

LAY DOWN A PLANK: THE PATH TO LAW SCHOOL DIVERSITY

*Jennifer Mason McAward**

I used to take my Civil Rights class to visit Fr. Ted Hesburgh, Notre Dame's former president, in his office each year. It was a remarkable experience for each student to meet Fr. Ted and to hear him regale us with stories about his work on the U.S. Civil Rights Commission.

In brief, Fr. Ted and his colleagues on the commission were appointed by President Eisenhower to study racial injustice in the United States and make recommendations as to how the federal government should respond. The group held hearings throughout the country, learning of the reality of discrimination in the realms of employment, education, voting, and housing. When it came time for the commission to formulate its first set of recommendations, Fr. Ted gathered the commissioners in Land O'Lakes, Wisconsin, at the Congregation of Holy Cross's retreat house. After a lovely evening of fishing, steaks, and scotch—and some hard work by Fr. Ted—the commissioners agreed to a set of recommendations. Those recommendations ultimately formed the framework for the Civil Rights Act of 1964, a centerpiece of antidiscrimination legislation.

By the time we met with Fr. Ted, my students had already studied Title VII of the 1964 Act, learning how its prohibitions on employment discrimination had transformed workplaces across America. When they realized that Fr. Ted had played a formative role in the passage of that law, you could almost see their jaws dropping.

At the end of each meeting, Fr. Ted would ask if the students had any questions. One year, a law student, who was the president of the Hispanic Law Students Association, raised her hand and told Fr. Ted that each year the association awarded the Graciela Olivarez award, named for the first female graduate of the law school. What opinions, she asked, did Fr. Ted have about diversity at Notre Dame in general and at the law school in particular?

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* Associate Professor of Law, Notre Dame Law School. Director, Klau Center for Civil and Human Rights.

Fr. Ted answered her with a story. During his tenure on the Civil Rights Commission, he and the other commissioners held hearings all over the country to learn about the experiences of a variety of minority groups. They had a hearing in Phoenix, Arizona, and the most impressive witness by far was a person who had spent her life advocating for Mexican-American farmworkers and the poor in the Mexican-American community. That person was Graciela Olivarez.

Years after that hearing, Fr. Ted happened to run into Olivarez at an airport. They talked about her work with the migrant community and she confessed that she was frustrated that her advocacy efforts weren't more effective. As Fr. Ted told it, their conversation went along the following lines:

Fr. Ted: "To be an effective civil rights advocate, you need to go to law school."

Graciela Olivarez: "I can't. I never graduated from high school."

Fr. Ted: "Let me get back to you."

They boarded their respective planes and flew off.

A couple of months later, Ms. Olivarez received an offer of admission from Notre Dame Law School, waiving any educational prerequisite. Fr. Ted had orchestrated it. It was a testament to Fr. Ted's belief in Ms. Olivarez and in the power of a legal education. Graciela Olivarez came to Notre Dame, lived in University Village with her son and nephew, and by all accounts thrived. In 1970, she became the first woman, the first single mother, and the first Latina student to graduate from the law school. Known to many as "Amazing Grace," she went on to a distinguished career, leading the Carter administration's antipoverty efforts. She died of cancer when she was only fifty-nine.

Fr. Ted ended by telling the group that in his room on campus, he had two favorite photos on the wall. The first was of the Holy Cross retreat house at Land O'Lakes. The second was a portrait of a woman—his friend, Graciela Olivarez.

There was a hushed awe in the room when he finished his story. Fr. Ted had not just the ability to shape our national conversation about civil rights, but also the creativity and generosity to shape the course of individual lives as well as the community at Notre Dame Law School. When asked about diversity, he did not respond with platitudes or policy statements, but with actions.

Embedded in the story that Fr. Ted told are three points that deserve further reflection as we think about diversity and inclusion at Notre Dame Law School.

The first is Fr. Ted's insistence that law schools, and the lawyers they form, have an essential role to play in the quest for civil rights. As 2020 reminded us, the struggle for racial justice is ongoing and requires the commitment and active engagement of every citizen. Protestors have an important role to play, as do politicians, scholars, business leaders, and voters.

But law is a critical tool in the struggle, a means by which we effectuate our commitment to equality and justice. Lawyers, with their knowledge of how to shape and use the law, therefore have the power to make ours a more perfect union.

Of course, nobody could put this better than Fr. Ted:

[L]egislation alone will not solve the problem . . . [.] [U]ltimate solutions must come . . . from individual minds and hearts. But law, defining the goals and standards of the community, is itself one of the great changers of minds and hearts. In this democracy, law points the way toward ultimate freedom and justice for all Americans, everywhere in our land. Equality under the law has long been a cherished American ideal. May it ever become, more and more, a proud American reality.¹

Catholic law schools, and the lawyers they produce, have a special responsibility when it comes to racial justice. Our animating conviction is that all people are made in the image and likeness of God, and therefore that each person shares equally in the dignity that befits a child of God. As the U.S. Bishops recently wrote, “[r]acist acts are sinful because they violate justice. They reveal a failure to acknowledge the human dignity of the persons offended, to recognize them as the neighbors Christ calls us to love.”² Thus, there is a moral imperative to combat racism. Because law is such an important tool to use towards this end, Catholic law schools must form their graduates to orient themselves, both personally and professionally, toward racial justice.

Who, then, should law schools—and especially Catholic law schools—be educating? The story of Graciela Olivarez illuminates a second important point: there are many paths to a successful life in the law. At first, Olivarez protested—quite reasonably—that she could not possibly attend law school because she had not graduated from high school. But she had intelligence, passion, and wisdom honed over the course of her career. Fr. Ted saw that her life experience had placed her in a position to thrive both in law school and in the legal profession.

Most law schools, Notre Dame included, place a premium on certain credentials in their admissions processes, especially high grades and test scores. In many ways, this is understandable. Those are often indicators of potential for success. Moreover, the grade point averages and test scores of entering students are highly relevant (determinative, some would say) to all-important law school rankings. Law schools’ hands are thus somewhat forced.

However, there is a broad range of applicants who have great potential and who are deserving of a seat at Notre Dame. They may lack certain

1 U.S. COMM’N ON CIV. RTS., REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS 1959 555 (1959) (General Statement by Commissioner Theodore M. Hesburgh).

2 U.S. CONF. OF CATH. BISHOPS, OPEN WIDE OUR HEARTS: THE ENDURING CALL TO LOVE - A PASTORAL LETTER AGAINST RACISM 3 (2018).

credentials but their intelligence, passion, and lived experience put them in a position to thrive in law school and to serve the common good when they graduate. They are the Graciela Olivarezes of today. How can we identify and admit them?

Notre Dame Law School's admissions team is outstanding. Each year they compile an excellent entering class that reflects the school's priorities. We must focus, therefore, on our priorities. As a Catholic institution that seeks to form the whole person in "mind, body, and spirit,"³ we must attend to the whole person in our admissions process. We must expand our sense of who deserves to be at Notre Dame Law School, and take deliberate, concrete steps to identify diverse candidates who deserve to be here. As a mission-oriented institution that recognizes the value and privilege of a life in the law, we must ensure that our admissions processes reflect our values. This will not be easy, and it may even be in tension with the metrics imposed by external ranking systems. But the story of Graciela Olivarez demonstrates how transformative and good it is for a community to welcome new types of students.

This leads to my third point. It was not enough that Graciela Olivarez received an offer of admission to Notre Dame Law School. She had to accept it. She had to believe that, despite her different path to law school, she would be able to do the work. She had to believe that the education and degree she would receive would be worth uprooting her family's life. She had to choose Notre Dame. That must have taken immense courage and confidence.

This courage is amplified when we consider the all-male and almost entirely white⁴ law school community that welcomed Olivarez in 1970. Olivarez was different from the average Notre Dame law student in so many ways: she was older. She had substantial work experience. She was divorced. She was a mother. She was a woman. she was Latina. She was like the average Notre Dame law student in other ways: She was smart and driven. But it is surely an understatement to note that coming to Notre Dame must have been quite a transition for her.

Our law school community today is more diverse than the one that welcomed Graciela Olivarez. But we still have room to improve. We know, from the testimonies of numerous students, that Notre Dame is not always the most welcoming place for diverse students. It still takes courage and confidence to come to and succeed at Notre Dame Law School. How do we encourage diverse students to choose Notre Dame? How do we create a pathway for diverse students to come to and flourish at Notre Dame?

3 *Mission*, UNIV. NOTRE DAME, <https://www.nd.edu/about/mission/> (last visited Feb. 11, 2021).

4 Alvin McKenna, the school's first African American student, had graduated only four years earlier.

In an interview, Olivarez once said that her success came because “so many people . . . laid the plank down when I needed it. . . . It was a whole series of people who said, ‘Go, you’ve got a lot to contribute. And so you don’t fall in the water, we’ll lay the plank down for you.’”⁵

Maybe each one of us should lay down some planks in an effort to build up our community. Not all planks need to be as improbably large as the one Fr. Ted laid down for Graciela Olivarez. Some planks may be smaller and more transient: an open door, a listening ear, a kind word, a recommendation letter. Other planks will have to be more substantial. At the end of the day, though, each plank will help to build a more welcoming, diverse, and inclusive community.

It’s wonderful to celebrate the “firsts” like the amazing Graciela Olivarez. But we celebrate “firsts” with the confidence that they are not the “onlys.” With the knowledge that their presence serves as an invitation to others and as a lesson to the institution that many deserve a place here. With the conviction that a diverse law school community is a stronger community. This is particularly true at Notre Dame, where we profess the dignity of all and believe that there are many gifts made possible through the one Spirit.

5 John Monczunski, *Amazing Grace*, NOTRE DAME MAG., June 1975, at 20, 21.