

## 2021 Black Lawyers Matter Conference<sup>SM</sup>: Afternoon Keynote

### FULL TRANSCRIPT

**Voiceover:** 2021 Black Lawyers Matter Conference<sup>SM</sup> presented by LSAC, University of Houston Law Center, and SMU Dedman School of Law, in collaboration with the conference planning committee. Recorded October 15, 2021. Afternoon Keynote.

[Upbeat music plays and fades out]

**Anthony Varona:** Welcome everyone to our afternoon keynote conversation at this extraordinary [2021] Black Lawyers Matter Conference. My name is Tony Varona and indeed, I'm dean emeritus and Massey Professor of Law at Miami Law. Like you, I have been enjoying and learning a great deal from this important and topical conference. I thank Deans Kellye Testy, Leon Baynes, and Jennifer Collins for convening us today. As Dean Baynes told us this this morning, the appalling lack of Black and other lawyers and law students and law professors of color in our profession is something that not only is unfortunate, but as so serious a problem that all of us have a moral and civic duty to address and redress it. As Dean Testy told us, "Everyone in the profession has a role to play in recruiting more Black and other minoritized students into law schools and helping them succeed through and beyond graduation." And as we learned from Judge Gilmore, the lack of Black and other lawyers of color in the legal profession undermines the ability of our judicial system to fulfill its obligation, to deliver justice. Indeed, Black lawyers, not only matter, but without Black lawyers, the law is unjust.

What we face with the under-representation of Black and other minoritized lawyers is a crisis, not only in our profession, but for our republic. This mornings and early afternoons panels address the lack of diversity in and the need to recruit more Black law students and other minoritized students and faculty into our law schools and improve and elevate our curriculum to serve them well. The sessions following this keynote conversation will focus on the profession itself and what it needs to do to better recruit and retain Black lawyers and other lawyers of color. This afternoon's brief keynote session will serve as a pivot point and transition for us and so we have the honor of being joined by someone with a bird's eye view of both legal education and the legal profession itself. We have the privilege of hearing from Deborah Enix-Ross recently elected as the President Elect of the American Bar Association. Ms. Enix-Ross is one of our most distinguished graduates at Miami Law, and now a senior advisor international dispute resolution at Debevoise & Plimpton, where she serves as a member of the firm's Diversity and Inclusion Advisory Council. Ms. Enix-Ross formally was Senior Legal Officer and Head of External Relations for the World Intellectual Property Organization's Arbitration and Mediation center. Ms. Enix-Ross also had served as one of the original eight U.S. members of the trilateral NAFTA Advisory Committee on Private Commercial Disputes. Interviewing Ms. Enix-Ross are two outstanding law school deans, who are leaders in American legal education. They are Dean Marcilynn Burke at the University of Oregon School of Law and Dean Joshua Fershée at Creighton University School of Law. As deans Burke and Fershée interview Ms. Enix-Ross, I will monitor the Q&A string and we'll select a couple of questions to share with the deans and Ms. Enix-Ross towards the end of our session.

So Deborah, thank you so much for joining us great to see you Marcilynn and Josh, thank you too, the virtual podium is yours.

**Marcilynn Burke:** Thank you so much and hello to everyone and hello to President Elect Enix-Ross. We're delighted to have you with us, and as was just said, we're sort of bridging the gap now from talking about education to the practice more explicitly. So the first question I'd like to ask you is as president elect, how do you characterize or frame the importance of diversity in legal education and the profession itself?

**Deborah Enix-Ross:** Well, let me begin by thanking you all for this incredible opportunity to be a part of this very important discussion, clearly as a Black woman lawyer, I have been acutely aware of the many challenges lawyers of color have faced and still face as we just seek to be active active and productive members of this noble profession. So let me begin by perhaps a bit of history, a bit of ABA history. I will be the fifth African American president, five, following the current ABA president who was Reggie Turner from Detroit, he's the fourth, and I'm only the second African American woman to be president of the ABA in it's 140 year history. Paulette Brown by the way, was the first African American president and many of you know, her, she was a pioneer and is a pioneer in the DEI space and was really crucial in, I would say, moving the ABA. But the ABAs history is that in 1912, they rescinded the membership of William H. Lewis, who was the first Black assistant U.S. Attorney General and he had been elected to membership — that's when you had to be elected to membership in the ABA — in August of 1911 and from that point, it restricted the ABA to essentially White lawyers until a resolution was passed in 1943, then stating that ABA membership would not be dependent on race, creed or color, but it was not until 1950 that a Black lawyer would be admitted to membership. And just so, to frame this, and I am a proud double University of Miami graduate, hence the green, but the first Black student was admitted to the University of Miami in 1961. So we're not talking a long, long time ago as we kind of think of where we are as a profession so with that now Professor I will attempt to answer your question about the importance of diversity and there are many reasons why having a diverse bar and bench are critical and some of these reasons have been cited. I'm sure you've heard them, but they still stand true and they include, first of all, diversity strengthens the rule of law. You have the inclusion of people from diverse backgrounds that leads to more trust in our justice mechanisms.

Diversity increases respect for the legal profession, diverse communities can better identify and interact with the profession and legal systems that represent and look like them. Diversity builds confidence within the legal community. We know that diverse opinions and thoughts and proposals that are respected and appreciated, is really critical and that, in turn, encourages people to become involved and then that perpetuates an inclusive and cooperative environment in the legal community. I would say diversity makes good business sense, both from the legal and the judicial workplace and for the profession, generally from a work place perspective, legal employers are proven - it's been proven — to be more innovative and profitable as lawyers from diverse backgrounds, better reflect and can attract a diversity of clients and citizens and customers from around the globe. From a general legal and judicial perspective, a diverse legal profession has demonstrated the ability to be more just as Dean Varona just talked about and productive and I would say even more intelligent because diversity, both cognitive and cultural often leads to better questions, better analysis, better solutions and processes. Diversity in the legal profession is critical because in our countries 245 year history lawyers are often where society draws its leaders and so lastly, I say, lawyers are uniquely qualified to seek justice and repair and maintain a society that values diversity equity and fundamental fairness and it's for this reason that when I become president, I intend to focus on what I call the three C's: civics, civility, and collaboration, because we need lawyers more than ever, to educate the public about civics and the importance of civility. So those are just some of the reasons why I think diversity is crucial in the legal profession.

**Joshua Fershée:** Thanks so much President Elect and thank you for your service we very much appreciate you. What are some of the ABA's efforts underway? And some of the things you hope to initiate during your presidency to help promote more diversity in our profession?

**Deborah:** So as many of you know, the ABA is the largest voluntary association of lawyers in the world and the ABA has four goals that define who we are as an association, one of those goals is our unwavering dedication to eliminate bias and enhance diversity equity and inclusion in the association, in the legal profession and in our justice system. Now diversity permeates everything that the ABA does, and the ABA has more than 3,500 sections divisions, committees, and other groups and they are all charged with advancing DEI in all areas of the profession and the justice system. I could spend the next hour just laying out everything that the ABA is doing, and that would be impossible, but I'm just going to highlight a few, what I'd say, are the fairly recent examples. First, the ABA in partnership with Duane Morris, LLP launched a law firm toolkit that's comprised of short video clips that teamed with questions from the four-part "Black Lawyers in America" national town hall webinar series. The toolkit includes tips for Black lawyers and facilitation discussion and other resources to engage in the work of uplifting Black lawyers' experience in the workplace and ending practices of implicit bias and anti-black racism in the legal profession and the educational pipeline.

Another initiative was during Black History Month, the ABA launched a series of 21-day ABA equity challenges, and that each comprise the syllabus of short daily assignments like readings or videos or podcasts to educate and make lawyers more aware of and how they can help address these historic and the current challenges impacting underrepresented communities. Most recently, during the ABA 2021 annual meeting, the board of governors approved a new and more expansive member, diversity equity and inclusion plan, that's designed to strengthen and increase full and equal participation in the association, by all of our members. And then the ABA, as you know has house of delegates and they passed a resolution, which is now ABA policy, making it clear that all attorneys across this country have an obligation to devote time and energy to advancing racial equity and all aspects of diversity, equity and inclusion. And I had the honor of participating in the ABA's first four-day equity summit that just finished in September and it was really a remarkable convening of people across the association, as well as some of our national affinity bars that came together to talk through and think about, and it wasn't just talk, but it was concrete steps that we can take to advance DEI and there were a number of programs, and podcasts and CLE there were over 1000 attendees and for me actually, the most impactful moment was the fireside chat with Supreme Court Justice Sonia Sotomayor and to hear her talk about her experiences dealing with racism and how she managed that throughout her career and it's not just, you would think that as a Supreme Court Justice, it would end there, but it didn't and she talked about even most recently as a Supreme Court Justice, what that feels like and how she responded. So I thought that was really very eye-opening and for me just a moment to understand that this is an ongoing fight. I'll call it a fight in a struggle, but it happens at the highest levels, but there are something that all of us can do in our own ways to make sure that we are advancing DEI and so for me, when I am ABA president, one of the more concrete things that I can do as many of you know, there are a number of presidential appointments that presidents elect make of different committees and assignments within the ABA and that's an opportunity for me to find diverse candidates, to be a part of the association.

So I would encourage anyone who has any interest in serving on any ABA committees to reach out to me and let me know of your interest and that will be one of the ways that I can certainly ensure that there's diversity in the association, and thereby diversity in the profession. Because when you work in the ABA, you gain leadership qualities and access to lawyers all across the country, and that does help you in your profession.

**Dean Fershée:** If I could ask a quick follow-up we had a question from our audience asking whether the ABA toolkit is publicly available.

**Deborah:** It is, it is on our website. I don't, yes, it is publicly available on the website. I don't have it, but if you put in ABA and diversity toolkit, you should be able to find it. If you can't find it, send me an email, I'll find it for you.

**Dean Fershée:** Thank you.

**Dean Burke:** Thank you so I want to focus in a little bit here to thinking about large firms and the difficulty that large firms have had in achieving and sustaining diversity in the partnership ranks and what do you think can be done differently to change those outcomes?

**Deborah:** So let me answer this question in three parts. The first is why is it difficult? Secondly, what can be done differently? And then third, what is the ABA's contribution? So why is it difficult? Well, it's not surprising that if there's a fixation on recruiting from select law schools and then looking at only law school rankings and grades that causes firms to sometime overlook many lawyers who have talent. Another difficulty is, frankly speaking, firms have scarce resources, for example, the best work and clients, right? And so most firms believe that they are based on their meritocracy and that success is earned and so it may be hard for them to see that cream doesn't always rise to the top without some assistance, right? And so when you're thinking about allocating the scarce resources to underrepresented groups, it feels almost for some, it may feel like a way of compensating, but that it's not in a meritocracy.

Another reason could be that there aren't enough diverse lawyers in firms and although they are enough diverse lawyers in firms — the numbers have increased — and sometimes some firms may think, well, we've got a number of diverse lawyers, and if there's one in one class not doing well, we'll just skip that person and go on to the next class. I'm not saying all firms do that, but that could be a reason. Many firms don't have a DEI goals and targets. So if then if it's not top of mind, then that's another reason why it could be difficult. Sometimes the business case for hiring firms that are more diverse than their peers had in the past that had not been at the top of clients' minds. But I think now there are more clients that are thinking about the composition of the teams and their law firms, but it's going to be important for corporations to give work, not only to smaller firms that are certified as women or diverse-owned firms, and believe me I think that's a terrific step, but when they do that, sometimes what that means is that they aren't thinking about investing in not only those women and minority-owned firms, but what about diverse lawyers in large firms? So we can help them think about that as well.

Now, what can be done differently? Well, I mentioned that some firms don't have DEI goals and so firms should adopt a metrics and goals that fit in with their culture, but also are reasonably aggressive and transparent. We could create more creative partnerships with clients that strengthen diverse lawyers and encourage accountability for investment in diverse lawyers. Clients could and should exert more pressure for diverse teams and client succession plans, and should invest in diverse women and lawyers. And I'm not saying that they don't do that in fact, years ago I remember Shell had a program that specifically asked firms, not only how many lawyers of color, but at that point, it was also how many African American men are on your teams and, or a part of your firm and how much of that work goes to them. So I think it's really a partnership with law firms and with our clients. And then I would encourage law firms to consider hiring a chief diversity officer or someone with the ability and the power, ability and power, to truly work alongside the managing partner or the executive committee and law firm partners and associates to develop a strategic plan that articulate

achievable objectives and associated action items to meet their respective DEI challenges. So I think those are some of the things that can be done differently.

Now with respect to the ABA, many of you know that we have a model diversity survey and that has about 167 or more corporate and other signatories and it's a straightforward way to review and access to diversity equity and inclusion information from hundreds of law firms and I think it has been a really successful tool. It assesses law firm policies, practices, and outcomes regarding hiring and attrition and promotion and leadership and so that incentivizes law firms to enhance their DEI efforts. We also have in the ABA, something called practice forward, which was developed as a result of the pandemic and it was created to provide insight and resources for lawyers on meeting the challenges of the pandemic, which all information indicates that it has had a higher impact on women lawyers with children and lawyers of color and so we are trying to provide tools that we can think of and use as we come out of the pandemic and so I think those are some of the ways that we can try and address what is clearly a problem, of lack of diverse partners in law firms.

**Dean Burke:** If I can just follow up a little bit about what you talked about just then about recognizing impacts on women and women with children. Some of the questions in the chat are getting at this intersectionality question. So also talking about, if you're a Black Lawyers Matter, but what about lawyers of color with disabilities or is age a factor in sort of these equity inclusion, diversity equity inclusion efforts?

**Deborah:** So it's a good question, I mean, obviously, the title of this conference is [2021] Black Lawyers Matter [Conference], but when we talk about DEI, we are talking the full, especially within the ABA, we are talking about all forms of diversity and that does include groups that have been mentioned, I guess, within the question. Yeah, it's race, it's ethnicity it's gender, it's sexual orientation, it's age, it's physical abilities. It is really the fulsome picture of DEI and especially within the ABA, we certainly have come to embrace that the notion, of a broad definition of diversity. Now when we started out, what was then goal nine in the ABA, it talked about promoting full and equal participation in the profession by minorities and women, and that has now been expanded to include other underrepresented groups. So we are trying to be as expansive as we can be as we should be, frankly, as it would be my view.

**Dean Fershée:** Thanks very much and where you started, I couldn't agree more that diversity is a competitive advantage and for most of us, we're not there yet and so as we seek to be inclusive and ensure representation of Black lawyers and other lawyers of color, we run the risk of placing heavy burdens on them, particularly in service and committee work. So we have representation, especially when we account for the high levels of informal mentoring and coaching that falls on Black lawyers and other underrepresented lawyers and law firms and schools and so I'm wondering if you have some ideas on how law firms and how other employers can help balance the desire for representation while giving people a kind of a space in the workplace to actually succeed and achieve tenure achieve partnership that you talked about. So we'd love to hear if you have some thoughts on that.

**Deborah:** Sure. So look, our ultimate objective is to create a truly inclusive workplace where Black lawyers and other lawyers of color and other lawyers from under-represented demographic groups will not have to face, or overcome additional barriers, of bias and discrimination and that's a job for every lawyer, not just lawyers of color. And so we need to be sensitive — and law firms in particular need to be sensitive and to incorporate into their strategic plans — first an understanding of the barriers and the impact that it may have on these lawyers and then to adjust their action items, and design them so that it takes that into consideration. So that, for example, if you have mentorship and other kinds of programs, and these are all good programs, and it can be that you get, you spend so



much of your time being a part of those programs that you lose sight, that really what we're trying to do is make sure that these lawyers have all the tools that they need to succeed and success in law firms, we all know, is how you deal with your clients and the billable hours and that's one way of measuring. But if we are going to have these programs, these mentorship programs, it almost begins to feel lack of requirements. So if we're going to have those requirements, then we need to adjust what the expectations are, whether billable or client work, or Bar Association work to account for that additional piece. So it doesn't mean exclude the mentorship programs. It doesn't mean get rid of. It just means that we need to make sure that we're making the right adjustments that factor that in, when we are evaluating these lawyers.

**Dean Burke:** We've got about five minutes left in our time here I think, so I'm going to ask perhaps one last question, and I don't know if Dean Varona has picked up any other in the Q&A?

**Dean Varona:** I just had more yes, yes.

**Dean Burke:** Okay.

**Dean Varona:** The last one, Deborah, was "How does the ABA address the problem of practicing lawyers, not only being disrespectful to DEI efforts, but outwardly acting in ways that are racist, ableist or prejudiced in other ways."

**Deborah:** So this reminds me of, some may have heard that, the Florida Supreme Court has said that they will not give lawyers CLE credit for ABA programs, because the ABA has as part of its mission and has asked that diversity equity and inclusion be a part of the panels that are ABA and ABA programs so in other words, when you have a panel, making sure that you are having diverse attorneys as part of those panels. Now, when the ABA passed the resolution, it was not a quota and it was not meant to be, if you've got five people on your panel, you have to take one off if there's no diversity. No. What it was meant to be was expanding the opportunities, not decreasing the opportunities for some and so to answer your question, the ABA is standing firm behind that policy and the ABA now has its own diversity officer. It is a part of this new diversity DEI plan that we adopted in August and so that officer within the association will be charged with making sure that all of the entities across the ABA are in fact, following the associations DEI policy. So we're not only telling the profession what it should be doing, but we're doing it ourselves in our own association and I think that's the best way to demonstrate what we will and will not tolerate with respect to DEI.

**Dean Varona:** President Enix-Ross one last question from our audience members that just snuck in here, a very good one. She's looking forward to becoming a member of the ABA and is an older student that faces all the challenges that we've been talking about in every aspect. "How can we face age challenges or age-ism challenges, in active practice, particularly when one is also a student or lawyer of color."

**Deborah:** Yeah, that's a great question. and I think we often think of age-ism on the other end, the younger end and I certainly, as many probably have, have had my share of that, but I think that, when I want to talk about Justice Sotomayor, and she talked about when she faced racism, she thought about it in three ways, as she gave three examples, one was someone who was racist and who said some things to her, and she thought, I am never going to change that person's mind, so I'm not going to engage with them. The second was someone who called her honey as a, I think I'm paraphrasing, but as a justice and she said, this was a teachable moment for that person, because I know that that person did not mean it in a derogatory way, but just didn't realize that you don't call someone, whether you have words, a Supreme Court Justice, or someone in that honey and so that's the teachable moment and the third example she gave was someone where it was systemic,

where it was a person who had authority and could impact others and so I would say to you, first of all, you have the advantage of age. You are not so young as to be afraid of what may happen to you, I hope, because with a bit of age comes some wisdom to be able to speak up and to discern when and how to speak up. But I would say to you do need to speak up and if you feel that you cannot speak up in that moment, that's fine, but you need to figure out how, and when you will do it, but you cannot let it go silence because you could either be doing a teachable moment or you could be helping someone else down the line.

**Dean Varona:** Very wise advice thank you, Deborah. Deans Burke and Fershée, any additional questions or comments?

**Dean Fershée:** I'll just share my thanks, to everybody, and President Elect, we look forward to your leadership and thank you so much.

**Dean Burke:** Absolutely.

**Deborah:** Thank you and can I just leave you with, I have this quote and it was from Dr. Martin Luther King, and he said, "Today, our very survival depends on our ability to stay awake, to adjust to new ideas, to remain vigilant and to face the challenge of change", and I think that this resonates even to today. So thank you for this opportunity, and this is important work, and I'm so glad to be a part of this discussion.

**Dean Varona:** What perfect words to end on Deborah. Thank you, President Elect Enix-Ross and Deans Burke and Fershée for a superb keynote conversation and thank you audience members for participating so thoughtfully and for those outstanding questions, I believe that we would now go into a 15 minute break, but do hurry back because we have some fantastic panels coming your way. Thank you everyone very much.

[bright upbeat music]

**Voiceover:** Thanks to our sponsors! The American Bar Association, Association of American Law Schools, and the National Association for Law Placement. The 2021 Black Lawyers Matter Conference is presented by LSAC, University of Houston Law Center, and SMU Dedman School of Law, in collaboration with the conference planning committee.

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