

Black Alumni Network Holds Capitol Hill Affirmative Action Program

ALUMNI

news & notes

The remedy cannot be removed until the playing field is level, one side said. Though racism continues to exist, African-Americans have made substantial progress, and group preferences are indefensible, stated the other.

The two sides were participants in a Boston College Law School Black Alumni Network (BCBAN) conference titled "Report Card on Affirmative Action." Held on Capitol Hill in March, the program brought together prominent

public eye, and the nation is at a crossroads regarding the issue; BCBAN believes Boston College Law School has excelled in its commitment to diversity; and, as socially conscious lawyers, BCBAN members want to play a meaningful role in shaping public policy.

Maze-Rothstein served as program chair and joined honorary chair Congressman Robert C. Scott '73 of Virginia in welcoming alumni and other attendees to the House of Representatives conference room.

what should be done, and what can be done in the future in terms of affirmative action."

Speakers both for and against affirmative action addressed the issue as it relates to contracting, employment, education, business, and women. Proponents of affirmative action were Barbara Arnwine of the Lawyers' Committee for Civil Rights Under Law; Dr. Dorothy Height of the National Council of Negro Women; Elaine R. Jones, director-counsel of the



Brian Jones, president of the Center for New Black Leadership, spoke in opposition to affirmative action programs during the Black Alumni Network's Washington, DC, conference

panelists who shared their perspectives on affirmative action.

According to the Honorable Susan Maze-Rothstein '85, BCBAN's president, the organization sponsored this conference for three reasons: affirmative action is in the

Scott introduced the program by saying, "Affirmative action and equal employment opportunity are this year's wedge issues. 'Quota' is used as a euphemism for 'unqualified.' ... Our goal here today is to find out what has been done,

NAACP Legal Defense and Educational Fund; Weldon H. Latham, a member of the Small Business Administration National Advisory Council and a senior partner in the Washington, DC, law firm of Shaw, Pittman, Potts & Trowbridge;

Pluria Marshall of the National Black Media Coalition; Washington, DC, attorney Warner Sessions; and J. Cobbie de Graft. Opponents of affirmative action included Anita Blair, executive vice president and general counsel of the Independent Women's Forum; Robert George, a writer for House Speaker Newt Gingrich; Brian W. Jones, president of the Center for New Black Leadership; Phyllis Berry Myers, a special assistant to Congressman James Talent of Missouri and a member of the National Advisory Council of Project 21; and Errol Smith, chief executive officer of Smith Friday Enterprises and vice chairman of the California Civil Rights Initiative seeking to eliminate affirmative action in that state.

During the discussion of contracting, Latham stated that "fair share procurement practices" is a more accurate term to use than "affirmative action." He noted that every United States president since Lyndon B. Johnson has been committed to minority business programs and that even Senator Robert Dole favored such programs until late 1994.

In contrast, Smith considered affirmative action inappropriate in contracting, employment, or any other aspect of business. He said, "We have engendered a generation of African-American men and women who honestly believe if we don't have certain programs, we can't make it. I consider that a tragedy."

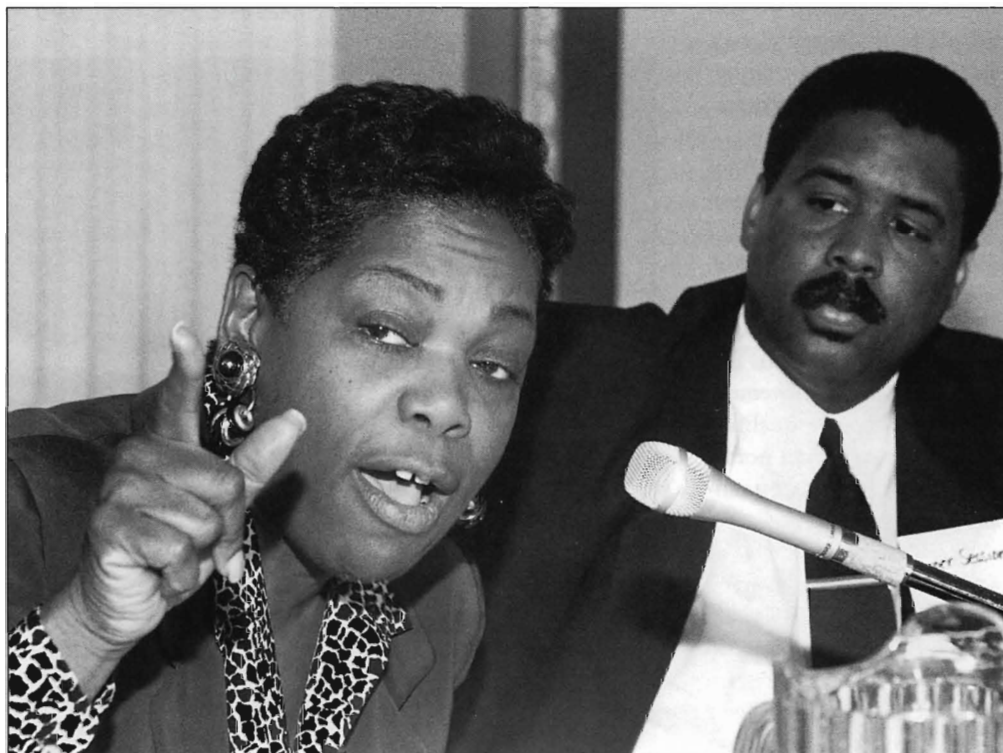
In discussing affirmative action and education, the United States District Court for the Fifth Circuit decision in *Hopwood v. Texas* was fresh in panelists' minds. Arnwine believed that the judges applied their own ideology and preferences in determining that race should not be used as

a factor in higher education admission decisions. She noted the University of Texas' historical discrimination

against African-Americans.

George countered by saying that affirmative action programs in education and other

areas hurt those they originally were intended to help. He argued that minority programs in education and other (continued on Page 38)



Elaine R. Jones, director-counsel of the NAACP Legal Defense and Educational Fund, makes a point as Warner Sessions looks on



Pictured are (standing, from left to right) the Honorable Susan Maze-Rothstein '85, BCBAN annual meeting keynote speaker Ralph G. Neas, Katy Neas, and Ronald A. LeGrand '80 and (seated, from left to right) Boston College Law School Dean Aviam Soifer, Congressman Robert C. Scott '73, and Andrea Ford Roberts '78

Affirmative Action Conference (continued from Page 37)

groups now find themselves competing against each other, not white Americans, for jobs and places in college classes. He said that this was another reason to eliminate affirmative action programs.

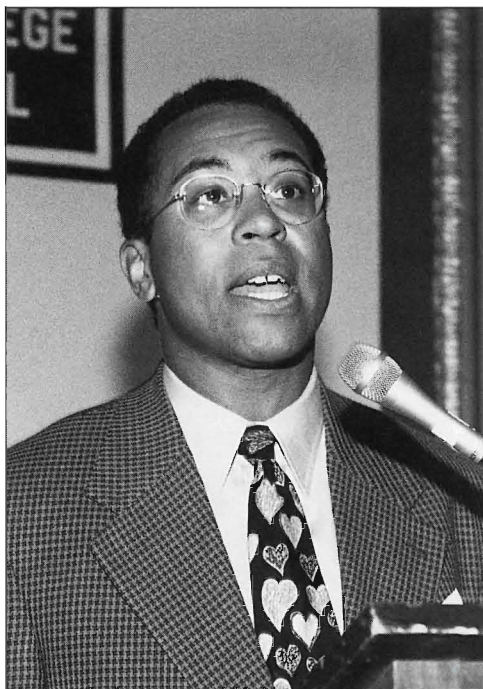
The 84-year-old Height addressed affirmative action generally and in terms of women's progress. She said, "Many of us are the beneficiaries of open doors but don't know how they got open. The whole civil rights movement said those who are qualified within a group should not be denied because they are members of that group."

She spoke similarly of women, noting, "Advancing women is not giving women preference over men but to give them full partnership. Affirmative action affects only those with enough experience and qualifications to be in the running."

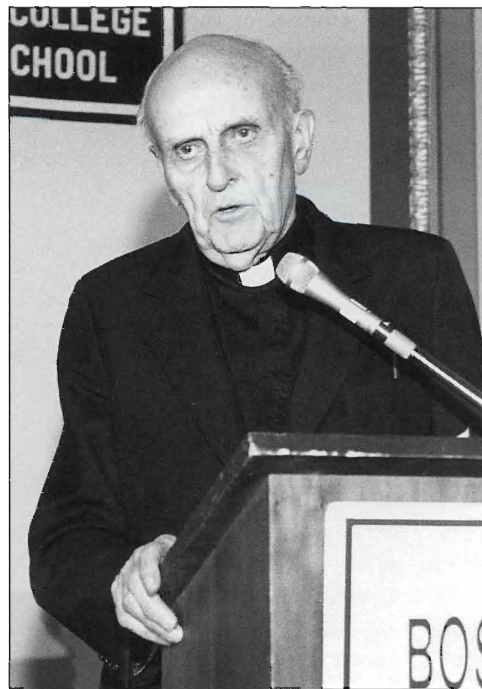
In contrast, Blair believed affirmative action for women is no longer necessary. She

spoke of women's success in the workplace and stated, "Women's record of achieve-

ment continues to grow. ... The experience of women shows that merely opening



Assistant Attorney General for Civil Rights Deval L. Patrick said the success of the United States depends on the contributions of all individuals



Former Boston College Law School Dean and United States Congressman Robert F. Drinan, S.J. discussed affirmative action measures worldwide



Pictured at the affirmative action conference with Assistant Attorney General for Civil Rights Deval L. Patrick (fourth from left) are Boston College Law School students (from left) Julius Ford '96, Pamela Johnson '96, Debora Ferreira '96, Tanya Greene '98, and Dinah Reese '98

doors can accomplish a lot — as long as they've literally done their homework. ... It is time for women to declare victory in affirmative action."

The panelists' presentations were followed by a question-and-answer session involving members of the audience. Subsequently, Massachusetts State Senator Dianne Wilkerson '81 and Patricia Hardiman Long '78 offered brief comments on affirmative action.

As the program entered the afternoon, Robert F. Drinan, S.J., a former dean of Boston College Law School and United States Congressman who now is a professor at the Georgetown University Law Center, provided a view of affirmative action globally. Noting that affirmative action has been standard practice in many

nations for at least 30 years and is part of customary international law, Drinan contrasted this with the present debate in the United States. He said, "Feelings about affirmative action in America run deep. Sometimes hostility to the concept is suppressed because it is deemed to be politically incorrect. But the strong and emotional attacks that almost certainly will be aired in the next several months suggest that calm and reasoned voices will be needed."

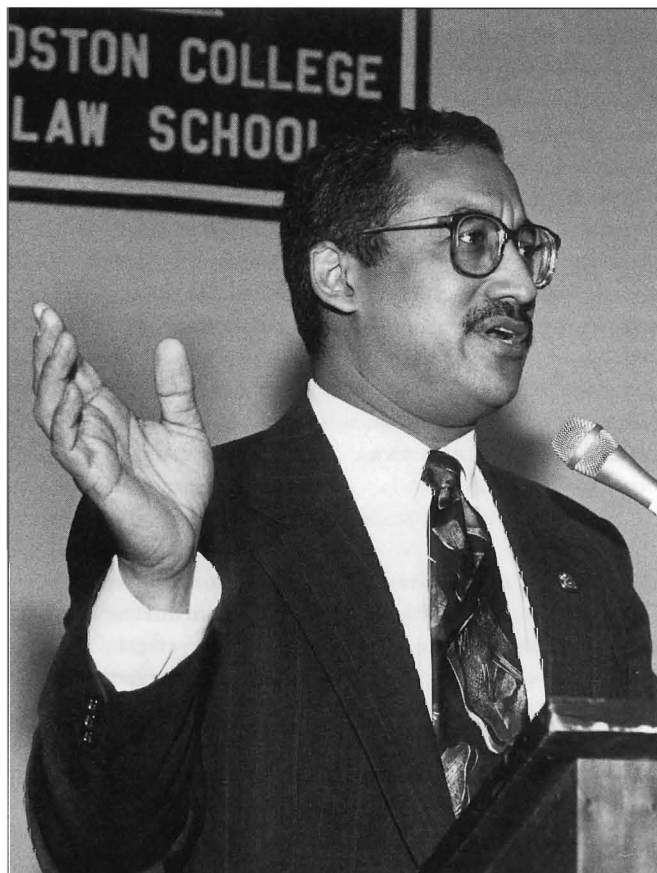
In a keynote address concluding the conference, Assistant Attorney General for Civil Rights Deval L. Patrick sought to offer such a voice. He described recent discriminatory acts experienced by African-Americans and other minorities and stated, "Reduced to pungent but pointless soundbites, fortified by myth



Massachusetts State Senator Dianne Wilkerson '81 addressed affirmative action in the Northeast



At age 84, Dr. Dorothy Height remains an energetic civil rights advocate



Congressman Robert C. Scott '73 of Virginia served as honorary chair of the Black Alumni Network's conference on affirmative action

but little useful data, fueled by the politics of division, this nation is grappling with a profound question: whether its sad legacy of exclusion and separation, based on race, on ethnicity, or on gender, is really behind us — and, if not, whether we have the collective will to do anything about it."

He continued, "This country may well be a truly color-blind nation one day, but we are not there yet. And our economy — to say nothing of the fabric of our civil society — cannot thrive, if even survive, without the contributions of all of us. Until that day arrives, we must continue to support efforts to open up our society and ensure that *all* Americans have an equal opportunity to participate in it. ... And where the legacy of discrimination deprives women and minorities of the chance to compete for jobs or places in school on an equal

basis with other Americans, the law rightly supports those remedies which will ensure equal opportunity for all. Sometimes that may mean affirmative action when it's done the right way: flexibly, sensibly, practically, lawfully, and without sacrificing qualifications. ... We have defined our ideals over time with principles of equality, opportunity, and fair play. For this, at the end of the day, like it or not, we are an inspiration to the world. Civil rights is the struggle for those ideals. It's hardly about some abstract racial spoils system. It's about breaking down artificial barriers of whatever kind to equality, opportunity, and fair play. It's about assuring everyone a fair chance to perform. It's about redeeming that fundamentally American sense of hope. It's about affirming our basic values and aspirations to become a genuinely unified nation." ■

Law School Black Alumni Network Issues Affirmative Action Position Statement

In conjunction with its program on affirmative action and its annual meeting, Boston College Law School's Black Alumni Network (BCBAN) presented a position statement on affirmative action that was endorsed by BCBAN members. This affirmative action position statement is reprinted here.

“..The whole history of the progress of human liberty shows that all concessions yet made to her against claims have been born of earnest struggle... If there is no struggle, there is no progress. Those who profess to favor freedom, and yet deprecate agitation, are men who want crops without plowing up the ground, they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters...”

Frederick Douglass, 1857

“[W]hen a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of mere citizen and ceases to be the special favorite of the laws.”

Supreme Court Justice
Joseph P. Bradley
Civil Rights Cases (1883)

PUBLIC PERCEPTIONS OF DIVERSITY AND AFFIRMATIVE ACTION

The debate over the benefits and burdens of affirmative action, foreshadowed by the sentiments expressed above, has from the

outset derived from incongruent and polar perceptions. On one side of the debate, affirmative action is seen as necessary, as long as certain groups bear the consequences of past and current discrimination. At the opposite pole, affirmative action is perceived as a counterproductive highlight of differences, a promoter of favoritism, and unnecessary in the face of race- and gender-neutral legislation and enforcement.

These inconsistent perceptions result in an uncomfortable dissonance; while most Americans support the idea of equality, many remain opposed to the notion of affirmative action. How can our aspiration for a society of parity be reconciled with the means to achieve these goals? Or, in the visual words of Frederick Douglass, when is it worthwhile to endure the “thunder and lightning” of requiring action in return for the nurturing “rains” of equality?

As the Black Alumni Network of Boston College Law School, we seek to contribute our perspective to the debate surrounding affirmative action. We recognize that this issue affects many, including women of all races and other people of color, but feel that we can best address the experiences of African-Americans. Therefore, we limit our discussion to the impact of discrimination and affirmative action on individuals of our race.

DEFINING AFFIRMATIVE ACTION

At its core, affirmative action is a fundamental

commitment to open the avenues of opportunity to all Americans. It is a commitment to take affirmative steps to combat the effects of past and current discrimination, based upon race, still prevalent in our society. Affirmative action embodies the American moral commitment to breathe life into the constitutional prom-

educational institutions.

In *Regents of Univ. of Ca. v. Bakke*, 438 U.S. 265 (1978), the United States Supreme Court struck down a practice of retaining a specific number of school seats for designated minorities. The Court acknowledged that institutions of higher learning could strive to attain a diverse student

*How can our aspiration
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ise of life, liberty, and the pursuit of happiness.

The exercise of these fundamental constitutional rights is only possible when there is an equal opportunity to access education, housing, and employment. With a moral commitment under our constitution, the question then becomes — How does society meet its moral obligations?

CURRENT STATE OF LAW REGARDING AFFIRMATIVE ACTION IN PUBLIC HIGHER EDUCATION

Voluntary affirmative action in public higher education permits race- and gender-conscious admissions decisions, but these generally are subject to strict scrutiny and must be tailored narrowly to serve a compelling state interest. In recent years, several prominent cases have addressed the question of affirmative action in admission to

body, but it found that reserving admission slots for minorities was not a necessary or appropriate means to achieve that goal. Writing for the majority, Justice Powell held that a better remedy would involve a flexible program that treated each applicant as an individual.

Under the *Bakke* case, an educational institution serves a compelling state interest when it adopts a voluntary affirmative action program intended to ameliorate the effects of past discrimination by a state government or others within the relevant jurisdiction. Institutions may be deemed to advance the compelling state interest in eliminating the effects of past discrimination even without a court finding of discrimination, but they must be able to demonstrate that a “strong basis in evidence” exists for concluding that remedial action is necessary. In *United States v. Fordice*, 112 S. Ct. 2727 (1992), the Court held

that states have an affirmative obligation to eliminate all vestiges of a previously segregated higher education system. That obligation is not satisfied merely by adopting race-neutral policies.

Once a university has demonstrated a basis in evidence that continuing effects of discrimination exist, it also must show that a particular affirmative action program is narrowly tailored to remedy those effects. The *Fordice* hurdle proved too high for the Maryland university system in *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994) (*Podberesky II*). In *Podberesky*, race-restricted scholarships were ruled unconstitutional, even though the university had determined the scholarships were necessary to overcome the lingering effects of the previously segregated Maryland higher education system. New uncertainties regarding the future of formalized affirmative action programs have emerged following a decision in *Hopwood v. State of Texas*, WL 120235 (5th Cir. 1996), in which the court ruled that the University of Texas School of Law could not give preference to African-American or Hispanic applicants for admission as part of a strategy to increase racial diversity.

OBJECTIONS TO AFFIRMATIVE ACTION

Many detractors of affirmative action object to its focus on race and gender. They propose revised formulations based on economic need. This concept would recalibrate the term “disadvantaged” to include poor whites, but would largely phase out efforts to rectify the disparate effects of past discrimination. Redefining who will benefit

from affirmative action programs, however, would not alleviate the underutilization and under-representation of African-Americans in both the professions and the trades.

Those who attack affirmative action say it leads to lower standards and that its beneficiaries are less deserving than those whose achievements are seen as based solely on merit. Yet the appropriate definition of merit remains unclear. Merit cannot be reduced to a test score or similar standard until the following question is considered: How rational, arbitrary, or inclusive is the measurement device? If merit is defined only by those qualifications desirable to accomplish a given job, close analysis reveals that lack of merit typically has been alleged when comparisons were made between truly qualified individuals rather than between the qualified and unqualified. Therefore, qualities other than actual merit must be factors in these allegations.

Affirmative action also is blamed for impairing the self-esteem of its beneficiaries. Critics say women and minorities who have attained their position through merit, not affirmative action, are stigmatized by their colleagues and future employers as less qualified. Affirmative action may be a grossly imperfect indicator of self-esteem, but consider: What is the level of self-esteem of those who are routinely denied opportunity and access?

THUNDER, LIGHTNING,... AND RAIN: OUR EXPERIENCE AT BOSTON COLLEGE LAW SCHOOL

Boston College Law School has employed a multi-layered approach to af-

firmative action that we consider highly effective. The approach is based in the Law School’s commitment to academic excellence; an environment of inclusiveness, support, and collegiality; and a desire to interweave these ideas into every aspect of its education. The approach is multi-layered because it extends beyond simply admitting African-Ameri-

has established an orientation program for prospective minority law students, created a bar examination preparatory course for minority students, developed awards honoring achievement and service, introduced a legal journal focused on third-world and minority issues, and founded an initiative that will provide financial support.

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can students to welcoming these students as part of the Law School community, valuing their perspectives, encouraging cultural exchanges, and recognizing their contributions and service. The Black Alumni Network is an outgrowth of this multi-layered approach: we felt so much a part of Boston College Law School as students that we wanted to create a mechanism to perpetuate our participation and presence in the school’s life as graduates.

Boston College Law School has recognized for many years that aggressively recruiting and admitting African-American students is important, but that it is only a starting point in ensuring that these students will become lawyers and succeed in their chosen profession. Working with its African-American students and alumni, the Law School

The level of Boston College Law School’s commitment is revealed in a single statistic: prior to 1968, when administrators decided to make their school truly an institution for all and began taking steps to accomplish this goal, the Law School had graduated only five African-Americans. In contrast, by 1995 there were more than 300 African-American graduates of Boston College Law School. That statistic reflects the Law School’s awareness that the “shortage” of qualified African-American applicants was more accurately a shortage of opportunities to pursue a legal education.

For the past decade, the Black Alumni Network has worked in partnership with administrators to ensure that inclusiveness, excellence, and strength through diversity re-

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Travels Take Law School to Alumni, Chapters From Coast to Coast

This spring, Boston College Law School faculty and staff were in touch with alumni from Boston and Springfield, Massachusetts, to Los Angeles, California.

On April 2, graduates and prospective law students gathered at the Washington, DC, office of Howrey & Simon for a reception hosted by the regional alumni chapter's president, Edward P. Henneberry '70. More than 50 alumni were present to respond to questions posed by admitted applicants and to recognize their colleagues who are members of the judiciary. Those honored and in attendance were

the Honorable Bruce Segal '63, Ellen S. Huvelle '75, and Robert J. Robertory '61.

On April 15, an event joining alumni and prospective students was held in the Los Angeles office of Howrey & Simon. The site was made possible by firm partner and Southern California alumni chapter president Richard T. Colman '62. Guests were welcomed by chapter treasurer Edith N. Dinneen '73. They also heard from Associate Professor Alfred C. Yen, who updated them regarding recent Boston College Law School activities and gave a presentation on regulating the Internet.

May brought the Law School to western Massachusetts, where graduates attended a reception and a program co-sponsored by the Law School, the Massachusetts Bar Association's Access to Justice Section and Individual Rights and Responsibilities Section, and the Women's Bar Association of Massachusetts. Held at the Law Offices of Egan, Flanagan & Cohen in Springfield, the program was titled "Gender Bias in the Courtroom and the Litigation Process: A State/Federal Forum." Dean Aviam Soifer was among the speakers, who also included the Honorable Michael A. Ponsor

of the United States District Court; the Honorable Mary-Lou Rup of the Massachusetts Superior Court; Springfield attorney Nancy Frankel Pelletier; and Diane H. Esser of the Greenfield, Massachusetts, law firm of Esser, Singer, Eisenberg & Wainstein.

Philadelphia alumni received a Law School visit in May as well, with Soifer traveling there for a reception at the Racquet Club on May 16.

Boston-area alumni also had opportunities to interact with former classmates and members of the Law School community. On April 17, more than 50 graduates at-

Black Alumni Network Position Statement (continued from Page 41)

main core values of the Law School. In turn, students and graduates have enhanced the legal profession and their larger communities by extending these values beyond the campus.

Dean Aviam Soifer expressed Boston College Law School's values and the value of celebrating difference in a recent message to all alumni. He wrote: "We are proud to be part of the Jesuit mission of educating men and women for others. We repeatedly demonstrate widespread care for the dignity of each individual; a shared awareness of the important congruence of theory and practice in law and life; and constant concern about the search for justice that stretches beyond individual success. We intend to graduate people who do not bifurcate self and others, past and future, what one can do from what one ought to do. Our strong moral codes instruct us

— even compel us — to recognize the needs of others both in everyday life and in the kind of professionals we seek to become.

In an indifferent world, we still celebrate difference. The prevailing spirit at Boston College Law School recognizes that each and all of us are enriched by reaching across barriers. Our individual and group distinctions intertwine and constitute a noteworthy, sturdier fabric."

WHY AFFIRMATIVE ACTION IS STILL NECESSARY

Racial discrimination still exists, causing African-Americans and other minorities ultimately to lag behind in terms of economic status. Until this race-imposed lag is eliminated, affirmative acts to undo the effects of past and present discrimination will

remain necessary. There are continued limits to accessing opportunities, and most industries still cannot boast of a racial mix even approximately proportional to the total population. While statistical underrepresentation is not equivalent to discrimination, it points to likely areas of continued discrimination. A preferred place in the corporate world remains reserved for those who look like traditional corporate leaders. In contrast, African-Americans toil under a 400-year-old legacy of racial prejudice and discrimination which has not been overcome by only 30 years of affirmative action. Calls for a "color-blind" society and race-neutral enforcement of the laws miss the point; even if racism could be eliminated overnight, African-Americans still would suffer the effects of generations of inadequate schools and diminished employment opportu-

nities, which perpetuate competitive disadvantages.

Thus, the continuing effects of historic discrimination, bolstered by current discrimination, make affirmative action in some form necessary to overcome the underrepresentation of African-Americans in numerous endeavors.

Racial discrimination is a problem of multiple causes, and its elimination requires multiple remedies. Therefore, we do not prescribe a specific solution. We do, however, suggest that Boston College Law School's approach can serve as a model for other institutions groping for ways to address discrimination and affirmative action in today's society. Though Boston College Law School cannot be viewed as offering a "magic formula," we believe its successful implementation of a multifaceted, creative approach may be useful to others. ■