms black lawyers as well as society in a variety of ways. In light of our exclusion from elite practice, a phenomenon referred to as “ghettoization”²² has occurred. Black lawyers have become over-represented in solo practice, immigration law, criminal law, public interest and poverty law.²³ Additionally, black lawyers are disproportionately concentrated in small practice and government jobs.²⁴ While

Michigan and noting that, although they entered Michigan with lower than average LSAT scores and undergraduate GPAs, Michigan’s minority alumni had entered all sectors of the legal profession, gained financial success, become leaders in their communities, and provided generous amounts of their time to *pro bono* work and nonprofit organizations).

²¹ See Kornhauser & Revesz, *supra* note 9, 915 (noting that a higher debt burden increases the probability that a black or Latino woman would take an elite for-profit position); Lempert et al., *supra* note 20, at 438 (illustrating the tendencies of minority and white alumni to devote less time to low-income individuals and medium-sized businesses).

²² See *supra* note 19 (explaining the usage of this term).

²³ Before the 1970s, most black lawyers worked mainly as sole-practitioners. The most common areas of practice were criminal law, personal injury and domestic relations. The least common areas of practice were in labor law and tax law. See Lateef Mtima, *African-American Economic Empowerment Strategies for the New Millennium: Revisiting the Washington-DuBois Dialectic*, 42 HOWARD L.J. 391, 412-14 (1999). Opportunities expanded in the post-civil rights era due to affirmative action programs. *Id.* at 413. Since the 1980s, any effects of these government affirmative action programs have been curtailed. *Id.* at 414. See also RICHARD L. ABEL, *AMERICAN LAWYERS* 102, 105 (1989).

²⁴ See *supra* note 4, 9 (providing statistics concerning this disproportionate concentration); Baxter, *supra* note 9, at 271 (arguing that

these areas are no less noble in their pursuits, concern exists that many of the attorneys in these practice areas have been denied the opportunity to practice in large firms.²⁵

Specifically, black attorneys are unable to reap the benefits that elite firm practice provides. Large firms often monopolize the most cutting edge and lucrative litigation and corporate work.²⁶ By virtue of their vast client bases and resources, elite firms are centers of power and influence.²⁷ In being excluded

black lawyers are unevenly represented in government jobs and small practice firms in Toronto).

²⁵ See Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005, 1007 (1997) (stating that minority attorneys are markedly under represented in corporate law firms); David B. Wilkins, *Rollin' on the River: Race, Elite Schools, and the Equality Paradox*, 25 LAW AND SOC. INQUIRY 527, 544 (2000) [hereinafter Wilkins, *Rollin' on the River*] (remarking that Michigan law firms have an unwillingness to hire minority lawyers).

²⁶ See Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 503 (1985) (describing large law firms as an "institution[s] that . . . handle[] the most consequential of economic transactions and litigated disputes").

²⁷ See Dale Brawn, *Dominant Professionals: The Role of Large-Firm Lawyers in Manitoba*, 25 MAN. L. J. 327, 328 (1998):

In addition to virtually monopolizing the most lucrative forms of legal work, as well as judicial posts, members of large law firms influenced the development of both the Law Society and the Manitoba Law School during their formative stages. Further their presence in politics guaranteed that corporate interests would be protected in the public as well as in the private arena.

Id. See also Mtima, *supra* note 23, at 404:

The corporate lawyer . . . whether associated with a major law firm or a large corporation, is relied upon to formulate and articulate societal norms under various guises. In the intense, yet hushed, world of the corporate legal advisor certain normative ideas deemed in the best interest of a particularized segment of society are nurtured. This . . . segment of society . . . with the aid of its lawyers plays a significant part in setting the pace and tenor of life as it known in America.

Mtima, *supra* note 23, at 404 (quoting Harry T. Edwards, *A New Role for the Black Law Graduate—A Reality or an Illusion?*, 69 MICH L. REV. 1407, 1415

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from these firms, persons of color forgo valuable experience and contacts.²⁸ This same experience and networking is accumulated in the hands of those who already control the corporate/business sectors. Moreover, this virtual absence means that people of color are unable to contribute their perspectives in these self-perpetuating institutions. Blacks are effectively without decision-making power in matters that often disparately and directly affect communities of color. Finally, the absence of black lawyers from private practice leads to their absence in the judiciary.²⁹ To the

(1971)).

²⁸ The retention and promotion rates in large firms for persons of color, generally, and blacks, in particular, is disappointing, to say the least. See generally Alfred Dennis Mathewson, *Commercial and Corporate Lawyers 'N the Hood*, 21 U. ARK. LITTLE ROCK L. REV. 769, 775-778 (1999) (proposing that law schools create curriculum tailored to practicing corporate and commercial law in order to remedy the failure of private firms to hire people of color and to provide training in corporate and commercial law); Derek Bok, Transcript of the Boston Bar Association Diversity Committee Conference: *Recruiting, Hiring and Retaining Lawyers of Color*, B.B. J. (May-June 2000) (highlighting the foreclosure of long term success for a lawyer of color due to frequent exclusion from essential client contact experience, even if employed at an elite firm). Presumably, some of these attorneys have been denied access to the partnership track or have opted out due to the lack of diversity and the "culture clash" described in *supra* note 9. Even if one chooses to leave elite firm practice, those credentials assist his or her mobility.

²⁹ See PAUL B. WICE, *CHAOS IN THE COURTHOUSE: THE INNER WORKINGS OF THE URBAN CRIMINAL COURTS* 49, 97 (1985) (discussing how the "judicial recruitment process 'produced few maverick judges' and how judicial attitudes were 'conventional and probably on the conservative side'"); Richard Devlin et al., *Reducing the Democratic Deficit: Representation, Diversity and the Canadian Judiciary, or Towards a "Triple P" Judiciary*, 38 ALTA. L. REV. 734, 753 (2000) (arguing that the judiciary suffers from a lack of diversity because appointments are part of the political system, and judges are political actors); *Final Report and Recommendations of the Eighth Circuit Gender Fairness Task Force*, 31 CREIGHTON L. REV. 9, 12 (1997); Sherrilyn A. Ifill, *Judging the Judges: Racial Diversity, Impartiality and Representation on State Trial Courts*, 39 B.C. L. REV. 95, 101 (1997) (stating that "the absence of minority judges on state trial courts contributes to an atmosphere of racial exclusion which, at the very least, marginalizes African American lawyers, litigants and courtroom personnel in many jurisdictions"); Sherrilyn A. Ifill, *Racial Diversity on the Bench: Role Models and Public Confidence*,

extent that the struggle for racial justice is and has always been aimed at achieving economic parity, it seems unwise to eliminate opportunities that can improve the economic situation of racialized persons and provide access to the arenas where many of the most important decisions affecting the economic well-being of racialized communities are made.

Our society values diversity. In the United States, diversity has been lauded especially as we progress toward the reality of a non-white majority in many states.³⁰ Likewise, in Canada, the cultural mosaic and relative lack of segregation has long been internationally celebrated as a Canadian hallmark.³¹ It should

57 WASH. & LEE L. REV. 405, 436 (2000) (noting that “racial minorities continue to comprise a minute faction of partners and associates at the nation’s elite law firms—the firms from which many federal judges traditionally have been selected”); Robert L. Nelson, Report, *The Discovery Process as a Circle of Blame: Institutional, Professional, and Socio-economic Factors that Contribute to Unreasonable, Inefficient and Amoral Behavior in Corporate Litigation*, 67 FORDHAM L. REV. 773, 798 (1998) (noting that judges typically come from large law firms); Kenneth B. Nunn, *The Trial as Text: Allegory, Myth and Symbols in the Adversarial Criminal Process—A Critique of the Roles of the Public Defender and a Proposal for Reform*, 32 AM. CRIM. L. REV. 743, 822 n.248 (1995) (“[J]udges that do not come from the prosecutorial ranks typically come from other generally conservative areas of legal practice, such as large downtown law firms.”).

³⁰ See generally Wendell L. Griffen, *Race, Law, and Culture: A Call to New Thinking, Leadership and Action*, 21 U. ARK. LITTLE ROCK L. REV. 901, 921-22, 924-25 (1999) (pointing to the necessity of diversity to back up declarations of racial equality made by professional organizations and to provide new role models for minorities); Frank H. Wu, *New Paradigms of Civil Rights: A Review Essay*, 66 GEO. WASH. L. REV. 698, 713-22 (1998) (book review) (stating that diversity is both inevitable and workable due to the necessity of cooperation across racial and ethnic groups as diversity increases).

³¹ See Charles Smith, *Racism and Community Planning: Building Equity or Waiting for Explosions*, 8 STAN. L. & POL’Y REV. 61, 65-68 (1997) (stating that integration programs established within Toronto are setting an example for the world); see also Yojana Sharma, *Population-Germany: Skilled Immigrants to Ease Labor Shortages*, INTER PRESS SERV., Jul. 4, 2001, available at 2001 WL 4804524 (reporting that a special German immigration commission recommended to the government an immigration policy “similar to Canada’s” that focuses on “age, education, skills and ‘willingness to integrate’”).

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follow that the legal profession is one where diversity is unconditionally embraced:

[A]s lawyers, we are members of a profession that has been a staunch advocate of the principles of non-discrimination and equal opportunity. We have always viewed the practice of law as more than just a business. If we, as a profession, continue to be apologist for discrimination, then our profession's claim to the high moral and ethical ground of society will be seriously undermined.³²

Elite firms that continue to be racially homogenous may find themselves in a precarious position and at a distinct disadvantage in law school recruitment and in practice competitiveness. It is not just a matter of losing out on talented students of color; critical and insightful white applicants are also increasingly asking questions about diversity. These matters, clearly, concern us all.

II. BRIDGING THE COMMUNICATION GAP BETWEEN ELITE FIRMS AND LAW STUDENTS OF COLOR

In order to address this cultural gap, greater dialogue between the practicing bar and the academy must be facilitated. While some law professors come to the academy having firmly rejected practice and some practitioners seek to leave law school behind,³³ educators must be vigilant to ensure a continuous and dynamic connection between the law school environment and the bar. This connection should focus on the interplay and exchange between law school faculty, students, curriculum and practitioners. As a result, differences in culture would, hopefully, be revealed, understood and minimized. Additionally, practitioners, who currently lack knowledge of diversity issues, would stay abreast

³² See Baxter, *supra* note 9, at 272.

³³ Robert J. Borthwick & Jordan R. Shau, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 213 (1991) (indicating that 79% of professors in the survey sample had at least some experience practicing law).

of diversity developments and initiatives undertaken by universities and law schools. Specifically, they would be more aware of the curricular initiatives and perspectives being explored within the classroom.³⁴

Much of the culture of elite firms is problematic precisely because elite firm lawyers lack experience with blacks and other persons of color. Undoubtedly, this lack of experience has been maintained through historically discriminatory hiring patterns and on-the-job racism.³⁵ Such discrimination also leads many lawyers

³⁴ Currently, elite firm practitioners are unaware of theory presented in law school curriculum. Some practitioners, while fully versed in such areas as Contract Law, have been puzzled by the curricular content of courses such as Critical Race Theory, Feminist Jurisprudence or Gay and Lesbian Legal Issues, already outdated references to ever increasing and dynamic bodies of legal thought. This unfortunate, troubling, and inexplicable situation connotes the complete discord between the profession and the academy. Well-intentioned and well-informed lawyers should not be completely unaware of burgeoning and cutting-edge areas of the law. See Alan M. Lerner, *Law and Lawyering in the Workplace: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107, 111 (stating that in order to exercise critical lawyering skills “[i]n today’s multi-cultural [society], lawyers will need to engage in difficult discussions about complex and contentious issues such as the law’s relationship to matters of race, culture and gender”); Jean R. Sternlight, *Symbiotic Legal Theory and Legal Practice Applications*, 50 U. MIAMI L. REV. 707, 769 (suggesting that students, faculty and practitioners would be better positioned to tackle cutting-edge diversity issues by continuing alternative legal perspectives—such as feminist theory). Additionally, academics have much to offer to practitioners as they often offer new and innovative problem-solving techniques overlooked by overworked attorneys practicing by prior example. *Id.* at 776.

³⁵ See David Charny & Mitu Gulati, *Efficiency-Wages, Tournaments, and Discrimination: A Theory of Employment Discrimination Law for “High-Level” Jobs*, 33 HARV. C.R.-C.L. L. REV. 57, 80, 83-84 (1998) (arguing that, in addition to other factors, discrimination continues because discriminatory hiring at elite firms does not reduce the profits of the firm, thus altering minority applicants’ incentives to obtain training and putting them at a competitive disadvantage); Wilkins & Gulati, *supra* note 9, at 554-61 (arguing that the structural features of the recruiting process, inherent stereotyping of black applicants, and overall discrimination lead elite firms to hire only blacks who were “superstars” from only elite law schools). See also Camille Nelson, *Out of Sync*, *supra* note 10, at 199 (examining some of the problematic

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of color to leave elite firms.³⁶ As a result of such focus, contact and understanding between races have been intentionally manipulated in favor of segregation and/or isolation.³⁷ Lack of personal familiarity shapes the culture of the elite firm in exclusionary and closed-minded ways. This is the only natural result of segregation.

Without the benefit of substantial personal interaction with Blacks, the gatekeepers tend to rely on the stereotypes so readily available through the media and have a tendency to make conscious or unconscious assumptions about Black lawyers based on these stereotypes. . . . These stereotypes are reinforced by the relative scarcity of Black lawyers in positions of power and prestige, and the virtual absence of Black lawyers [in elite law firms]. As a result, [elite firm] interviewers tend to question the credentials of black applicants more than those of White applicants.³⁸

Clearly such discrimination and lack of diversity implicates the elite firm practitioner's inability to effectively lawyer, in other words, to issue-spot and seek holistic legal remedies that benefit *all* constituencies.

Greater communications between practitioners and law

“cultural” practices common in elite firms such as color-blindness, transparency, tokenism, analogizing racism to other forms of discrimination, and the failure to mentor).

³⁶ See Wilkins & Gulati, *supra* note 9, at 564, 568 (noting that “virtually all blacks who start at a given elite firm leave before becoming partner”). The authors hypothesize that one reason black associates leave elite firms earlier than white associates is that black associates are less likely to get on a “training track.” Wilkins & Gulati, *supra* note 9, at 570. Therefore, because white associates do not face the general market presumption that they have not been trained, the authors argue that black associates have more of an incentive to seek a lateral transfer earlier than white associates. Wilkins & Gulati, *supra* note 9, at 573.

³⁷ See Wilkins & Gulati, *supra* note 9, at 540-41 (arguing misconceptions about black lawyers lead partners to discriminate and exclude black from getting on a partnership track); *Bicentennial Report*, *supra* note 9 (“[I]ndividuals who work in an environment where diversity is valued . . . are more likely to remain loyal to and productive in that environment.”).

³⁸ Baxter, *supra* note 9, at 273-74.

schools would allay abounding misperceptions about the composition of today's law school. For example, practitioners have explained the dearth of lawyers of color in practice by pointing to the lack of diversity in law school.³⁹ While law school diversity is certainly not where it could or should be in terms of faculty and students,⁴⁰ this rationale can be debunked to some extent if practitioners are privy to the changing "face" of the law

³⁹ *But see* Chambliss, *supra* note 5, at 703 (concluding that changes in the composition of law students over time is an important factor in law firm composition); Mary Kay Lundwall, *Increasing Diversity in Law Schools and the Legal Profession: A New Approach*, 14 CHICANO-LATINO L. REV. 147, 147 (1994) (arguing that law schools have an obligation to increase access for minorities in order to increase minority representation in the legal profession).

⁴⁰ Students of color accounted for 8.4% of all law students in 1977, 8.8% in 1980, 10.4% in 1985, 11.8% in 1988, 13.6% in 1990, and 17.9% in 1993. *See* Kornhauser & Revesz, *supra* note 9, at 860. This is not to overstate the gains that law schools have made in terms of diversity. Unfortunately, some schools have actually regressed a great deal in this regard. *See* Ruben Navarette Jr., *Minorities Get Boost from Bar Association More Would Get into Law Schools*, THE ARIZ. REPUBLIC, Oct. 21, 1997, at B1 (citing "dramatic declines in minority law school enrollment in California and Texas"). Of course, law schools are still not representative institutions, neither in terms of faculty nor students. However, significant gains have been made in terms of diversity over the last 30 or so years. *See* Kornhauser & Revesz, *supra* note 9, at 860. Affirmative action efforts are likely the key to closing this gap. *See* the following academic articles addressing effects of attacks on affirmative action in the state of California: Erwin Chemerinsky, *Making Sense of the Affirmative Action Debate*, 22 OHIO N.U. L. REV. 1159, 1168-69 (1996); Andre Douglas Pond Cummings, "Never Let Me Slip, Cause if I Slip, then I'm Slippin": *California's Paranoid Slide from Bakke to Proposition 209*, 8 B.U. PUB. INT'L L.J. 59, 73-74 (1998); David Hall, *Reflections on Affirmative Action: Halcyon Winds and Minefields*, 31 NEW ENG. L. REV. 941 (1997); Angela Mae Kupenda, *Why Isn't What's Good for the Goose, also Good for the Gander?: Confronting the Truth and Reframing the Affirmative Action Question*, 25 S.U. L. REV. 141 (1997); Eva Jefferson Paterson & Erica J. Teasley, *Current View on Affirmative Action: California's Campaign for Equal Opportunity: A Response to Governor Wilson's Open Letter*, 15 ST. LOUIS U. PUB. L. REV. 85 (1995); Harvey Gee, *Race, American Values, and Colorblind Justice*, 5 TEX. F. ON C.L. & C.R. 121, 124 (2000) (book review) ("The elimination of affirmative action at the University of California at Berkeley School of Law (Boalt Hall), for example, has dramatically reduced the percentage of African Americans and Latinos admitted.").

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student generally. With such an expansive communication gap between practice and academics, however, it has become far too easy for the left hand to remain unaware of the movements of the right and to become completely isolated, distant and oblivious to evolutions in the opposite arena. By maintaining contact with the law school, even if only on a semi-social level, practicing lawyers may observe and appreciate its changing composition.⁴¹

Moreover, greater contact between firms and law schools would have the additional benefit of creating interaction between lawyers and students prior to the interview stage. This association should not be underestimated. Many students, especially students of color, may not otherwise have the opportunity to interact with practicing lawyers—especially lawyers from elite firms.⁴²

Finally, increased contact, experience, and genuine dialogue between elite firm “gatekeepers” and students would ideally increase the elite firm’s reception and appreciation of applications from students of color. Such interaction breeds familiarity, understanding and hopefully appreciation. This is particularly necessary given that elite firm hiring decisions are based largely upon subjective assessments of the applicant’s personality and fit, instead of more objective indicia of quality and merit.⁴³ In

⁴¹ A fellow professor raised the concern that such social settings frequently work to the advantage of already privileged students. Specifically, her concern was that white students, often being more comfortable in “smoozing” scenarios, steal the thunder from students of color. Taking that observation at face value, I believe firms can take measures to ease the disadvantages felt by students of color. Specifically, I envision elite firms hosting or attending functions and conferences run by or featuring various students of color and other non-traditional law students.

⁴² See Angela I. Onwuachi-Willig, *Moving Ground, Breaking Traditions: Tasha’s Chronicle*, 3 MICH. J. RACE & L. 255, 274 (stating that “many minority students have had no exposure to the law, to lawyers, or even professional life before coming to law school”); Daria Roithmayr, *Barriers to Entry: A Market Lock-in Model of Discrimination*, 86 VA. L. REV. 727, 785 (stating that 50% of white law students have at least one relative in the legal profession who exposes them to the occupation and its culture, whereas people of color with fewer lawyers in their families are disadvantaged at getting such knowledge).

⁴³ See NELSON, PARTNERS, *supra* note 10, at 206. This is nothing new.

addition, greater contact between firms and law schools can only benefit our students. This interaction would certainly help to ease some of the culture clash experienced by persons of color upon entrance into law firm practice. It would also serve to expose a student to firm life and culture before his or her entry into the firm as a student or associate. Students, thus, would have an earlier opportunity to opt out of the "elite" firm experience should they find it unfavorable. As a result of understanding achieved through open communications, both the elite firms and students of color would profit.

III. THE NEED OF THE LAW STUDENT OF COLOR FOR MENTORS

An additional obstacle for persons of color in elite firms to overcome is the difficult road to partnership. This road breaks down if access to power is denied within the white hierarchy.⁴⁴

Law firms, like many corporations, have sought out racial sameness rather than appreciation of differences. I have spoken with students after interviews with elite firms. Certain students of color made comments regarding their "lack of ease" and "discomfort." They felt that "attitude," attire, makeup and hair were all fair game when it came to rationale for not hiring competitive candidates. See David Charny & G. Mitu Gulati, *Efficiency-Wages, Tournaments, and Discrimination: A Theory of Employment Discrimination Law for "High-Level" Jobs*, 33 HARV. C.R. & C.L. L. REV. 57, 84-86 (1998) (asserting that hiring decisions of elite law firms are based on minimal information such as resumes, on-campus interviews, and office visits); Mtima, *supra* note 23, at 406-07 (explaining that employers apply a stricter standard to black candidates when hiring on the basis of subjective criteria); Wilkins, *Rollin' on the River*, *supra* note 25, at 555 n.5 (indicating that objective criteria such as grades are only loosely correlated with future lawyering success); Wilkins & Gulati, *supra* note 9, at 546-57 (recognizing that firms emphasize issues of personality and fit over objective signals such as writing ability and analytical skill).

⁴⁴ Wilkins & Gulati, *supra* note 9, at 569:

Studies of cross-racial and cross-gender mentoring relationships in the workplace repeatedly demonstrate that white men feel more comfortable in working relationships with other white men. Anecdotal evidence suggests that white partners in law firms are no different. This natural affinity makes it difficult for blacks to form supportive mentoring relationships.

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The optimal method to repair such damage is to increase the availability of mentors for persons of color. Such relationships are critically important to the success of any associate.⁴⁵

A good mentor will look out for you, guide you and counsel you. Most importantly, your mentor will ensure that you receive the essential training required to succeed in [elite law firms]. *This is key*. You cannot succeed in [an elite firm] if you have not received the necessary training. By the time an associate comes up for partnership, the associate must have acquired the necessary skills to function as a partner. The associate must have been exposed to a variety of challenging assignments that allowed him or her the opportunity to develop an area of expertise, sound legal judgment and the ability to take charge of matters. Most importantly, the associate must have been exposed to clients to develop the necessary client-relations skills. Is this unique to Black associates? No. It is true for all associates, regardless of color.⁴⁶

Despite this, black lawyers frequently complain about the absence of such mentors.⁴⁷ Law professors can and should play a

Wilkins & Gulati, *supra* note 9, at 569; Caroline V. Clarke, *The Diversity Dilemma*, AM. L., Oct. 1992, at 31 (arguing that major law firms are not overtly racist, but that perceptions of black lawyers and white lawyers are profoundly different, thereby providing race-related barriers to mentors, challenging work, and partnerships).

⁴⁵ See Stille, *supra* note 15, at 9 (quoting a black partner as stating that “in order to make partner in one of these firms you need someone to take your hand and lead you through it”).

⁴⁶ Baxter, *supra* note 9, at 277 (emphasis added).

⁴⁷ See 1 N.Y. COMMISSION ON MINORITIES, *supra* note 15, at 85 (quoting a black litigator as complaining, “I have few if any contacts, no mentor and no one to turn to in considering other avenues of law that may interest me or that may be interested in me”). Bar associations’ reports on the problem of minority retention consistently emphasize that black lawyers have difficulties finding mentors. N.Y. COMMISSION ON MINORITIES, *supra* note 15, at 84-85. See also Caroline V. Clarke, *The Diversity Dilemma*, AM. L., Oct. 1992, at 31 (reporting that “African-Americans perceive more race-related barriers to obtaining adequate mentors, challenging work, direct client contact, and

role in bridging the gap by facilitating contact and communication between students and practitioners and by fostering the development of mentors.

A. The Lack of Mentors: A Chronic Problem for Students of Color

The lack of mentoring has been a continual problem for students of color. The difficulty facing associates of color is that people naturally choose to mentor people with whom they feel most comfortable.⁴⁸ Within the elite firm culture, however, lawyers of color challenge the comfort levels of many white lawyers.⁴⁹ Partners often rely on a combination of their own subjective judgments to determine associates they will mentor and train.⁵⁰ As a result of this vicious cycle within the elite firm culture, lawyers of color experience feelings of isolation and suffer from decreased levels of confidence, which may relate directly to a lack of exposure to and inclusion within various practice circles.⁵¹ Moreover, they have few mentors to whom

partnership” than either whites or members of other minority groups); Stille, *supra* note 15, at 9 (reporting that blacks have a harder time finding mentors than their white counterparts).

⁴⁸ See Wilkins & Gulati, *supra* note 9, at 567.

⁴⁹ See Wilkins & Gulati, *supra* note 9, at 567.

⁵⁰ See NELSON, PARTNERS, *supra* note 10, at 206 (arguing that black lawyers challenge the comfort level of partners, and that the “[p]ath to partnership breaks down, when connections to the predominantly white hierarchy are not built up”).

⁵¹ See Arthur S. Hayes, *Color-Coded Hurdle*, NBA NAT’L B.A. MAG., Feb. 13, 1999, at 30 (explaining how black women lawyers, like black male and white female lawyers, feel isolated and have trouble finding mentors); Wendall Lagrand, *Getting There, Staying There*, NBA NAT’L B.A. MAG., Feb. 13, 1999, at 28 (discussing how a black attorney in a mostly white firm may experience isolation, which in turn will make it difficult to find mentors); Wilkins, *Partners Without Power?*, *supra* note 18, at 41 (stating that because black lawyers do not have as many mentors as other associates, they are often more isolated as partners); Wilkins & Gulati, *supra* note 9, at 499 (noting that “blacks reasonably believe they face an increased risk that their abilities will be unfairly devalued or overlooked”).

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they can express such concerns.⁵² Yet supportive and nurturing mentoring relationships are imperative for the success of lawyers of color:

[The] framework of business as usual obscures the fact that “business-as-usual” practices in large firms often disproportionately disadvantage minority lawyers even in the absence of intentional discrimination. The most important problem minority lawyers face is gaining access to the important assignments and training opportunities that every associate needs to develop sophisticated lawyering skills and to showcase those skills to partners who are in a position to advance their careers. This problem, or course, is not unique to minority lawyers. Minorities, however, face additional obstacles. Chief among these is the well-documented tendency among people to prefer to work with, and to be able to see the value in, people who remind them of themselves. In a world in which 97% of all partners are White and partners have considerable discretion to choose with

⁵² See generally Peter C. Alexander, *Silent Screams from Within the Academy: Let My People Grow*, 59 OHIO ST. L.J. 1311, 1312, 1329 (1998) (describing the sense of loneliness, lack of support, and frustration felt by minority law school faculty members, and the need for law school to recruit, nurture, and inspire more minority faculty members); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 544-45 (1988) (stating that black law school faculty members, both tenured and on the tenure track, have higher departure rates from their institutions than do white faculty members); Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299, 2316 (1992) (arguing that the status of minority women law school faculty members lag behind their male counterparts based on prestige of employer, desirability of courses taught, or academic rank of starting position); Leland Ware, *People of Color in the Academy: Patterns of Discrimination in Faculty Hiring and Retention*, 20 B.C. THIRD WORLD L.J. 55, 68-69 (2000) (noting that, although the number of minority law school faculty members has increased in the past decade, those faculty members still face many obstacles within the law school environment, including unresponsive and indifferent administrators, racially based evaluations, and hostile students).

whom they will work, it should come as no surprise that minority lawyers have a disproportionately more difficult time forming the kind of relationships that play such a crucial role in building a successful career.⁵³

B. Methods to Bridge the Gap

In order to compensate for the overall lack of mentors for students of color in elite practice, law school professors should step forward to bridge this gap. Legal educators should take advantage of our contacts in the legal community; all of our friends and colleagues are an invaluable resource for our students. As professors, we can organize, or at least facilitate, both formal and informal contact with potential mentors through in-house seminars, in-firm training sessions, inviting practitioners and judges to speak in our classrooms.⁵⁴ It is my sense that both our students and our colleagues in practice desire this type of engagement. A large number of practicing lawyers and judges would likely be willing to give their time to listen and assist students with career planning and practice strategies.⁵⁵ These

⁵³ David B. Wilkins, *Five Reasons Why Law Firms Are Not Making Progress on Diversity*, 1999 CHI. B. ASS'N J. 20, 20 (May 1999).

⁵⁴ A simple example of the potential benefits that can be yielded from facilitating mentoring occurred when I invited two separate guest speakers to a large, first-year course. On the first occasion, the judge who was lecturing mentioned that he had been a math major and found the adjustment to law school challenging. Struck by his honesty, a student who had heretofore said little in class raced to the podium following the lecture to speak with the judge, get his business card, and ask for tips and pointers since he too was a math major and was finding the adjustment to law school to be quite difficult. Together with several other students, the judge chatted easily and passed out his card.

The second example from the same class involved a guest speaker who was able to engage the class by tapping into the students' common sense interpretation of statistics. One of the students, an actuary, impressed the speaker so much with his questions and insights, that the guest speaker asked the student to keep in touch so that they could discuss the use of statistics in his research.

⁵⁵ When practicing, I regularly spoke with students, proofread their

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efforts would, in turn, greatly benefit students of color. Armed with more information provided by mentors, black law students would be better able to appreciate and weigh competing variables such as job retention, career aspirations, economic factors, and desires to better the community. As a result, they would be better able to make educated choices regarding their employment.

One mechanism for building bridges between law schools and elite law firms involves the use of reciprocal in-house seminars open to students, professors and practitioners alike. Specifically, the law school could invite practitioners to attend presentations within their particular areas of expertise. More importantly, however, law schools could invite lawyers to attend seminars and paper presentations that further the law in novel ways. Specifically, partners and associates could hear lectures and presentations on multiculturalism, feminism, critical race theory, and queer theory, to name but a few “non-traditional” areas. Particular focus could be placed on areas to which older or more tradition-minded practitioners have perhaps never been exposed. Indeed, the attendance and participation of practitioners could prove invaluable in the development of “practical theories” for change.⁵⁶ Such continuing legal education could be a welcome breath of fresh air for many practitioners and might present an opportunity for them to encounter theory, which they might be able to use to enhance their practice. Such exposure might further force some practitioners to contemplate the legitimacy of these critical issues as they impact upon the law and legal practice in dynamic ways.

In addition, professors and students could also be invited to

resumes and cover letters, and met with them to discuss their concerns about elite firm practice. This was helpful for me, my firm, and, hopefully, the students themselves as valuable connections were made, insight was gained and, most importantly, friendships were created.

⁵⁶ By “practical theories,” I mean to recognize and address the concern levied against academics for “pie-in-the-sky” theorizing. Practical theories, by definition, incorporate the desire to be affected, utilized and tested. Practitioners should bring their everyday practice experience to bear on the work of students and academics to help problem-solve means to make our theories “fly.”

attend some of the numerous in-firm training sessions, seminars and debriefing sessions. While confidentiality is a concern they must address, firms could hold open to students seminars and discussions that would provide intriguing after-the-fact examination of practice-driven issues. Typically, these seminars address recent victories or defeats, innovations in the law, trial techniques, negotiation strategies, arbitration insights, evidence preparation, and other useful information. The opportunity to learn from inclusion in such firm “soul-searching” meetings would be valuable and enlightening for all students, but for students of color in particular, who have had limited exposure to the firm environment.

While teachers and professors are in a position to be ambassadors for their schools, legal educators who practice or have practiced in firms could also act as liaisons between their students and their firms. Such maintained contact might prove useful in terms of transmitting information about and between law firms and law schools. It may also provide students of color with the opportunity to network and find mentors in practice. Such continued relationships, in turn, may prove an excellent source of informal recommendations and student referrals. This informal grapevine, moreover, would operate to the benefit of white students and associates as well. As professors, we are regularly approached by attorneys seeking associates and judges seeking clerks. If the people we recommend are recognized and recalled by the “mentors,” the hiring process may be facilitated. “Putting a face to the name” is a refreshing and comforting phenomenon that we should encourage, especially when careers are at issue.

In addition to facilitating communications, legal educators must also incorporate pragmatic, practice-driven information regarding the reality of practice into their curriculum. Currently, most class discussions about lawyering implicitly envision a solo practitioner with an individual client who has engaged the lawyer’s services in connection with a specific, single, controversy. This, however, is but one model. Class discussions, alternatively, should focus far more attention on the structural, systemic, and ethical aspects of a variety of practice methods. As

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professors, we need to guide students in the difficult choices they face regarding the realities of the career paths before them.

We must educate our students on elite firm practice where both “lawyer” and “client” are likely to be large organizations, each with its own complex and contradictory set of interests and objectives. The realities of elite practice should be illuminated such that our students can deploy their skills and awareness to their advantage. The necessary prioritizing, time constraints and politically charged nature of elite practice should not come as a surprise to star-struck law school graduates. Since these issues particularly affect students of color, they should be addressed prior to these students’ initial contact with elite firms.

Law school educators should directly confront student fears about the consequences of ethical conduct. This is particularly true for lawyers of color in elite firms who must learn to balance the real danger of being seen as inaccessible against their sense of obligation to their community and any desire they may have to succeed in “keeping up with the Joneses.” Those who are perceived as not being team players run the risk of reinforcing ugly stereotypes. While black lawyers often view career advancement as a social justice issue in light of the continuing effects of racism, elite firms typically attach no “value” to a lawyer’s determination to assist her community.⁵⁷ Generally, students of color provide greater *pro bono* and community work than their white counterparts while attempting to achieve the same billable hours target.⁵⁸ Law school professors need to be aware of these tensions as they disparately impact racialized students. Law schools, generally, owe all their students practical advice on how to navigate the often turbulent waters of private practice.

⁵⁷ Wilkins & Gulati, *supra* note 9, at 579-80.

⁵⁸ See Lempert et al., *supra* note 20, at 456 (explaining that white private practitioners who graduated in the 1970s or 1990s have devoted less time to *pro bono* work than their minority counterparts, and white practitioners who graduated in the 1980s have averaged a statistically insignificant greater amount of *pro bono* service hours).

CONCLUSION

I recognize that some might object to these suggestions as a violation of the law school's commitment to educational neutrality. For some, education regarding ethics constitutes a form of indoctrination.⁵⁹ For others, the objection is to the review of ethical and political issues with the disparate circumstances of a particular group of students in mind. These objections, however, presuppose the existence of educational institutions and legal curriculum that are neutral with respect to competing conceptions of the lawyer's role. Instead, I concur with Carrie Menkle-Medow that law professors cannot avoid modeling some version of "the good lawyer" and, accordingly, they cannot avoid teaching ethics.⁶⁰ More importantly, given their societal placement, law schools cannot be neutral about the ethical issues involved in the lives and careers of their students. Specifically, law schools should not be neutral regarding a lawyer's obligation to participate in the struggle for social justice. Law is a public profession licensed by states and provinces alike. This public foundation and role supports the argument that justice is the only legitimate goal of the legal profession and, therefore, the only legitimate goal of law school study.⁶¹

This is not to suggest that law schools should endorse one particular vision of how to achieve social justice through law. There is undoubtedly a range of legitimate possibilities for how legal institutions, practitioners, and professors might help correct existing inequalities and improve the lives of our respective constituencies. Those who oppose a justice-centered conception of the role of lawyers or legal educators, however, will either unduly politicize or completely eviscerate legal education and ignore the possibility of the proverbial middle ground—the

⁵⁹ For a general critique of moral education see William Trombley, *In Oakland, A Textbook Case of Trouble*, L.A. TIMES, Nov. 4, 1991, at A3.

⁶⁰ Carrie J. Menkel-Meadow, *Can a Law Teacher Avoid Teaching Legal Ethics?*, 41 J. LEGAL EDUC. 3, 3 (1991).

⁶¹ See generally Anthony D'Amato, *Rethinking Legal Education*, 74 MARQ. L. REV. 1 (1990).

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cultural bridge, if you will.⁶² By attempting to bridge the culture gap between law schools and law firms, legal educators have the added benefit of reminding legal practitioners that they too have societal justice-oriented obligations that must be balanced against their other personal and professional commitments. In this way, we, as legal educators, would indeed be furthering the nobility of the profession as we seek to ensure the inclusion within the profession of all those seeking to cross the bridge.

⁶² Wilkins, *Two Paths*, *supra* note 15, at 2026 (citing Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 49 (1992)). Rhode argues that professors should “encourage toleration and intellectual debate ‘without endorsing agnosticism.’” Wilkins, *Two Paths*, *supra* note 15, at 2026.