

## ON BEING FIRST, ON BEING ONLY, ON BEING SEEN, ON CHARTING A WAY FORWARD

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On July 1, 2019, I became the first Black woman to be promoted as a tenured full professor of law at Notre Dame Law School. Notre Dame has been my home for almost nine years,<sup>1</sup> and in that time, I have been supported and embraced by our community in innumerable ways. Yet, even with the support of my colleagues, the reality that I could be the first Black woman to do anything was and remains challenging for me to process.

For many, being the first to achieve a particular milestone says something about the individual. Not only had she accomplished something significant, she had persevered in the face of significant hardship and obstacles. Not only was she talented and accomplished, she possessed grit and fortitude despite what were often overt barriers to success. But for me, an individual who had the opportunity, privilege, and choice to work in demographically diverse workplaces,<sup>2</sup> being the first Black woman to achieve tenure at Notre Dame Law School says, I think, less about me specifically and more about the world in which I live.

In the late spring of 2012, I was preparing to leave D.C. to move to South Bend, Indiana. It was a glorious time of year filled with rooftop and backyard barbecues and gatherings full of young lawyers of color who were basking in their own intellect, fulfillment, and accomplishment. The extended circle that I navigated during that time was impressed that I was leaving to take the steps necessary for becoming a law professor, but on more than one occasion I was asked: “Are there any Black people in South Bend?” They understood,

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1 I was a Visiting Assistant Professor from 2012–2014 and then transitioned to a tenure-track position in 2014.

2 Those opportunities and choices would necessarily include environments outside of legal academia. Tenure-track and tenured Black women at the top twenty-five law schools are, for the most part, a small percentage of their respective faculties.

and I dare to say admired, the idea that I might one day become a law professor, but they were hesitant on my behalf at the prospect of entering a community that might lack color.

My heritage is multiracial, but I am keenly aware that when I walk into a room people see a Black woman, and I identify as such. When I walk into a room, people do not see a lawyer, or a law professor, or a mom, or a novice gardener—they see a Black woman. And all of the assumptions and stereotypes that come with that identity get layered on top of my personhood before I have said a single, solitary word. To navigate that reality when you are the only one can be particularly fraught. It is, at times, isolating, stifling, infuriating, and, most importantly, silencing. My racial and gender identity has impacted and mattered in more ways than I can count or recount as I have navigated both professional and personal environments.<sup>3</sup>

While in law school, I was interviewing for a summer associate position at a law firm that had about 150 attorneys in its office. None were Black. At some point during one of my interviews, a white woman acknowledged this fact in a roundabout way and then said something to the effect of: “It wasn’t purposeful. We just looked around one day and realized we somehow didn’t have any Black attorneys on staff.” Several years later, once I had transitioned to legal academia, I had lunch with a white woman who was, I think, attempting to mentor me. She worked at an institution without any women of color on faculty, and she made almost the exact same statement: “We just didn’t realize.”

These statements are as perplexing for me today as they were when I first heard them. You didn’t realize that there were no Black people in the room when you had meetings? You are unaware of the lack of demographic diversity within the world and community you have created for yourself? You just did not notice?

In both instances, I was talking to women who seemed committed to doing something about the lack of demographic diversity within their organizations. And yet, they did not appear to understand a basic fact: they had the luxury and privilege of failing to recognize that the professional community in which they worked was utterly devoid of persons of color. In admitting their failure to see this reality, these women were not simply recruiting me to remedy the oversight; they were, I think, tacitly asking me to excuse—and forgive—their blindness.

And now, I am the first Black woman to receive the power, prestige, and security that comes with tenure at an institution that has been educating students for over 150 years. I do not point this out for the purpose of receiving

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<sup>3</sup> Some people—including some people of color—truly believe that one’s demographic identity does not and should not impact how they navigate the world. I respect those who hold those beliefs. Just as I hope they would take me at my word, as a person of good will and good heart imbued with the dignity of my creator, that it has genuinely mattered to me in profound and important ways.

congratulations, because this is not an accomplishment. The fact that I am the first Black woman to reach this milestone, however, says something about the institutional frameworks of my professional life. And frankly, it is incredibly frustrating. I know dozens of capable, competent, Black women who, with the mentorship and support that I received, could easily have met the requirements for tenure at my institution. I am not special.

Yet, the frustration of being the first pales in comparison to the challenges associated with being the only. To be clear, being the only was hard for someone like me for whom race is a salient part of my identity. And being one of very few is exceedingly difficult for many students, particularly students at predominantly white educational institutions where the legitimacy of their presence is often questioned.<sup>4</sup>

During the 2012–2013 academic year, *Fisher v. Texas*<sup>5</sup> was before the Supreme Court, and I was asked to participate in a variety of events for students. One event was for undergraduates at Notre Dame, and it required me to provide a simple overview of the relevant caselaw. During the Q&A, a young, Black woman stood up and asked something like: “What should you say when someone tells you that you don’t belong here and that you took a slot a white person was supposed to have?” This student—this beautiful child—was being told she was inferior. Was being told she did not belong. Was being primed to doubt herself and her abilities. She desperately needed to ask that question, and she needed it answered by someone who looked like her.

Being such an extreme minority often requires one to justify her place in the world. A reality I know all too well, because I have knowingly chosen on multiple occasions to take on opportunities where I knew it was quite likely that I would often be the only Black person in the room. My willingness to take on these opportunities was entirely pragmatic. I consistently accepted positions that I thought would best prepare me for my professional goals. I did not allow a lack of diversity within an organization to exclude it from my set of options, because doing so might have resulted in me making less than optimal decisions for my career. I did this even in instances where I perceived hints of discriminatory conduct prior to accepting the position. I was not reckless; I went into these opportunities with my eyes wide open. I just was not going to allow an organization’s history of exclusion—be it purposeful or careless—to mean that I would preemptively exclude myself from the organization too. But that choice is not for everyone and it should not be.

A few years ago, I found myself having a very candid and extraordinarily difficult conversation with a student. The student asked me what one was

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4 See, e.g., Danielle M. Lyn, *More Than a Number: A Call to Measure Institutional Diversity Through Qualitative Classroom Methods*, 96 NOTRE DAME L. REV. REFLECTION 257 (2021); Zahraa Nasser & Marquan Robertson, *The Need for Meaningful Representation in Legal Education*, 96 NOTRE DAME L. REV. REFLECTION 239 (2021).

5 *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297 (2013).

supposed to do if a potential employer engaged in behavior that suggested the employer cared about the demographic diversity the student could bring to their organization, but not about the student's actual professional attributes. Given the student's educational pedigree, the student would be afforded a variety of elite employment opportunities where there would often be little to no people of color in the room. The chances are high that at least some of these organizations would put value on the demographic diversity the student could provide. I explained that the choice to allow an employer to commodify the student's demographic status belonged to the student alone, and that the student could choose not to allow it. But I noted that forgoing employment opportunities where demographic commodification might occur could have its own set of professional costs, just as voicing concerns of that nature in an employment environment was inherently risky.

I have learned that when you are the only or one of very few, you have to be extraordinarily careful about when you decide to utilize your voice. If one wants one's voice to be heard when it really matters, it is often best to adopt a default posture of silence. And yet it turns out that even in my purposeful, and at times stifling, silence, my presence made an impact.

Several years ago, a Black student walked into my office after graduation. I knew of the student, but I had never taught or met the student. As we spoke, the student eventually told me that the members of the Black Law Students Association had been worried about me—worried because “at least we have each other, but you are all alone.” I assured the student that I was fine; that I had wonderful, supportive colleagues; that I did not feel alone. But I realized these students were watching me, holding their breath as I walked the hall, like one might watch a child learning to walk—just in case she falls and needs help to get back up.

A couple of years later I was attending an event at my alma mater, and I was told an undergraduate student really wanted to meet me. During our brief interaction, she looked at me with wide eyes and said something like: “I can't believe you work at Notre Dame. I'm from Indiana, and I thought I would go there for school, but when I went to go visit no one there looked like me. I can't believe you are there.” Has anyone ever looked at you like you are a real-life unicorn?

And then there was the holiday party, full of happiness, wine, and good cheer, where a friend who teaches undergraduates of color told me: “You mean so much to the students.” I was quite confused because I knew I did not know these students. She then explained, “You don't know them, but they know you, and they are inspired by you. They think if you can do it, they can too.”

I did not become an academic to be first. I did not attend law school so that I could be the only. And I have never aspired to be seen.<sup>6</sup> The ivory

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6 I'm an introvert who avoids things like taking pictures and talking to reporters.

tower is my happy place, in part, because of the relative anonymity it provides. People in my field know who I am, but I am not famous. I am just me. And yet, if I have learned anything since I walked into my freshman dorm twenty years ago at my own predominately white institution, it is that the ivory tower needs a great deal more color.

The reasons it is important to bring more demographic diversity into the halls of academia are numerous and multifaceted. From the very basic—how does one find truth if one’s ideas aren’t challenged on a variety of fronts by individuals with a diversity of knowledge and experience? To the practical—how will students know how to interact with a female supervisor if they have never experienced what it is like to have a woman in a position of authority over them? But, for purposes of this collection of thoughts, it is important because it allows students to be seen in ways they might otherwise not be seen and it allows students to see a future of possibilities that might otherwise remain unclear. This latter insight—that being seen has an incredible amount of value—is why this set of essays is so important. It is an opportunity to both see and be seen.

The challenges confronting all members of the Notre Dame Law School who are committed to embracing activities targeted at creating a diverse, equitable, and inclusive culture are, quite frankly, not all that unique. They are endemic to the legal academy and elite law schools more generally. And yet, this larger failure cannot be an excuse for *our community* to be complacent.

Instead, it demonstrates once again that if we have the will to change, we have the opportunity to live out our aspirations to form and become “a different kind of lawyer.” If we use our collective talents effectively, we have the capability of creating the sorts of innovative opportunities necessary for transforming our community into one that better reflects the diversity of our surrounding world. This is something we can do; after all, we have done it before.

The reflections within this collection demonstrate time and again the ways in which Notre Dame Law School has led on issues related to race and diversity. We see that leadership in Father Ted Hesburgh’s decision to march with Dr. Martin Luther King Jr. and oversee the creation of what is now the Klau Center for Civil and Human Rights.<sup>7</sup> We see that leadership in former Dean David Link’s decisions to pointedly and purposefully recruit Black students to the law school and, critically, provide support and encouragement while they were here.<sup>8</sup> We see it in former Dean Patty O’Hara’s commitment

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7 See Jennifer Mason McAward, *Lay Down a Plank: The Path to Law School Diversity*, 96 NOTRE DAME L. REV. REFLECTION 222 (2021).

8 See MAURA POSTON ZAGRANS, CAMERADO, I GIVE YOU MY HAND 153–54 (2013); Max Siegel, *Reflections: How Notre Dame Law School Molds Leaders of Global Diversity*, 96 NOTRE DAME L. REV. REFLECTION 235 (2021).

to Black students by encouraging them to live out their vocations without silencing their views or perspectives.<sup>9</sup>

And I have seen it. I have seen it when I was applying for tenure-track positions and Professors Rick Garnett and Mark McKenna emailed almost every school in the country to tell them to hire me. I saw it when I gave a moot job talk here at Notre Dame, and Professor Patty O'Hara turned to the people in the room to say what a valuable contribution the paper I had written made; in doing so she was lending me her own reputational capital—she was putting out a hand to help me along my path at Notre Dame. I saw it when former Dean Nell Newton blocked potential distractions and barriers that might have knocked me off my path when I was on the tenure track; she used her position as one of both protection and promotion. And I have seen it in the endless generosity of my colleagues to read my papers, provide me comments, allow me to visit their classes, and give me pointers on how to improve my teaching; my professional achievements are just as much theirs as they are my own. But more importantly, when I encountered personal challenges, our community supported me, prayed for me, and made sure my family was well fed. My vantage point has given me the opportunity to see the many and varied ways in which my colleagues have been fully invested in my success—both personally and professionally. It has been both remarkable and humbling.

And yet, we must do more.<sup>10</sup>

Even as I have been supported, I am still the first. Even as I have been embraced, I am still the only. And even as I have been celebrated, there are so many more who deserve to be seen. We must not look to our peers and think we are doing “good enough.” Instead, we must chart our own unique path forward. We must adopt the will to lead on issues related to race and diversity both within the faculty, the student body, the curriculum, and in all aspects of our beloved Notre Dame Law School.

We are a community that embraces the life of the mind and understands our distinctive place in the world, but we are also a community that relies on wisdom of the heart.<sup>11</sup> As Father Ted Hesburgh once explained: “Our words are buttressed by our deeds, and our deeds are inspired by our convictions.”<sup>12</sup> We must harness our intellect, our wisdom, and our convictions as we collectively work to create a law school community where *all* of its members

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9 See Qiana Denise Lillard, *Beyond an Unreasonable Doubt: Owning Your Seat at the Table & Presence in the Room*, 96 NOTRE DAME L. REV. REFLECTION 227 (2021).

10 It is worth noting, that current Dean G. Marcus Cole has called on us all to do more. G. Marcus Cole, *I Am George Floyd. Except, I Can Breathe. And I Can Do Something*, 96 NOTRE DAME L. REV. REFLECTION 211 (2021).

11 See Daniel T. Judge, *Catholic Education and the Formation of Conscience*, 96 NOTRE DAME L. REV. REFLECTION 248 (2021).

12 HESBURGH QUOTES, <https://hesburgh.nd.edu/fr-teds-life/an-extraordinary-life/in-his-own-words/hesburgh-quotes/> (last visited Mar. 31, 2021).

are equally included and valued with dignity, respect, and grace at all times. We can and must do more to transform our stated intentions into the tangible deeds and actions necessary to create a more inclusive and diverse Notre Dame Law School. We can do it. We have done it before.