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PANEL DISCUSSION No. 2

LEGAL EDUCATION OF MINORITY STUDENTS: REVIEW AND OVERVIEW

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- Frederick M. Hart
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- Dr. Stephen P. Klein
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LEONARD.

The non-decision in *DeFunis* did very little toward resolving the issues. However, in the minds of some people the non-decision was indeed a decision. Those who had not wanted to move in any positive way saw the Supreme Court's unwillingness or inability to deal with *DeFunis* as a green light to do nothing. Those who had been on shaky grounds all along saw it as an opportunity to cut back on already meager movement; and those who had decided that what they had done was enough saw this as a signal for them to stop. Now in the face of *DeFunis*, I think that is important that we recognize that *DeFunis* goes beyond just the issues raised from a legal standpoint. *DeFunis*, along with a number of other things that had been happening in the country really amount to a hitlerization of the racial issue in this country. It is almost impossible to pick up a periodical and not see something that suggests a level of inferiority with respect to minority people; the term "minority" has been placed on us as a sociological, economic and political term by the governmental structure. It includes black people, Chicanos, Native Americans, Asian Americans, and Spanish surname individuals. So when we use the term "minority" we are talking about approximately 40,000,000 people in this country who wear that badge. But its almost impossible to pick up a piece of literature, pick up a so-called "learned" magazine, from the Chronicle of Higher Education to Change, Commentary, Freedom House, Public Issue, Forum—without seeing some supposedly learned article on what it means to have individuals within a pluralistic society who score differently on national tests, or come out of different kinds of institu-

tions. Unfortunately the negative fallout is very much like the hitlerization of the position of Jews in Germany or some time ago. DeFunis does nothing more than concretize this kind of situation. I urge you to consider it in that context.

HART.

The Law School Admission Council started about 28 years ago when four or five schools, went to Educational Testing Service and talked to them about the possibility of developing a test for applicants to law school. It started after the Second World War when there was what in today's terms would be a very slight boom in the number of applications causing some law schools to have far more applications than they could accommodate. In its early years, the council was a very informal group, a very small group growing from, 5 or 6 law school representatives at the start to 8 or 10 or 12. At that point in time there was somewhat of a partnership between this small group and ETS. In many respects, it was simply an advisory committee to ETS.

Through the years, the council has expanded and become an entity in itself. It now is composed of all of the law schools that have ABA accreditation and who require the Law School Admission Test from their applicants. There is no requirement that they use the law school admission test but they must require it from their applicants. That amounts to about 150-160 law schools in the country. They are all members of the Council.

The Council is technically a corporation incorporated in New York under the Education Non-Profit Corporation Act. The members meet once a year in an annual meeting. At that meeting they vote on various matters that come before the Council and elect a Board of Trustees and a President and in alternate years, the President-Elect who will then become President. The Board of Trustees is made up of 15 members: the chairmen of each of the committees who serve on the Board of Trustees *ex-officio*; six members who are elected by the constituency, 3 each year; the President and the President-Elect; and one person appointed by the President. The Board of Trustees, is the operative unit of the organization. It handles things through the year and presents matters to the council each year, much like other organizations.

There is the action brought against the University of Mississippi by black applicants who are claiming discrimination within the school. The initial belief was that we would be on the side of the University of Mississippi. However, we have determined as a general policy that (1) we will provide whatever information is asked of us by any party to the litigation, and we will automatically provide the same information to the other party to the litigation, (2) that we will not go on either side of the litigation, and (3) that we will make the same offers to both sides in that suit and all of the other suits that involve admissions.

The Test Development Research Committee has the responsibility for research that is done by the Council, and for developing the test, changing items in the test, making certain that the equating of the test is done properly, testing out new experimental items, etc.

The Services Committee basically determines what services the law schools would like to have from the Council. Such things as the form in which scores are reported and the Law School Data Assembly Service are generally within the domain of the Services Committee. We have a Finance Committee which has, until recently, been a minor committee; its becoming more important now because of a new contractual relationship with ETS. It generally handles finances. Finally, we have a Pre-Law Committee which is designed to undertake projects aimed at the people who are applying to Law School.

The relationship between ETS and the Council at the present time is almost exclusively a contractual relationship. We have a contract with ETS that will run for the next three years. It is a contract wherein they agree to provide certain services for the Council and in return we pay a fee to ETS. The total dollar amount of the contract is in the neighborhood of \$4,000,000 per year for the services. Most of that money goes for administering and developing the tests, and running Law School Data Assembly Service. About \$400,000 of the \$4,000,000 is in a sense council money that is at our disposal for various services. For example the research that we do is in that category. It is not earmarked until we decide what we want to do. The test is owned by the Law School Admissions Council, it's not owned by Educational Testing Service. We control the test and we're the ones that should take the heat on a lot of things that really have been aimed at ETS. We design the test, we tell them what we want in the test and with their guidance and cooperation, we decide when it's going to be administered and what the fees are going to be, etc. So in effect the test is the Law Schools Admissions Council's test and ETS is a service organization.

That doesn't tell the whole story, however, because in this kind of a venture there has to be a partnership. There are areas in which we have little expertise and there are areas in which we have to depend upon Educational Testing Service. Conversely, there are areas where they have little expertise and have to depend upon us. That's basically it; the composition and history of the Council, and its relationship with ETS.

Professor Smith also asked me to set forth the role the Council has played and intends to play in the legal education of minority law students. I will try to mention all of the places I can think of (although I'm not sure that this is a complete list) where we have been involved one way or another with minority admissions and some of the problems that have arisen in connection with minority admission. We are a co-sponsor of CLEO and have been since its beginning. I don't really know what that means. We have never really expended any substantial sums of money as far as CLEO is concerned. We have undertaken in conjunction with CLEO some research projects and have aided in that sense, but as you probably know, practically all of the money from CLEO is federal money, - initially OEO - and, now primarily HEW money. One CLEO project that we are supporting, is the application-sharing project which started on a very modest basis last year and hopefully will be expanded in a better project this year. We are getting started at a better time of the year.

Several years ago, we supported recruitment trips to the predominantly black schools, primarily in the South but also in some other states. We set

up free administrations of the Law School Admissions Test at predominantly black schools in the South. We have abandoned both of those on the grounds that they no longer seem to be productive; we have retained the fee waiver provision so that people who cannot pay the fee for taking the test or for LSDAS can have the fee waived. We have the Candidate Referral Service which has been in operation for about 5 years. This enables students to place their names in a pool of applicants and then allows the Law School to draw from that pool on various bases. For example, at the University of New Mexico we asked for all of the Indian Law Students who were in that pool and for all of the Chicano and black students in our state and close geographical area to us. The hope there is that by obtaining the names and some data on these people who have put themselves in the pool, the law schools would be encouraged to seek out some of these people to come to their school and send them applications and information about the school. We have done a substantial amount of research in the area of minority admissions trying to determine the extent to which the test is "culturally biased". We have been involved in the DeFunis litigation. We submitted a brief, both at the Supreme Court of Washington level and the Supreme Court of the United States level in support of the position of the University of Washington. We are prepared and will do that in any other litigation that develops in the DeFunis area. The council has in one of the few policy positions I think we have taken since I have been in the Council, said that we would support schools that have minority admissions programs. I am confident that as in the past we'll have unanimous support for that policy on the board in the future.

We have also been involved in other things, for example: testifying before the O'Hara committee on House of Representatives on Labor and Education. That Committee, as you probably know, is very interested in affirmative action programs and Congressman O'Hara is generally opposed to them. We testified again in favor of the position of the law schools such as Washington in the DeFunis type situation.

I think that runs through generally some of the things that the Council has done in connection with minority admissions in law schools. As far as the future is concerned I think we can expect to continue the projects we have underway, there's no indication to in any way, depart from the projects we are doing now. We hope that we'll do more in the sense of literature aimed at minority students both at the high school level and at the college level in trying to interest them in a career in the legal profession and in coming to law school.

As far as research is concerned I think the major project that we're pushing now is a so-called "competent lawyer" study. It is a "look down the road" and is ultimately an attempt to determine whether or not anything we do in the law school's admissions process or in law school, or in the bar admissions process has any relation whatsoever to lawyering in the community. This is an expensive long-term project which cannot be speeded up despite Dean Liacouras' urging. We have lost some time because for one reason or another we started a Phase I which might have been omitted, but wasn't. Phases II, III and IV are going to take 4 or 5 years. At the end

of 4 or 5 years we're not going to know a hell of a lot. But we might have a handle on the question. It's the type of study that is a high risk study if you're looking at it from the standpoint of payoff or concrete results. At the same time, it's the most necessary study that we undertake to the present, both from the standpoint of the law school and from the standpoint of the profession.

RAPPAPORT.

I would like to think that the reasons I am here today go to the history and the size of our program. I think the notion probably is a legitimate one because the program is one of the oldest in the country and it's one of the largest in the country. And it has been our experience from going to conferences like this that the kind of problems we have had at UCLA are typical of the problems that most schools around the country have had. However, given the size of our program and its early inception we generally seem to run into these problems a year or so ahead of most other law schools. Perhaps describing our program will give you some ideas of how one reasonably successful program is operated, some of the problems that we have had and where to plan to go.

[Editor's note: Dean Rappaport's prepared comments are reprinted in full infra pp. 506-526]

BOYD.

I was asked to address myself particularly this morning to the result of some research which the Educational Policy Center did on the experience of minority law students across the United States. I certainly intend to do that, and I hope that you will find it interesting and useful information. But before doing that I would like to offer a few general comments which will supply some background for the specifics and which I think merit some attention on their own anyway.

1975 can be as crucial a year for equal opportunity in higher education as any year ever has been. It is a year when many people will realize for the first time that equal opportunity is not gaining momentum in the United States. It will become clear during 1975 that the current trend actually is negative. There are many factors which influence the negative outlook. Some of them are legal pressures (*DeFunis*) and, some are on the financial pressures (inflation) . . . I don't think I need to belabor that. However, one set of statistics should illustrate the point that things are a little rough. In 1972 the American Council on Education in its annual study of freshman enrollment or newly enrolled freshmen found that 8% of America's college freshmen were Black. In both 1973 and 1974 that percentage shrank to 7% and then to 6%. In the fall of 1975, unless dramatic changes occur in admissions activities during the next few months, a third consecutive decline in Black and other minority enrollment probably will occur.

I think the response that all of us make to this trend is vital to the future of equal opportunity in the United States. As President of A Better Chance, Inc. an organization that works for equal opportunity through its scholarship

program and through its research, I'm particularly concerned with this negative trend. While you may not share a similar level of direct involvement in the issues of equal opportunity, I hope that we all share the conviction as concerned citizens that this down turn in minority enrollment, this situation that has 1972 as the peak of advances in equal opportunity in the United States must be improved, and the current negative trend must be reversed.

[Editor's note: Dr. Boyd's prepared report is reprinted in full at pp. 527-552 infra.]

KLEIN.

[Editor's note: Dr. Klein's prepared report is reprinted in full at pp. 553-560 infra.]

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