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LeRoy Pernell

Florida A&M University College of Law, leroy.pernell@fam.u.edu

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DEANS OF COLOR SPEAK OUT: UNIQUE VOICE IN A UNIQUE ROLE

LEROY PERNELL*

I. SIGNIFICANCE OF A DEAN OF COLOR PERSPECTIVE

As faculty members of color, many of us are accustomed to the interpretive resource that our cultural heritage brings to the academic discourse.¹ This perspective has been discussed for some time now in such circles as the Critical Race Theory movement. The First National Meeting presented a unique opportunity for the voices of scholars of color serving in the highest administrative capacity within the law school to discuss their experiences collectively for the first time.

II. IS THERE A "DEAN OF COLOR" PERSPECTIVE?

The answer to that question can be found, at least in part, in the recognition that the history of racism and the ongoing obsession of our society with race places non-white deans under a lens of "strict scrutiny" in its most oppressive sense. But beyond the constant pressure to do twice as well as our white counterparts for half the credit, the perspective we bring to the position is further made unique by the

* Dean and Professor, Northern Illinois University College of Law; J.D., The Ohio State University College of Law, 1974; B.A., Franklin & Marshall College, 1971.

I was extremely pleased and humbled to be asked to chair this historic panel that serves as the basis for this commentary. I wish to take this opportunity to add, in print, my heartfelt thanks to Professors Linda Greene, Linda Crane and Antoinette Sedillo Lopez for their incredible diligence and assistance in making this First National Meeting of the Regional People of Color Legal Scholarship Conferences, this Deans of Color Legal Scholarship Conference, and this "Deans of Color Speak Out" panel a success. I would also like to thank my fellow Deans of Color, both those who could be present and those who could not, for their advice, support, and, most of all, participation in this endeavor. To my fellow panelists, I give my thanks, and I hope that I have not in any way misrepresented the spirit and content of this historic endeavor.

The views expressed are wholly my own and I take all blame for the extent to which they may depart from anyone's sense of reality. These comments are a reflection on points made during my introduction of the panel and are an expansion on those same themes. It is anticipated that these same points and views may reappear in the near future in an extended version of this piece as part of a separate and new article.

¹ See generally Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 BERKELEY WOMEN'S L.J. 46 (1990-91); John O. Calmore, *Close Encounters of the Racial Kind: Pedagogical Reflections and Seminar Conversations*, 31 U.S.F. L. REV. 903 (1997).

influence of a heritage and culture that presents a different, and often oppositional, face to accepted norms. A clear example of this is presented when one considers that deans are taught in general that a basic tenet of the dean as leader is loyalty to the institution.² The Dean of Color, raised in a culture naturally suspicious (and with good cause) of both law and institutions, is more likely to see her or his support as grass-roots and outside the institution.³

Not to suggest or encourage "disloyalty," but the Dean of Color may well recognize that not only will loyalty to the institution go both unrewarded and unreciprocated, but it also may not be warranted in light of the socio-political needs of his or her community. Some commentators have suggested that the dean should not be driven by the perceived community needs but should forge ahead with what she or he knows is right.⁴ Deans of Color more often will filter their actions through a screen of community consensus because they see themselves in a more representational role.

These roles form a complex matrix reflected by the wide range of experiences, issues, and viewpoints voiced by this panel. In the context of looking at our individual and collective stories, I thought it appropriate to indicate briefly some of the major roles that are unique to and fulfilled by Deans of Color.

² See Jeffrey O'Connell & Thomas E. O'Connell, *The Five Roles of the Law School Dean: Leader, Manager, Energizer, Envoy, Intellectual*, 29 EMORY L.J. 605, 614 (1980). The authors, in this seminal article on the nature of law school deans, look at the varied roles that deans must play that in no small part contribute to their relatively short average tenure. See generally *id.* Among those roles, the position of Leader is referred to as the "most magical or exalted function of the academic chief." *Id.* at 610. The importance of loyalty in the traditional view of the dean is summed up in the author's statement that "[l]oyalty to the institution and commitment to its purposes, in addition to integrity and a zest for risk-taking are . . . essential characteristics of the Leader." *Id.* at 614.

³ Indeed, the viewpoint of the Critical Race Scholar has been characterized as "oppositional scholarship" that "challenges the universality of white experience/judgment as the authoritative standard that binds people of color and normatively measures, directs, controls and regulates the terms of proper thought, expression, presentment, and behavior." John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing An Authentic Intellectual Life In a Multicultural World*, 65 S. CAL. L. REV. 2129, 2160 (1992).

⁴ See O'Connell & O'Connell, *supra* note 2, at 624 (quoting MICHAEL D. COHEN & JAMES G. MARCH, LEADERSHIP AND AMBIGUITY—THE AMERICAN COLLEGE PRESIDENT 205 (1974) as stating "[w]e believe that [an academic chief] is, on the whole, better advised to think of himself as trying to do good than as trying to satisfy a political or bureaucratic audience . . .").

III. COMMUNITY POSITIONING AND VOICING FOR DEANS OF COLOR

The role of dean, particularly within minority communities, has distinct political and social dimensions that go beyond the traditional academic leadership role. We are often looked upon to be community leaders regarding a range of issues and we often can be perceived as a resource for generating political, economic, and social change separate from the academy. This role as champion for the community in many ways is a continuation of a relationship that may exist prior to our administrative post and indeed may predate our ensconcement into academia. The deans of Howard University College of Law have a long tradition of community activism through their roles as deans and are illustrative of this point. Professor J. Clay Smith, Jr., himself a former dean at Howard, tells us, in his excellent work *Emancipation: The Making of the Black Lawyer 1844–1944*, how the early deans of Howard promoted social and political change on behalf of African American communities outside of the university setting.⁵

John Mercer Langston, the first dean of Howard Law School, traveled about the South during the late 1800s to promote not only Howard Law School, but also the concept of the Black lawyer as an integral part of the protection of newly won rights for the Black community.⁶ Dean Richard Theodore Greener is noted for his role, while dean from 1879 to 1880, as “a spokesman for Negroes when he advocated migration of the freedmen to western states such as Kansas to settle fertile land and escape oppression.”⁷

As to the Dean of Color’s work within the legal academy, Dean Charles Hamilton Houston perhaps states most clearly the role that Deans of Color have in light of the special significance of legal training for African Americans and all people of color. According to Houston, “[i]f a Negro law school is to make its full contribution to the social system,” its course of study should feature “a difference in emphasis with more concentration on the subjects having direct application to the economics [sic], political and social problems of the Negro.”⁸

⁵ See J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844–1944*, at 33–92 (1993).

⁶ See *id.* at 42–43.

⁷ *DICTIONARY OF AMERICAN NEGRO BIOGRAPHY* 267 (Rayford W. Logan & Michael R. Winston eds., 1982), quoted in SMITH, *supra* note 5, at 46.

⁸ SMITH, *supra* note 5, at 50 (quoting Charles H. Houston, *The Need for Negro Lawyers*, 4 J. NEGRO EDUC. 49, 51 (1935)).

For Deans of Color who serve as deans at other than historically Black institutions, the need and desire to serve as community advocate is no less compelling. The relationship of dean to community, for Deans of Color, is similar in many respects to that of political office holders and a constituency that reasonably expects both that their concerns are your concerns and that you will "make them proud" with your demonstrated response to the call.

I cannot say that this role is always an easy one to fulfill. Indeed, I suspect that a significant percentage of those of us at predominately white institutions, who have been positioned between two worlds, opt to hear more clearly the call of "be a team player" issued by institutions that in fact are often reluctant to bring you off the bench in key games. On the other hand, the Dean of Color, particularly at predominately white institutions, has a unique and important opportunity to view the applicability of law school resources to community needs from an experiential perspective that employs those unarticulated realizations of need and appropriateness that can only come from having lived the community's life.

There is, ultimately, no shame in community advocacy. An important subtext of this panel and conference is that there are indeed so few of us in existence⁹ at any one time that opportunity and limited shelf life create a keen sense of urgency.

IV. OPPORTUNITIES TO SPEAK OUT AND LEADERSHIP ON DIVERSITY IN LEGAL EDUCATION—THE NATIONAL DEBATE

Recent events, particularly in Texas and California, illustrate how important decisions in the academy concerning affirmative action and opportunity are to the nation as a whole. What our institutions do and say is closely watched by a nation that is wavering in its commitment to political and social justice. Our responsibility and opportunity as deans to provide clear, strong leadership may make a real difference both within and outside legal education.

This is particularly true when one pays attention to the swiftness and, indeed, glee with which some universities across the country are

⁹ Shortly after settling in as dean two years ago, I called a friend of mine, who was dean at a historically Black law school, and during the course of our conversation we tried to add up the number of Deans of Color at all the American Bar Association (ABA) approved law schools. I was shocked to realize that the number was less than 10, *inclusive* of the four Historically Black College (HBC) associated law schools. It is symbolic of the crisis that my friend is no longer a dean and that currently, to my knowledge, there are only 12 Deans of Color—six of whom have been appointed within the last two years.

embracing the conservative agenda and analysis of legal counsel and attorneys general.¹⁰ The need and opportunity to speak out to counter a lack of institutional commitment (disguised as legal caution) is particularly strong for Deans of Color.¹¹ While courage has no color, Deans of Color can speak with an experiential authority on issues within the academy from a vantage point seldom heard. Certainly the need for such authoritative voices is particularly great in the face of legal scholarship that has fueled a national debate on the very existence of people of color within the legal profession.¹²

Within the context of legal education, Deans of Color have special stories to tell. The importance of storytelling, and its significance as a tool for scholars from other than the Anglo-European frame of reference, has been noted and discussed in some detail within the Critical Race Theory movement.¹³ The unique voice that the Dean of Color can add, however, has not received the same type of exposure or documentation. Until this panel, there has not been any organized forum of collective thought, nor has there been any formal attempt at developing a collective agenda. The lack of numbers and the lack of extended tenures of Deans of Color has been a formidable, though not insurmountable, barrier. The need for leadership from Deans of Color within legal education is nowhere more evident than in the recent troubling history of organizational efforts such as the American Law Deans Association (ALDA). Formed in 1994, the ALDA was designed "to provide deans with an opportunity to discuss issues affecting legal education and to formulate policy recommendations on

¹⁰ Witness the turn-around of the Texas Attorney General following the *Hopwood* decision. See Janet Elliott, *Rights Leaders Fume As AG Embraces Federalism and Snubs Affirmative Action*, 12 TEX. LAW., May 6, 1996, at 1; see also Ken Myers, *ALAS [sic] Seminar Counsels Caution When Offering Race-Based Aid*, NAT'L L.J., Jan. 23, 1995, at A16, A16.

¹¹ Such a role is certainly not the exclusive domain of Deans of Color. The courageous and forthright stand of Barbara Aldave, former dean of St. Mary's University School of Law, is a testament to both her commitment and the necessity of deans becoming agents of opposition to negative legal norms. Faced with hostile, fear-based reactions to the *Hopwood* decision in Texas, Dean Aldave nonetheless confronted attempts at retrenchment with renewed efforts to ensure minority access and with strong statements in defense of affirmative action. See *Remarks of Dr. Barbara Aldave: Hopwood Conference, February 12-13, 1998* (visited July 13, 1999) <<http://resi.tamu.edu/remarks2.html>>.

¹² See generally Lino A. Graglia, Podberesky, *Hopwood*, and Adarand: *Implications for the Future of Race-Based Programs*, 16 N. ILL. UNIV. L. REV. 287 (1996).

¹³ See generally Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988); Thomas Ross, *The Richmond Narratives*, 68 TEX. L. REV. 381 (1989).

those issues."¹⁴ Yet a review of ALDA history would suggest that no Dean of Color has ever served as an officer or a board-of-directors member within the organization. A major area of criticism of the organization has been the perceived negative position of the ALDA on affirmative action (such a position has been denied by former ALDA president, Ronald Cass).¹⁵ What should be the greatest cause of concern, however, is not whether the ALDA has taken a position on affirmative action, but rather that Deans of Color have not been in leadership roles within this unique organization and thus have been unable to lead the formulation of a dialogue inclusive of a non-majority perspective.

V. DEANS OF COLOR AND FACULTY RECRUITING, PROMOTION AND TENURE

Achieving diversity within the faculty is most often a direct result of leadership commitment and clear direction. In addition, dean mentoring of faculty members in the promotion and tenure process adds an element necessary for success in many instances. Our experiences as deans can serve as inspiration and direction not only for other deans, but also for the faculty.

The process of hiring law faculty is a combination of the qualitative and the political. While it is undeniably true that most, if not all, law schools will swear allegiance to the concept of hiring the best and brightest, what constitutes satisfaction of those standards is often subjective. Faculty members and deans tend to hire people who look like they do. Quality, in such cases, is often a function of looking for mirror reflection and/or survival of elimination barriers. As we end the twentieth century, it is still true that the chairs of hiring committees at most law schools year after year are white and usually male. This is largely a function of the position being considered the most prestigious of committee assignments and, therefore, tending to draw senior faculty members to the post. It is also true, however, that faculty members tend to view the hiring process as something that generates fear—a fear that they will be forced to recognize as colleagues, perhaps for life (if tenured), persons who represent characteristics that they have long considered less worthy than their own.

¹⁴ Letter from Scott H. Bice, President, American Law Deans Association, to ABA deans (Sept. 15, 1997) (on file with author).

¹⁵ Letter from Ronald A. Cass, Dean, Boston University School of Law, to Richard S. Wirtz, Dean, University of Tennessee College of Law (Dec. 3, 1997) (on file with author).

The concept of diversity and access is probably fought harder in faculty hiring than anywhere else in academia. I remember vividly a particularly telling example in my own experience. As a clinical staff attorney at Ohio State, I was under consideration for a tenure-tracked opening on the regular faculty. One day, while my candidacy was under consideration, a senior faculty member came into my office, closed the door, and told me that he had been the champion of equality at Ohio State for student affirmative action but that he did not believe in affirmative action for faculty appointments. He then offered to find me a job at any law school in the country other than Ohio State. After twenty-three years as a faculty member at Ohio State, promoted and tenured, I still remember that incident with a clarity that has made me determined to counter such attitudes whenever and wherever I can.

As dean I now feel that I have the ability to act in a leadership role that serves to counter-balance reluctance and uncertainty regarding diversity commitment, while at the same time providing a different cultural perspective. The dean's role in the hiring process is, in most cases, pivotal and intensive. The dean plays the key role in committee assignments, committee priority-setting, the attraction of candidates, and the selection of candidates. Whether or not the dean serves as an *ex officio* member of the committee, it is the dean's role and opportunity to make sure that the process pays more than just lip service to diversity.¹⁶

The success of a hiring search is very much in the hands of the dean. In most instances, the dean will control the salary offer. Certainly the dean is perceived by the candidate as the principal emissary of the school and his or her success as dean may in part be measured by the success of recruitment efforts.

What then is the unique role of the Dean of Color? In short, a Dean of Color is, first, one of the best indications that the school means business. Her or his presence is a sign to the candidate not only that he or she might have a chance of being hired, but also that there is a stronger chance of success and fair-dealing throughout the new faculty member's career. The Dean of Color is also a sign to the faculty that new ways of thinking are in order and that their performance is subject to judgment not only by the traditional administrative hierarchy but by an outside community. This political presence is only

¹⁶ See Alice Gresham Bullock, *A Dean's Role in Supporting Recruitment of Minority Faculty*, 10 ST. LOUIS U. PUB. L. REV. 347, 349 (1991).

effective if the Dean of Color is willing to accept the mantle of race consciousness that is endemic to the role and opportunity.

The presence of the Dean of Color at the annual hiring conference (known by some as the "meat market") is a strong signal to both the hiring faculty and candidates that he or she is prepared to make a serious effort at opening once-closed doors. The Dean of Color's presence is also a resource to candidates whether or not they are interviewing with the dean's school. As a resource, the dean knows the system from deep within and can shepherd the neophyte through the more obvious dangers. The importance of this function cannot be understated. When I was chair of the American Association of Law Schools (AALS) Minority Group Section in the early 1980s we began a hospitality suite at the meeting (then in Chicago) which I am pleased to see is still in existence. Candidates were eager to find a source of knowledge other than official channels to guide them through an otherwise dehumanizing process. The Dean of Color can certainly serve in much the same capacity with similar effectiveness.¹⁷

The role and opportunity for the Dean of Color regarding promotion and tenure are no less significant. The Dean of Color as administrator of college and university standards can both advocate criteria changes consistent with minority perspectives and mentor faculty development consistent with both institutional and community needs.

Like the hiring process, it is clear that the promotion and tenure system is as much a political process as it is a measure of intellectual quality. The bottom line at most schools still is that the first hurdle to success is that the candidate's colleagues must want to keep her. This desire, if present, is not necessarily a result of any emotional attachment or even intellectual appreciation but, in no small part, may be a recognition of the political implications that retention or non-retention of the faculty member may have. For the minority faculty member it is certainly true that while the vote is secret (in most cases), her or his ethnicity is not. Thus the concept of peer review takes on a particularly significant role with the minority promotion/tenure candidate.

The diversification of peer evaluators for both majority and minority candidates is a responsibility that often falls in some part on the dean. The absence of faculty members of color in scholarship evalua-

¹⁷ I would like to recognize with appreciation the people who worked, in those days when our numbers were much smaller, on projects such as the hospitality suite, and in particular the work on that project of Assistant Dean Frank Motley of Indiana University School of Law.

tions creates a lack of a balanced perspective for all faculty members. The old cliché about inability to find faculty of color deflates in the face of conferences such as this, where the proof of scholarly production is abundant. The traditional pattern of reviewer selection, however, has depended on “good ol’ boys” contacting other “good ol’ boys.” While it is popular to decry such systems, my own view is that the only problem with such networking is that the net is not broad enough to be inclusive of more than white males. In most promotion and tenure review systems, the dean plays—or can play—a significant direct or indirect role in the selection of reviewers, at least to the extent of soliciting potential outside reviewers. A Dean of Color can, therefore, have a profound impact on the complexion of outside reviewers by actively seeking participation from faculty of color around the country whose temperament and credentials might enhance the chance for success for the minority candidate.¹⁸

The role of the Dean of Color in the promotion and tenure process is not an easy or comfortable one. Because Deans of Color, in addition to unashamedly advocating inclusion for traditionally excluded communities, must also operate from the perspective of the overall health and well-being of their law schools, there are inevitable tensions and occasions where they will displease everyone. The alliances and friendships that they may have developed as faculty members are tested and often destroyed by decisions that they view as principled and necessary. This result proves true in promotion and tenure decisions and in virtually all other aspects of a dean’s life, regardless of race.

¹⁸ As an aside I might mention the importance that wisdom drawn from experience plays in assisting faculty members of color in the selection of outside reviewers. Those of us who have been in this business a while know about the tendency of some of our colleagues to feel that no scholarly review is good unless they, as reviewers, can trash some part or all of a piece. Some of this tendency comes from the mistaken belief that their views will lack credibility unless something negative is said. While I am not suggesting that reviews should not contain criticism, I am suggesting that the wise reviewer should understand the political consequences that her or his comments will have on the success of the applicant both within the law school and within the often law school-phobic university. The problem is presented by both white and non-white reviewers. Minority faculty members and Deans of Color should realize, however, the tendency of majority, established faculty members, administrators, and university committees to point out with glee, “See! Even one of their own thinks this work stinks!” (or nicer words to that effect). We as Deans of Color should know our colleagues and solicit accordingly if we are committed to the success and growth of minority faculty subject to promotion and tenure review.

VI. DEANS OF COLOR AND THE STUDENT COMMUNITY

The types of tensions just described also crop up in the context of the Dean of Color's role vis-à-vis the student body—particularly minority students. Despite claims of maturity and sophistication, students nonetheless still look to the faculty and deans for role modeling and social direction. How deans, in particular, deal with conflicts and tension within the student community is important. Students look upon the Dean of Color with a mixture of hope, suspicion, and uncertainty as to the particular concerns that the dean will be sensitive to in coping with student interactions. The tension between affinity to particular ethnic communities and the need to provide objective oversight of inter-student relationships is not necessarily easy to manage. Because, in my experience, students think politically in primarily broad strokes of social policy as opposed to administrative minutia (a tendency that is a strength, not a weakness of student activism), there is a greater tendency for students to wonder if deanship represents "sell-out," indifference, favoritism, or even incompetence.

I have always operated as a faculty member or Dean of Color with the belief that it is not my primary responsibility to try to be the student's pal in a socially intimate sense. While I encourage interaction with students on a social event level, I believe that the mark of true friendship for a faculty member or dean is to do everything possible within a professional capacity to promote the success of the student in reaching his or her goals and in surviving an often hostile educational and professional system, including being a compassionate, caring listener and activist regarding students' needs, desires, and fears stemming from their struggle to succeed and coming from both inside and outside the institution.

Advocacy and counseling have long been among the unofficial duties of the academic. This role is, if anything, greater for a minority faculty member or Dean of Color. It is not uncommon in our experience, particularly where we were the only non-white professionals within the law school, for us to be the unofficial "dean of minority students." Such responsibilities, while in most instances willingly borne, are more difficult for the Dean of Color, who in many instances directly or indirectly becomes the bearer of bad news as might pertain to academic standing, admission, financial aid, or other decisions that are the responsibility of the office.

Perhaps no area tests the relationship between Deans of Color and minority students more than protecting students from racial and sexual harassment. The role of dean is seen as one of insuring a law

school environment in which the student community is protected from violations of law and policy while at the same time promoting a community in which ideas are freely shared.

The traditional white male structure has often had difficulty in appreciating the profound impact that racial and sexual harassment has on the student body. The tendency of the traditional establishment to believe that students should simply learn to "live with it," coupled with its difficulty in developing effective investigatory procedures and/or disciplinary sanctions, adds to a level of frustration that quite often leads to the inability of the impacted students to continue with legal education. Such oppression is only enhanced when the principal offender appears to be a faculty member.¹⁹

Despite the fact that many instances of harassment involve "night-rider" tactics—anonymous notes, statements, epithets, and other cowardly behavior—the failure of the dean both to put an end to such conduct and to punish the offender causes many students to ask the Dean of Color, "Whose side are you on?" Where the offender is known and particularly where the offender is a faculty member, the same question is asked, with suspicion, by both sides.

Notwithstanding the difficulty of resolving such conflicts within the school community, the role of a Dean of Color is in some ways enhanced by the power of the position. He or she can bring to bear on the issue the weight of authority that comes both from administrative oversight and from the wrath of one's own cultural identity and social/political history. Timidity is neither expected nor accepted by the victims. Strong but fair response is a clear signal to current and future offenders that "a new sheriff is in town." Ultimately, the student body looks to the Dean of Color for leadership that not only signifies the current institutional level of care, but also what the proper response and direction should be within the profession beyond law school.

The set of roles and voices for Deans of Color discussed herein and elaborated upon by this panel, is by no means exhaustive. By concentrating on these few roles I do not intend to lessen the significance of issues such as alumni relations, fund raising, university politics, or other traditional and non-traditional functions of the dean. The points discussed reflect some of the experiences I have had in my

¹⁹ The problem is no less severe where the victim is a faculty member. See generally Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, the Life of One Blackwoman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259 (1993).

short time as dean and address some of the concerns that I and other Deans of Color must address in the new millennium.