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Tribute to John Pickering

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TRIBUTE TO JOHN PICKERING

*John Payton**

I want to reflect on what we have heard here today, and over the course of the last several weeks, about John Pickering.

We have heard simply remarkable things about a remarkable man of consequence. He was not just a remarkable person. He was more than that. He was a remarkable person who did things that actually changed everyone's lives. He mattered.

We heard a lot of things today and some of them we heard for the first time. But I do not think that any of us was surprised to hear any of them about John Pickering. We just did not know all of them. There are a lot of other things that we do not know about John Pickering, but I do not think that we are going to be surprised when we hear some of those other things either.

John would talk about the things that he did, but it seemed to me that outside of the things he did at the law firm—he talked about the law firm a lot—he only talked about those other things when it was relevant to the particular subject that we were talking about: sort of a need-to-know basis. When you had a need to know, you learned something about John that you did not know, and you were really glad that you learned it.

I have an example. John was a former president of the D.C. Bar and after I became president of the D.C. Bar I walked into his office to talk to him about some research I had done into the horrible history of race in the District of Columbia in our professional organization. I am talking about fifty or sixty years ago. I just went in to tell him what I had learned.

I was talking specifically about the Bar Association of the District of Columbia. It is a voluntary bar. Fifty years ago, it excluded all black people from membership. Of course, fifty years ago it was not unique at all; most of the voluntary bars here in the District excluded black people. The ABA excluded black people.

What was unique was that although it was a voluntary bar, the federal courts actually allowed the Bar Association of the District of Columbia to perform some crucial functions for the court. It ran the court's library, for example. To that extent, the Bar Association was turning the courts into a racially exclusive entity for some functions. There were only federal courts in the District then; we did not have the D.C. Court system. And there was no mandatory bar; we only had voluntary bars.

So, I walked in and I was telling John what I had learned. I do not know what I was expecting him to tell me. Whatever it was, it was not what I

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heard. John proceeded to tell me about how, fifty years ago, he had, along with a small group of lawyers, Charles Horsky included, sought to end the restriction of race that applied to membership in the Bar Association of the District of Columbia. Those efforts to integrate the Bar Association initially succeeded, then suffered a dramatic reversal, and finally resulted in the lifting of racial restrictions on membership in the Bar Association. That did not end the story.

John went on to talk about something someone else has mentioned here: his role in the creation of the District of Columbia Court system. In connection with that, they had to decide what they were going to do about a bar. Most states have mandatory bars, and they had to make a decision about what would be the mandatory bar here in the District. One of the suggestions was that the voluntary Bar Association of the District of Columbia be asked to become the mandatory bar.

No way. John told me that in the course of the deliberations, he saw to it that there was a new bar created, the D.C. Bar, a brand-new mandatory bar, and it just cut off right there any connection with the past. The voluntary bars could go forward, but we would have a brand-new mandatory bar, the District of Columbia Bar. Before I walked in to John's office, I did not know any of this.

Now, I had talked to John a gazillion times about things. He never volunteered his role in these pretty important events in our collective history as a profession here in the District.

I did not know about these events, but I knew John, and they absolutely did not surprise me—I just wish I had known them earlier. I am sure they did not surprise anyone here who just heard them for the first time. That is who John was.

A few minutes ago someone said that John always knew what the right thing was, even when it was in fact controversial. Absolutely. He always knew what the right thing was.

I heard the story Elaine Jones told about John's role in her appointment as the first black member of the ABA's Board of Governors in another visit to John's office, when I walked in and was talking about the ABA and the House of Delegates. He said, "Sit down and let me talk to you, John." None of these stories are surprising. They are John Pickering. They are all John Pickering.

I worked with John on a lot of cases, most notably and most recently on the two high-profile cases involving his alma mater—the University of Michigan and its law school. But I thought I would end by talking about a case on which we actually did not work together. It was in 1988. I was asked by Richmond, Virginia, to handle a case in the Supreme Court about the constitutionality of the city's racial preferences in its contracting program. This is *Richmond v. Croson*. We had a great team. As we were furiously working to finish our brief, John called and asked to have a copy of the draft brief delivered to his office. I sent it up.

Later that day, John walked into the conference room where we were editing the final brief. He pointed to me and asked if I would step out for a

minute to talk to him outside the conference room. I was a little anxious—I am not going to lie about that. But I stepped out.

He handed me the draft brief and he said, “I would be honored if you would put my name on this brief as ‘of counsel.’” Of course I did. But we were the ones who were honored by that.

When the ABA announced that it was awarding John the ABA Medal, the highest award the ABA has, the president of the ABA referred to John as a “national treasure.” I think we know exactly what he was talking about. Each one of us in this room—each one of us in our profession, and larger than that, each one of us in this country—are honored by what John Pickering did for all of us.

