A Leg Up: Affirming Affirmative Action

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A Leg Up
Affirming affirmative action

1996 marked the 100th anniversary of one of the Supreme Court's most notorious decisions — Plessy v. Ferguson, which gave judicial approval to the racially divisive doctrine of "separate but equal."

Last spring, UB Law School's Black Law Students Association explored the idea of redressing that injustice through one of the hot-button issues of our own time: affirmative action programs.

BLSA's forum, "A Question of Affirmative Action," brought together five African-American panelists before an audience in John Lord O'Brian Hall. Their discussion ranged widely on this contentious issue, from two recent cases that will restrict affirmative action programs, to personal experiences with the good such programs can do.

The two cases exemplified the anti-affirmative-action tenor of the current political climate. In Adarand v. Pena, the U.S. Supreme Court sharply limited the federal government's authority to give minority contractor's special preference. Though the court stopped short of ruling race-based programs impermissible, the Adarand ruling on June 12, 1995, was an important shift in doctrine that rekindled the national debate over affirmative action.

Buffalo City Court Judge Robert T. Russell, the first panelist to speak at the forum, noted that the Supreme Court's decision "specifically stated that we are altering the playing field" He noted, "This is not just minorities — it will have an impact on women, too."

The decision will limit minorities' and women's access to government-contracted business, Russell said, adding that Justice Antonin Scalia had acknowledged it was doubtful that many affirmative action programs will survive the new, stricter test.

Affirmative action took another blow with the Supreme Court's decision in Miller v. Johnson, which it decided on June 29, 1995. The issue this time was politi-
cal: Could race be considered as a "predominant factor" in drawing the boundaries of a state's election districts?

By a 5-4 vote, the justices decided that it could not, and declared unconstitutional Georgia's 11th Congressional District, which the state legislature had drawn to incorporate a majority of African-Americans.

"Georgia historically has done everything it can to keep African-Americans from voting," said the second panelist, Buffalo City Court Judge Shirley Troutman.

Troutman said the effect of the ruling is unclear. It's simplistic, she said, to assume that people vote entirely along racial lines, so the Miller decision may have little effect on blacks' access to government. On the other hand, the decision certainly won't make it any easier for African-Americans to gain office.

Backlash against affirmative action has gained momentum in California, noted the next speaker, Buffalo City Court Judge E. Jeannette Ogden '83. She cited a decision by the regents of that state's public university system to eliminate preferential treatment for minorities in gaining admission to the system. "That's not precedent outside of California," she said, "but California is often trend-setting for the rest of the nation."

Speaking more generally about affirmative action, Ogden shot down some myths about such programs: that they enable African-Americans to take all the jobs available; that blacks are the sole beneficiaries (women benefit greatly); that such programs are designed to establish quotas.

No, she said — "they're designed to stop Americans from using subtle discrimination to unlevel the playing field. Affirmative action simply means that we are given an opportunity."

Erie County Legislator Crystal Peoples cast the issue in a broader perspective by saying affirmative action is a "wedge issue," like welfare reform and a balanced budget, wielded by an economic elite to "keep the masses divided."

"The movement against affirmative action comes from people who are worried about their jobs," she said. "I think we have to come together, not just as African-Americans but as people, to say no to the capitalists who want bigger cars and bigger homes. I think we should switch the debate from ways we can divide each other to ways we can work together to solve our problems."

Peoples said a local law passed in 1994 means that Erie County will set aside 10 percent of its purchasing contracts over $10,000 for women-owned and minority-owned suppliers. The county applies the same standard for its building contracts over $100,000.

Finally, panelist Shirley Sapp-Burgess, director of the Buffalo office of Arthur O. Eve, deputy speaker of the New York State Assembly, agreed that the fear of affirmative action stems from people's general insecurity about their jobs.

"There are fewer jobs," she said — "not because we have them all, but because the power brokers decided their profit margin wasn't enough and moved them to another country."

Sapp-Burgess noted that women and African-Americans are better-represented in public-sector jobs than in the private sector. "Affirmative action does not give us an edge," she said, "but a tool by which we can expand the growth of this great nation."