

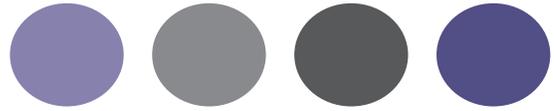
IILP Review 2014: The State of Diversity and Inclusion in the Legal Profession



© 2014 Institute for Inclusion in the Legal Profession
All rights reserved.



IILP Review 2014: The State of Diversity and Inclusion in the Legal Profession



Editorial Board

Editor-in-Chief

Elizabeth Chambliss

Editorial Board

Robert T. Cichocki

Brian W. Duwe

Sharon E. Jones

Sandra S. Yamate

Articles Editors

Chelsea J. Clark

Amanda Reasoner

Editorial Assistants

Janet J. Lee

Michelle Musielewicz

The views and opinions expressed herein are those of the author of each article or essay and not necessarily those of the Institute for Inclusion in the Legal Profession or the employer of any author.

Any individuals who may be quoted in specific articles and who are identified in connection with their employer are not representing the views, opinions, or positions of their employer unless that representation is specifically noted.

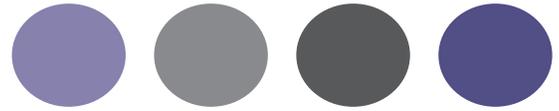


Table of Contents

- 8 Letter from the Chair
- 9 Letter from the Editor-in-Chief
- 10 Letter from The Claro Group
- 11 About IILP
- 11 About the IILP Review: The State of Diversity and Inclusion in the Legal Profession

The State of Diversity and Inclusion in the Legal Profession

- 13 **Demographic Summary**
by Elizabeth Chambliss
- 37 **The Dean Scene**
by Chelsea J. Clark
- 38 **Explaining the Bar By Numbers: Diversity Challenges at the Bar for England and Wales**
By Sam Mercer
- 46 **Diversity in the Legal Profession of England and Wales**
By Nicholas Fluck

Diversity and Inclusion in the Legal Profession in General

- 57 **Fisher v. University of Texas: Surviving Scrutiny in a Post-Fisher World**
By Melinda S. Molina
- 62 **The Face of Access to Justice: Diversity, Debt and Aspiration among American Lawyers**
By Rebecca L. Sandefur



Table of Contents

66 **The *Call to Action* Ten Years Later: A Look at the Effects on Retention of Women and Racial Minorities at Law Firms**
By Sharla C. Toller

78 **Life Cycle of Diversity Programs**
By Richard Meade

Gender Diversity and Inclusion Issues in the Legal Profession

89 **Generational Differences Among Female Attorneys in the Workplace: “Lean In” — and Lean Out?**
By Jamie Sinclair

98 **Cooking Up a Women’s Initiative: A Tale of Stone Soup**
By Jennifer H. Zimmerman

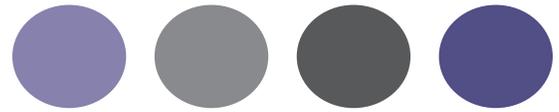
Racial and Ethnic Diversity and Inclusion Issues in the Legal Profession

105 **Because of Our Success: The Race of Blacks Makes a Difference on LSAT Scores**
By Kevin Brown and Renee Turner

114 **Diversity in Law Schools**
By Collette Brown

121 **The Pipeline to Law School: Uplifting Students of Color from the Negativity Surrounding Racial Identity, Racial Diversity, and LSAT Scores**
By Leonard M. Baynes

128 **An Exercise in Limiting the Pipeline: How the Application of the Standard of Excellence in Large Law Firm Diversity Initiatives Eliminates Black Attorneys**
By Tiffany R. Harper and Chasity A. Lomax



- 131 The “Invisible” Associate**
By Emmanuel U. Obi
- 141 ABAs in La-La Land: The Rise of Asian American Bar Associations in Los Angeles**
By Mia Yamamoto and Steven K. Yoda
- 148 The Stephen Lawrence Murder Twenty-One Years On**
By Max Hill QC
- 156 Self-Identity: Report From An Indian-American Working in India**
By Mona Mehta Stone
- 168 ¿Quién soy yo? — Staying True to Your Unique Voice**
By Elizabeth Espín Stern
- 176 When the Native American Invitation to the Diversity Table Gets Lost in the Mail: Who’s Got Our Six? — A Cautionary Tale**
By Lawrence R. Baca
- 185 The Decline in African American Law Partners: A Wake Up Call**
By E. Macey Russell
- 195 Perspective on Lawyering in Non-Native Language**
By Jen C. Won

Disability Diversity and Inclusion Issues in the Legal Profession

- 199 Technology for Lawyers Who Are Visually Impaired**
By Denise Avant



Table of Contents

LGBT Diversity and Inclusion Issues in the Legal Profession

- 203 The Diversity Experience: A Path to an Inclusive and Productive Workforce**
By Brian J. Winterfeldt, Merilee J. Arevalo, and Emily D. Murray
- 210 Out in the Workplace: Career Management Considerations for LGBT Lawyers**
By K. Steven Blake and Steve John

The Intersection of Diversity and Inclusion Issues in the Legal Profession

- 219 The “Super Minority”: The Status of Latina Lawyers in the Legal Profession**
By Dolores S. Atencio
- 233 From Racial and Gender Bias to Diversity and Inclusion in the Legal Profession – A Collection of Asian Pacific American Stories**
By the Asian Pacific American Women Lawyers Alliance
- 243 Transgender Women of Color in Law**
By Mia F. Yamamoto

- 250 About the Authors**
- 272 2014 Practice Round-Up**
- 284 IILP Board of Directors**
- 285 IILP Advisory Board**
- 286 Partners, Allies and Friends**
- 288 Acknowledgements**



Diverse teams arrive at better and more creative solutions.

JENNER & BLOCK

Whether it is developing the next generation of lawyers, providing leadership in organizations that promote diversity, or working on legal matters with far-reaching impact, we strive to build diversity and inclusion in the legal profession, the community and our firm.

We salute the Institute for Inclusion in the Legal Profession for its real-world, common-sense approach to addressing diversity in today's legal profession.

CHICAGO | LOS ANGELES | NEW YORK | WASHINGTON, DC

JENNER & BLOCK LLP | 353 NORTH CLARK STREET, CHICAGO, ILLINOIS 60654-3456 | 312 222-9350

JENNER.COM

December, 2014

Dear Colleagues,

It is with great pleasure that the Institute for Inclusion in the Legal Profession (“IILP”) presents the IILP Review 2014: The State of Diversity and Inclusion in the Legal Profession. IILP’s annual Reviews continue to serve as the hallmark of our desire to effect Real Change. Now.

Each year’s Review summarizes key data; examines what the statistics mean in a practical sense; and showcases promising programs and strategies. In this and other ways, we are doing our best to inform, answer hard questions, and help move the profession closer to the state of diversity it needs to achieve. As before, thanks to the many contributors with whom we are honored to work, the 2014 Review offers many new insights and perspectives.

This year’s IILP Review again features a comprehensive statistical analysis of diversity data by Professor Elizabeth Chambliss. In an effort to reflect IILP’s expansion into the United Kingdom, we are also pleased to include data provided and analyzed by Nicholas Fluck of The Law Society of England and Wales and Sam Mercer of The General Council of the Bar of England and Wales. While the diversity challenges in our two countries are not identical, there are enough similarities that we can learn from each other and perhaps, in doing so, discover new strategies and stimulate new approaches to address a long-standing problem.

On behalf of IILP, I am delighted and grateful that so many members of the legal profession are finding the IILP Review a valuable and informative tool. IILP continues to receive great encouragement and support. For that we are most appreciative.

With best wishes.



Marc S. Firestone
Chair

December, 2014

Dear Readers,

The Institute for Inclusion in the Legal Profession (IILP) is proud to present the 2014 edition of the *IILP Review: The State of Diversity and Inclusion in the Legal Profession*. The *IILP Review* brings together a statistical summary of recent demographic data, thought pieces exploring diversity issues in a wide range of professional contexts, and a roundup of initiatives by law firms, corporations, law schools, bar associations, and government—all in an accessible, readable format. Our goal is to make it easier for busy lawyers, judges, law professors, students, employers and diversity professionals to keep abreast of thinking and research related to diversity and inclusion in the profession and to provide momentum—and a regular venue—for addressing the continuing challenges that we face.

Thanks to your efforts, this year's *IILP Review* includes contributions from 32 people at the forefront of thinking and practice in the field, as well as reports and round-ups from an impressive array of professional and practice organizations in both the United States and the United Kingdom. We are delighted to present such a comprehensive sampling of this important work and welcome the continuing development of the content and format of the Review. In particular, we hope to stimulate both large-scale and small-scale data collection and reporting by employers, diversity professionals, bar associations, and research institutions, so that we might better assess our progress toward greater integration and inclusion within the profession.

We hope that you find the 2014 *IILP Review* useful and informative; and that you will consider contributing to a future issue of the *IILP Review*.



Elizabeth Chambliss
Editor-in-Chief



July 24, 2014

Dear Participant:

Welcome to the 2014 IILP Review: State of Diversity and Inclusion in the Legal Profession. The Claro Group is proud to continue to support the IILP, so thank you for taking the time to participate and to share, as everyone's contribution is vital to bringing about change. "No culture can live, if it attempts to be exclusive", so said Mohandas K. Gandhi. His early 20th Century message of inclusion and diversity being essential and beneficial to wider society is certainly relevant today. Perhaps "thrive" is a more apt and current term than "live"; How can the legal profession as well as all professional services firms grow to better reflect and improve cultural competence in a diverse society? What are the most current and effective means to achieve this? Why do certain barriers remain, despite having been identified and discussed for years? These questions need to be answered in order to thrive in the 21st Century.

Diversity today is not a single topic issue; it is simple in concept yet multi-dimensional in content. As we all know, there are not any silver bullets. But open, courageous and respectful dialog backed with actual statistics and analysis will allow all of us to make real and measureable change. After all, conflict of opinion leads to debate and, ultimately, action and measurement. We need to commit to questioning our own actions and assumptions and cultivate flexible and reflective thinking.

The array of thought-provoking and insightful article submissions the IILP received from the legal community ahead of the 2014 Review is a testament to the will of many in the legal profession to continue to pursue a tangible, meaningful and timely evolution.

We look forward to continuing to collaborate, learn and grow with you to drive forward inclusion in the legal industry. Let us all thrive.

Sincerely,

Mark C. Hargis
Chairman of The Claro Group LLC

The Claro Group, LLC
321 North Clark Street
Suite 1200
Chicago, IL 60654
Tel: 312.546.3400
Fax: 312.554.8085

About IILP

The Institute for Inclusion in the Legal Profession (IILP) is a 501(c)(3) organization that believes that the legal profession must be diverse and inclusive. Through its programs, projects, research, and collaborations, it seeks real change, now, and offers a new model of inclusion to achieve it. IILP asks the hard questions, gets the data, talks about what is really on people's minds, no matter how sensitive, and invents and tests methodologies that will lead to change. For more information about IILP, visit www.TheIILP.com.

About the IILP Review: The State of Diversity and Inclusion in the Legal Profession

The *IILP Review* features the most current data about the state of diversity in the legal profession, compelling essays that explore subtle issues of diversity and inclusion for lawyers, and current research from academic experts. As such, the *IILP Review* brings together general insights on programs and strategies to improve diversity and inclusion, as well as targeted articles about the different challenges faced by those seeking to survive and thrive as law students, lawyers, judges, and leaders.

The depth and breadth of diversity and inclusion efforts makes it hard to keep abreast of the most current information about our progress or lack thereof. Furthermore, as notions of diversity and inclusion have expanded and evolved, it's even more difficult to stay current with the latest thinking. The *IILP Review* addresses that challenge by making information about diversity and inclusion more readily and easily accessible.

If you are interested in submitting an article for a future edition of the *IILP Review* please visit www.TheIILP.com for more information and to download the Call for Papers. Also follow us on Twitter (@TheIILP), Facebook and LinkedIn.

IILP Review 2014: The State of Diversity and Inclusion in the Legal Profession

Demographic Summary

Elizabeth Chambliss

**Professor of Law and Director, Nelson Mullins Riley & Scarborough Center on Professionalism,
University of South Carolina School of Law**

An executive summary of the most current demographic data on the legal profession by Professor Elizabeth Chambliss, author of the ABA report, “Miles to Go: Progress of Minorities In the Profession.”

The Institute for Inclusion in the Legal Profession (IILP) was created in 2009 to promote demographic and cultural diversity and inclusion in the U.S. legal profession. As part of this effort, the *IILP Review* publishes an annual statistical summary regarding the status of traditionally underrepresented groups within the profession. Such data are critical for assessing the profession’s progress toward greater diversity and inclusion.

This summary takes stock of the profession’s progress as of July, 2014. Its goal is to provide a current, comprehensive picture of the demographics of the profession and to use this information to help the profession set an agenda for effective future action.

The summary is based on a review of academic, government, professional, and popular data sources. Most sources focus primarily on providing racial and ethnic data, or data about gender and minority¹ representation, and these emphases are reflected below. Where available, however, the summary also includes data about the representation of lesbian, gay, bisexual, and transgender (LGBT) lawyers, lawyers with disabilities, and other demographic categories relevant to diversity and inclusion, broadly defined. One goal of the *IILP Review* is to promote the systematic collection of a wide range of demographic data.

The main findings of the 2014 demographic summary are as follows:

- Minority representation among U.S. lawyers increased from 9.7% in 2000 to 13.1% in 2010, according to data from the Census Bureau (see Table 1). According to Department of Labor statistics, in 2013, aggregate minority representation among lawyers stood at 14.4% (see Table 2).
- Progress for different groups varies. Based on Department of Labor statistics, African American representation among lawyers dropped from 4.7% in 2009 to 4.2% in 2013, whereas Asian American representation increased from 4.1% to 5.1%, and Hispanic representation increased from 2.8% to 5.1% (see Table 2). During the same time period, female representation among lawyers dipped to a low of 31.1% in 2012, then rebounded to 33.1% in 2013 (see Table 2).
- Aggregate minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs. Based on Department of Labor statistics, minority representation among lawyers was 14.4% in 2013, compared to 27.8% among accountants and auditors, 38.2% among software developers, 24.3% among architects and engineers, 31.8% among physicians and surgeons, and 25.8% within the professional labor force as a whole (see Table 3).

1. The term “minority” typically is used to refer to aggregated data about African Americans, Asian Americans, Hispanics, and Native Americans, although there are variations from source to source. Unless otherwise noted, we follow the categories used in the original source and provide definitions in the footnotes.

- Women’s representation among lawyers (33.1% in 2013) is higher than women’s representation in some other professions, including software developers (19.7%), architects and engineers (14.1%), and clergy (15.5%) (see Table 3). Women’s representation among lawyers is significantly lower than their representation among accountants and auditors (62.1%), physical and social scientists (46.1%), and post-secondary teachers (50.2%); and significantly lower than their representation within the professional workforce as a whole (57.1%) (see Table 3).
- Women continue to be significantly underrepresented in some top-level jobs within the legal profession, such as law firm partner. In 2013, women made up only 20.2% of partners nationally—only 3.4% higher than their representation among partners ten years ago (see Table 13). Minority women, especially, are underrepresented among law firm partners. In 2013, minority women comprised only 2.3% of law partners nationally (see Table 13), and even this figure is skewed upward by a few standout cities, mostly on the West Coast. In Los Angeles, for instance, minority women made up 4.4% of all partners in 2013; and in San Francisco, 4.1% (see Table 18). Miami had the highest percentage of minority female partners at 9.2% (see Table 18). In many other cities, however, minority women’s representation among partners hovered just above— or below—1.0 percent (see Table 18).
- Women’s representation has increased in other top-level legal positions, such as corporate counsel and law school dean. According to Association of Corporate Counsel data, women’s representation among corporate counsel increased from 31.5% in 2001 to 41.0% in 2011 (see Table 19), which is higher than women’s representation among lawyers generally (33.1% in 2013) (see Table 3). Women’s representation among law school deans has also increased, from 20.6% in 2008-09 to 28.7% in 2013 (see Table 23). In 2013, out of 202 law schools, there were 58 female deans (see Table 23).
- African Americans historically have been the best-represented minority group among lawyers (see Table 1), but this pattern changed in 2013 (see Table 2). The most recent Department of Labor statistics measure African American representation among lawyers at 4.2%, compared to 5.1% for both Hispanics and Asian Americans (see Table 2). Part of the change appears to reflect African American exit from the profession, since both the number of lawyers (see Table 2) and the number of African American law students (see Table 6) have remained relatively stable since 2009. Has the recession disproportionately affected African American lawyers?
- The pace of African American entry into the profession has remained steady since 2009, with about 10,000 African American students enrolled in law school each year, according to data from the American Bar Association (see Table 6). Moreover, as overall law school enrollment has dropped, African American representation among law students has increased, from 7.0% in 2009–10 to 8.0% in 2013–14—an all-time high (see Table 6). Hispanic representation among law students also has increased in both absolute and relative terms, from 6.7% in 2009–10 to 8.7% in 2013–14 (see Table 6). As a result, aggregate minority representation among law students has increased from 22.3% in 2009–10 to 26.9% in 2013–14 (see Table 4).
- Asian American enrollment, on other hand, has dropped in both absolute and relative terms, from a high of 11,000-plus students (8.0%) in the mid-2000s to 8,696 students (6.8%) in 2013–14 (see Table 6). Native American enrollment has been stagnant, at roughly 1,000 students nationally, since the mid-1990s (see Table 6).
- As we go to press, the ABA has not yet reported the most recent female enrollment and graduation figures (see Tables 4 and 5). In 2012–13, women made up 47.0% of law students at ABA-approved schools, down from a high of 49.0% in 2000–01 and 2001–02 (see Table 4).

- Women’s initial employment continues to differ from men’s among both white and minority law graduates, with women less likely than men to be employed in private practice or business, and more likely to be employed in public interest jobs. In 2013, 8.5% of white women were initially employed in public interest jobs, compared to 4.6% of white men; and 11.1% of minority women, compared to 6.8% of minority men (see Table 7). Women also were more likely than men to have judicial clerkships. These patterns have remained relatively stable since the late-1990s (see Table 7).
- Initial employment patterns also differ between racial and ethnic groups. African Americans are significantly less likely than other groups to start off in private practice, and more likely to start off in business or government. In 2013, only 35.8% of African American law graduates were initially employed in private practice, compared to 54.8% of Hispanic graduates, 52.2% of white graduates, 51.0% of Asian American graduates, and 48.1% of Native American graduates (see Table 8).
- The 2013 figure for African Americans represents a significant decline since 2009, when 50.1% of African American graduates began their careers in private practice—though all groups except Native Americans saw some decline (see Table 8). Meanwhile, overall entry into business and public interest jobs has increased. In 2013, 29.3% of minority graduates started off in business or public interest jobs, compared to 19.2% in 2009; and 24.2% of white graduates, compared to 16.2% in 2009 (see Table 7).
- Judicial clerkship rates also are down since 2009 for all groups except Asian Americans, and are especially low among Hispanic and Native American graduates. In 2013, only 4.6% of Hispanic graduates and 3.6% of Native American graduates had judicial clerkships, compared to 9.8% of white graduates, 7.7% of African American graduates, and 6.8% of Asian American graduates (see Table 8).
- For most groups, government employment has remained steady since 2009, except Native Americans, whose initial employment in government jobs has dropped sharply. In 2013, only 16.2% of Native American law graduates started off in government, compared to 26.2% in 2009 (see Table 8). Native Americans remain the most likely to start off in government, however, followed by African Americans, Hispanics and whites—a pattern that has remained consistent since 1998 (see Table 8). Asian Americans are the least likely to start off in government, with less than 10% of Asian American graduates entering government in 2013 (see Table 8).
- The initial employment of graduates with disabilities varies significantly from year to year, due in part to the small number of graduates in the sample (507 in 2013). In general, however, the 2013 figures for graduates with disabilities (see Table 9) appear roughly consistent with the figures for minority graduates (see Table 7), with 46–48% starting off in private practice, 20–21% starting off in business, and 13–15% starting off in government.
- As with most groups, the percentage of graduates with disabilities who begin their legal careers in private practice has dropped since the recession—from 55.0% in 2009 to 46.2% in 2013—whereas the percentage who enter business has increased (see Table 9). In 2013, 20.7% of graduates with disabilities entered business, compared to 11.6% in 2009 (see Table 9). Judicial clerkship rates have also dropped, from 9.8% in 2009 to 5.3% in 2013.
- There are no recent national data on the distribution of practicing lawyers by gender or race/ethnicity and type of employment, beyond initial employment. In 2005, 75.0% of all lawyers were engaged in private practice, and 8.0% were in business; thus, 83.0% of all lawyers were employed in the for-profit sector (see Table 10).

- In 2005, female lawyers were less likely than male lawyers to be in private practice and more likely to work in business, government, or public interest jobs (see Table 11). Data on initial employment (see Table 7) and women’s representation among law firm partners (see Table 12) suggest that gender differences in private practice and public interest employment likely persist (see Table 7). Beyond those general observations, however, the lack of data precludes a current assessment of demographic patterns in employment. Post-recession statistics on the distribution of lawyers by employment type are sorely needed.
- There also are no national data on the distribution of LGBT lawyers or lawyers with disabilities by type of employment, beyond initial employment. The National Association for Law Placement (NALP) began collecting LGBT and disability employment data from law firms in 2004. These data show that the percentage of openly LGBT lawyers in law firms is very low—less than 2% of partners and less than 3% of associates—although it has increased slightly each year (see Table 14). The representation of lawyers with disabilities in law firms is miniscule—less than 0.5% (see Table 16). More data are needed to place these figures in perspective, including data from other employment settings and occupations.
- Based on the data available, women’s representation is highest among law firm associates (44.8% in 2013) (see Table 12), corporate counsel (41.0% in 2011) (see Table 19), and law school faculty (48.4% of tenure track faculty, 32.7% of tenured faculty, and 28.7% of deans in 2013) (see Table 23), and lowest among law firm partners (20.2% in 2013) (see Table 12).
- Minority representation is highest among tenure track faculty (30.5% in 2013) (see Table 23), law firm associates (20.9% in 2013) (see Table 12), federal government lawyers (18.7% in 2010) (see Table 20), and corporate counsel (15.0% in 2011) (see Table 19), and lowest among law firm partners (7.1% percent in 2013) (see Table 12). Minority representation among partners varies significantly by city however, with higher figures in Austin (10.7%), Houston (9.4%), Miami (33.4%), and on the West Coast (see Table 18). This pattern is consistent with the increasing entry (see Table 6) and representation (see Table 2) of Hispanics within the profession.
- The profession would benefit greatly from better data on the demographics of practicing lawyers in different settings and levels of seniority. Outside of law firms, the profession lacks even basic gender and ethnic breakdowns by employment category, not to mention more detailed breakdowns by title, seniority, and region; or more inclusive efforts covering sexual orientation and disability status. The profession also lacks demographic data on lawyer compensation, satisfaction, and public service. Gathering such data requires a sustained commitment by the entire profession, including bar associations, employers, law schools, and public service groups. Contributing to this effort is a chief goal of the *IILP Review*.

Table 1 - U.S. Legal Profession by Gender and Race/Ethnicity¹

1990	Lawyers (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	747,077 (100.0)	25,670 (3.4)	18,612 (2.5)	10,720 (1.4)	1,502 (0.2)	56,397 (7.6)
M	564,332 (75.5)	14,360 (1.9)	12,330 (1.7)	6,744 (0.9)	1,029 (0.1)	34,463 (4.6)
F	182,745 (24.5)	11,310 (1.5)	6,282 (0.8)	3,897 (0.5)	445 (0.1)	21,934 (2.9)
	Judges (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	32,394 (100.0)	2,278 (7.0)	1,098 (3.4)	342 (1.1)	191 (0.6)	3,909 (12.1)
M	24,994 (77.2)	1,407 (4.3)	800 (2.5)	216 (0.7)	117 (0.4)	2,540 (7.8)
F	7,400 (22.8)	871 (2.7)	298 (0.9)	126 (0.4)	74 (0.2)	1,369 (4.2)
2000	Lawyers (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	871,115 (100.0)	33,865 (3.9)	28,630 (3.3)	20,160 (2.3)	1,730 (0.2)	84,385 (9.7)
M	621,315 (71.3)	17,450 (2.0)	17,835 (2.0)	11,020 (1.3)	975 (0.1)	47,280 (5.4)
F	249,805 (28.7)	16,415 (1.9)	10,795 (1.2)	9,140 (1.0)	755 (0.1)	37,105 (4.3)
	Judges (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	58,355 (100.0)	5,155 (8.8)	2,650 (4.5)	1,000 (1.7)	465 (0.8)	9,270 (15.9)
M	36,565 (62.7)	2,285 (3.9)	1,440 (2.5)	605 (1.0)	260 (0.4)	4,590 (7.9)
F	21,795 (37.3)	2,870 (4.9)	1,210 (2.1)	395 (0.7)	205 (0.4)	4,680 (8.0)
2010	Lawyers (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	1,040,000 (100.0)	44,720 (4.3)	35,360 (3.4)	35,360 (3.4)		136,240 (13.1)
M	712,400 (68.5)					
F	327,600 (31.5)					
	Judges (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	71,000 (100.0)	8,875 (12.5)	5,538 (7.8)	2,769 (3.9)		17,182 (24.2)
M	45,156 (63.6)					
F	25,844 (36.4)					
	Legal Support (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	604,000 (100.0)	57,296 (9.5)	53,063 (8.9)	19,676 (3.3)		130,035 (21.5)
M	120,196 (19.9)					
F	484,044 (80.1)					

1. *Census 2000 EEO Data Tool*, U.S. CENSUS BUREAU, <http://www.census.gov/eo2000/index.html> (last visited Jul. 23, 2014) (for 1990 and 2000 data); *Statistical Abstract of the United States, Table 616: Employed Civilians by Occupation, Sex, Race and Hispanic Origin 2010*, U.S. CENSUS BUREAU (2012), <http://www.census.gov/compendia/statab/2012/tables/12s0616.pdf> (for 2010 data). Figures for African Americans include blacks and African Americans. Figures for Hispanics include Hispanics and Latinos. Figures for Asian Americans include Native Hawaiians and Pacific Islanders. Figures for minorities are derived from aggregating the minority categories listed. 2010 figures for Native Americans are not available. 2010 figures for judges include “judges, magistrates, and other judicial workers.” 2010 figures for legal support include paralegals, legal assistants, and “miscellaneous legal support workers.” *Id.*

Table 2 - U.S. Lawyers by Gender and Race/Ethnicity²

	Lawyers	Female	Af Am.	Hisp.	As Am.	Minority
2009	1,043,000	32.4%	4.7	2.8	4.1	11.6
2010	1,040,000	31.5	4.3	3.4	3.4	13.1
2011	1,085,000	31.9	5.3	3.2	4.2	12.7
2012	1,061,000	31.1	4.4	4.0	4.3	12.7
2013	1,092,000	33.1	4.2	5.1	5.1	14.4

2. Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, U.S. DEP'T OF LABOR (2010), <http://www.bls.gov/cps/aa2009/cpsaat11.pdf> (for 2009 figures); Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, U.S. DEP'T OF LABOR (2011), <http://www.bls.gov/cps/aa2010/cpsaat11.pdf> (for 2010 figures); Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race and Hispanic or Latino Ethnicity*, U.S. DEP'T OF LABOR (2012), <http://www.bls.gov/cps/aa2011/cpsaat11.pdf> (for 2011 figures); Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race and Hispanic or Latino Ethnicity*, U.S. DEP'T OF LABOR (2013), <http://www.bls.gov/cps/aa2012/cpsaat11.pdf> (for 2012 figures); Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race and Hispanic or Latino Ethnicity*, U.S. DEP'T OF LABOR, <http://www.bls.gov/cps/cpsaat11.htm> (last visited Jul. 23, 2014) [hereinafter 2013 *Table 11*] (for 2013 figures). Figures for minorities are derived from aggregating the minority categories listed.



African Americans historically have been the best-represented minority group among lawyers but this pattern changed in 2013. Part of the change appears to reflect African American exit from the profession, since both the number of lawyers and the number of African American law students have remained relatively stable since 2009.

Table 3 - Selected U.S. Professions by Gender and Race/Ethnicity (2013)³

	Total Employed	Female	Af Am.	Hisp.	As Am.	Minority
Civilian Labor Force	143,929,000	46.9%	10.8	14.5	4.9	30.2
Management/Business	22,794,000	43.4	7.4	8.4	6.1	21.9
Chief Executives	1,520,000	26.8	2.9	4.3	4.8	12.0
Financial Managers	1,218,000	55.3	8.8	10.5	6.8	26.1
Accountants/Auditors	1,814,000	62.1	8.6	7.3	11.9	27.8
All Professional Occupations	31,917,000	57.1	9.3	8.2	8.3	25.8
All Computer/Mathematical	3,980,000	26.1	8.3	6.3	18.5	33.1
Software Developers	1,103,000	19.7	4.1	5.3	28.8	38.2
All Architecture/Engineering	2,806,000	14.1	5.5	7.5	11.3	24.3
Architects	193,000	25.0	1.6	7.9	5.8	15.3
Civil Engineers	360,000	12.1	6.4	4.9	10.4	21.7
All Physical/Social Sciences	1,307,000	46.1	5.6	7.9	11.8	25.3
Psychologists	186,000	73.8	3.6	8.6	2.5	14.7
All Social Services	2,332,000	62.3	18.6	10.0	2.9	31.5
Clergy	410,000	15.5	9.1	6.4	6.5	22.0
Legal Occupations	1,800,000	50.8	6.2	8.2	4.9	19.3
Lawyers	1,092,000	33.1	4.2	5.1	5.1	14.4
Judges/Judicial Workers	55,000	35.6	7.8	6.3	0.1	14.2
Paralegals/Legal Assistants	404,000	86.1	9.5	15.2	4.5	29.2
Education	8,623,000	73.8	9.4	9.6	4.5	23.5
Postsecondary Teachers	1,313,000	50.2	6.8	5.9	13.0	25.7
Arts/Entertainment	2,879,000	47.2	6.5	8.4	5.0	19.9
All Healthcare/Technical	8,182,000	74.4	10.5	7.4	9.3	27.2
Physicians/Surgeons	934,000	35.5	6.4	3.8	21.6	31.8
Registered Nurses	2,892,000	90.1	10.5	6.5	8.0	25.0
Nurse Practitioners	126,000	91.8	5.8	7.1	5.9	18.8

3. 2013 Table 11, *supra* note 2. Figures for minorities are derived from aggregating the minority categories listed.

Table 4 - Law School Enrollment by Gender and Minority Status ⁴

	Total	Female (%)	Minority (%)
1976-77	112,401	29,343 (26.1)	9,589 (8.5)
1977-78	113,080	31,650 (28.0)	9,580 (8.5)
1978-79	116,150	35,775 (30.8)	9,952 (8.6)
1979-80	117,297	37,534 (32.0)	10,013 (8.5)
1980-81	119,501	40,834 (34.2)	10,575 (8.8)
1981-82	120,879	43,245 (35.8)	11,134 (9.2)
1982-83	121,791	45,539 (37.4)	11,611 (9.5)
1983-84	121,201	46,361 (38.2)	11,866 (9.8)
1984-85	119,847	46,897 (39.1)	11,917 (9.9)
1985-86	118,700	47,486 (40.0)	12,357 (10.4)
1986-87	117,813	47,920 (40.7)	12,550 (10.7)
1987-88	117,997	48,920 (41.5)	13,250 (11.2)
1988-89	120,694	50,932 (42.2)	14,295 (11.8)
1989-90	124,471	53,113 (42.7)	15,720 (12.6)
1990-91	127,261	54,097 (42.5)	17,330 (13.6)
1991-92	129,580	55,110 (42.5)	19,410 (15.0)
1992-93	128,212	54,644 (42.6)	21,266 (16.6)
1993-94	127,802	55,134 (43.1)	22,799 (17.8)
1994-95	128,989	55,808 (43.3)	24,611 (19.1)
1995-96	129,397	56,961 (44.0)	25,554 (19.7)
1996-97	128,623	57,123 (44.4)	25,279 (19.7)
1997-98	125,886	56,915 (45.2)	24,685 (19.6)
1998-99	125,627	57,952 (46.1)	25,266 (20.1)
1999-00	125,184	59,362 (47.4)	25,253 (20.2)
2000-01	125,173	60,633 (48.4)	25,753 (20.6)
2001-02	127,610	62,476 (49.0)	26,257 (20.6)
2002-03	132,885	65,179 (49.0)	27,169 (20.4)
2003-04	137,676	67,027 (48.7)	28,318 (20.6)
2004-05	140,376	67,438 (48.0)	29,985 (21.4)
2005-06	140,298	66,613 (47.5)	29,768 (21.2)
2006-07	141,031	66,085 (46.9)	30,557 (21.6)
2007-08	141,719	66,196 (46.7)	30,598 (21.5)
2008-09	142,922	66,968 (46.9)	31,368 (21.9)
2009-10	145,239	68,502 (47.2)	32,505 (22.3)
2010-11	147,525	69,009 (46.8)	35,045 (23.8)
2011-12	146,288	68,262 (46.7)	35,859 (24.7)
2012-13	139,055	65,387 (47.0)	35,914 (25.8)
2013-14	128,712		34,584 (26.9)

4. A.B.A. Sec. of Legal Educ. & Admissions to the B., *Enrollment and Degrees Awarded*, A.B.A. (2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded_authcheckdam.pdf (for data on female enrollment) (figures for 2013-14 are not available); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, First Year & Total JD Minority*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click "First Year & Total JD Minority") (for data on minority enrollment). Some figures differ slightly from those previously reported by the ABA.

Table 5 - JDs Awarded by Gender and Minority Status⁵

	Total	Female (%)	Minority (%)
1984-85	36,829	14,119 (38.3)	3,150 (8.6)
1985-86	36,121	13,980 (38.7)	3,348 (9.3)
1986-87	35,478	14,206 (40.0)	3,450 (9.7)
1987-88	35,701	14,595 (40.9)	3,516 (9.8)
1988-89	35,520	14,553 (41.0)	3,809 (10.7)
1989-90	36,385	15,345 (42.2)	4,128 (11.3)
1990-91	38,800	16,580 (42.7)	4,585 (11.8)
1991-92	39,425	16,680 (42.3)	4,976 (12.6)
1992-93	40,213	16,972 (42.2)	5,653 (14.1)
1993-94	39,710	16,997 (42.8)	6,099 (15.4)
1994-95	39,191	16,790 (42.8)	6,802 (17.4)
1995-96	39,920	17,366 (43.5)	7,152 (17.9)
1996-97	40,114	17,552 (43.8)	7,611 (19.0)
1997-98	39,455	17,662 (44.8)	7,754 (19.7)
1998-99	39,071	17,516 (44.8)	7,532 (19.3)
1999-00	38,157	17,713 (46.4)	7,391 (19.4)
2000-01	37,909	18,006 (47.5)	7,443 (19.6)
2001-02	38,576	18,644 (48.3)	7,780 (20.2)
2002-03	38,863	19,133 (49.2)	8,233 (21.2)
2003-04	40,018	19,818 (49.5)	8,367 (20.9)
2004-05	42,673	20,804 (48.8)	9,568 (22.4)
2005-06	43,883	21,074 (48.0)	9,564 (21.8)
2006-07	43,518	20,669 (47.5)	9,820 (22.5)
2007-08	43,588	20,537 (47.1)	9,631 (22.0)
2008-09	44,004	20,191 (45.9)	9,725 (22.1)
2009-10	44,258	20,852 (47.1)	10,121 (22.9)
2010-11	44,495	21,043 (47.3)	10,748 (24.2)
2011-12	46,478		11,188 (24.1)
2012-13	46,763		11,951 (25.5)

5. A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Degrees Awarded: Longitudinal Charts, JD & LLB*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click "JD & LLB") (for gender data) (figures for 2011-12 and 2012-13 are not available); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Degrees Awarded: Longitudinal Charts, Totals and Minority Students*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (for data on minorities). Some figures differ slightly from those previously reported by the ABA.

Table 6 - Law School Enrollment by Race/Ethnicity⁶

	Total	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)
1984–85	119,847	5,476 (4.6)	3,507 (2.9)	2,026 (1.7)	429 (0.4)
1985–86	118,700	5,669 (4.8)	3,679 (3.1)	2,153 (1.8)	463 (0.4)
1986–87	117,813	5,894 (5.0)	3,865 (3.3)	2,303 (2.0)	488 (0.4)
1987–88	117,997	6,028 (5.1)	4,074 (3.5)	2,656 (2.3)	492 (0.4)
1988–89	120,694	6,321 (5.2)	4,342 (3.6)	3,133 (2.6)	499 (0.4)
1989–90	124,471	6,791 (5.5)	4,733 (3.8)	3,676 (3.0)	527 (0.4)
1990–91	127,261	7,432 (5.8)	5,038 (4.0)	4,306 (3.4)	554 (0.4)
1991–92	129,580	8,149 (6.3)	5,541 (4.3)	5,028 (3.9)	692 (0.5)
1992–93	128,212	8,638 (6.7)	5,969 (4.7)	5,823 (4.5)	776 (0.6)
1993–94	127,802	9,156 (7.2)	6,312 (4.9)	6,458 (5.1)	873 (0.7)
1994–95	128,989	9,681 (7.5)	6,772 (5.3)	7,196 (5.6)	962 (0.7)
1995–96	129,397	9,779 (7.6)	6,970 (5.4)	7,719 (6.0)	1,085 (0.8)
1996–97	128,623	9,542 (7.4)	6,915 (5.4)	7,706 (6.0)	1,116 (0.9)
1997–98	125,886	9,132 (7.3)	6,869 (5.5)	7,599 (6.0)	1,085 (0.9)
1998–99	125,627	9,271 (7.4)	7,054 (5.6)	7,877 (6.3)	1,064 (0.8)
1999–00	125,184	9,272 (7.4)	7,120 (5.7)	7,883 (6.3)	978 (0.8)
2000–01	125,173	9,354 (7.5)	7,274 (5.8)	8,173 (6.5)	952 (0.8)
2001–02	127,610	9,412 (7.4)	7,434 (5.8)	8,421 (6.6)	990 (0.8)
2002–03	132,885	9,436 (7.1)	7,539 (5.7)	9,179 (6.9)	1,021 (0.8)
2003–04	137,676	9,437 (6.9)	7,814 (5.7)	10,042 (7.3)	1,048 (0.8)
2004–05	140,376	9,488 (6.8)	8,068 (5.7)	10,856 (7.6)	1,106 (0.8)
2005–06	140,298	9,126 (6.5)	8,248 (5.9)	11,252 (8.0)	1,142 (0.8)
2006–07	141,031	9,529 (6.8)	8,564 (6.1)	11,306 (8.0)	1,158 (0.8)
2007–08	141,719	9,483 (6.7)	8,782 (6.2)	11,176 (7.9)	1,216 (0.9)
2008–09	141,922	9,822 (6.9)	8,834 (6.2)	11,244 (7.9)	1,198 (0.8)
2009–10	145,239	10,173 (7.0)	9,732 (6.7)	11,327 (7.8)	1,273 (0.9)
2010–11	147,525	10,352 (7.0)	10,454 (7.1)	10,215 (6.9)	1,208 (0.8)
2011–12	145,288	10,452 (7.1)	11,027 (7.5)	10,415 (7.1)	1,165 (0.8)
2012–13	139,055	10,435 (7.5)	11,328 (8.1)	9,666 (7.0)	1,063 (0.8)
2013–14	128,712	10,241 (8.0)	11,215 (8.7)	8,696 (6.8)	1,065 (0.8)

6. A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, Diversity Data 1988–2010*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Diversity Data 1988–2010”) (for figures through 2009–10); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, Black or African American*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Black or African American”) (for black/African American figures beginning in 2010–11); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, All Hispanic*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “All Hispanic”) (for Hispanic figures beginning in 2010–11); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, Asian*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Asian”) (for Asian American figures beginning in 2010–11); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, American Indian or Alaska Native*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “American Indian or Alaska Native”) (for Native American figures beginning in 2010–11). Figures include all JD candidates enrolled at ABA–approved law schools, excluding Puerto Rican law schools. Figures for Hispanics include Hispanics of any race. Figures for Native Americans do not include Native Hawaiians or Pacific Islanders. In 2013–14, there were 279 Hawaiian Natives or other Pacific Islanders enrolled in ABA–approved law schools. A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, Native Hawaiian or Other Pacific Islander*, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Native Hawaiian or Other Pacific Islander”).

Table 7 - Initial Employment by Minority Status and Gender⁷

1998	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	59.4%	53.9	57.1	52.8	46.5	49.5
Business/Industry	13.5	12.0	12.9	16.0	14.5	15.2
Government	12.6	13.4	13.0	16.4	17.7	17.1
Judicial Clerkships	10.7	14.8	12.4	8.7	11.5	10.2
Public Interest	1.3	3.5	2.2	2.5	5.9	4.3
Academic	0.9	1.0	1.0	1.4	2.0	1.7
Unknown	1.7	1.4	1.5	2.1	1.9	2.0
2003	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	62.1	58.8	60.5	53.0	53.9	53.5
Business/Industry	10.6	8.8	9.7	15.3	11.1	12.9
Government	12.7	12.4	12.6	15.6	15.2	15.3
Judicial Clerkships	10.7	14.1	12.3	8.1	10.4	9.4
Public Interest	1.5	3.5	2.5	3.3	5.7	4.8
Academic	1.0	1.3	1.1	2.1	2.1	2.1
Unknown	1.4	1.1	1.3	2.6	1.5	2.0
2009	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	61.5	57.7	59.8	59.2	56.2	57.5
Business/Industry	12.4	10.5	11.6	14.8	10.4	12.4
Government	11.5	11.2	11.4	12.6	13.4	13.0
Judicial Clerkships	9.4	11.9	10.5	5.4	8.8	7.3
Public Interest	3.3	6.4	4.6	5.4	7.8	6.8
Academic	1.4	1.8	1.6	1.7	2.7	2.2
Unknown	0.5	0.4	0.5	0.9	0.7	0.8
2013	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	53.6	50.2	52.2	49.1	46.6	47.7
Business/Industry	19.3	16.1	17.9	22.0	18.6	20.2
Government	10.9	11.5	11.2	13.2	12.5	12.8
Judicial Clerkships	9.0	10.9	9.8	5.5	7.4	6.5
Public Interest	4.6	8.5	6.3	6.8	11.1	9.1
Unknown	2.6	2.8	2.6	3.4	3.8	3.7

7. NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 1998 48 (1999) [hereinafter *Class of 1998*] (for 1998 figures); NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2003 52 (2004) [hereinafter *Class of 2003*] (for 2003 figures); NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2009 52 (2010) [hereinafter *Class of 2009*] (for 2009 figures); NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2013 64 (2014) [hereinafter *Class of 2013*] (for 2013 figures). The category "business/industry" includes non-legal as well as legal jobs. Figures for 2009 include only full-time jobs.

Table 8 - Initial Employment by Race/Ethnicity⁸

1998	White	Af Am.	Hisp.	As Am.	Na Am.	
Private Practice	57.1%	40.1	55.2	55.8	46.6	
Business/Industry	12.9	16.7	11.6	15.9	19.4	
Government	13.0	21.5	17.7	11.9	16.2	
Judicial Clerkships	12.4	11.1	7.5	11.4	8.9	
Public Interest	2.2	5.1	5.1	2.6	6.3	
Academic	1.0	2.6	1.6	1.0	0.5	
Unknown	1.5	2.8	1.4	1.6	2.1	
2003	White	Af Am.	Hisp.	As Am.	Na Am.	Latino
Private Practice	60.5	46.3	55.8	59.4	46.4	54.3
Business/Industry	9.7	14.6	12.2	12.5	10.2	11.8
Government	12.6	19.1	14.7	10.7	21.7	17.2
Judicial Clerkships	12.3	10.3	6.5	10.3	10.8	7.1
Public Interest	2.5	4.1	6.9	4.1	6.0	6.2
Academic	1.1	3.4	0.9	1.3	2.4	2.2
Unknown	1.3	2.2	3.0	1.7	2.4	1.2
2009	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	59.8	50.1	59.9	62.3	47.1	58.6
Business/Industry	11.6	13.6	10.3	13.6	12.2	7.9
Government	11.4	16.1	12.8	9.5	26.2	15.0
Judicial Clerkships	10.5	8.4	6.6	6.7	4.6	9.7
Public Interest	4.6	8.1	7.5	5.2	5.2	7.3
Academic	1.6	2.7	2.3	1.9	3.5	1.2
Unknown	0.5	1.0	0.6	0.8	1.2	0.3
2013	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	52.2	35.8	54.8	51.0	48.1	49.5
Business/Industry	17.9	24.9	15.5	21.9	21.1	15.0
Government	11.2	16.1	12.6	9.5	16.2	14.6
Judicial Clerkships	9.8	7.7	4.6	6.8	3.6	7.8
Public Interest	6.3	9.9	10.1	7.8	7.6	9.4
Unknown	2.6	5.6	2.4	3.0	3.4	3.7

8. *Class of 1998*, supra note 7, at 49 (for 1998 figures); *Class of 2003*, supra note 7, at 53 (for 2003 figures); *Class of 2009*, supra note 7, at 53 (for 2009 figures); *Class of 2013*, supra note 7, at 65 (for 2013 figures). The category “business/industry” includes non-legal as well as legal jobs. Figures for 2009 include only full-time jobs. 2003 figures for Hispanics do not include Latinos. NALP defines “Latino” as Mexican, Puerto Rican, or Cuban.

Table 9 - Initial Employment of Graduates with Disabilities⁹

	2009	2010	2011	2012	2013
Private Practice	55.0%	48.1	48.9	50.7	46.2
Business/Industry	11.6	16.1	16.9	16.4	20.7
Government	12.9	12.3	13.4	10.0	14.6
Judicial Clerkships	9.8	10.8	6.5	7.0	5.3
Public Interest	8.0	8.9	9.3	11.4	8.3
Academic	2.3	2.4	6.5	4.0	4.3

9. *Class of 2009, supra* note 7, at 54 (for 2009 figures); NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2010 54 (2011) (for 2010 figures); NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2011 66 (2012) (for 2011 figures) NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2012 66 (2013) (for 2012 figures); *Class of 2013, supra* note 7, at 66 (for 2013 figures). The category "business/industry" includes both non-legal and legal jobs. Figures for 2009 and 2010 include only full-time jobs.

Table 10 - Distribution of U.S. Lawyers by Type of Employment¹⁰

	1980	1991	2000	2005
Private Practice	68.0%	73.0	74.0	75.0
Private Industry	10.0	9.0	8.0	8.0
Private Association	1.0	1.0	1.0	1.0
Federal Judiciary	0.5	0.4	0.3	0.3
State/Local Judiciary	3.0	2.0	2.0	2.0
Federal Government	4.0	4.0	3.0	3.0
State/Local Government	6.0	5.0	4.0	5.0
Legal Aid/Public Defender	2.0	1.0	1.0	1.0
Education	1.0	1.0	1.0	1.0
Retired or Inactive	5.0	5.0	5.0	4.0

10. CLARA N. CARSON & JEEYON PARK, A.B. FOUND., THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005 5 (2012).

Table 11 - Distribution of U.S. Lawyers by Type of Employment and Gender¹¹

	1980		1991		2000		2005	
	Male	Female	Male	Female	Male	Female	Male	Female
Private Practice	73.3%	58.9	77.6	71.9	75.0	71.0	76.3	71.6
Industry/Association	10.7	9.7	9.5	8.5	8.0	9.0	8.2	9.9
Government	9.1	18.2	7.7	8.5	7.0	10.0	6.4	10.2
Judiciary	3.8	4.0	2.8	2.8	3.0	3.0	2.5	2.4
PubInt/Education	3.2	9.2	2.4	4.9	2.0	4.0	1.7	3.0
Retired/Inactive					6.0	3.0	5.0	2.7

11. Lewis A. Kornhauser & Richard Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829, 850 (1995) (footnote omitted) (for 1980 data); CLARA N. CARSON, A.B. FOUND., THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000 9 (2004) (for 1991 and 2000 data); CARSON & PARK, *supra* note 10, at 6 (for 2005 data) (some categories were combined for consistency with prior years).

Table 12 - Representation of Female and Minority Lawyers in Law Firms¹²

	Partners			Associates		
	Female	Minority	Minority F	Female	Minority	Minority F
2003	16.8%	4.0		43.0	14.6	
2009	19.2	6.1	1.9	45.7	19.7	11.0
2010	19.4	6.2	2.0	45.4	19.5	10.9
2011	19.5	6.7	2.0	45.4	19.9	11.0
2012	19.9	6.7	2.2	45.1	20.3	11.1
2013	20.2	7.1	2.3	44.8	20.9	11.3

12. Press Release, Nat'l Ass'n for L. Placement, Women and Attorneys of Color Continue to Make Small Gains at Large Law Firms (Nov. 2003), <http://www.nalp.org/2003womenandattorneysofcolor> [hereinafter *November 2003 Release*] (for 2003 figures); Press Release, Nat'l Ass'n for L. Placement, Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners Continue to Make Small Gains (Dec. 11, 2013), http://www.nalp.org/lawfirmdiversity_2013 [hereinafter *December 2013 Release*] (for 2009–2013 figures). Figures are based on statistics provided by firms in the NALP DIRECTORY OF LEGAL EMPLOYERS. Figures for firms with foreign offices may include foreign lawyers, which may inflate the percentage of minority lawyers.

Table 13 - Representation of Female and Minority Lawyers by Firm Size¹³

2003	Partners			Associates		
	Female	Minority	Minority F	Female	Minority	Minority F
Nationwide	16.8%	4.0		43.0	14.6	
< 100 lawyer firms	16.2	3.9		40.8	10.8	
101-250 lawyer firms	16.4	3.3		43.1	11.7	
251-500 lawyer firms	17.3	3.7		43.5	13.6	
501+ lawyer firms	17.2	5.0		43.2	17.2	

2013	Partners			Associates		
	Female	Minority	Minority F	Female	Minority	Minority F
Nationwide	20.2	7.1	2.3	44.8	20.9	11.3
< 100 lawyer firms	20.2	6.3	2.1	43.1	16.6	9.1
101-250 lawyer firms	19.7	5.1	1.5	44.3	16.1	8.7
251-500 lawyer firms	21.1	7.0	2.3	44.6	19.4	10.2
501+ lawyer firms	19.6	7.8	2.2	45.0	20.5	11.0
701+ lawyer firms	20.4	8.3	2.7	45.1	23.3	12.6

13. November 2003 Release, *supra* note 12 (for 2003 figures); December 2013 Release, *supra* note 12 (for 2013 figures). Figures are based on statistics provided by firms in the NALP DIRECTORY OF LEGAL EMPLOYERS. Figures for firms with foreign offices may include foreign lawyers, which may inflate the percentage of minority lawyers.

Table 14 - Representation of LGBT Lawyers in Law Firms¹⁴

	Partners	Associates
2004	0.79%	1.33
2009	1.36	2.29
2010	1.47	2.35
2011	1.44	2.43
2012	1.58	2.69
2013	1.65	2.83

14. Nat'l Ass'n for L. Placement, *Few Openly Gay or Disabled Lawyers Reported in NALP Directory of Legal Employers*, NAT'L ASS'N FOR L. PLACEMENT (Jun. 2005), <http://www.nalp.org/2005junfewopenlyglbtdisabled> [hereinafter *June 2005 Bulletin*] (for 2004 figures); Nat'l Ass'n for L. Placement, *Although Most Firms Collect GLBT Lawyer Information, Overall Numbers Remain Low*, NAT'L ASS'N FOR L. PLACEMENT (Dec. 2009), <http://www.nalp.org/dec09glbt> (for 2009 figures); Nat'l Ass'n for L. Placement, *Most Firms Collect LGBT Lawyer Information—LGBT Representation Up Slightly*, NAT'L ASS'N FOR L. PLACEMENT (Dec. 2010), <http://nalp.org/dec10lgbt> [hereinafter *December 2010 Bulletin*] (for 2010 figures); Nat'l Ass'n for L. Placement, *Most Firms Collect LGBT Lawyer Information, LGBT Representation Steady*, NAT'L ASS'N FOR L. PLACEMENT (Dec. 2011), http://www.nalp.org/lgbt_lawyers_dec2011 [hereinafter *December 2011 Bulletin*] (for 2011 figures); Nat'l Ass'n for L. Placement, *LGBT Representation Up*, NAT'L ASS'N FOR L. PLACEMENT (Jan. 2013), http://www.nalp.org/lgbt_representation_up_in_2012 [hereinafter *January 2013 Bulletin*] (for 2012 figures); Nat'l Ass'n for L. Placement, *LGBT Representation Up Again in 2013*, NAT'L ASS'N FOR L. PLACEMENT (Jan. 2014), <http://www.nalp.org/jan14research> [hereinafter *January 2014 Bulletin*] (for 2013 figures).

Table 15 - Representation of LGBT Lawyers by Firm Size¹⁵

2004	Partners	Associates
Nationwide	0.79%	1.33
100 or fewer lawyer firms	0.60	0.71
101-250 lawyer firms	0.65	0.90
251-500 lawyer firms	0.77	1.19
501-700 lawyer firms	1.02	1.67
2007	Partners	Associates
Nationwide	1.19	1.89
100 or fewer lawyer firms	0.88	1.07
101-250 lawyer firms	0.91	1.24
251-500 lawyer firms	1.04	1.56
501-700 lawyer firms	1.37	2.95
701+ lawyer firms	1.67	2.16
2010	Partners	Associates
Nationwide	1.47	2.35
100 or fewer lawyer firms	1.17	1.42
101-250 lawyer firms	0.99	1.63
251-500 lawyer firms	1.42	2.10
501-700 lawyer firms	1.18	2.50
701+ lawyer firms	2.02	2.78
2013	Partners	Associates
Nationwide	1.65	2.83
100 or fewer lawyer firms	1.49	1.86
101-250 lawyer firms	1.19	2.23
251-500 lawyer firms	1.60	2.42
501-700 lawyer firms	1.56	2.67
701+ lawyer firms	2.01	3.24

15. *June 2005 Bulletin*, *supra* note 14 (for 2004 figures); Nat'l Ass'n for L. Placement, *Although Most Firms Collect GLBT Lawyer Information, Overall Numbers Remain Low*, NAT'L ASS'N FOR L. PLACEMENT (Dec. 2007), <http://www.nalp.org/2007decglbtlawyerinformation> [hereinafter *December 2007 Bulletin*] (for 2007 figures); *December 2010 Bulletin*, *supra* note 14 (for 2010 figures); *January 2013 Bulletin*, *supra* note 14 (for 2012 figures); *January 2014 Bulletin*, *supra* note 14 (for 2013 figures).

Table 16 - Representation of Lawyers with Disabilities in Law Firms¹⁶

	Partners	Associates
2004	0.16%	0.10
2009	0.25	0.17
2010	0.24	0.20
2011	0.23	0.17
2012	0.33	0.24
2013	0.30	0.26

16. *June 2005 Bulletin*, *supra* note 14 (for 2004 figures); Nat'l Ass'n for L. Placement, *Reported Number of Lawyers with Disabilities Remains Small*, NAT'L ASS'N FOR L. PLACEMENT (Dec. 2009), <http://nalp.org/dec09disabled> (for 2009 figures); Press Release, Nat'l Ass'n for L. Placement, *Law Firm Diversity Among Associates Erodes in 2010* (Nov. 4, 2010), <http://www.nalp.org/2010lawfirmdiversity?s=disabilities> [hereinafter *November 2010 Release*] (for 2010 figures); Press Release, Nat'l Ass'n for L. Placement, *Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline* (Nov. 3, 2011), http://www.nalp.org/2011_law_firm_diversity?s=disabilities (for 2011 figures); Press Release, Nat'l Ass'n for L. Placement, *Representation of Women Among Associates Continues to Fall, Even as Minority Associates Make* (Dec. 13, 2012), <http://www.nalp.org/2012lawfirmdiversity?s=disabilities> [hereinafter *December 2012 Release*] (for 2012 figures); *December 2013 Release*, *supra* note 12 (for 2013 figures).



The representation of lawyers with disabilities in law firms is miniscule—less than 0.5%. More data are needed to place these figures in perspective, including data from other employment settings and occupations.

Table 17 - Representation of Lawyers with Disabilities by Firm Size¹⁷

2004	Partners	Associates
Nationwide	0.16%	0.10
100 or fewer lawyer firms	0.16	0.11
101-250 lawyer firms	0.19	0.09
251-500 lawyer firms	0.21	0.09
501+ lawyer firms	0.10	0.11
2007	Partners	Associates
Nationwide	0.19	0.14
100 or fewer lawyer firms	0.16	0.13
101-250 lawyer firms	0.21	0.15
251-500 lawyer firms	0.18	0.06
501+ lawyer firms	0.30	0.25
701+ lawyer firms	0.13	0.13
2010	Partners	Associates
Nationwide	0.24	0.20
100 or fewer lawyer firms	0.16	0.08
101-250 lawyer firms	0.23	0.13
251-500 lawyer firms	0.28	0.23
501-700 lawyer firms	0.36	0.14
701+ lawyer firms	0.23	0.27
2013	Partners	Associates
Nationwide	0.30	0.26
250 or fewer lawyer firms	0.22	0.10
251-500 lawyer firms	0.26	0.23
501-700 lawyer firms	0.55	0.36
701+ lawyer firms	0.27	0.33

17. *June 2005 Bulletin*, *supra* note 14 (for 2004 figures); *December 2007 Bulletin*, *supra* note 15 (for 2007 figures); *November 2010 Release*, *supra* note 16 (for 2010 figures); *December 2013 Release*, *supra* note 12 (for 2013 figures). The total number of lawyers with disabilities reported is very small: 105 partners and 80 associates in 2013, down from 131 partners and 85 associates in 2010. See *December 2012 Release*, *supra* note 16.

Table 18 - Law Firm Diversity by City (2013)¹⁸

	Partners			Minority	Associates			Minority
	Total	Female	Minority	Female	Total	Female	Minority	Female
Nationwide	49,785	20.2%	7.1	2.3	45,808	44.8	20.9	11.3
<100 lawyer firms	4,018	20.2	6.3	2.1	2,254	43.1	16.6	9.1
101-250 lawyer firms	10,576	19.7	5.1	1.5	6,085	44.3	16.1	8.7
251-500 lawyer firms	9,682	21.1	7.0	2.3	7,052	44.6	19.4	10.2
501-700 lawyer firms	8,237	19.6	7.8	2.2	7,592	45.0	20.5	11.0
701+ lawyer firms	17,272	20.4	8.3	2.7	22,825	45.1	23.3	12.6
Atlanta	1,341	19.9	7.5	2.2	1,071	44.7	16.8	9.8
Austin	309	21.7	10.7	3.6	221	43.0	22.2	9.5
Boston area	1,516	22.0	3.8	1.2	1,816	46.4	16.2	9.4
Charlotte	432	15.3	3.9	1.2	284	38.4	11.6	5.3
Chicago	3,473	20.5	6.3	2.2	2,664	43.3	18.5	9.7
Cleveland	401	19.5	2.7	0.8	256	39.1	7.8	3.9
Columbus	397	19.7	6.1	1.3	203	47.8	13.8	5.4
Dallas	1,296	19.8	7.0	2.1	1,142	37.1	19.3	8.1
Denver	661	24.7	5.9	2.3	511	42.5	13.1	7.8
Detroit area	711	21.2	4.9	2.0	224	41.1	14.3	7.1
Houston	1,100	18.0	9.4	2.6	1,088	41.4	20.6	9.9
Indianapolis	718	20.8	3.6	0.7	305	44.6	13.1	6.9
Kansas City	886	19.6	3.1	0.8	426	43.0	13.6	6.3
Los Angeles area	2,093	21.1	13.2	4.4	2,325	48.3	30.7	16.5
Miami	404	24.0	33.4	9.2	295	46.4	37.6	20.7
Milwaukee	706	21.3	3.0	1.0	370	40.3	9.7	3.8
Minneapolis	1,232	23.7	2.7	1.1	652	48.2	11.2	6.1
New York City	6,436	17.8	8.0	2.7	11,674	44.9	24.8	13.7
Newark area	713	16.6	4.2	1.5	565	45.0	13.8	6.9
Northern Virginia	212	11.8	7.6	0.9	186	37.6	22.6	9.7
Orange County	567	14.6	12.2	3.2	565	37.9	24.8	11.7
Philadelphia	710	20.7	3.9	1.6	747	49.3	13.5	8.4
Phoenix	556	21.6	6.7	1.6	320	40.0	12.8	6.3
Pittsburgh	326	20.3	2.5	0.6	247	43.3	7.3	4.5
Portland, OR area	472	21.0	3.8	1.5	238	47.5	16.8	7.1
San Diego	273	21.6	8.8	2.6	364	40.4	23.6	8.5
San Francisco	1,326	25.6	11.2	4.1	1,435	51.7	26.1	15.2
San Jose area	830	19.0	16.0	3.5	1,317	42.9	36.6	18.6
Seattle area	978	24.4	9.0	3.1	547	45.2	22.1	12.8
St. Louis	801	21.2	4.0	1.1	394	46.2	13.2	5.6
Washington, D.C.	5,075	20.4	7.7	2.7	5,456	45.8	21.0	11.8

18. December 2013 Release, *supra* note 12.

Table 19 - Female and Minority Representation Among Corporate Counsel¹⁹

	Female	Af Am.	Hisp.	As Am.	Na Am.	Other	Minority
2001	31.5%						12.5
2004	37.0	2.0	3.0	3.0	0.0	2.0	10.0
2006	39.0	3.0	3.0	3.0	0.0	2.0	11.0
2011	41.0	4.0	3.0	5.0	<1.0	3.0	15.0

19. Ass'n of Corporate Counsel, *ACC 2001 Census of U.S. Inhouse Counsel*, ASS'N OF CORPORATE COUNSEL (2001), <http://www.acc.com/legalresources/resource.cfm?show=16320> (for 2001 figures); ASS'N OF CORPORATE COUNSEL, *2011 CENSUS REPORT 72* (2012) (for 2004, 2006, and 2011 figures). 2001 figures are based on a survey of 12,674 in-house lawyers, with 929 (7.3%) responding. 2006 figures are based on a survey of 49,259 in-house lawyers, with 3,426 (7.0%) responding. See Ass'n of Corporate Counsel, *Profile of In-House Counsel*, ASS'N OF CORPORATE COUNSEL (2006), <http://www.acc.com/v1/public/Surveys/loader.cfm?csModule=security/getfile&pageid=16297>. 2011 figures are based on responses from roughly 5,000 in-house counsel. See Ass'n of Corporate Counsel, *ACC's 2011 Census Report: Overview*, ASS'N OF CORPORATE COUNSEL (2012), <http://www.acc.com/legalresources/loader.cfm?csModule=security/getfile&pageid=1307039>.



In 2012, women made up only 15% of equity partners in AmLaw 200 law firms—a percentage that has not increased in seven years.

Table 20 - Federal Government Lawyers by Race/Ethnicity and Gender²⁰

2002	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	26 (9.4)	21 (7.6)	28 (10.1)	2 (0.7)	77 (27.9)
Male	12 (4.3)	6 (2.2)	9 (3.3)	1 (0.4)	28 (10.1)
Female	14 (5.1)	15 (5.4)	19 (6.9)	1 (0.4)	49 (17.8)
General Attorneys	2,461 (8.7)	1,141 (4.0)	1,013 (3.6)	144 (0.5)	4,759 (16.9)
Male	977 (3.5)	593 (2.1)	443 (1.6)	74 (0.3)	2,087 (7.4)
Female	1,484 (5.3)	548 (1.9)	570 (2.0)	70 (0.2)	2,672 (9.5)
Admin. Law Judges	54 (4.1)	51 (3.8)	11 (0.8)	16 (1.2)	132 (9.9)
Male	39 (2.9)	45 (3.4)	8 (0.6)	12 (0.9)	104 (7.8)
Female	15 (1.1)	6 (0.5)	3 (0.2)	4 (0.3)	28 (2.1)
2006	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	29 (9.4)	11 (3.6)	24 (7.8)	4 (1.3)	69 (22.5)
Male	7 (2.3)	8 (2.6)	10 (2.3)	2 (0.7)	28 (9.1)
Female	22 (7.2)	3 (1.0)	14 (4.6)	2 (0.7)	41 (13.4)
General Attorneys	2,570 (8.7)	1,218 (4.1)	1,292 (4.4)	145 (0.5)	5,237 (17.6)
Male	935 (3.2)	624 (2.1)	548 (1.8)	66 (0.2)	2,179 (7.3)
Female	1,635 (5.5)	594 (2.0)	743 (2.5)	79 (0.3)	3,058 (10.3)
Admin. Law Judges	67 (4.8)	54 (3.9)	8 (0.6)	17 (1.2)	147 (10.5)
Male	44 (3.1)	49 (3.5)	6 (0.4)	11 (0.8)	111 (7.9)
Female	23 (1.6)	5 (0.4)	2 (0.1)	6 (0.4)	36 (2.6)
2010	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	33 (9.0)	13 (3.5)	32 (8.7)	1 (0.3)	79 (21.5)
General Attorneys	3,026 (8.7)	1,391 (4.0)	1,888 (5.4)	202 (0.6)	6,507 (18.7)
Admin. Law Judges	100 (6.1)	72 (4.4)	23 (1.4)	19 (1.2)	214 (13.0)

20. Kay Coles James, U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce*, U.S. OFFICE OF PERS. MGMT. (2003), <http://www.opm.gov/feddata/demograp/02demo.pdf> (for 2002 figures); U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce: Table 3*, U.S. OFFICE OF PERS. MGMT. (2008), <http://www.opm.gov/feddata/demograp/table3mw.pdf> (for 2006 figures); U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce: Table 3*, U.S. OFFICE OF PERS. MGMT. (2013), <http://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/demographics/2010/table3mw.pdf> (for 2010 figures) (figures for 2010 represent women and men combined).

Table 21 - Article III (Lifetime) Judges by Gender and Race/Ethnicity²¹

	Total	Female (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)
Nixon (1969–74)	227		6 (2.6)	2 (0.9)	1 (0.4)	0 (0.0)
Ford (1974–76)	65		3 (4.6)	1 (1.5)	2 (3.1)	0 (0.0)
Carter (1777–80)	262	41 (15.7)	37 (14.1)	16 (6.1)	3 (1.1)	1 (0.3)
Reagan (1981–88)	383	32 (8.8)	7 (1.8)	14 (3.6)	2 (0.5)	0 (0.0)
Bush I (1989–92)	193	36 (18.7)	13 (6.7)	8 (4.1)	0 (0.0)	0 (0.0)
Clinton (1993–00)	378	111 (29.4)	62 (16.4)	25 (6.6)	5 (1.3)	1 (0.3)
Bush II (2001–08)	327	71 (21.8)	24 (7.3)	30 (9.1)	4 (1.2)	0 (0.0)
Obama (2009–14)	279	117 (41.7)	50 (18.0)	31 (11.1)	19 (6.8)	1 (0.4)
Obama (Pending)	27	11 (40.7)	6 (22.2)	1 (3.7)	1 (3.7)	0 (0.0)

21. ALLIANCE FOR JUSTICE, JUDICIAL SELECTION PROJECT 2001–02 BIENNIAL REPORT 7, 10–11 (2003) (for 1969–1976 data); Alliance for Justice, *Judicial Selection Snapshot*, ALLIANCE FOR JUSTICE 4 (2014), <http://www.afj.org/wp-content/uploads/2014/07/Judicial-Selection-Snapshot-8.6.14.pdf> [hereinafter *Snapshot*] (for 1977–2014 data). Figures for female judicial appointments are not available prior to 1977. Figures for Obama (2009–14) include all judges confirmed. Judge Cathy Bissoon identifies as both Hispanic and Asian American. She is included in both ethnic categories but only once in the total of confirmed judges. Judges Analisa Torres and Vernon Broderick identify as both Hispanic and African American, which is similarly reflected in the data. *Id.*

Table 22 - Article III (Lifetime) Judges by GLBT and Disability Status²²

	Total	GLBT (%)	Disabled (%)
Carter (1777–80)	262	0 (0.0)	1 (0.4)
Reagan (1981–88)	383	0 (0.0)	1 (0.3)
Bush I (1989–92)	193	0 (0.0)	1 (0.5)
Clinton (1993–00)	378	1 (0.4)	3 (0.8)
Bush II (2001–08)	327	0 (0.0)	2 (0.6)
Obama (2009–12)	279	10 (3.6)	1 (0.4)
Obama (Pending)	27	1 (3.7)	0 (0.0)

22. *Snapshot*, *supra* note 21. Figures for GLBT judges and judges with disabilities are not available prior to 1977.

Table 23 - Law Faculty by Gender and Minority Status²³

	Deans (%)	Full Prof (%)	Assoc Prof (%)	Asst Prof (%)
1990–91				
Minority	12 (6.8)	212 (6.2)	193 (18.8)	123 (19.3)
Female	15 (8.5)	481 (13.1)	375 (34.9)	313 (46.3)
1995–96				
Minority	17 (9.5)	336 (8.6)	282 (24.5)	186 (28.7)
Female	15 (8.4)	749 (18.1)	501 (41.8)	351 (52.8)
2000–01				
Minority	15 (8.5)	492 (11.5)	271 (24.2)	152 (27.6)
Female	23 (12.5)	955 (22.0)	437 (43.4)	201 (44.6)
2005–06				
Minority	21 (11.5)	608 (14.0)	302 (28.8)	180 (29.6)
Female	36 (18.8)	1,185 (25.9)	491 (43.8)	319 (45.1)
2008–09				
Minority	27 (13.6)	772 (13.5)	367 (23.4)	261 (25.1)
Female	41 (20.6)	1,706 (29.9)	734 (46.8)	554 (53.4)
Fall 2013				
Minority	42 (20.8)	907 (16.8)		460 (30.5)
Female	58 (28.7)	1,766 (32.7)		731 (48.4)

23. *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions (2001–02)*, ASS’N OF AM. LAW SCHS., <http://www.aals.org/statistics/2002statspage2.htm> (last visited Jul. 23, 2014) (for 1990–91, 1995–96, and 2000–01 data); *Statistical Report on Law School Faculty (2005–06)*, ASS’N OF AM. LAW SCHS., http://www.aals.org/statistics/0506/0506_T2A_tit4_8yr.html (last visited Jul. 23, 2014) (for 2005–06 data); *Statistical Report on Law Faculty (2008–09)*, ASS’N OF AM. LAW SCHS., <http://www.aals.org/statistics/2009dlt/titles.html> (last visited Jul. 23, 2014) (for 2008–09 data); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, Law School Faculty & Staff by Ethnicity and Gender*, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Law School Faculty & Staff by Ethnicity and Gender”) [hereinafter *Law School Faculty Chart*] (for 2013 data). Figures are based on all full-time faculty listed in the AALS DIRECTORY OF LAW TEACHERS for whom race/ethnicity is known.

Table 24 - Law Faculty by Gender and Race/Ethnicity (2013)²⁴

	Total (%)	Af Am (%)	Hispanic (%)	As Am (%)	Am Ind (%)
Deans	202 (100.0)	26 (12.9)	12 (5.9)	3 (1.5)	1 (0.5)
M	144 (71.3)	15 (7.4)	7 (3.5)	3 (1.5)	0 (0.0)
F	58 (28.7)	11 (5.4)	5 (2.5)	0 (0.0)	0 (0.0)
Tenured	5,398 (100.0)	464 (8.6)	222 (4.1)	181 (3.4)	28 (0.5)
M	3,632 (67.3)	226 (4.2)	140 (2.6)	115 (2.1)	18 (0.3)
F	1,766 (32.7)	238 (4.4)	82 (1.5)	66 (1.2)	10 (0.2)
Tenure Track	1,509 (100.0)	200 (13.3)	97 (6.4)	129 (8.5)	15 (1.0)
M	778 (51.6)	76 (5.0)	52 (3.4)	68 (4.5)	4 (0.3)
F	731 (48.4)	124 (8.2)	45 (3.0)	61 (4.0)	11 (0.7)
Part-Time	8,361 (100.0)	337 (4.0)	293 (3.5)	214 (2.6)	22 (0.3)
M	5,667 (67.8)	173 (2.0)	190 (2.3)	119 (1.4)	12 (0.1)
F	2,694 (32.2)	164 (2.0)	103 (1.2)	95 (1.1)	10 (0.1)

24. Law School Faculty Chart, *supra* note 23.



As of July, 2014, there were 58 female law school deans, including 12 minority female deans.

The Dean Scene

Chelsea J. Clark

University of South Carolina School of Law

In 1990, the dearth of women of color in the legal academy was so egregious that Professor Derrick Bell—the first tenured black professor at Harvard Law—was moved to take a leave of absence in protest of Harvard’s failure to add a woman of color to the law faculty.¹ His protest did not work.²

Now, in 2014, we are finally taking steps in the right direction. Not only have minority women become faculty members at law schools across the country, they now head many of those schools as Dean. There are twelve currently serving law school deans who are minority women.³

These women include a lot of “firsts” in their ranks: first Cuban American female dean at a US, ABA-accredited law school,⁴ first American Indian woman to serve as a law school dean,⁵ and the first Latina dean of a top 20-rated US law school.⁶

Those welcomed to the ranks this year include Wendy Scott, who will be the first black dean at the Mississippi College School of Law, and Danielle R. Holley-Walker, who has been appointed dean of the Howard University School of Law.⁷ Holley-Walker—who follows in the footsteps of her father, already a law school dean—plans to build on Howard’s unique social justice history.⁸

1. Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299, 2299 (1991–1992); Fred A. Berstein, Derrick Bell, Law Professor and Rights Advocate, Dies at 80, N.Y. Times, Oct. 6, 2011, <http://www.nytimes.com/2011/10/06/us/derrick-bell-pioneering-harvard-law-professor-dies-at-80.html>.

2. Merritt & Reskin, *supra* note 1, at 2299 n.1.

3. Penelope Andrews, Phyliss Craig-Taylor, Leticia Diaz, JoAnne Epps, Danielle Holley-Walker, Stacy Leeds, Maria Pabón López, Shirley Mays, Rachel Moran, Camille A. Nelson, Jennifer L. Rosato Perea, and Wendy Scott.

4. Leticia M. Diaz, *Dean and Professor of Law*, BARRY UNIVERSITY DWAYNE O. ANDREAS SCHOOL OF LAW, <https://www.barry.edu/law/future-students/faculty/staff/leticiadiaz.html> (last visited Jul. 12, 2014).

5. Stacy Leeds, *Dean and Professor of Law*, UNIVERSITY OF ARKANSAS SCHOOL OF LAW, <http://law.uark.edu/directory/?user=sleeds> (last visited Jul. 12, 2014).

6. *Berkeley Law Professor Rachel F. Moran Named UCLA Law Dean*, BERKELEY LAW: BOALT HALL, Jun. 7, 2010, <http://www.law.berkeley.edu/8497.htm>.

7. See Karen Sloan, *Howard Law’s New Dean Follows a Family Tradition*, THE NATIONAL LAW JOURNAL, Jun. 20, 2014, <http://www.nationallawjournal.com/id=1202660223769/Howard-Laws-New-Dean-Follows-a-Family-Tradition#>.

8. See Sloan, *supra* note 7.

Explaining the Bar By Numbers: Diversity Challenges at the Bar for England and Wales

Sam Mercer

Head of Equality and Diversity, The General Council of the Bar

What are the diversity demographics like within The Bar Council, the representative body for barristers in England and Wales? How do they compare to solicitors in England and Wales or to lawyers in the U.S.? Are some of the diversity trends about which American lawyers are concerned actually broader in scope than previously thought? How are barristers addressing diversity challenges and what might American lawyers learn from them?

I. Introduction

Diversity is good for our profession; we want the best talent (and recognize that this talent comes from different backgrounds). We also want a legal profession that reflects our community (the people it serves) in order to secure their confidence. It is from this that the Bar Council's Equality and Diversity Committee takes its vision: that of ". . . a profession representative of all, for all." To achieve this we must be constantly vigilant over diversity at the Bar and respond when it is under threat.

In order to do this, The Bar Council (the representative body for barristers in England and Wales) monitors the profession annually, tracking movements and identifying trends. We look at those entering the profession as well as the profile of barristers at key stages in their professional lives.

The Bar Council is the only organization to collect aggregated data on the 15,585 barristers practicing at the English and Welsh Bar.¹ We record the profile of barristers across a number of protected characteristics² including age, disability, ethnicity, gender, religion and belief, and sexual orientation. We also track marital/civil partnership status, caring responsibility, and socioeconomic status, where private versus state-funded secondary education is used as a proxy for social mobility.

Recording these numbers enables us to predict the future shape of our profession and better understand the experience of women, ethnic minorities, barristers with a disability, and those from a lower socioeconomic background. The information generated reflects our changing society. It tells us what is happening to colleagues across the Bar in a period of immense change, as the Bar responds to both the deregulation of legal services and significant cuts to government spending on legal aid. Our statistics have become an increasingly important indicator of pressure on our profession and this article attempts to tell the story behind the numbers and explain our response.

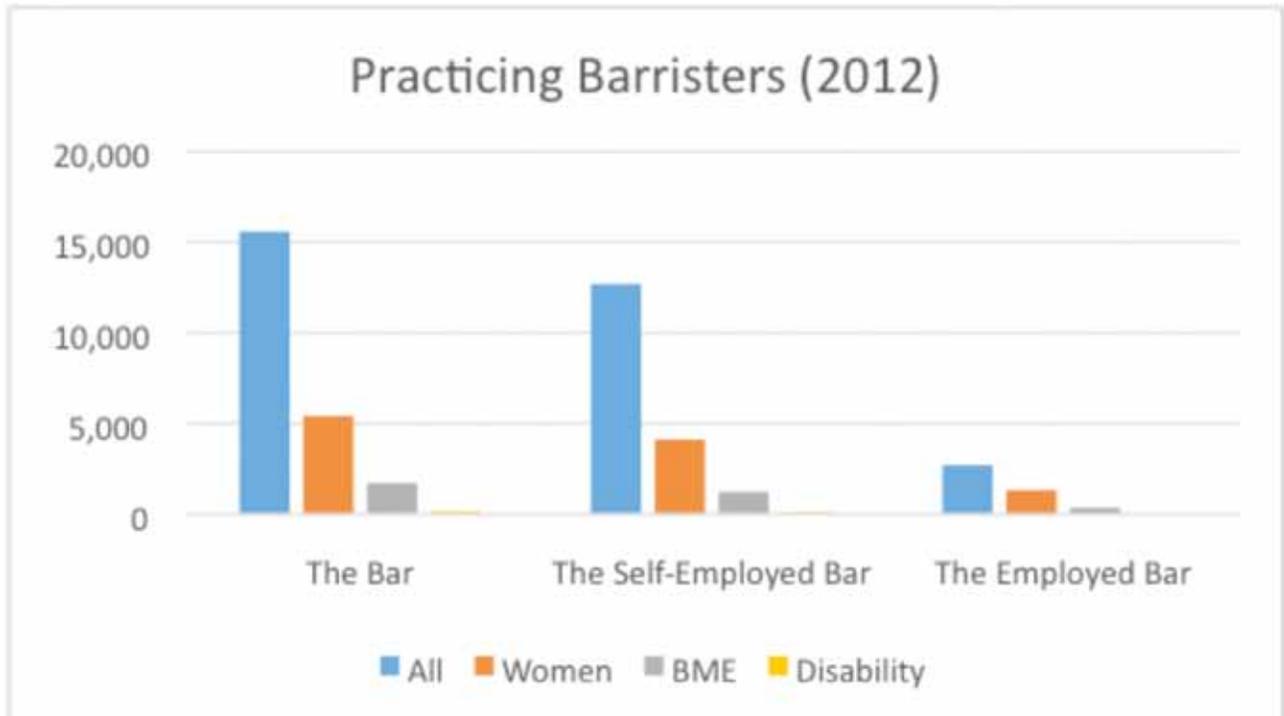
1. Gen. Council of the Bar of Eng. and Wales, Bar Barometer: Trends in the Profile of the Bar 9 (2014), available at https://www.barstandardsboard.org.uk/media/1599997/bsb_barometer_report_112pp_june_13.pdf [hereinafter *Bar Barometer*]. Chambers are individually required to collect data on members of their chambers by the regulator (the Bar Standards Board).

2. As defined by the Equality Act, 2010 (U.K.).

II. A Portrait of The Bar

In 2012, the Bar grew by just four barristers.³ Of the 15,500-plus barristers practicing in England and Wales, 34.7% were women and 11% were from a black and minority ethnic group (BME);⁴ 1% were disabled.⁵ Ninety-seven percent identified as heterosexual.⁶ Fifty percent identified as Christian (39% had no religion); just 4% of the Bar identified as Jewish, 1.4% as Muslim; 1% each identified as either Hindu, Buddhist, or Sikh.⁷ The largest age group is 35–44 (29.5%), 1.7% of the profession is aged 65-plus.⁸ Additionally, 81.4% work in self-employed practice.⁹

Figure 1: Practicing Barristers—in Numbers¹⁰



3. *Bar Barometer*, *supra* note 1, at 9.

4. *Id.*

5. *Id.* There is some variation between the profile of those in employed practice and those in self-employed practice. According to the *Bar Barometer* (2013), the proportion of women, ethnic minority and disabled barristers is slightly higher in employed over self-employed practice.

6. GEN. COUNCIL OF THE BAR OF ENG. AND WALES, *BARRISTERS' WORKING LIVES BIENNIAL SURVEY: A SECOND BIENNIAL SURVEY OF THE BAR 102* (2013) [hereinafter *Barrister's Working Lives Survey*].

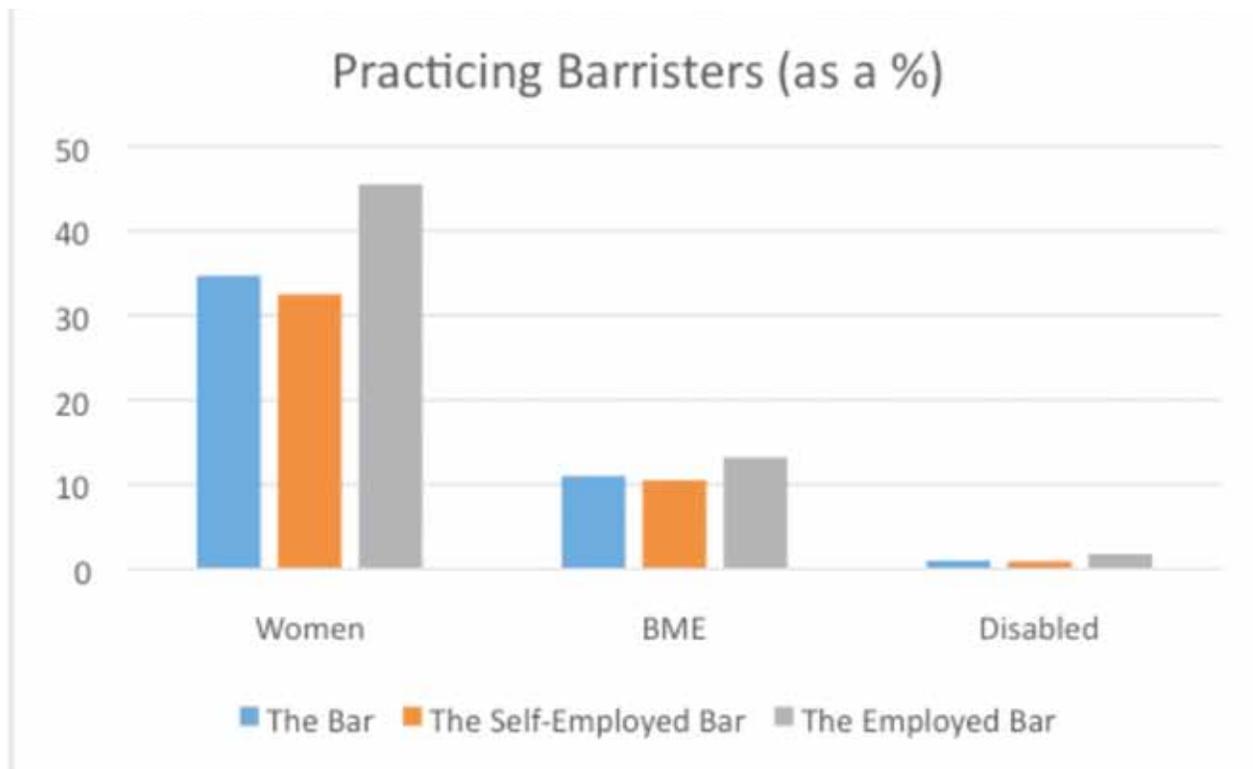
7. *Id.* at 103.

8. *Bar Barometer*, *supra* note 1, at 17.

9. *Id.* at 9.

10. *Id.*

Figure 2: Practicing Barristers—as a Percentage¹¹



III. Getting in, Staying in, and Getting on

To tell our story and bring data on the Bar to life, this article considers the numbers around our three key “challenges” . . . access, retention, and progression (or “getting in,” “staying in,” and “getting on”).

A. Access (or “Getting in”)

From a gender and ethnicity perspective “access” to the profession is our good news story. Whilst the numbers fluctuate a little every year, last year about half of all students on the Bar’s training course were women.¹² That said, the gender balance starts to slip almost as soon as women enter the final stage of their training, with women making up just 44% of pupils.¹³

We’ve also made significant progress in the ethnic diversity of First Six pupils over a twelve-month period (up from 13.1% in 2010–11 to 20.5% in 2011–12).¹⁴ However, BME statistics are more difficult to assess; many non-UK domiciled (international) students come to the UK to study for the Bar, and the majority of these never intend or are not entitled to practice in England and Wales. As such, and as a benchmark, we don’t expect to see a similar proportion of the BME students (41.6%¹⁵) on the BPTC training course going on to secure Pupillage. Our performance in this area can be difficult to evaluate because it is hard to establish a suitable comparator group for race. We could justify comparing our statistics with either the ethnic profile of the population of England and Wales as a whole, the ethnic

11. *Id.*

12. *Id.* at 72. In 2011, 50.01% were women.

13. *Id.* at 84.

14. *Id.* at 86.

15. *Id.* at 74.

profile of the working age population, or the ethnic profile of those in higher education. This is one of the challenges we are grappling with.

In reality the key access challenge now from a gender and race perspective is to encourage more women and ethnic minorities to pursue a legal career in privately funded practice areas.¹⁶ Currently, 61% of the Family Bar is made up of women barristers compared with just 24% at the Commercial and Chancery Bar.¹⁷

Social mobility presents a more complicated story. We currently use the fairly rough proxy of secondary school education (private versus state-funded) as an indicator of socioeconomic background; approximately half the Bar is currently educated in state schools.¹⁸ Whilst we are able to demonstrate school is not a determinant of pupillage, it remains a determinant of university attended, with privately educated pupils more likely to attend the most academically selective universities (the traditional recruiting ground for the Bar). The advantage already enjoyed by those who attend universities such as Oxford or Cambridge,¹⁹ is exacerbated by a fall in the number of pupillages on offer as the Bar reacts to economic pressures. As a result, chambers appear to be adopting risk-averse recruitment practices, selecting those candidates with only the highest academic qualifications, from the more traditional universities. This has an indirect adverse impact on social mobility at the Bar.

The Bar Council is attempting to address this with a social mobility strategy, which focuses on tackling the three key barriers to access: “Cash, Confidence, and Contact.” For example, we are working to ensure high-achieving students from lower socioeconomic backgrounds have access to information (e.g., on scholarships for training available) and opportunities to gain experience and confidence through shadowing barristers. Further, we are providing more tailored advice and support by brokering e-mentoring between students and members of the profession at key decision making points (such as university selection) in a student’s academic career.

B. Retention (or “Staying in”)

The Bar continues to lose significant numbers of women eight to twelve years after they begin their careers²⁰ (around the time they are likely to have a family). Our studies consistently indicate barristers struggle to balance family life with self-employed practice and this particularly affects women. This is aggravated by current financial pressure on those publically funded areas of the Bar where women (and ethnic minorities) tend to practice (crime, family, and immigration²¹), which are all at the mercy of public funding cuts. Both the amount of work available, and fees for this type of work are falling making self-employed practice unsustainable, particularly for those who work part time, have to meet child-care costs, or both.

Addressing this requires fundamental structural and cultural change. Solutions may well include exploring alternative business models and ways of working that better support those with child-care costs and responsibilities. It also involves encouraging women and BME barristers into more lucrative areas of the Bar (such as the Commercial and Chancery Bars) that enable practitioners to both

16. See *infra* Figure 3.

17. BARRISTER’S WORKING LIVES SURVEY, *supra* note 7, at 105.

18. BAR BAROMETER, *supra* note 1, at 88. 93% of the UK population attend state schools. D.D. Guttenplan, *British Students Find Advantages at U.S. Schools*, N.Y. TIMES (Dec. 7, 2012), http://www.nytimes.com/2012/12/10/world/europe/10iht-educlde10.html?_r=0.

19. 28.4% of those who secured pupillage in 2011–12 attended Oxford or Cambridge Universities; 32.6% had secured a First. *Id.* at 89–90.

20. GEN. COUNCIL OF THE BAR, EXIT SURVEY 2011, 17 (2011). Fifty-three percent of leavers were called to the Bar more than twelve years ago. *Id.*

21. See *infra* Figure 3.

generate higher earnings and potentially require less court-based work (allowing greater flexibility in working practices). In addition, we need to better support chambers in implementing effective working practices with respect to maternity policy, flexible working, fairer work allocation, and managing career breaks.

Disability at the Bar presents another challenge. Disability appears to be significantly underreported at the Bar (whilst 7.4% of BPTC students declare a disability,²² this falls to just 1% of the practicing Bar²³). A lack of information on disability makes it difficult to track and understand the experiences of barristers with a disability and how many sustain a long-term career at the Bar. Lack of data is not a problem easily solved. We know from feedback across the profession that there is a perception reporting any type of disability (particularly mental health and other hidden disabilities) can have a negative effect on a barrister's career. This would suggest data challenges can only be resolved by a twin track approach which both reassures the Bar over the confidentiality of disability reporting, and at the same time delivers a long-term education program that seeks to normalize disability.

C. Progression (or "Getting on")

Poor retention of women and BME barristers inevitably impacts on the progression of these groups as the Bar becomes increasingly male and white with experience. Women make up just 12.4%²⁴ of QCs and 29%²⁵ of the Judiciary. BME barristers make up 5.5%²⁶ of QCs and 4.8%²⁷ of the Judiciary; numbers that, for the Government in particular, prompt heated political debate over an under-representative judiciary. Although the statistics are improving, the loss of talented women barristers around twelve years' Call and the precarious practices that some women and BME barristers now find themselves in, makes it difficult to ensure those appointing QCs and judges have a representative pool from which to draw candidates.

For those women who do remain in the profession, balancing child-care responsibilities makes securing the "right" experience for more senior roles difficult. Traditionally, more complex and demanding cases (that provide the rich experience and profile required for career progression) have been handed to male colleagues, perceived to have more time, less child-care responsibility and a greater ability to travel.

Where women and BME candidates do apply, statistics suggest they are slightly more successful than white male candidates. This appears to confirm the main problem lies in ensuring there are a suitable number of candidates both willing to apply and with the right experience, rather than a need to further reform the appointment process itself. (This is now much more transparent and no longer a "tap on the shoulder" based on "who you know," which was the traditional approach in the past).

In addition to our work on improving retention (discussed above), which seeks to address this, The Bar Council also runs information events explaining the appointment process and encouraging women, BME, and other underrepresented groups of candidates to apply. We have also recently introduced a mentoring service to support judicial and silk applications and continue to advise the Queen's Counsel Appointments (QCA) and Judicial Appointments Commission (JAC) on inclusion initiatives.

22. *Bar Barometer*, *supra* note 1, at 75.

23. *Id.* at 9.

24. *Id.* at 42.

25. Judicial Appointments Comm'n, *Background Statistics*, https://consult.justice.gov.uk/digital-communications/equal-merit-provision/supporting_documents/backgroundstatisticsjudicialdiversity.pdf (last visited Sept. 9, 2014).

26. *Bar Barometer*, *supra* note 1, at 44.

27. Judicial Appointments Comm'n, *supra* note 26.

IV. Conclusion

So our story is two steps forward, one step back. Two steps forward . . . we've made progress, at least in access. One step back . . . until we can reduce the loss of women, BME, and others mid-career, we not only fail to deliver a truly representative Bar, but also will fail to deliver a truly representative judiciary. We also find ourselves presiding over a profession that continues to lose some of our best talent: an issue in need of urgent remedy.

Attitudes are changing as the profession embraces new and fairer recruitment and working practices; but the Bar in England and Wales faces unprecedented external challenges, which may well, if current trends continue, reverse any diversity gains we have made over the last decade.

**Figure 3: Demographic Data by Practice Area (Percentages)
2013²³**

	Criminal	Civil	PN/PI	C&C	Family	Int'l/EU	All
Gender							
Male	64%	72%	69%	72%	39%	65%	63%
Female	36%	28%	31%	28%	61%	35%	37%
Base N=100%	1013	210	279	475	503	43	2523
Age Band							
Under 30	11%	10%	11%	13%	11%	6%	11%
30-39	25%	31%	33%	24%	26%	24%	27%
40-49	31%	27%	28%	29%	32%	31%	30%
50-59	22%	21%	19%	21%	23%	23%	21%
60 plus	10%	11%	9%	14%	8%	17%	11%
Base N=100%	908	826	256	434	461	71	2956
Disability							
Yes	4%	4%	5%	3%	4%	1%	4%
No	96%	96%	95%	97%	96%	99%	96%
Base N=100%	922	836	257	443	466	74	2998
Sexual Orientation							
Bisexual	2%	2%	3%	2%	2%		2%
Gay Man	3%	4%	2%	4%	3%	3%	3%
Gay Woman/Lesbian	1%	1%	2%	0%	1%	1%	1%
Heterosexual/ Straight	93%	93%	93%	94%	93%	96%	93%
Other	1%	1%	0%	0%	1%		1%
Base N=100%	884	797	255	425	455	71	2887

28. Unpublished data drawn from those who disclosed their protected characteristics whilst participating in the Bar Council's Biennial Survey of Barristers' Working Lives (2013). Please note: Limitations of the data include (i) this is a survey of half the practicing Bar of England & Wales where N=100% refers to the population of respondents rather than the whole practicing Bar; (ii) it includes missing data ("no answer") or where participants did not disclose their Protected Characteristic (answering "prefer not to say").

**Figure 3: Demographic Data by Practice Area (Percentages)
2013²³ (continued)**

Religious Affiliation	Criminal	Civil	PN/PI	C&C	Family	Int'l/EU	All
No religion	40%	40%	38%	36%	37%	38%	39%
Christian	50%	47%	54%	51%	53%	50%	50%
Buddhist	1%	<1%	<1%	1%	1%	1%	1%
Hindu	1%	1%	<1%	<1%	1%	<1%	1%
Jewish	3%	5%	4%	8%	3%	8%	4%
Muslim	2%	2%	2%	1%	1%	1%	2%
Sikh	1%	1%	<1%	1%	1%	0%	1%
Other	3%	2%	1%	2%	2%	1%	2%
Base N=100%	905	818	256	436	458	74	2947
Ethnicity							
White British	84%	79%	88%	86%	84%	69%	83%
White Irish	2%	1%	1%	1%	1%	1%	2%
White Gypsy/Irish traveller	<1%	0%	0%	0%	0%	1%	<1%
Other white background	4%	6%	5%	7%	4%	20%	5%
Mixed: White/Black Caribbean	<1%	<1%	0%	<1%	<1%	0%	<1%
Mixed: White/Black African	<1%	<1%	0%	0%	<1%	0%	<1%
Mixed: White/Asian	1%	2%	1%	1%	1%	0%	1%
Mixed: other	1%	1%	2%	1%	2%	1%	1%
Asian: Indian	2%	2%	0%	2%	2%	0%	2%
Asian: Pakistani	1%	1%	1%	<1%	<1%	1%	1%
Asian: Bangladeshi	<1%	1%	<1%	0%	<1%	0%	<1%
Asian: Chinese	<1%	<1%	<1%	0%	<1%	0%	<1%
Asian: other	1%	1%	<1%	<1%	<1%	0%	1%
Black: African	1%	1%	0%	<1%	1%	1%	1%
Black: Caribbean	1%	1%	1%	<1%	2%	3%	1%
Black: other	0%	<1%	0%	<1%	0%	0%	<1%
Other: Arab	<1%	0%	0%	<1%	0%	0%	<1%
Other: other ethnic group	<1%	1%	<1%	<1%	0%	1%	1%
Base N=100%	909	829	259	446	467	75	2985

Key Facts about the Bar

Barristers in England and Wales are specialist advocates and advisers who provide expert legal services when representing their lay and professional clients in courts and other legal contexts.

Barristers usually specialize in particular areas of the law (of which there are more than ninety different traditional classifications). A barrister can practice in any one or more of these areas throughout the life of their career. Criminal law is the most common area of practice (in 2012, 25.1% of barristers engaged primarily in this area).

Practicing barristers are normally classified into one of two categories: self-employed or employed.

Barristers at both the self-employed and employed Bar can apply to be appointed Queen's Counsel (QC). QCs are considered experts in their field, generally with a minimum of fifteen years' practice. When a barrister is appointed as a QC this is known informally as 'taking silk' due to their entitlement to wear black silk gowns instead of standard court dress.

The Publicly Funded Bar comprises barristers whose services are paid for by the State.

Key Stages in becoming a Barrister

The Bar Professional Training Course (BPTC) is the vocational stage in training for the Bar (undertaken after completion of an under-graduate degree). The BPTC lasts for thirty weeks for full-time students.

Pupillage is compulsory training that must be completed before a member of the Bar is authorized to practice in their own right. Generally this is an overall period of twelve months split into two six month periods referred to as First Six and Second Six. Pupillage is spent either in a barristers' chambers or in another Approved Training Organization.

Called to the Bar is the stage at which a barrister is formally recognized to have completed the vocational or BPTC stage of training when a barrister is called to the Bar by their Inn of Court.

1. Professional Negligence/Personal Injury
2. Commercial and Chancery

Diversity in the Legal Profession of England and Wales

Nicholas Fluck

Immediate Past President, The Law Society of England and Wales

Just as in the U.S., the demographics within the U.K. are changing rapidly. The solicitors side of the profession, as represented by The Law Society, is grappling with the diversity challenges that changing demographics brings, just as American lawyers are. Here, we learn about diversity demographics among solicitors in England and Wales and some of the efforts that the legal profession in the U.K. is implementing to address its own diversity challenges.

The Law Society continually strives to promote the benefits of a diverse legal profession to our members. We offer a suite of initiatives and have on hand a dedicated Diversity and Inclusion team to ensure firms receive information and assistance in incorporating equality and fairness into their everyday business practices.

With the demographics of the UK changing rapidly, diversity is essential for law firms wanting to attract the best people and meet clients' needs. In addition, corporate clients are increasingly looking to ensure their panel law firms match their values and commitment to diversity and inclusion.

We know, from direct experience as well as through extensive research, that if a firm has a good reputation for equality and fairness, it is more likely to attract good caliber candidates from diverse backgrounds when recruiting. With the ever-expanding international market, it makes sense for law firms to have a wide understanding of language, cultural, and religious influences.

To promote and incentivize diversity, the Law Society has in place a Procurement Protocol. It has been designed to give organizations that purchase legal services the peace of mind that they are using law firms that share their commitment to diversity and inclusion. To complement the protocol we have a Diversity and Inclusion Charter, which requires practices that sign up to participate in the Law Society's Diversity and Inclusion Annual Report. The report shows how well practices are meeting their charter commitments and where more work still needs to be done. In addition, we recently published a business case for diversity which offers clarity as to the economic benefits of inclusion.

However, while the diversity of legal talent in the profession is increasing every year, this is not reflected in those who become partners or leaders of law firms, where women, who make up half the solicitors in the profession, represent less than one third of partners. Meanwhile, nearly 12% of solicitors are from an ethnic minority background, but make up only 6% of partners.

Clearly, the profession has come a long way in terms of its diversity and inclusion policies, but to use the familiar adage, there is a lot done, a lot more to do.

We urge those responsible for recruitment in the legal profession to look beyond their inner circle and to resist the urge to recruit in their own image.

Below are figures from *Trends in the solicitors' profession—Annual Statistical Report—The Law Society 2012 and the Law Society Annual Earnings Report 2014*.

Total Roll and Practising Certificate holder registrations in 2012 increased relative to 2012 but the rise is artificially inflated

- The 165,971 solicitors listed on the Roll on 31st July 2012 represents an increase of 4% on 2011.
- 128,778 solicitors held a current practising certificate (PC) entitling them to act as a solicitor within the definition of the Solicitors Act 1974 – an increase of 5.6% on 2011.
- The PC and Rolls figures are artificially inflated for 2012 and reflect delays in the process of removing 'inactive' PC holders (i.e. those not renewing PCs) from the systems supporting the Annual Statistics Report (ASR).
- The 37,193 solicitors on the Roll without a PC include solicitors working in jobs for which a PC is not required, retired solicitors, women on maternity or child care leave and those no longer pursuing a career in the legal profession but who wish to remain on the Roll.
- Women made up 47.4% of solicitors with PCs and 48.2% of those on the Roll. In 2002 the figures were 38.6% and 39.5% respectively.

Table 1.1 (formerly Tbl 1.3): Solicitors on the Roll with and without practising certificates, by gender as at 31st July 2012

	No.	%
With Practising Certificates		
Male	67,760	52.6
Female	61,018	47.4
Sub-total	128,778	100.0
Without Practising Certificates		
Male	18,253	49.1
Female	18,940	50.9
Sub-total	37,193	100.0
Total solicitors on the Roll		
Male	86,013	51.8
Female	79,958	48.2
Total	165,971	100.0

PC holders from BAME groups made up 13% of all PC holders in July 2012 – almost double the proportion in 2002

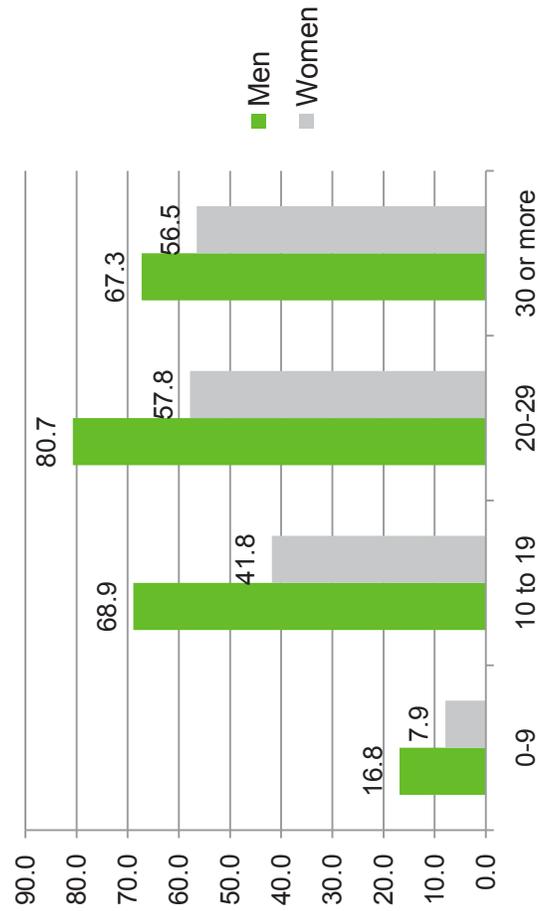
Table 2.5 (formerly Tbl 2.12): Ethnic origin of practising certificate holders as at 31st July 2012

	Men	Women	Total	%
White European	53,600	47,012	100,612	78.1
African-Caribbean	245	629	874	0.7
Asian	4,172	4,993	9,165	7.1
Chinese	642	1,082	1,724	1.3
African	748	1,002	1,750	1.4
Other ethnic origin	1,136	1,552	2,688	2.1
All solicitors for whom ethnic origin is known	60,543	56,270	116,813	90.7
All BAME practising certificate holders known to the Law Society	6,943	9,258	16,201	
% of all solicitors with PCs	10.2	15.2	12.6	
Unanswered	2	0	2	0.0
Refused	7,215	4,748	11,963	9.3
All practising certificate holders	67,760	61,018	128,778	100.0
% of all solicitors with PCs for whom ethnicity is known	89.3	92.2	90.7	

- Representation of BAME groups amongst PC holders is slightly lower than the representation of BAME groups in the wider population (14.6%).

Male private practitioners continued to be better represented at partner level than female practitioners

Chart 4: Percentages of men and women in private practice in England and Wales who were either partners or sole owners as at 31st July 2012 (by years since admission)



11.3% of solicitors in private practice were known to be drawn from BAME groups in July 2012

- Whereas 35.4% of White Europeans in private practice were partners in July 2012, the corresponding proportion of BAME private practitioners remained much lower, at 23.8%. However, while the proportion for BAME private practitioner partners has remained relatively stable since 2002 (23.9%) that for White Europeans has declined substantially from 43%.
- Twice the proportion of BAME private practitioners were sole practitioners as were White Europeans in 2012 – and that relationship has remained fairly stable since 2002 when 8.2% of BAME solicitors were sole practitioners compared to 5.4% of White Europeans.

Table 4.5 (formerly Tbl 2.15): Status of private practice solicitors in firms registered in England & Wales, by ethnicity, as at 31st July 2012

	All in pp	Partners	SPs	Assoc	Assist	Other pp	Total %
African-Caribbean	455	24.2	11.2	18.5	37.2	9.0	100.0
Asian	6,096	25.6	8.9	19.6	38.0	7.9	100.0
Chinese	795	16.5	4.7	43.0	28.7	7.2	100.0
African	978	21.5	14.8	18.2	35.3	10.1	100.0
Other ethnic origin	1,652	21.9	4.8	27.5	38.4	7.5	100.0
All BAME groups	9,977	23.8	8.6	22.6	37.0	8.0	100.0
White European	70,734	35.4	4.4	20.8	29.3	10.1	100.0
Unknown	7,057	41.2	6.9	18.1	22.0	11.9	100.0
Total	87,768	34.5	5.1	20.8	29.6	10.0	100.0

The distribution of BAME private practitioners across firms of different size has changed little since 2002 – the proportion of white Europeans working in the largest firms has increased in the same period

- In 2002, 37.2% of White European private practitioners worked in the largest firms with 26 or more partners – in 2012 that figure had risen to 43.5%, whereas, for BAME groups the 2012 figure of 20.5% differs little to the 19.8% evident in 2002.

Table 4.6 (formerly 2.16) Ethnicity by size of private practice firm registered in England and Wales, as at 31st July 2012

	All in Private practice	Sole practice	2-4 partners	5-10 partners	11-25 partners	26-80 partners	81+ partners	All firms
African-Caribbean	455	18.7	29.7	16.0	14.5	7.5	13.6	100.0
Asian	6,096	17.5	36.3	11.4	9.3	9.4	16.2	100.0
Chinese	795	9.1	16.4	10.8	8.4	13.4	41.9	100.0
African	978	29.3	38.3	5.4	7.4	6.1	13.5	100.0
Other ethnic origin	1,652	9.1	21.0	13.0	12.4	14.2	30.2	100.0
All BAME groups	9,977	16.6	32.1	11.2	9.8	10.1	20.2	100.0
White European	70,734	7.0	20.2	15.6	13.7	17.5	26.0	100.0
Unknown	7,057	10.2	24.8	12.1	11.7	15.0	26.2	100.0
Total	87,768	8.3	21.9	14.8	13.1	16.5	25.4	100.0

Solicitors known to be from Black Asian and Minority Ethnic (BAME) groups made up 13.1% of all solicitors on the Roll

- The overall participation rate of BAME solicitors (the percentage of those on the Roll with a PC) is lower than that for all solicitors. The lower rate is attributable to the fact that Chinese solicitors (over one-third of whom work overseas) continued to have the lowest participation rate of all BAME solicitors at 44.1% (though an increase on 41.4% in 2011).

Table 1.2 (formerly Tbl 1.5) Ethnicity of solicitors on the Roll and with practising certificates as at 31st July 2012

	(1) On the roll	(2) With PC	(3) (2) as % of (1)
African-Caribbean	1,095	874	79.8
Asian	11,152	9,165	82.2
Chinese	3,910	1,724	44.1
African	2,188	1,750	80.0
Other ethnic origin	3,362	2,688	79.9
All minority ethnic group solicitors	21,708	16,201	74.6
White European	126,658	100,612	79.4
Unknown	17,605	11,965	68.0
Total	165,971	128,778	77.6
BAME solicitors as a % of all solicitors	13.1	12.6	
BAME solicitors as a % of solicitors with known ethnicity	14.6	13.9	

Table 1. Private Practice earnings: by gender and grade

Grade		Male £ p.a	Female £ p.a	All £ p.a
Assistant / Associate	Percentile 25	38,000	30,000	32,000
	Median	50,000	38,000	43,000
	Percentile 75	73,000	56,000	62,500
	Valid n	n=156	n=182	n=338
Equity Partner	Percentile 25	40,000	35,000	40,000
	Median	75,000	60,000	70,000
	Percentile 75	170,000	100,000	145,000
	Valid n	n=102	n=34	n=136
Salaried partners	Percentile 25	48,000	40,000	42,000
	Median	64,000	56,000	60,000
	Percentile 75	87,000	80,000	85,000
	Valid n	n=32	n=26	n=58
All grades	Percentile 25	40,000	31,000	35,000
	Median	60,000	42,000	50,000
	Percentile 75	90,000	60,000	77,500
	Valid n	n=290	n=242	n=532



Key statistics for the solicitors' profession as at 31st July 2012

As at 31st July	2011	2012	% change
Private practice firms registered in E&W	10,202	10,102	-0.98
Solicitors on the Roll	159,524	165,971	4.04
Solicitors with Practising Certificates	121,933	128,778	5.61
Solicitors without Practising Certificates	37,591	37,193	-1.06
PC holders working in private practice in firms registered in E&W	87,973	87,768	-0.23
PC holders working in private practice in foreign firms (here or abroad)	3,950	4,079	3.27
PC holders in the employed sector	23,215	23,577	1.56
	13,968	14,691	5.18
	132	145	9.85
	7,491	7,172	-4.26
	1,624	1,569	-3.39
	6,795	13,354	96.53
PC holders not attached to an organisation	121,933	128,778	
PC holders based abroad (across all categories of employment)	7,272	7,823	7.58
New admissions (in the preceding 12 months)	8,402	6,330	-24.66
Training contracts registered (in the preceding 12 months)	5,441	4,869	-10.51

Over one-third (35.6%) of UK students accepted onto first degree law courses at universities were from BAME groups

Table 5.2: Ethnicity of students from the UK accepted onto first degree law courses at universities and colleges in 2011

Ethnic group	Male	Female	Total
White	3,794	6,625	10,419
Black			
Black African	477	823	1,300
Black Caribbean	84	324	408
Black Other	22	59	81
Asian			
Indian	349	599	948
Pakistani	571	738	1,309
Bangladeshi	173	244	417
Chinese	52	91	143
Other Asian	125	230	355
Mixed			
White and Black Caribbean	68	160	228
White and Black African	28	75	103
White and Asian	88	140	228
Other mixed background	66	144	210
Other	105	213	318
Unknown	92	130	222
All BAME acceptances	2,103	3,627	5,730
All acceptances	6,094	10,595	16,689
% from BAME groups	34.5	34.2	34.3

(Source: UCAS)

IILP Review 2014: Diversity and Inclusion in the Legal Profession in General

Fisher v. University of Texas: Surviving Scrutiny in a Post-Fisher World

Melinda S. Molina

Assistant Professor of Law, Capital University Law School

Is there a future for race-conscious higher education admissions programs? How might these programs survive future scrutiny?

I. Introduction

Last summer, the Supreme Court of the United States considered the constitutionality of the University of Texas at Austin's (the University) race-conscious admissions program under the Equal Protection Clause of the Fourteenth Amendment in *Fisher v. University of Texas*. The Court reaffirmed the central premise of judicial precedent: the educational benefits that a diverse student body provides is a compelling governmental interest that may justify the use of a race-conscious admissions program as long as the program is narrowly tailored.

The Court, however, held that the lower courts had misconstrued and misapplied the narrowly tailored prong of strict scrutiny in reviewing the University's admissions program.¹ Specifically, the Court found that the lower courts had incorrectly deferred to the judgment of the University in assessing whether the program was narrowly tailored.

Instead, the Court held that a reviewing court must first determine whether a race-conscious admissions program evaluates an applicant "as an individual and not in a way that makes . . . race or ethnicity the defining feature."² Secondly, a reviewing court must verify that the use of race is "'necessary' to achieve the educational benefits of diversity."³ Thirdly, a reviewing court must be satisfied that "no workable race-neutral alternatives would produce the educational benefits of diversity."⁴ *Fisher* signals a significant shift in the role courts will play in evaluating race-conscious admissions programs.

While *Fisher* reaffirmed the importance of diversity in higher education, it leaves many questions unanswered.⁵ Principally, can the University's admissions program, modeled after longstanding judicial precedent, survive the narrowly tailored inquiry? This question is currently before the Fifth Circuit in *Fisher* after remand by the Court. This suggests that subsequent rulings in *Fisher* may serve as the true test of the ongoing vitality of race-conscious admissions programs in higher education.

1. *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411, 2421 (2013). The Court reiterated that strict scrutiny is the analysis that is applied to challenges to race-conscious policies under the Equal Protection Clause. To survive strict scrutiny, the policy at issue must serve a compelling state interest and be narrowly tailored to meet its goals. *Id.* at 2418.

2. *Id.* at 2420 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 337 (2003)).

3. *Id.* at 2420 (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 305 (1978)).

4. *Id.*

5. *Id.* at 2419. This part of the Court's holding should be tempered with the noted disagreement among the Justices about the constitutionality of the diversity rationale under the compelling interest prong. See *id.* The Court stated that aspect of strict scrutiny was not before it. *Id.*

II. The Long, Winding Road to *Fisher*: A Brief Overview

In the last thirty-six years, the Court has heard three landmark cases addressing race-conscious admissions policies.⁶ While each case ostensibly permits the consideration of race as a factor in a holistic, flexible, and individual assessment of a candidate, the question remains of how an institution does so under the narrowly tailored prong of strict scrutiny.

In *Regents of the University of California v. Bakke*, the Court considered whether a public medical school's use of racial set-asides for certain racial and ethnic groups was constitutionally permissible.⁷ Casting the deciding vote for a fragmented Court, Justice Powell applied strict scrutiny and found that the goal of achieving a diverse student body could serve as a compelling governmental interest, but that the use of racial set-asides was not narrowly tailored. In Justice Powell's view, racial set-asides hindered the "attainment of genuine diversity" because diversity "encompasses a far broader array of qualifications and characteristics of which [race] . . . is but a single though important element."⁸

He described and appended to his opinion the Harvard Admissions program as an example of the permissible use of race as one factor among many that include grades, standardized test scores, personal backgrounds, and professional experiences in an individualized, holistic assessment of an applicant's file. Justice Powell also noted that the Court would not presume that such an assessment would operate as the functional equivalent of a racial quota. Instead, Justice Powell opined that "good faith would be presumed in the absence of a showing to the contrary."⁹

Bakke served as a "touchstone for constitutional analysis of race-conscious admissions policies."¹⁰ Many institutions would later model their admission policies after the Harvard Admissions program approvingly described by Justice Powell in *Bakke*. Courts, however, struggled to discern whether the diversity rationale was binding precedent.¹¹ In 1996, the United States Court of Appeals for the Fifth Circuit took the view that it was not binding precedent in *Hopwood v. Texas*. In *Hopwood*, the Fifth Circuit held that the use of race to achieve educational diversity, "even as part of the consideration of a number of factors," was unconstitutional.¹² The Fifth Circuit ruled that the use of race in admissions decisions could not serve as a proxy for diversity because it assumes—in violation of the Fourteenth Amendment—that certain racial groups have shared characteristics and socioeconomic backgrounds. While the Fifth Circuit proscribed the use of race *per se*, it did leave room for the consideration of a "host of factors—some of which may have some correlation with race" in admissions decisions.¹³ In response to *Hopwood*, a year later the Texas legislature enacted "The Top Ten Percent Plan," which guarantees admission to the University of Texas to any high school senior in Texas graduating in the top ten percent of his or her class.¹⁴ The Top Ten Percent Plan would later serve as a basis for the constitutional challenge in *Fisher*.

The ruling in *Hopwood* was overruled in 2003 by the Supreme Court's decision in *Grutter v. Bollinger*. In *Grutter*, the Supreme Court evaluated the constitutionality of the University of Michigan Law School's admissions program modeled on the Harvard program endorsed by Justice Powell in *Bakke*. Justice O'Connor authored the 5–4 majority opinion in which the Court held that the law

6. See *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Grutter*, 539 U.S. 306; *Bakke*, 438 U.S. 265. Interestingly, the Court stated that it would take the three cases as a given for the purpose of deciding *Fisher*.

7. *Bakke*, 438 U.S. at 269–70.

8. *Id.* at 315.

9. *Id.* at 318–19.

10. *Grutter*, 539 U.S. at 323.

11. The decision in *Bakke* engendered confusion because of six separate opinions, none of which commanded a majority of the court.

12. *Hopwood v. Texas*, 78 F.3d 932, 945–46 (5th Cir. 1996).

13. *Id.* at 946.

14. *Fisher v. Univ. of Tex. at Austin*, 631 F.3d 213, 224 (5th Cir. 2011), *vacated and remanded*, 133 S.Ct. 2411 (2013).



The pronounced benefits of diversity were multifactorial and included enhanced learning outcomes for students, the promotion of cross-racial understanding among students, better preparation of students to deal with an increasingly diverse workforce and society, and the dismantling of racial stereotypes.

school had a compelling interest in attaining the educational benefits of a diverse student body. The pronounced benefits of diversity were multifactorial and included enhanced learning outcomes for students, the promotion of cross-racial understanding among students, better preparation of students to deal with an increasingly diverse workforce and society, and the dismantling of racial stereotypes.

The majority opinion also endorsed the concept of critical mass, which posits that the benefits of racial diversity require a critical mass of diverse students. *Grutter* described critical mass as “‘meaningful numbers’ or ‘meaningful representation’ . . . that encourages underrepresented minority students to participate in the classroom.”¹⁵ The Court ruled that public institutions of higher education could use race as part of a holistic review of an applicant’s file—where race is considered among many factors—to achieve a critical mass of diverse students. In doing so, the Court held that the University of Michigan Law School’s admissions program bore “the hallmarks of a narrowly tailored plan.”¹⁶

Writing a separate dissent in *Grutter*, however, Justice Kennedy characterized the use of the critical mass concept as an “attempt to make race an automatic factor in most instances and to achieve numerical goals indistinguishable from quotas.”¹⁷ He argued that the “numerical concept of critical mass” was inconsistent with individualized holistic assessments that the narrowly tailored prong of strict scrutiny mandates.¹⁸

Notably, the Court responded to an argument raised in *Grutter* that race-conscious admissions programs were not narrowly tailored because of race-neutral alternatives like the “percentage plans” in Texas, Florida, and California.¹⁹ The Court explained that the narrow tailoring prong “does not require exhaustion of every conceivable race-neutral alternative,” but instead requires a “serious, good faith consideration of workable race-neutral alternatives.”²⁰ The Court stated that “even assuming such plans are race-neutral,” it was unclear how they would operate in graduate and professional

15. *Grutter v. Bollinger*, 539 U.S. 306, 318 (2003) (quoting App. to Pet. for Cert. 208a–09a).

16. *Id.* at 334.

17. *Id.* at 389 (Kennedy, J., dissenting).

18. *Id.* Justice Kennedy took issue with the law school referencing daily enrollment reports near the end of the admission season as evidence of racial balancing.

19. *Id.* at 340.

20. *Id.* at 339–40.

schools.²¹ More importantly, percentage programs could “preclude . . . the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university.”²²

In *Gratz*, the University of Michigan’s undergraduate admissions policy of assigning fixed points to minority applicants was not narrowly tailored because it lacked adequate “individualized consideration.”²³ The Court viewed the policy as a quantitative rather than a qualitative assessment of an applicant’s file. *Grutter* and *Gratz* affirmed *Bakke*’s rejection of racial quotas or of any fixed weight afforded to an applicant’s race.

The admissions policy at issue in *Fisher* is modeled after the policy endorsed in *Grutter*. Specifically, for students that fall below the top ten percent requirement, the University considers an applicant’s Academic and Personal Achievement Indices. The Academic Index looks at traditional markers of academic achievement like high school ranking and standardized test scores. The Personal Achievement Index is a holistic assessment of each candidate. This assessment considers “special circumstances,” which may include socioeconomic status and race, among other factors. Most students are admitted to the University based on the Top Ten Percent Plan with a smaller number admitted under the holistic review. The petitioner in *Fisher* challenged the consideration of race as a factor in an applicant’s holistic review arguing that it was no longer necessary because the Top Ten Percent Plan increased diversity sufficiently.

III. Narrowly Tailored Prong under *Fisher*

In *Fisher*, the Court in a 7–1 vote authored by Justice Kennedy found that educational diversity remains a compelling interest. The Court, however, did announce a doctrinal shift in the narrowly tailored prong of strict scrutiny. This shift differs substantially from judicial precedent.

First, the Court held that the lower courts incorrectly deferred to the University’s judgment on assessing whether the program was narrowly tailored to attain a diverse student body. The Court found that this deferential review was inconsistent with the stringent requirements of the narrowly tailored prong of strict scrutiny. The Court then added that a university’s experience and expertise in adopting or rejecting certain admissions policies can be considered by a reviewing court.

Secondly, a reviewing court must “be satisfied that *no* workable race-neutral alternatives would produce the educational benefits of diversity.”²⁴ The Court explained that “[if] ‘a nonracial approach . . . could promote the substantial interest about as well and at tolerable administrative expense . . . then the university may not consider race.’”²⁵ A reviewing court will have to determine if race-neutral alternatives could promote the educational benefits of diversity “about as well” as its current race-conscious policy.²⁶

There is little guidance on exactly what this means. For example, how does a university or a reviewing court define or quantify “about as well?” How does the university’s experience and expertise in rejecting race-neutral alternatives fit within this calculus? The Court offered no further explanation other than the language it quoted from *Wygant*. In *Wygant*, the Court, in another fragmented decision, held that race-based preferential layoff treatment was unconstitutional. The Court’s reliance on

21. *Id.* at 340.

22. *Id.*

23. *Gratz v. Bollinger*, 539 U.S. 244, 271–72 (2003).

24. *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411, 2420 (2013) (emphasis added).

25. *Id.* (quoting *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 280 n.6 (1986)).

26. *Id.*

Wygant in the higher education context, which involves holistic assessment rather than one based primarily on a racial classification, raises additional questions.

After *Fisher*, universities may feel pressure to implement purportedly race-neutral alternatives like percentage plans. However, as Justice Ginsburg's dissent in *Fisher* points out, percentage plans are not race-neutral and instead explicitly rely on historical patterns of residential segregation to admit students.²⁷ She wrote, "[O]nly an ostrich could regard the supposedly neutral alternatives as race unconscious."²⁸ The Court in *Grutter* also cast doubt on percentage plans because they do not allow for a holistic assessment and instead rely solely on class rank.

IV. *Fisher* on Remand

One of the primary questions the Fifth Circuit will likely address on remand in *Fisher* is whether the University has achieved or when it will achieve a "critical mass." The plaintiff argued that the University's admissions program is not narrowly tailored because the Top Ten Percent Plan already yields a critical mass of diverse students. The plaintiff also argued that the University's use of racial classifications is impermissible because it only minimally impacts the number of enrolled students of color.²⁹

It is unclear whether the Fifth Circuit will define critical mass as a quantitative or qualitative concept, or both. The Court's rejection of quotas in *Bakke*, *Grutter*, and *Gratz* suggests that any definition based solely, or even primarily, on the number of enrolled students of color is constitutionally impermissible. Moreover, a definition based solely or primarily on enrollment numbers as noted by Justice Kennedy in *Grutter* may also hinder the holistic individualized assessment that the narrowly tailored prong of strict scrutiny mandates.

Further, if the Fifth Circuit adopts a numerical approach to critical mass, how can a race-conscious program survive the narrowly tailored inquiry? Specifically, how does a university or a court define or quantify "more than" a minimal impact? For example, if a university were to put forth a specific number or percentage, it would open itself to a challenge that it violated judicial precedent by identifying and pursuing specific targets or goals.

Fisher offers more questions than answers. Nevertheless, the narrowly tailored analysis set forth in *Fisher* signals a significant shift in the active role courts will play in evaluating race-conscious admissions programs. This suggests that any subsequent rulings in *Fisher* may serve as the true test of the ongoing vitality of race-conscious admissions programs in higher education.

Subsequent to this article on the Supreme Court's *Fisher v. University of Texas at Austin* opinion, the Fifth Circuit heard the case on remand. The 2–1 decision ruled in favor of the University, holding that the race-conscious admissions plan employed by the school was narrowly tailored. The opinion stated that viewing critical mass as a "rigid numerical goal" "misses the mark" and that the school's "holistic review" was a "necessary complement to the Top Ten Percent Plan." *Fisher v. Univ. of Tex. at Austin*, 758 F.3d 633, 654 (5th Cir. 2014).

27. *Fisher*, 133 S. Ct. at 2433 (Ginsburg, J., dissenting).

28. *Id.*

29. See Kimberly A. Pacelli, Note, *Fisher v. University Texas at Austin: Navigating the Narrows Between Grutter and Parents Involved*, 63 ME. L. REV. 569, 585 (2011), for a more detailed critique of the minimal impact theory.

The Face of Access to Justice: Diversity, Debt and Aspiration among American Lawyers

Rebecca L. Sandefur

Associate Professor of Sociology and Law, University of Illinois College of Law
and Faculty Fellow, American Bar Foundation

The amount of debt borne by recent law school graduates to pay tuition is staggering. It understandably inhibits the career choices of these young lawyers. Given that minority lawyers are more likely to report debt after law school graduation but generally less likely to find initial employment in more lucrative practice settings, what role is law school debt playing in the legal profession's lack of diversity?

In the United States, lawyers are central gatekeepers of access to justice for individuals facing problems and disputes, for groups struggling for social and legal equality, and for public interests or causes whose proponents seek legal support and protection. Many aspiring attorneys enter law hoping to facilitate the public's access to justice. For example, among a cohort of lawyers who entered the profession around 2000 and were surveyed in 2002, 62% reported that "'a desire to help individuals as a lawyer' or to 'change or improve society' had been 'important . . . goals in [their] decision to attend law school.'"¹ This article reports briefly on research into the supply side of access to justice, examining who mediates between the public's interests and needs and the public's justice system. In particular, this research explores the debt burdens of public-serving lawyers, and how debt may shape the face of access to justice. In an era of historically high educational debt and relatively low salaries for lawyers who serve the public, who does the public's legal work?

The U.S. legal profession remains less diverse than the public it serves. For example, in the 2000 Census, 12.5% of the U.S. population identified as Hispanic,² while Hispanics were 3.7% of those passing the bar for the first time around that same time.³ Similarly, 12.3% of the U.S. population identified as black or African American in 2000,⁴ while 5.6% of lawyers who entered practice around the same time identified as black.⁵

Many early-career attorneys enter jobs where they help individuals or work to change or improve society. We see this particularly when we step back to consider the full range of lawyers who work for the public. These attorneys include public servants, employed in government, and public interest attorneys, employed in non-profit organizations or public interest law firms. But a third group of

1. Rebecca L. Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 91 (2009) (footnote omitted).

2. Karen R. Humes, Nicholas A. Jones & Roberto R. Ramirez, *Overview of Race and Hispanic Origin: 2010*, US CENSUS BUREAU 4 tbl.1 (Mar. 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

3. RONIT DINOVITZER, BRYANT G. GARTH, RICHARD SANDER, JOYCE STERLING & GITA Z. WILDER, NAT'L ASS'N FOR LAW PLACEMENT FOUND. FOR LEGAL RESEARCH AND EDUC. & AM. B. FOUND., *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 21 tbl.2.1 (2004), available at <http://www.americanbarfoundation.org/uploads/cms/documents/ajd1.pdf> [hereinafter *AJD1*].

4. Humes, et al., *supra* note 2.

5. *AJD1*, *supra* note 3.

lawyers also serves the public: those lawyers who deliver the ordinary legal services that Americans need in order to handle their everyday problems in our “law-thick”⁶ world. Criminal defense is part of this, but so is legal assistance with a range of civil justice issues: widespread and potentially serious problems involving the security of people’s housing, their employment or livelihood, their debts and access to credit, their intimate relationships, and care for vulnerable and dependent children and adults.⁷ Some lawyers engaged in direct service to the public work as employees of government or nonprofit organizations, but legal aid lawyers and public defenders have long constituted only a small part of the U.S. legal profession.⁸ The majority of lawyers who provide direct service to individual members of the public do so in the context of private practice.⁹

While public-serving lawyers work in different settings serving different kinds of clients, they share two important aspects of their situation: working for the public, in one way or another, and high levels of educational debt coupled with earnings low in comparison with lawyers who do other kinds of work. Findings from the first wave of the After the JD (AJD1) study illustrate the prevalence of legal work for the public among the bar. The After the JD (AJD) study is a longitudinal survey of an initial sample of over 5,000 respondents representing the experiences of people who became eligible to practice law for the first time around the turn of the twenty-first century.¹⁰ By my calculations, in 2002, when AJD lawyers were a few years into their careers, 42.6% of practicing lawyers were doing legal work for the public, either serving individuals, serving government, or serving causes they deemed in the public interest.¹¹ Among lawyers working for the public in different capacities, the most common roles involved service to government (41.9%) and providing legal services to individuals (54.9%). Among those lawyers who worked for individuals, over four-fifths (83%) were working in private practice. A small proportion of AJD1 lawyers working for the public worked in public interest organizations (3.2%).

The supply of public-serving lawyers is contingent on lawyers’ ability and willingness to sustain high debt burdens while receiving relatively low salaries. The challenge that public-serving lawyers face can be illustrated with further findings from the AJD1. As Figure 1 reveals, high levels of debt in early career are widespread, so that lawyers receiving very different pay bear similar average debt levels. Public-serving attorneys, regardless of their work settings, receive earnings low relative to their average debt. As Figure 1 demonstrates, attorneys working in government and in the kinds of small firm private practice where individual clients purchase their legal services earn substantially less on average than attorneys employed in the larger private practice firms that tend to serve organizational clients of different types or attorneys employed by businesses. Thus, the ratio of debt to earnings among public-serving lawyers is much higher than for other attorneys.

6. Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice through the (Un) Corporate Practice of Law*, 38 INT’L REV. L. & ECON., No. 1-2, Jun. 2014, at 43, 43.

7. Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51–59 (2010).

8. See, e.g., CLARA N. CARSON, AM. B. FOUND., *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000*, tbl.6 (2004) (reporting that these lawyers have constituted 1–2% of the U.S. legal profession over the past several decades).

9. A famous finding from twentieth-century studies of the U.S. legal profession is that the bar has two “hemispheres,” one made up of lawyers in solo and small firm practice who serve the legal needs of individuals and small business and one made up of lawyers in larger organizations who serve businesses and other kinds of organizations. See, e.g., JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1994).

10. See generally AJD1, *supra* note 3, at 13–15.

11. These findings are based on original calculations from the After the JD data. In these analyses, lawyers working for individuals are defined as those working in legal aid and criminal defense and lawyers in private practice who report that at least 60% of their clients are individuals, as opposed to businesses, government agencies, or other kinds of organizations. Government lawyers are defined as those working for agencies of government other than legal aid or public defender offices. Public interest attorneys are defined as those working in public interest organizations.

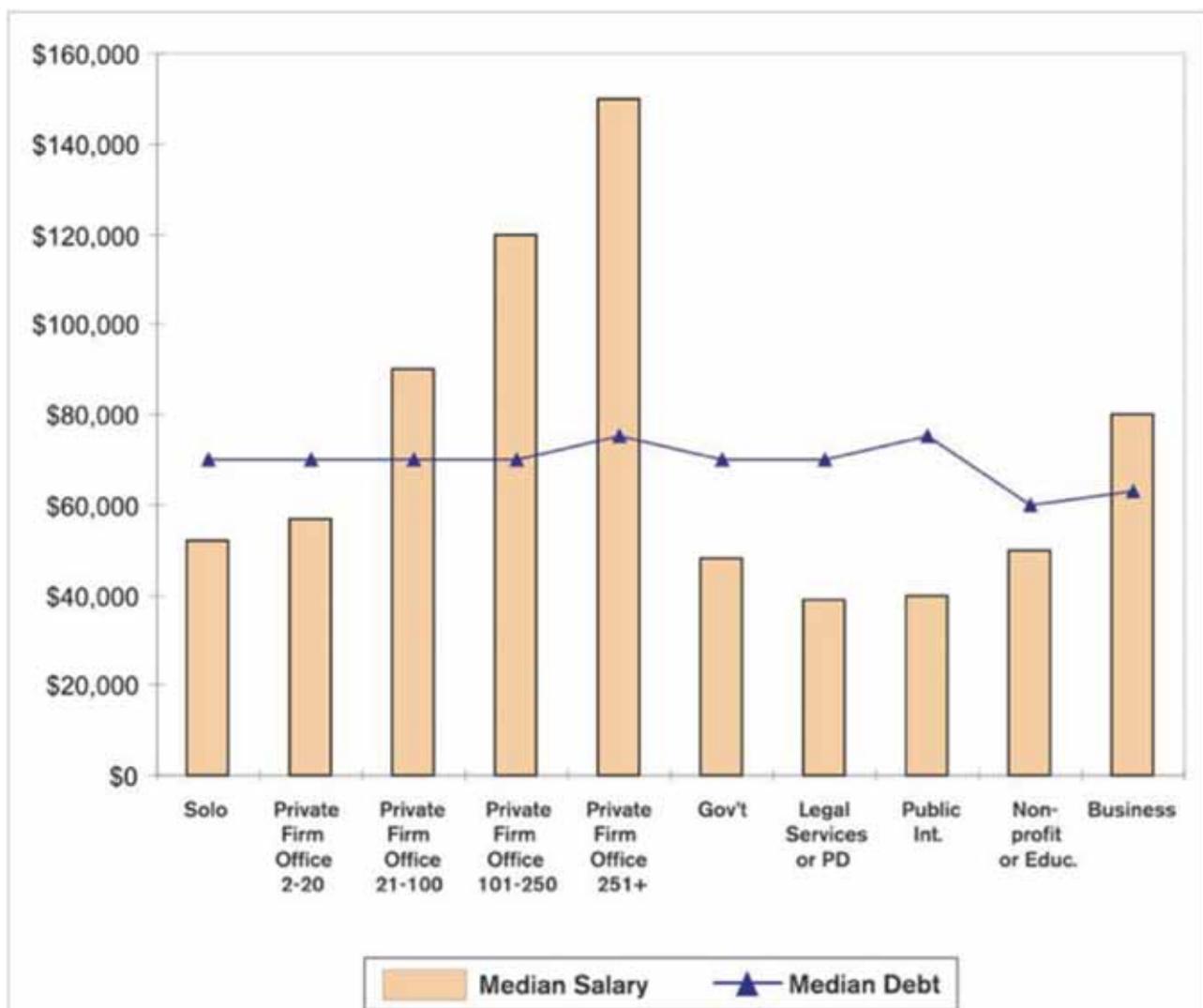


Figure 1: Median Salary and Median Debt among US Lawyers Entering Practice Around 2000: After the JD, Wave 1.¹²

Loan repayment assistance programs (LRAPs)¹³ and student loan forgiveness programs targeting people working in public service¹⁴ can aid some attorneys who work for government agencies or in public interest organizations in handling their educational debt. But these resources are not available to all lawyers in public interest or public service. More significantly for the public's access to justice, LRAPs and loan forgiveness are generally not available to the thousands of early-career attorneys who currently work or wish to work in private practice serving ordinary Americans confronting legal problems. As one respondent in a recent study of law students put it:

I would love to do solo practice. Believe me, if we had a national loan repayment program that made it possible for people to move to Garden City, Kansas, and set up shop, I think a lot of people would do that . . . [but] how the hell am I going to pay off my loans?¹⁵

12. Gita Z. Wilder, Nat'l Ass'n for Law Placement & The NALP Found., *Law School Debt Among New Lawyers—An After the JD Monograph*, NAT'L ASS'N FOR LAW PLACEMENT 16 fig.3 (2007), http://www.nalp.org/assets/645_ajddebt-monograph2007final.pdf.

13. For an overview of LRAPs, see *Loan Repayment Assistance Programs*, A.B.A., http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs.html (last visited Aug. 18, 2014).

14. See generally Constantine Von Hoffman, *Student Loan Forgiveness Plans Underused*, CBS MONEYWATCH (Aug. 29, 2013, 12:56 PM) <http://www.cbsnews.com/news/student-loan-forgiveness-plans-underused/>.

15. DEBRA J. SCHLEEF, *MANAGING ELITES: PROFESSIONAL SOCIALIZATION IN LAW AND BUSINESS SCHOOLS* 179 (2005).

While average debt levels are fairly constant across attorneys doing different kinds of work in early career, they are not constant across different groups of early-career attorneys. In particular, minority attorneys are more likely to report debt than white attorneys. In the first wave of the After the JD, 94% of black and 95% of Hispanic lawyers reported bearing at least some educational debt, while 86% of both Asian and Native American attorneys reported educational debt.¹⁶ By comparison, 81% of white respondents reported debt in the early years out of law school.¹⁷ Among attorneys with debt, Hispanic attorneys reported the highest median debt, \$72,000, while white, Asian, and black attorneys reported median debt levels of \$70,000.¹⁸

Black and Hispanic lawyers were more likely to start their law careers with educational debt, and also more likely than white or Asian attorneys to be working in public-serving law jobs during their early careers. Black lawyers made up 6.6% of the AJD2 sample,¹⁹ but 9% of AJD2 lawyers working for the public as understood here—that is, working for government, in public interest organizations, or predominantly in the direct service of individual clients.²⁰ Hispanic lawyers made up 4.5% of AJD2 lawyers,²¹ but 6% of public-serving lawyers, when serving the public is understood in this way.²² The debt forgiveness programs available to some public-serving lawyers may have been an attraction to black and Hispanic attorneys, who were more likely to leave law school with debt. In AJD2, 21.1% of black attorneys and 19.9% of Hispanic attorneys worked for the government, in comparison with 16.1% of Asian and 15.9% of white attorneys.

Black and Hispanic attorneys were also less likely to be working in the kinds of small-scale private practice settings that provide service for ordinary American's justice problems. In AJD2, 29.1% of white attorneys were in solo practice or firms of 2–20 lawyers, while 23.3% of Hispanic attorneys and 24.6% of black attorneys were working in these settings.²³ Working in a community-based law practice raises challenges not only of money, but also of mentoring. In order to devise a business model, build up a client-base, and manage a practice, new attorneys need advice and information historically not taught in most law schools.²⁴ This mentoring may not be readily available to attorneys who are the first generation of their families to attend college and take professional jobs.

The present moment is a time of tremendous uncertainty in the American legal profession. It is also a moment of opportunity. Many young people enter law dreaming of serving the public. The profession faces a challenge: can it design institutions that make public-serving law jobs accessible, both financially and practically, to the full range of attorneys who may want to take up such work?²⁵ These new institutions will be necessary in order for the face of access to justice to come to look more like the public it serves.

16. Wilder, et al., *supra* note 12, at 9 tbl.2A.

17. *Id.*

18. *Id.* at 12 tbl.3A.

19. RONIT DINOVITZER, ROBERT L. NELSON, GABRIELE PLICKERT, REBECCA SANDEFUR & JOYCE S. STERLING WITH TERRY K. ADAMS, BRYANT G. GARTH, JOHN HAGAN, GITA Z. WILDER & DAVID B. WILKINS, AM. B. FOUND. & THE NALP FOUND. FOR LAW CAREER RES. & EDUC., *AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS* 19 tbl.2.1 (2009), available at <http://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf> [hereinafter *AJD2*].

20. Author's calculations from the After the JD data.

21. *AJD2*, *supra* note 19.

22. Author's calculations from the After the JD data.

23. However, black lawyers also had the highest rates of participation in solo practice of any racial or ethnic group in AJD2. 15.5% of black attorneys reported working in solo practice in the second wave of the survey, by comparison with 8.7% of Hispanics, 6.2% of Asians, and 9.6% of whites. *Id.*

24. See Luz E. Herrera, *Reflections of a Community Lawyer*, 3 *THE MOD. AMER.*, Summer-Fall 2007, at 39, for a description of some of the challenges of starting a community-based law practice in an underserved community.

25. American Bar Association President James Silkenat has made this a signature issue of his presidency in his Legal Access Job Corps initiative. http://www.americanbar.org/groups/leadership/office_of_the_president/legal_access_jobs_corps.html (visited March 28, 2014).

The *Call to Action* Ten Years Later: A Look at the Effects on Retention of Women and Racial Minorities at Law Firms

Sharla C. Toller

Managing Director, Major, Lindsey & Africa

It has been ten years since the legal profession's Call to Action was issued. Sharla C. Toller analyzes what, if any, has been its long term impact.

I. Introduction

Although the legal profession is one of the most prestigious professions in the United States, it is also one of the most regressive when it comes to diversity.¹ Large corporate law firms have struggled over the years to retain diverse lawyers, in particular, women and racial minorities. Unfortunately, women and racial minorities leave law firms at a much higher rate than white males.² According to a 2008 NALP Foundation Study, 52% of racial minority lawyers leave law firms by the third year, and 85% leave by the fifth year of joining.³ These groups often leave law firms within three years of practicing due to a minimum chance they will be promoted to partnership, among other reasons.⁴

In contrast, corporations and their legal departments have long recognized the need for a diverse workforce.⁵ In addition to promoting diversity within their own workforce, corporations have also made greater demands on their suppliers, including their outside servicing law firms, to diversify their workforce.⁶ Along these lines, within the past fifteen years, hundreds of major corporations have made at least two public pledges to promote diversity at their outside law firms. These pledges include the 1999 *Diversity in the Workplace: A Statement of Principle*⁷ (“*Statement of Principle*”), and a renewal of this commitment in a 2004 document entitled *A Call to Action: Diversity in the Legal Profession* (“*Call to Action*”). The *Call to Action* recognized that the efforts in diversity at law firms had reached a plateau after the execution of the *Statement of Principle*. In response, the *Call to Action* went further in scope than the *Statement of Principle* by stating that the signatories would “end or limit” their relationships with law firms whose performance evidenced a “lack of meaningful interest in being diverse.”⁸

1. See Terese Ching & Brian H. Kleiner, *Discrimination and Harassment in Law Firms*, 20 EQUAL OPPORTUNITY INT’L 106 (2001).

2. See Andrew Bruck & Andrew Canter, Note, *Supply, Demand, and the Changing Economics of Large Law Firms*, 60 STAN. L. REV. 2087, 2098 (2008).

3. THE NALP FOUNDATION, UPDATE ON ASSOCIATE ATTRITION: FINDINGS FROM A NATIONAL STUDY OF LAW FIRM ASSOCIATE HIRING AND DEPARTURES 11 tbl.5 (2009).

4. Ching & Kleiner, *supra* note 1.

5. See John M. Conley, *Tales of Diversity: Lawyers’ Narratives of Racial Equity in Private Firms*, 31 LAW & SOC. INQUIRY 831, 845 (2006); see also Gail Robinson & Kathleen Dechant, *Building a Business Case for Diversity*, ACAD. MGMT. EXECUTIVE, Aug. 1997, at 21, 21.

6. David B. Wilkins, *Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars*, 11 GEO. J. LEGAL ETHICS 855, 856 (1998).

7. *Diversity in the Workplace: A Statement of Principle*, 9 BUS. L. TODAY 41 (1999–2000) [hereinafter *Statement of Principle*].

8. Karen Donovan, *Pushed by Clients, Law Firms Step Up Diversity Efforts*, N.Y. TIMES, Jul. 21, 2006, http://www.nytimes.com/2006/07/21/business/21legal.html?_r=2&oref=slogin&.

Despite corporations' strong encouragement for law firms to diversify over the past fifteen years, the corresponding financial incentive to do so, as well as increased representation of women and racial minorities in the legal talent pool and at the entry-level ranks within law firms over the past decade, inequities in the retention of women and racial minorities at law firms continue to persist. Although many law firms have developed varying types of diversity initiatives in an effort to improve the situation, these practices have not been effective in addressing the systemic retention issue of women and racial minorities.⁹

One of the main causes for the retention issue is the traditional law firm business model which does not lend itself to the retention of women and racial minorities. Law firms' continued adherence to its outdated traditional business model, which includes the billable hour structure, outdated recruiting practices, and the associate-to-partner "up or out" career track, is an underlying cause of the retention issue for women and racial minority lawyers. The effects of the current traditional business model leads to many of the causes of the retention issue, including bias in evaluations, issues in the distribution of work assignments, an adverse effect on these groups from unconscious bias and stereotypes, issues relating to business development and networking, and work/life balance issues. However, a change in the traditional law firm business model would result in increased retention of women and racial minorities at law firms.

Moreover, although corporations have increasingly pledged to enforce diversity sanctions on their outside law firms, the consequences that corporations employ for noncompliance are either minimal or nonexistent. Corporations should adopt an industry standard model for addressing diversity issues at their outside servicing law firms.

II. The Impact of the Traditional Law Firm Business Model on the Retention of Women and Racial Minorities

In response to pressures from their corporate clients, many law firms have made some level of commitment to diversity. However, there are many reasons why their efforts are not successful in the retention of women and racial minority lawyers. Law firm leaders must realize that the traditional law firm structure is not conducive to an inclusive environment. One key reason is because for dominant groups, such as white males, navigating through the traditional law firm model is much easier than for non-dominant groups, such as women and racial minorities.¹⁰

9. A comparison of data showing only a slight increase in the percentages of women and racial minorities at law firms since the execution of the *Call to Action* is outlined below in Table 1.

Table 1: Women and Racial Minorities at Law Firms – Partners and Associates

Year	Partners		Associates	
	% Women	% Minority	% Women	% Minority
2003	16.81	4.04	43.02	14.63
2012	19.91	6.71	45.05	20.32
Total % Increase	3.1	2.67	2.03	5.69

See Press Release, Women and Attorneys of Color Continue to Make Small Gains at Large Law Firms, Nat'l Ass'n of Legal Professionals (Nov. 7, 2003), www.nalp.org/2003womenandattorneysofcolor (for 2003 data); Press Release, Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners Continue to Make Small Gains, Nat'l Ass'n of Legal Professionals (Dec. 11, 2013), http://www.nalp.org/lawfirm-diversity_2013 (for 2012 data).

10. LAURA A. LISWOOD, *THE LOUDEST DUCK: MOVING BEYOND DIVERSITY WHILE EMBRACING DIFFERENCES TO ACHIEVE SUCCESS AT WORK* (2010).

A. Issues Affecting Retention of Women and Racial Minorities

1. The Traditional Law Firm Business Model

Developed in the nineteenth century, the Cravath System is the business model law firms have used over the years.¹¹ The Cravath System involves a billable hour structure, an associate-to-partner career progression track, and the “up or out” system of career progression.¹² The system has been adopted by most law firms, and many have used the traditional Cravath System since their inception.¹³ Around 1975, corporate law firms adopted the now industry standard hourly system of billing clients.¹⁴ Under this system, a lawyer is expected to bill only the time actually spent working on a client’s matter.¹⁵ Thus, there is a distinction between the actual time spent at work and the time that can legitimately be billed to a client.¹⁶ The billable hour system is counterintuitive because it rewards an inefficient working style.¹⁷

As part of the traditional law firm business model, the system of promotion from an associate to partner has been commonly referred to as the “up-or-out” system.¹⁸ This business model is built on substantial attrition, and if associates are not promoted to the partnership level they are often dismissed from the law firm.¹⁹ The “up-or-out” system adversely affects women and racial minorities who often leave the law firm because they know they have a minimal chance of making partner, or may be asked to leave the law firm after a certain number of years, although the lawyer may have excellent legal skills, only because they are not at a point in their professional development (including the potential and track record for bringing in business) to make partner.²⁰

For women, certain family decisions such as pregnancy and maternity leave can often have an adverse effect on the timing of when they are promoted to partner.²¹ According to a 2006 focus group conducted by the ABA Commission on Women in the Legal Profession (hereinafter referred to as the “ABA 2006 Focus Group”), high percentages of women and racial minorities report they are adversely affected with respect to promotion opportunities in law firms.²² The survey results indicated that 16% of women of color and 19% of men of color were reportedly denied advancement or promotional opportunities because of race; 28% of white women because of gender.²³ Whereas, less than 1% of white men and women were reportedly denied advancement opportunities because of race.²⁴

Also, women attorneys are often placed in positions with no advancement opportunity or positions that do not provide opportunities to participate in management decisions.²⁵ These positions include staff

11. Bruck & Canter, *supra* note 2, at 2092–93.

12. *See id.*

13. *See generally*, Rick Palmore, et al., *2008 White Paper*, LEADERSHIP COUNCIL ON LEGAL DIVERSITY (2008), <http://www.lcdnet.org/resources/2008-white-paper/>.

14. *See* Bruck & Canter, *supra* note 2, at 2094–95 (footnotes omitted).

15. Ingo Forstenlechner & Fiona Lettice, *Well Paid but Undervalued and Overworked: The Highs and Lows of Being A Junior Lawyer in A Leading Law Firm*, 30 EMP. REL. 640, 642 (2008).

16. *Id.*

17. Clayton M. Christensen & Scott D. Anthony, *eLawForum: Transforming Legal Services*, INNOSIGHT 5 (2012), available at http://www.drystonecapital.com/pdf/christensen_case_study.pdf.

18. *See* Kathleen L. McGinn & Katherine L. Milkman, *Looking Up and Looking Out: Career Mobility Effects of Demographic Similarity among Professionals*, 24 ORG. SCI. 1041 (2013).

19. *See id.*; Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041 (2011).

20. McGinn & Milkman, *supra* note 18.

21. Paula A. Patton, *Women Lawyers, Their Status, Influence, and Retention in the Legal Profession*, 11 WM. & MARY J. WOMEN & L. 173 (2005).

22. JANET E. GANS EPNER, ABA COMMISSION ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* 9 (2006).

23. *Id.*

24. *Id.*

25. *See* Barbara M. Flom & Stephanie A. Scharf, *Report of the Sixth Annual National Survey on Retention and Promotion of Women in Law Firms*, NAT’L ASS’N OF WOMEN LAWYERS & THE NAWL FOUND. 1, 15 (Oct. 2011), www.nawl.org/d/do/62.

attorney, non-equity partner, and counsel positions.²⁶ A 2011 National Association of Women Lawyers (“NAWL”) survey reported that, “[w]omen represent 55% of staff attorneys”; and 34% of counsel positions in law firms.²⁷ Further, “women are much more likely than men to be ‘counsel’ in firms than partners or equity partners—and therefore, more likely than men to be viewed as ‘not suitable’ for partnership”²⁸

2. Conscious Bias, Unconscious Bias, and Stereotypes

Conscious and unconscious bias in law firms can lead to discriminatory effects on women and racial minorities. A substantial number of people consciously or unconsciously hold discriminatory or stereotypical views about other minority groups.²⁹ Everyone brings unconscious beliefs about others in the workplace.³⁰ However, the key is to identify and recognize the bias and address it. Unfortunately, many law firm leaders underestimate the impact such bias can have on women and racial minority lawyers.³¹ These biases can manifest in a variety of ways, including in the evaluation process of women and racial minority attorneys, as discussed in greater detail in the next section.³² It can also affect how women and racial minority lawyers perform.³³

Racial, ethnic, and gender stereotypes can also play a role in the retention of women and racial minorities at law firms. Some representative racial stereotypes include an assumption that blacks and Latinos are less intelligent and less qualified than their white colleagues.³⁴ Asian Americans have a stereotype of being smart and hardworking, but not assertive.³⁵ Women, particularly women of color, are sometimes not assumed to be lawyers, but mistaken for court reporters or secretaries.³⁶ Women can also be plagued with the stereotype of being meek, less competitive, and lacking business development skills.³⁷ Mothers are often assumed to be less accessible than men, even if they are working a full-time schedule.³⁸ In contrast, men are viewed as better lawyers because of their aggressive and outspoken stereotype.³⁹ As a result of these biases and stereotypes, in some instances, racial minorities have reported feeling isolated, and marginalized.⁴⁰ Many women similarly experience feelings of isolation and exclusion from the dominant white male “good ole boys” network.⁴¹

3. Bias in Associate Evaluations

Associate evaluations are critical to an associate’s development at a law firm. Evaluations are helpful guidelines for associates to know where they need to improve and make adjustments if they are interested in progressing to a partner position. Certain biases can adversely affect woman and racial minorities in the evaluation process at law firms.

According to the ABA 2006 Focus Group, “[c]lose to one-third of women of color in the survey (31%) said they have had at least one unfair performance evaluation, as did 25% of white women and 21% of

26. *Id.* at 1.

27. *Id.* at 2.

28. *Id.* at 10.

29. David B. Wilkins & G. Mitu Gulati, *Why Are There so Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 496 (1996).

30. LISWOOD, *supra* note 10.

31. Rhode, *supra* note 19.

32. Wilkins & Gulati, *supra* note 29.

33. Rhode, *supra* note 19.

34. *Id.*

35. *Id.*

36. *Id.*

37. Ching & Kleiner, *supra* note 1; Rhode, *supra* note 19.

38. *See supra* text accompanying note 37.

39. Ching & Kleiner, *supra* note 1.

40. Rhode, *supra* note 19.

41. *Id.*

men of color.”⁴² However, “less than 1% of white men reported ever having received an unfair performance evaluation.”⁴³ White males are more likely to receive fair and constructive evaluations and feedback.⁴⁴

The performance evaluation process varies from law firm to law firm. However, law firms should be particularly sensitive to processes that may lead to bias for women and racial minority attorneys such as the “similar to me” approach.⁴⁵ “‘Similar to me’ is [an] error [made] when we judge those who are similar to us more highly than those who are not.”⁴⁶ Because most law firm partners are white males, the “similar to me” approach likely affects women and racial minority attorneys at a much higher rate than white males in the evaluation process. The opposite effect of this can also negatively impact women and racial minorities if partners are reluctant to offer candid feedback to these groups in fear of appearing racist.⁴⁷ This can result in a senior or mid-level associate receiving soft evaluations for several years, and not given the opportunity to correct mistakes that can assist in the associate’s professional development towards advancement in the law firm.⁴⁸

4. Distribution of Work Assignments

The level of sophistication and complexity of work assignments that associates receive is important to the professional development of all associates, particularly for purposes of advancement to partner. Less sophisticated assignments in law firms might include document review, legal research, and drafting a portion of a larger brief.⁴⁹ More sophisticated assignments might include participation in a trial, such as conducting direct or cross examinations, witness interviews, and significant client management and interaction.⁵⁰ According to the ABA 2006 Focus Group survey, women and racial minorities, more often than white male associates, are passed over for more desirable, high profile, and sophisticated assignments.⁵¹

How assignments are distributed to associates can vary from firm to firm. Some law firms have an assignment partner. The purpose of the assignment partner is to monitor the work docket for associates in an effort to assure that associates are not overly worked or has enough work. Often, partners are required to go to the assignment partner before giving any associate an assignment. However, most law firms distribute work assignments on an ad hoc basis, where a partner subjectively chooses the associates he or she wants to work on an assignment. In both instances, the system can lead to bias because partners subjectively choose whom they prefer to work with on an assignment.

5. Business Development and Networking Opportunities

Integration into the internal network at a law firm is crucial for upward mobility to partnership.⁵² Internal networking can often lead to sponsors for advancement to partner, that is, someone who supports an associate’s progression into the partnership and advocates on an associate’s behalf to other partners, business development opportunities (which is essential for partnership consideration), and the opportunity to be assigned to high profile assignments.⁵³ These internal networking opportunities often come from formal or informal mentors or sponsors within the law firm. Internal networking is critical in law firms because,

42. EPNER, *supra* note 22, at 26.

43. *Id.* (emphasis removed).

44. LISWOOD, *supra* note 10.

45. JOHN R. HOLLENBECK ET AL., HUMAN RESOURCE MANAGEMENT: GAINING A COMPETITIVE ADVANTAGE (2010).

46. *Id.* at 388.

47. Rhode, *supra* note 19.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

“In private law firms, this can make a huge difference because of the general ‘free market’ nature of associating with others to work on cases, refer clients, etc. To survive in private practice, you not only need to excel at your trade, you also need a strong support network within the firm.”⁵⁴

Women and racial minorities are frequently excluded from internal networking opportunities.⁵⁵ It is often manifested in situations where partners invite certain associates to social events, and select those they feel most comfortable with to attend. This type of bias is difficult to identify because, “by human nature, we tend to be more comfortable with those with whom we can identify and share similar background and interests.”⁵⁶ The 2006 ABA Focus Group revealed that “[s]ixty-two percent of women of color in the survey reported being excluded from informal or formal networking opportunities, as did 60% of white women. Thirty-one percent of men of color and only 4% of white men reported similar problems.”⁵⁷

External networking opportunities are also important to the success of an associate.⁵⁸ External networks are important because they are the basis for which an attorney is able to bring business opportunities to the law firm, which is an important requirement for promotion to partner.⁵⁹ For racial minorities, business development can be a challenge because people within this group often lack the necessary business contacts.⁶⁰ Specifically, racial minorities on average come from lower income households than their white counterparts, making it difficult to create business development opportunities through family members and friends.⁶¹ Bias also affects women and racial minority associates in the area of external networking. According to the ABA 2006 Focus Group, “43% of women of color reported limited access to client development and client relationship opportunities, as did 55% of white women, 24% of men of color, and only 3% of white men.”⁶²

6. Work/Life Balance Issues

Due to the accessibility demands that clients place on law firm attorneys and billable hour requirements often in excess of 1,800 hours annually, it is often difficult for law firm associates to attain work/life balance. An 1,800-hour billable requirement can result in an associate working in excess of seventy to eighty hours per week for at least seven to ten years, the average time it takes to make partner.⁶³ Many women and racial minorities often leave law firms early in their careers in part because they believe there is little chance for them making partners, as a result, there is little incentive to work such long hours for an excessive number of years.⁶⁴ This issue also disproportionately and adversely affects women, who often have family obligations.⁶⁵ Part-time work arrangements, as discussed in more detail in section I.B.3., *infra.* at law firms began as a way for retaining women attorneys who struggle to balance law firm life with family responsibilities, but can be ineffective.⁶⁶

Although many law firms started to provide options for part-time work arrangements, with over 90% of law firms reporting such policies, only about 4% of lawyers within these firms actually use the

54. EPNER, *supra* note 22, at 17 (emphasis removed).

55. Rhode, *supra* note 19.

56. EPNER, *supra* note 22, at 17.

57. *Id.*

58. *See generally id.*, at 19.

59. *Id.*

60. Leonard M. Baynes, *Falling Through the Cracks: Race and Corporate Law Firms*, 77 ST. JOHN'S L. REV. 785, 793 (2003) (footnote omitted).

61. *Id.*

62. EPNER, *supra* note 22, at 19.

63. Ching & Kleiner, *supra* note 1.

64. *Id.*

65. *Id.*; Mark Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1919 (2008).

66. Patton, *supra* note 21, at 189.

program.⁶⁷ One reason for this low percentage of usage is because many lawyers do not think part-time programs are worth some of the resulting consequences.⁶⁸ The challenge has been that the law firm community as a whole does not value the benefits of part-time programs, and do not support and respect the decision of those lawyers who opt to participate in them.⁶⁹

Another reason is because part-time programs can decrease an associate's chances of making partnership once an associate goes off-track and in a part-time working arrangement.⁷⁰ Also, lawyers on a part-time track are compensated accordingly, but due to demands from partners or clients, they continue to work a full-time schedule.⁷¹ Further, lawyers on a part-time schedule are sometimes stigmatized for not working as hard.⁷² Additionally, many women associates who have taken advantage of part-time programs report a lower likelihood of receiving high-profile work assignments and training opportunities.⁷³

B. Traditional Law Firm Diversity Initiatives for Women and Racial Minorities

In response to client demands for increased retention of women and racial minorities, law firms have increasingly adopted various diversity initiatives targeted at increasing the hiring and retention of women and racial minorities, as well as other diverse groups. These initiatives include, but are not limited to, sponsor and mentor programs, the formation of affinity groups, and part-time program options. Many law firms have also hired diversity officers, a position that focuses on addressing diversity issues.⁷⁴ Unfortunately, these initiatives seldom result in fundamental structural changes or routine monitoring, and can thus be ineffective tools to resolving the diversity retention problem at law firms.⁷⁵ This section describes some of the more popular diversity initiatives and explains how, in some instances, they can be ineffective in retaining women and racial minorities at law firms.

1. Sponsorship and Mentoring Programs

Law firms have started formal mentoring and sponsorship programs in response to corporate client pressures. These opportunities can provide the following types of support for attorneys: role modeling, friendship, personal and professional advice, advocacy, and networking opportunities.⁷⁶ Mentoring relationships have been defined as the "career and psychosocial development support provided by a more senior individual (mentor) to a junior (protégé)."⁷⁷ Sponsors are different from mentors in that they sponsor, nominate, or support a protégé's potential promotion.⁷⁸ Mentoring programs can be effective diversity strategies.⁷⁹ However, not everyone receives the benefit of a mentoring relationship, and if they do, it may not be effective.⁸⁰ Research suggests bias can affect mentoring and sponsorship opportunities for women and racial minorities in law firms.⁸¹

The ABA 2006 Focus Group shows that even when women and racial minorities have mentors within large corporate law firms, mentors have often been unsuccessful in advocating on their behalf.⁸² Because

67. Rhode, *supra* note 19, at 1056 (footnote omitted).

68. *Id.*

69. *Id.* at 1056–57 (footnote omitted).

70. *Id.*

71. *Id.*

72. *Id.*

73. Galanter & Henderson, *supra* note 65.

74. Arif Virji, *Everyone Benefits When Law Firms Diversify to Match U.S. Population*, S. F. DAILY J., Sept. 13, 2006, at 8.

75. Rhode, *supra* note 19, at 1069.

76. *Id.* at 1071 (footnote omitted).

77. Jing Cao & Yu-Chung Yang, *What are Mentoring and Sponsoring and How do they Impact Organizations?*, Student Works, CORNELL UNIVERSITY ILR SCHOOL 1 (2013), <http://digitalcommons.ilr.cornell.edu/student/30>.

78. *Id.*

79. Rhode, *supra* note 19, at 1071.

80. LISWOOD, *supra* note 10.

81. *See generally* EPNER, *supra* note 22, at 12–17.

82. *Id.* at 14.

women and racial minorities are less likely to be mentored by white men—and even white men report difficulties in their efforts to advocate on behalf of these groups—women and minorities with mentors still may have difficulties progressing in their careers within law firms.⁸³

Moreover, white male mentors sometimes hesitate to select women and racial minorities as protégés, indicating that women are “flight risks” because of family demands, or because they are in high demand and thus hired by another law firm.⁸⁴ Generally, “[p]eople are more comfortable talking to, risking for, and mentoring someone who is like them.”⁸⁵ Given that women and racial minorities are underrepresented in large law firm leadership, they often have a difficult time finding someone who is willing to mentor them; and if a white male does commit to mentoring, he may have a difficult time establishing an effective mentoring relationship.⁸⁶ These bias thoughts towards women and racial minorities ultimately leaves them in a place where either they are not mentored by some of the more powerful partners in the firm; they are mentored in “name” only, and the partner does not truly develop the associate; or they are left with no mentor or sponsor.

2. Affinity Groups

One of the most common diversity initiatives within law firms is affinity groups.⁸⁷ However, their effectiveness can vary.⁸⁸ Affinity groups can provide attorneys with such things as role models, networking contacts, and informal mentoring relationships.⁸⁹ Networks may increase participants’ sense of community, but they have no significant impact on career development.⁹⁰ This may in part be due to white male partners being excluded from participating in these groups. A more effective strategy would be to invite leadership, regardless of racial or gender identity, to participate in at least some of the affinity group discussions so they are privy to the issues these groups face at the firm.

3. Part-time Programs

As previously mentioned, law firms are increasingly providing associates with the option to go part-time. Although part-time programs are available to lawyers, they often feel that going on a reduced schedule is not a viable option.⁹¹ Due to the pressures of the billable hour structure, even on a part-time schedule, associates’ schedules are not respected because partners continue to expect them to be on call and available at all times.⁹² In some cases, they are still working demanding hours, but their pay is reduced because they are officially on a part-time schedule.⁹³ Further, part-time lawyers are often labeled as not being a hard worker and in some cases the quality of the work assignments they receive are effected as a result.⁹⁴ Effectively, the part-time programs at law firms can result in adverse effects for associates. Irrespective of the part-time programs, that are often a part-time option in name only, mothers who have family demands in addition to a demanding work schedule at a law firm are often pushed out of the firm due to the inflexibility of their work schedules and bias against mothers.⁹⁵

83. *Id.*

84. *Id.* at 15–16; Rhode, *supra* note 19, at 1054 (footnote omitted).

85. LISWOOD, *supra* note 10.

86. *See* Rhode, *supra* note 19, at 1072.

87. *Id.* at 1070.

88. *Id.*

89. *Id.* (footnote omitted).

90. *See* Frank Dobbin, Alexandra Kalev & Erin Kelly, *Diversity Management in Corporate America*, CONTEXTS, Nov. 2007, at 21, 25.

91. Rhode, *supra* note 19, at 1056 (footnote omitted)

92. *See id.* at 1056–57 (footnote omitted).

93. *See id.*

94. *See id.*

95. *See generally* Joan C. Williams, Jessica Manvell & Stephanie Bornstein, “Opt Out” or Pushed Out?: How the Press Covers Work/Family Conflict, CTR. FOR WORKLIFE L., U. OF CAL., HASTINGS COLL. OF L. (2006), <http://www.worklifelaw.org/pubs/OptOutPushedOut.pdf>.

III. The Role of Corporations and Law Firms to Increase Retention

A. Changing the Traditional Law Firm Business Model

As previously discussed, the traditional law firm business model leads to adverse effects that contribute to the retention issue for women and racial minority lawyers at law firms. In addition to the traditional diversity initiatives adopted by many law firms and corporations to address retention issues for these groups, there are additional practices that should be adopted in an effort to make progress towards higher retention rates.

There are currently a few newly formed law firms and recruiting companies that have adopted a new business model that meets the demands of corporate clients and whose business practices offer solutions to the diversity problem. These newly created law firm and sectors within recruiting companies, including Major, Lindsey & Africa's Solutions Practice Group, minimize overhead for their corporate clients by hiring lawyers that work remotely or at the client's office. Unlike in a traditional law firm, attorneys have the flexibility to select and turn down assignments, work on a part-time or full-time basis, and develop skills in new practice areas. Less focus is placed on billable hours and advancing from associate to partner.⁹⁶ Lawyers are paid according to time actually worked and are not under the traditional law firm billable hour system. Some or all of these practices should be considered by law firms in changing the traditional law firm business model.

1. Predictable Costs/Abandon the Billable Hour System

An across the board fixed fee arrangement eliminates the billable hour system which disproportionately affects the retention of women lawyers due to their increased likelihood to assume caretaking responsibilities at home.⁹⁷ If an across-the-board fixed fee arrangement is not an option for a law firm due to its varying practice groups (e.g., litigation), the adoption of variations of the fixed fee arrangement, including a phased fee and collared fee arrangements, is an alternate solution. As previously mentioned, billable hour requirements have significantly increased at law firms, which results in increased working hours for lawyers.

The elimination of the billable hour tracking system would result in more predictable schedules for lawyers. This would be particularly useful to the retention of women with family responsibilities, and result in increased retention. As previously discussed, the current diversity initiative that law firms have adopted in an effort to address this issue is the option to work part-time. However, with the underlying pressures to bill a certain amount of hours to remain on track to become partner, and the resulting stigma attached to going on a part-time schedule as a result of the billable hour model as opposed to a focus on performance, work product, and outcomes, the part-time system is not a viable solution to this issue.

2. Flexible Career Path for Lawyers

Under the traditional law firm business model, associates only have one career path option under the "up or out" system, namely, to make partner or leave. Law firms should consider an alternate model that allows junior lawyers to choose their career path. One option is to give lawyers more autonomy over how many hours they desire to work by selecting the assignments they want to handle. Lawyers would get paid on an hourly basis in relation to how many hours they actually billed on assignments, although there would be no billable hour requirement. However, law firms should still give junior lawyers the option to become partner if they desire. The partnership track would be slightly different from the existing track, in that billable hours would not be a factor in the decision process. Factors for promotion to partner would

⁹⁶. See generally Stephanie L. Kimbro, *Regulatory Barriers to Growth of Multijurisdictional Virtual Law Firms and Potential First Steps to Their Removal*, 13 N.C. J. L. & TECH. 165 (2012).

⁹⁷. Rhode, *supra* note 19, at 1056.

still include a lawyers' ability to bring in business and their ability to produce excellent work product for clients. Partners of the firm would continue to focus on business development opportunities and receive a percentage of the firm's profits. As previously mentioned, women and racial minorities are frequently excluded from internal and external networking opportunities that assist in their ability to develop business for the firm, which is typically a requirement for partnership. The new business model would eliminate the pressures that women and racial minorities have to bring business to the firm in an effort to make partner, or risk being released from the firm under the "up or out" system of promotion.

Law firms adopting this model can decrease overhead by having lawyers work onsite at corporations or remotely at home. Instead of the traditional office space, law firms can decrease real estate office space and move to alternative workspace arrangements for cost savings. Alternatives to secretarial and administrative support should also be assessed.

Further, under the traditional law firm business model, assignments are typically distributed in an ad hoc manner, and are subject to bias. Under the traditional system, women and racial minorities are subject to not being selected for key assignments that can aid in the development of a lawyer on the basis of unconscious bias against them. Along these lines, under the current system, women and racial minorities "are also subject to 'race matching'; they receive work because of their identity, not their interests, in order to create the right 'look' in courtrooms, client presentations, recruiting, and marketing efforts."⁹⁸ In contrast, if the selection of who is placed on a client's assignment is partly the decision of the corporate client (who as previously mentioned are far more likely to value the diversity of their legal teams than law firms), it is far less likely that women and racial minorities will be overlooked or selected for assignments solely on the basis of their diversity group. By eliminating the pressure that law firms currently have under the traditional business model to showcase the few women and racial minorities employed at their firms, and resolving the underlying cause of the retention issue, the decision regarding who is placed on a case could be determined by the corporate client and this new model should result in increased retention of these groups.

B. Increased Corporate Commitment Efforts to Enforce Diversity

Although there is pressure from corporations for their corporate law firms to value diversity, law firms have not made major efforts to comply because the pressure has not created a sense of urgency for the firms to make real change.⁹⁹ Along these lines, corporations have not made serious demands for diversity resulting in an economic stake for law firms to take them seriously.¹⁰⁰ For now, law firms are content with making good-faith efforts towards diversity; and corporations accept it.¹⁰¹ This may be in part because the majority of the major law firms are not diverse, and thus corporations believe they do not have alternate means for outside counsel. Unless a mass number of law firms start making changes in this area, corporations believe they have no choice but to remain with their current law firm providers.¹⁰² Another factor that can affect a corporation's power to demand diversity is the nature of the legal service.¹⁰³ For example, in high stakes cases or work involving highly specialized and technical issues, there may be a scarcity of qualified law firms capable of handling the work.¹⁰⁴ In these cases, "the power of the client to dictate the terms of the relationship decreases."¹⁰⁵

98. *Id.* at 1055.

99. *Id.* at 1063 (footnote omitted).

100. *Id.*

101. *Id.*

102. See Conley, *supra* note 5, at 846.

103. Bruck & Canter, *supra* note 2, at 2110.

104. *Id.*

105. *Id.*

History has shown that law firms are less likely to act in a way that affects real change unless it affects the firm financially.¹⁰⁶ This was the impetus for drafting the *Call to Action*.¹⁰⁷ However, the *Call to Action* is nothing more than a threat with no substance if more corporations do not enforce it. Although some major corporations have made public examples of firms by eliminating large books of business for their failure to achieve meaningful progress in diversity,¹⁰⁸ these instances are rare. Law firms are not likely to change their existing practices without demands and corresponding action from corporations for them to do so.

Further, there is currently no best industry standard for how corporations should manage diversity requests of their outside law firms. Progress in the area of retention of women and racial minority lawyers at law firms can happen with defined diversity standards and consistent enforcement of these standards by corporations. This section provides four clear standards that can be adopted by corporations.

1. Set Achievable Diversity Goals for Law Firms

Corporations should set clear achievable diversity goals for their outside law firms and law firms that are trying to gain the company's business. These goals should be communicated to law firms clearly defining the corporation's diversity standards. These goals should be as specific as possible and avoid generalities, such as merely stating the law firm should make efforts to value diversity. The goals should be aimed at initiatives that assist in the retention of diverse groups. These areas include leadership opportunities and success at the leadership level, as well as sustained retention of diverse groups. Examples of such policies might include demands that women and racial minorities receive credit for bringing in business no matter the circumstances. Specifically, if another partner in the firm brought in business many years ago, but has not recently maintained the client relationship, and another lawyer (in this instance, a woman or racial minority) is able to reestablish the client relationship and obtain the business for the firm, corporations should make sure the client partner is changed to the woman or racial minority lawyer responsible for gaining the business. Further, companies should make it clear that "the work will follow that partner if he or she leaves the firm."¹⁰⁹

Also, specific diversity targets in terms of firm diversity numbers should be set. However, corporations must do more than set diversity numbers they should consistently monitor law firms to make sure they are in compliance. These numbers can be based upon a minimum percentage of the total number of lawyers at the firm. For example, a corporation could demand that their servicing law firms have a minimum of 35% racial minorities. If the firm has 1,000 lawyers, the firm's goal is a minimum of 350 racial minority lawyers. These goals can be broken down even further at the partnership and associate levels.

2. Set Clear Timeline for Achievement

Corporations should not merely set goals with no timeline for when the goals should be achieved. This leads to flexibility for law firms to not meet standards in a reasonable amount of time, and corporations giving law firms long periods of time to comply. Instead, corporations should give law firms a deadline to comply. Compliance deadlines can be tailored to the law firm and based on the individual firm, where they are currently with the corporation's diversity goals, and where the corporation would like them to be. Another option is having strict compliance deadlines across the board, irrespective of a law firm's current diversity situation.

106. Virji, *supra* note 74.

107. See Melanie L. Levs, *Sara Lee's General Counsel: Making Diversity a Priority*, DIVERSITY & THE BAR, Jan./Feb. 2005, <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=803>.

108. Bruck & Canter, *supra* note 2, at 2115.

109. Virji, *supra* note 74.

3. Reprimand Policy

A clear reprimand policy for noncompliance with the corporation's diversity standards is essential to the success of the model. The reprimand policy should always involve loss of business if a law firm is not in compliance with a corporation's set diversity goals. Accountability is crucial, and if law firms are truly held accountable through financial means, diversity results are inevitable. The reprimand policy should be enforced in instances where the law firm did not comply within the specified time articulated in the corporation's timeline for action.

4. Demand Predictable Fee Arrangements

Law firms are more likely to change the traditional law firm model if they receive pressure from their clients to do so. Once elite law firms change their model and show proven results, other law firms are likely to also change and make it an industry standard.

Alternative fee models are not a new concept for corporations to demand.¹¹⁰ For example in 1992, DuPont led a diversity initiative that included alternative fee arrangements.¹¹¹ Fixed fee arrangements benefit corporations in that their fees are more predictable, and they are able to more accurately budget for outside attorneys fees. In addition, as mentioned in the preceding section, a consistent fixed fee billing model eliminates the billable hour system, and results in predictable working schedules, an issue of concern for women and racial minorities which can lead to their leaving law firms early in their careers.

IV. Conclusion

The legal profession has struggled in the area of diversity for many decades. Law firms, in particular, have had a difficult time with diversity, particularly with retaining women and racial minorities. There are several reasons for the lack of significant progress at law firms in retaining women and minorities, but the effects from two main issues are the root cause: the traditional law firm business model and corporations' failure to establish effective industry standards for requesting, monitoring, and enforcing diversity policies.

Corporations should set industry standards for executing the *Call to Action* to effectuate real progress. The industry standards should involve four components: (1) clear achievable diversity goals articulated to law firms; (2) a clear timeline for when law firms should achieve the set goals; (3) a clearly defined reprimand policy that corporations consistently enforce, with minimal exceptions; and (4) a demand that law firms abandon the traditional law firm business model, including the billable hour system of billing for flat fee arrangements.

However, change is not limited to corporations. Instead of relying on ineffective diversity initiatives, law firms should change the traditional business model to effectively address the root cause of the retention issue.

110. See Levs, *supra* note 107.

111. *Id.*

Life Cycle of Diversity Programs

Richard Meade

Vice President & Chief Legal Officer - International, Prudential Financial Inc.

Effective diversity programs needn't be massive in scale or scope. Diversity programs have their own "life cycle" and understanding that cycle can allow the creation and implementation of more effective diversity efforts.

I. Introduction

In 2012, for the first time in U.S. history, non-Hispanic white babies represented less than 50% of the births in this country,¹ continuing a long trend in the racial and ethnic diversification of the U.S. population. As we all know, diversity in the legal profession is not keeping up with this trend. In fact, our diversity lags meaningfully behind the general population and behind most other professions, including doctors, accountants, architects, and engineers.

The drive over the past two decades to improve diversity in the legal profession has been long on good intentions, but unfortunately, relatively short on results. The need to improve diversity is generally acknowledged and the business case has often been made for the importance of diversity to legal organizations. Many initiatives have been launched to make a difference, yet the legal profession in America has remained stubbornly unreceptive to significant change.

According to the U.S. Census Bureau "overview" released in March 2011, 16.3% of Americans are Hispanic or Latino, 12.6% are African American, and 4.8% are Asian. In total, over 30% of the U.S. population is ethnically or racially diverse.² And, as already noted, the U.S. is growing more diverse, particularly with respect to increasing numbers of Hispanic Americans.³ Compare these numbers to 2012 diversity statistics for US law firms, where we find the following: about 13% of all lawyers in law firms are minorities; less than 7% of all partners in law firms are minorities; and about 33% of all attorneys in law firms are women, yet women account for less than 20% of the partners at law firms.⁴ Female attorneys of all races are less likely than males to be partners in law firms.⁵

Similar studies by the American Bar Association and the Minority Corporate Counsel Association (MCCA) show that women, minorities, and minority women in particular, have made scant progress at the largest law firms in the past decade.

For several years, many major corporations have tried to address the issue of diversity in the profession by focusing on diversity within the large law firms they employ, with varying degrees of success and with relatively modest overall effect.

1. Press Release, U.S. Census Bureau, Most Children Younger than Age 1 are Minorities, Census Bureau Reports (May 17, 2012), <https://www.census.gov/newsroom/releases/archives/population/cb12-90.html>.

2. Karen Humes, Nicholas A. Jones & Roberto R. Ramirez, U.S. Census Bureau, *Overview of Race and Hispanic Origin: 2010*, U.S. CENSUS BUREAU 4 tbl.1 (Mar. 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

3. See Press Release, U.S. Census Bureau, Projections Show a Slower Growing, Older, More Diverse Nation a Half Century from Now (Dec. 12, 2012), <http://www.census.gov/newsroom/releases/archives/population/cb12-243.html>.

4. Press Release, Nat'l Ass'n for Law Placement, Representation of Women Among Associates Continues to Fall, Even as Minority Associates Make Gains (Dec. 13, 2013), *available at* <http://www.nalp.org/uploads/PressReleases/2012WomenandMinoritiesPressRelease.pdf>.

5. See *id.*

The purpose of this paper is two-fold:

- To offer some thoughts about how to build a Diversity Program.
- To provide some suggestions regarding the “life cycle” of programs that can help to move the diversity needle for the legal profession, either by enhancing *access* for interested diverse students or by facilitating the *retention* of diverse attorneys.

II. Building a Diversity Program: Pick One or Two Ideas and Just Get Started

There are many opportunities to participate in diversity and inclusion efforts within the legal profession. You can tackle diversity challenges at a level that is geared to your firm’s or department’s own level of resources and interests and your estimate of where you can have the greatest impact.

Diversity programs may be designed to produce big, long-term social changes; or they can be small, local “touch a life” programs that may only produce the slightest societal ripple but can mean so much for the person you touch. I have a bias for these smaller programs because they are personal and can be very compelling. But the larger programs, whose creators are dreaming and thinking “big,” have the potential to create hundreds or thousands of such stories. There is room and need for both types of approaches if we are going to make a difference.

I will try to illustrate these points with examples from my experience helping to build Prudential’s legal diversity and inclusion program. In this regard, I have followed three general principles.

First, if you will pardon the baseball analogy, I often advocate a “small ball” approach to building diversity programs; that is, start with pilot programs, perhaps in one or two areas. Get some experience and then start thinking of ways to expand.

Second, if you hear about a good idea, don’t be afraid to steal it and adapt it to your department’s needs or capabilities. Two of the Prudential’s best legal diversity programs were created by following someone else’s lead (hiring diverse summer interns who have completed their first year of law school—1Ls, and the Inclusion Initiative). I will address these programs in more detail below.

Third, once you have something working, look for opportunities to grow it, transfer it, or otherwise leverage it. Take a good idea and look for ways to make it better.

III. Components of the Diversity Program Life Cycle

There are a number of programs that focus on *attracting* diverse people to the legal profession. These typically require some combination of funding, mentoring, educational support, and creating opportunities for access. Such programs include specialized training for high school students to get them into college and beyond; similar training for college students to help get them into law school and succeed there; and programs to help launch diverse law students as lawyers.

There are also programs focused on *retaining* diverse attorneys in the profession. These typically require efforts to create opportunities for diverse lawyers to succeed: mentoring, sponsorship, networking, using affinity groups and other programs to reduce the sense of social isolation that diverse attorneys often experience, or leveraging the law department’s buying power to encourage diversity within the law firms we use. Retention programs are built to fight the “glass cliff” phenomenon, where diverse attorneys reach a plateau in their careers, and then are frustrated by further lack of progress and opt to leave the profession.

The balance of this paper will discuss just two examples each of programs that fall into various subcategories of attracting and retaining diverse attorneys. I want to acknowledge that there are many more examples than these, with various companies, law firms, and professional organizations experimenting across a broad spectrum of activities to move the diversity and inclusion needle. My purpose in focusing on just a couple of examples within each subcategory is to stimulate some thought and activity that each company or group can gear to its own resources and interests.

IV. Programs for Attracting Diverse People to the Profession

A. High School Programs

1. Legal Outreach (NY)

For thirty years, Legal Outreach has been helping disadvantaged urban youth in New York City compete at high academic levels and prepare for college by using intensive legal and educational programs as tools for fostering vision, developing skills, enhancing confidence, and facilitating the pursuit of higher education. The program includes exposure to career paths in the legal sector, features summer law institutes and constitutional law debates, and provides lawyers as mentors.

Programming begins with a Summer Law Institute designed to introduce junior high school students to the “power of the law” and the operation of legal systems. For those students who are attracted to these topics, Legal Outreach then offers its highly successful College Bound program, a four year academic enrichment and support program that includes after school work, weekend classes, and summer programs. The College Bound program had its first graduating class in 1993.⁶ Over 488 students have completed the College Bound program; virtually all have attended college.⁷ Graduates have attended schools such as Amherst, Cornell, Hamilton, NYU, Smith, and Williams, among other well respected colleges,⁸ and more than two-thirds of the College Bound program graduates attend top-ranked colleges and universities.⁹

The success of the Legal Outreach College Bound program can also be measured by the impressive statistics the program has produced. Of those who complete the program, there is a 100% high school graduation rate.¹⁰ Even if you include attrition, the high school graduation rate is 75%, compared to an average of about 65% for New York City public high schools. About 85% of the College Bound participants graduate from college in four years versus a four year college graduation rate for all New York City public school graduates of 21%.¹¹

Roughly 15% of the Legal Outreach college graduates have gone on to law school and many others are pursuing or have earned other post-graduate degrees.¹² Legal Outreach and its sister organization described below, New Jersey Legal Education and Empowerment (NJ LEEP), have been called by the National Law Journal “one of the few diversity programs with a proven track record of long-term success.”¹³

6. *History*, LEGAL OUTREACH, http://legaloutreach.org/?page_id=83 (last visited Aug. 22, 2014).

7. *Id.*

8. *About Us*, LEGAL OUTREACH, http://legaloutreach.org/?page_id=2 (last visited Aug. 22, 2014).

9. *Our Success*, LEGAL OUTREACH, http://legaloutreach.org/?page_id=61 (last visited Aug. 22, 2014).

10. *Id.*

11. *Id.*

12. *Id.*

13. *NJLEEP (New Jersey Law and Education Empowerment Program)*, SETON HALL LAW, <http://law.shu.edu/About/diversity/njleep.cfm> (last visited Aug. 23, 2014).

2. NJ Legal Education and Empowerment (NJ LEEP)

New Jersey Legal Education and Empowerment was founded in 2006 in partnership with Seton Hall Law School.¹⁴ Modeled on the success of Legal Outreach, NJ LEEP is based in Newark, New Jersey, and primarily serves disadvantaged urban youth from Newark and surrounding communities. NJ LEEP seeks to empower its participants “by building skills through law-related, mathematic, and other educational programs,” by helping them develop “the habits necessary for lasting success and community leadership,” and by “offering exposure to role models who have achieved academic and professional success.”¹⁵ Components of the NJ LEEP program include mock trials, after-school tutoring, grammar and writing classes, attorney mentoring, SAT prep, and college visits.

Like Legal Outreach, NJ LEEP first introduces students to legal issues and themes at the middle school level, with staff attorneys teaching in-school and after-school classes on constitutional law, criminal law, and the trial process. Interested students are then encouraged to apply to participate in NJ LEEP’s Summer Law Institute, a five week program co-taught by Seton Hall Law Students and NJ LEEP staff members. Skills workshops and skill assessment exams are offered, along with exposure to guest speakers and field trips to courthouses. A mock trial competition is also conducted.

Students who successfully complete the Summer Law Institute are then eligible to join the NJ LEEP College Bound program as they enter high school. The College Bound program features fourteen hours per week of after-school work to build academic and social competencies, as well as summer legal internships with law firms and corporate law departments, SAT preparation courses, and a college application program.

NJ LEEP graduated its first College Bound class in 2011.¹⁶ Of the forty-three students who have completed the program in the past three years, all have gone to college, with 75% attending top-100 colleges and universities.¹⁷ This compares very favorably to the college matriculation rate more generally for Newark high school students (approximately 68%).¹⁸ Over 100 students are currently participating in NJ LEEP’s College Bound program.

3. Specialized Charter High Schools

Charter high schools are being developed in metropolitan centers that seek to provide an enriched high school educational environment laced with themes of law and justice for students in underserved communities. New York Law School is developing one such school in New York City. Another has opened in Chicago. A brief description of each is provided below.

The Charter High School for Law and Justice, a pipeline project being developed by New York Law School, is in the developmental stage and is currently seeking approval to operate as a high school. It intends to introduce a curriculum focused on liberal arts, social sciences, and the critical thinking and oral and written advocacy skills needed for success in the legal profession. The school program will include mentoring, law office internships, and a summer law camp featuring training in oral and written advocacy. New York Law School will contribute expertise in legal theory, practice, and education.

14. *Id.*

15. *Id.*

16. See Press Release, Prudential, NJ LEEP Honors Prudential Counsel Susan Blount and Goldman Sachs General Counsel Gregory Palm (April 29, 2014), available at <http://law.shu.edu/About/diversity/njleep.cfm>.

17. *Id.*

18. Peggy McGlone, *N.J. High School Graduation Rate Grows to 87.5 Percent*, NJ.COM (Dec. 5, 2013), http://www.nj.com/education/2013/12/nj_high_school_graduation_rate_1.html.

Legal Prep in Chicago admitted its first class of freshmen in August 2012.¹⁹ While it is located in and serves Chicago communities that are predominantly diverse and low income, Legal Prep is free and open to any student living in Chicago. This charter school also seeks to build student skills in oral and written communication, critical thinking, problem solving, and advocacy. Legal Prep works with the Chicago legal community to obtain resources and provide exposure to enable students to aspire to excel in college and pursue a legal education.

Both charter high school programs, like Legal Outreach and NJ LEEP, feature extended school days and specialized training programs, as well as summer school, after-school tutoring, and college-readiness programs—all intended to prepare their graduates for success in post-secondary educational endeavors.

B. College Level Programs

1. Council on Legal Education Opportunity (CLEO)

The Council on Legal Education Opportunity is an organization founded by the American Bar Association (ABA) in 1968.²⁰ It is committed to diversifying the legal profession by expanding legal education opportunities for disadvantaged groups. Since its inception, more than 8,000 students have participated in CLEO's pre-law and law school academic support programs, successfully matriculated through law school, passed the bar exam, and joined the legal profession.²¹ In furtherance of its goal, CLEO provides law school placement assistance, academic support and counseling, financial assistance, bar exam preparation, on-line tutoring, and weekend seminars and workshops.

CLEO offers a College Scholars program designed to identify, motivate, and prepare low income, minority, and otherwise disadvantaged college students for a career in the legal profession by helping them develop the skills needed to succeed in law school and providing training and advice in connection with preparing and taking the LSAT exams and navigating the law school application process.

CLEO programs include training for college freshmen on analytical reasoning and logic, critical reading and writing, and advice on college curriculum choices, as well as financial planning for law school. There are substantive legal courses for sophomores, including mock law classes and moot court, as well as reading comprehension and legal writing skill-building courses. Juniors and seniors get help understanding how LSAT scores impact law school admissions, coupled with strategies to get competitive LSAT scores, including the value and benefits of systematic LSAT preparation. Practical help is also provided to juniors and seniors in terms of selecting a law school, preparing a personal statement, selecting sources for recommendation letters, and managing their finances and debt.

2. Leadership Council on Legal Diversity (LCLD)

The Leadership Council for Legal Diversity (LCLD) is an organization of more than 200 corporate chief legal officers and law firm managing partners who have dedicated themselves to creating a diverse legal profession through programs designed to attract, inspire, and nurture diverse generations of attorneys and to help them ascend to positions of leadership.²² LCLD pursues this mission through four committees, including the Pipeline Committee.

19. LEGAL PREP CHARTER ACADEMIES, <http://www.legalprep.org/> (last visited Aug. 23, 2014).

20. *What is Cleo*, CLEO, <http://www.cleoscholars.com/index.cfm?fuseaction=Page.viewPage&pageId=482> (last visited Aug. 23, 2014).

21. *Id.*

22. *About LCLD*, LCLDNET.ORG, <http://www.lclldnet.org/about/> (last visited Aug. 23, 2014).

The LCLD Pipeline Committee seeks to empower high potential students at the college and law school levels and to equip them for a leadership position in the law. Two of the four major programs operated by this committee are focused on helping diverse college students apply for and be accepted to law school. These include pre-law workshops for prospective law students conducted in partnership with CLEO, and a collaboration with the Society of American Law Teachers (SALT) to create a forum where law school deans, prelaw advisors, and law school admissions personnel can explore the barriers students of color face when applying to law school, and work to provide the tools, best practices, and information needed to effectively counsel those students.

Other LCLD pipeline programs provide hundreds of mentors to law students of color as they navigate the shoals of the law school experience and seek to expand the opportunities available to diverse first year law students through 1L summer internships and networking opportunities.

C. Law School Programs

For the balance of this paper, my examples will focus primarily on examples drawn from Prudential law department programs. In doing so, I readily acknowledge that many companies and law firms have similar programs in place.

1. 1L Summer Internships

Prudential's summer program for diverse 1L students completed its fourteenth year in 2013. The program was inspired by hearing about another company's 1L summer program at an MCCA awards dinner in 2000. Prudential has hosted over 160 law students since the program's inception. From the beginning, students have been drawn from Rutgers Law School's program for minority and economically disadvantaged students and from the Association of the Bar of the City of New York's Committee on Diversity Pipeline Initiatives. In recent years, we have also drawn our 1L students from the student membership ranks of the National Bar Association (NBA), the Hispanic National Bar Association (HNBA), the National Asian Pacific American Bar Association (NAPABA), the National LGBT Bar Association, the National Association of Women Lawyers (NAWL), and the ABA Commission on Disability. In 2014, we will add a student drawn from the ranks of the latest recipients of MCCA 1L Scholarships.

Involving these organizations in our 1L selection process has helped to cement our ties with the organizations, while giving them an opportunity to add to their program offerings for their student members. It has also helped to ensure a high quality group of students from a broad mix of backgrounds for our program.

Prudential's 1L program provides ten weeks of work experience, paid at competitive rates, and features one or more attorney mentors for each intern. Each 1L student gets real legal work experience and enjoys a variety of social interactions at Prudential and with other participants of other summer intern programs in the area. Among the features of the program are the following: practical training programs on legal writing and negotiations (including an assignment to generate a writing sample); exposure to practice areas within Prudential's Law Department including litigation and regulatory practice, insurance law, and international law, among others; participation in the Diversity Day program held each year by the Law, Compliance, Business Ethics and External Affairs Department (LCBE); participation with Prudential's NJ LEEP program site visit (for high school students); and participation in "practice" job interviews with partnering law firms—this provides the interns with immediate feedback on interviewing skills and responses just weeks before 2L job interviews begin.

2. Fellowships

Prudential's Law Department does not hire right out of law school, except for the Fellows program. The Fellows program started in 2010, after the market for new law graduates was eviscerated as a result of the financial crisis.²³ We believed that many deserving recent diverse law graduates were struggling to find jobs in their chosen profession and created a program to give a few of them a start on their legal careers. This modest program is consistent with our "touch a life" philosophy for building diversity, in some instances, just a few people at a time.

Candidates to be hired as Fellows are identified for the Prudential program by NAPABA, HNBA, NBA, and the National LGBT Bar Association. Like the 1L program, we believe this arrangement is mutually beneficial to Prudential and the bar associations, while producing new job opportunities for their members.

As originally designed, the Prudential Fellows program provided eighteen months of paid legal work, as employees of Prudential, to diverse recent law graduates who had been admitted to the bar but had not yet found work. The Fellows were expected to participate in three six-month job rotations among Prudential Law Department practice areas, with attorney mentors from those areas assigned to them.

Assuming good performance, by the end of the eighteen-month Fellowship, Prudential attorneys would, if needed, assist in job placement efforts on behalf of the Fellows, typically including recommendations of the Fellows for positions with law firms closely tied to Prudential.

After several years of experience operating the Fellows program, Prudential's Law Department is currently introducing a new design that takes much of the uncertainty out of the process of landing a job at the conclusion of the eighteen-month program. In the newly designed Fellows program, Prudential is working with law firm partners on the "front end" in selecting Fellows (still drawn from the bar associations identified above). The law firms will hire and train the Fellows for two years, lend them to Prudential in their third year, and then bring them back to the firm at the end of their year with Prudential (assuming good performance throughout). By partnering with the law firms from the beginning, and in effect sponsoring the Fellows within their firms during their early years, Prudential and the law firms can provide rich job opportunities and a good start on their legal careers for those selected.

V. Programs for Retaining Diverse Attorneys

A. Diversity Councils

Many law firms and corporate law departments interested in building an inclusive internal environment at some point create a Diversity Council. These councils are typically populated by interested attorneys, paralegals, and administrative staff, and when successful, can help retain and even enhance the diverse make-up of the organization. In effect, they are often "staff led" rather than "leader led," although leadership support and involvement is generally necessary for the councils to succeed. The councils themselves can be company- or law-firm-wide, or within specific offices or corporate functions.

The LCBE Diversity and Inclusion Council at Prudential was formed in 2006. It has proven to be a popular component of our larger diversity and inclusion initiative, with a focus on education and

23. See *Two New Law School Graduates Join Prudential Law Fellows Program*, PRUDENTIAL, http://www.news.prudential.com/article_print.cfm?article_id=5887 (last visited Aug. 23, 2014).

awareness, communications, mentoring, and interfacing with Prudential's "Business Resource Groups," as well as supporting diversity and inclusion programming tailored to our Compliance department.

The LCBE Diversity and Inclusion Council, by virtue of a number of subcommittees, programs, and initiatives, has created a wide array of opportunities for our associates to get involved, increase their visibility, and show leadership within the department. Over sixty-five associates participate on the Council and its subcommittees and a far greater number are involved in planning, executing, and participating in its programs.

Educational programs include annual diversity-oriented Town Hall meetings that have focused on a variety of issues and cultures, including in recent years, celebrations and discussions of Japanese and Hispanic culture and an exploration of issues important to and experienced by the LGBT community. Other current programs cover recent U.S. Supreme Court rulings with equal rights implications and "unknown heroes" who have played important roles within their diverse communities.

Prudential's LCBE Department believes the work of the Diversity and Inclusion Council, combined with its pipeline and other "outwardly facing" programs seeking to influence the legal profession, have contributed to the overall improvement in our Department's employee opinion scores, in particular to a significant reduction over time in differences in satisfaction levels based on gender, race/ethnicity, and management or non-management status. This is one of the Department's measures of success.

B. Diverse Attorneys in Majority-Owned Law Firms

The efforts of corporate law departments and government agencies to influence diversity at the large majority-owned law firms that do the bulk of our work have been well documented. The Prudential Law Department has signed the "Call to Action" and attempts to honor that commitment primarily by calling upon the firms we use to staff our matters with a diverse slate of attorneys. We monitor their performance in this regard and provide feedback to the firms via our relationship managers.

Monitoring is done in two ways. Prudential looks at the firm's overall diversity statistics as published by Vault. For most of its major law firm relationships, the Department also asks the firms to populate their e-billing systems with demographic information about those whose work is included on our bills. Once the demographics are entered, the Department can run a report at any time to look at whether there is a diverse team handling our matters or not. This analysis focuses on the percentage of the bill (in dollars) associated with each demographic category. This approach gives greater weight to the use of more expensive (presumably more senior) diverse attorneys, as well as the volume of the work they are doing for us, rather than just counting the number of diverse professionals who are charging time to us.

The diverse categories measured are: race and ethnicity (with break-outs of African American, Hispanic, Asian American, and American Indian), gender, LGBT status, and disability status. Our target is for at least 45% of the bill to be generated by professionals who are people of color, women, LGBT, or disabled; with at least 33% women and 12% people of color, LGBT, or disabled. We set these goals somewhat arbitrarily, simply reasoning that a firm that is paying attention to Prudential's message and to diversity generally should be able to achieve these percentages.

After the Department analyzes these metrics, the firms are advised of our findings. Many do well; some do not. Those in the latter category get some hard messages about the need to improve and

there have been some lively discussions in-person with senior representatives from the Department and the firms at those meetings.

Later this year, Prudential's Law Department plans to produce comparative results for its top twelve billing law firms from 2013. Their results will be listed as firms A through L with the metrics provided to all twelve firms in that manner. Each firm will know which letter represents its results on the list so it can see its relative ranking. The firm with the best results will be named for all to see in recognition of its achievement.

C. Support for Minority-Owned and Women-Owned Law Firms

Prudential's Law Department recommitted to support minority-owned and women-owned law firms in 2006. From that year forward, the Department set annual goals for expenditures on these firms, tracked and reported progress on a monthly basis at the highest levels of the Department, made adjustments along the way, built a list of approved firms for purposes of this program, and actively sought to expand the pie by adding firms with legal practices that met an increasing array of legal needs (e.g., starting with litigation and employment and then building up other areas including contracts, intellectual property, real estate transactions, and more). This process led to significant growth over the seven-year life of the current program with expenditures in 2013, more than ten times the expenditures achieved in 2006. This increase has been both in absolute dollar terms and also in the percentage of the Department's total outside counsel budget being spent on minority and women owned law firms.

Building on the success of Prudential's internal program and borrowing a concept previously developed by DuPont, Shell, General Motors, Sara Lee, and Walmart, Prudential also helped to launch the Inclusion Initiative in 2010. This is a multi-company commitment to send work to minority-owned and women-owned law firms, with annual aggregate goals set by the group, coupled with an annual report on its actual results. This program grew from eleven companies in 2010 to twenty-eight companies in 2013. Expenditures by the group on minority- and women-owned law firms also grew dramatically, from about \$43 million in 2010 to over \$245 million in 2013.

The Inclusion Initiative's goals are to provide direct support to the network of minority and women owned law firms, thereby enabling their success and to help them retain women and minorities in the profession, and also to demonstrate to the rest of corporate America that many of the minority and women owned firms are well suited to do their work as well.

This program also illustrates two concepts previously mentioned—the value of adopting best practices (in other words, if you see someone else with a program that is working, “steal” the idea and build your own; no need to reinvent the wheel) and the power of leverage (i.e., start with a good idea and think about how to expand it for even greater impact, in this case, by bringing multiple companies together to jointly pursue a shared goal).

D. Support for Diverse Bar Associations

One more way to help preserve and expand diversity in the legal profession is to support other organizations whose goals are consistent with that objective. Prudential maintains a “relationship manager” program intended to help maximize its ability to positively influence a variety of constituent organizations including: NBA, HNBA, NAPABA, NAWL, the National LGBT Bar Association, the ABA Committee on Disabilities, MCCA, and the National Association of Minority and Women Owned Law Firms (NAMWOLF).

The relationship manager program is intended to build the Company's brand within each professional organization (i.e., to be viewed by its constituents as an employer and provider of choice), to assure consistent funding commensurate with our corporate support, to go beyond just funding to help build or enhance the organization's capabilities, to use the organizations as a potential source of recruiting for summer interns, fellows, and full time hires, and to utilize our relationship with those organizations to help build Prudential's business with their members.

VI. Conclusion

There are many different ways to participate in the diversity program life cycle. Arguably, there is something for everyone. Not everyone agrees on what program is the most effective, but all these components have a role to play in addressing a broad and deeply entrenched problem in our profession

To paraphrase Desmond Tutu: "Do a little, but do whatever you can, wherever you can." If you do that enough, consistently, over time I think you will find that you have done a lot, and if enough of us do it, we will make a difference.

Our commitment should be:

- To fight to add seats to the table for people from all walks of life, across the full spectrum of our increasingly diverse population
- To be hopeful and to lead in a profession that clings to its established ways, despite a rapidly changing marketplace.

IILP Review 2014: Gender Diversity and Inclusion Issues in the Legal Profession

Generational Differences Among Female Attorneys in the Workplace: “Lean In”—and Lean Out?

Jamie Sinclair

Associate, Goldstein, Rikon, Rikon & Houghton, P.C.

What are some of the generational differences of opinion and attitudes among women lawyers? What might lawyers of different generations want to consider when thinking about “women’s issues” for the legal profession as it exists today and in the future?

I. Introduction: “Lean in”—A Generational Perspective

When we speak about diversity, there is a tendency to lump all individuals in one “diverse” group together, and speak holistically about the progress of that “group.” The trend is no less pronounced when it comes to focusing on gender. When analyzing the progress of women in the legal workplace, we point to their representation among the associate and partnership ranks, or perhaps their representation on high-powered committees. Rarely are the differences and diverse outlooks within this, or any, particular group examined.

This is important. Understanding the diversity within a minority group can improve the unity, strength, and progress of the group by providing an understanding of the differences in perspective and outlook which impact how we work, interact, and experience our careers.

In 2013, Sheryl Sandberg, the COO of Facebook and a very savvy businesswoman, published *Lean In: Women, Work, and the Will to Lead (Lean In)*. Sandberg described the book as “a sort of feminist manifesto” about the need for more women in powerful positions.¹ In it, she offers relevant, inspiring, and easy-to-remember advice to young women in the workplace.

This article seeks to examine how different generations of female attorneys might interpret various facets of Sandberg’s *Lean In* message as it pertains to their legal careers. Does Sandberg’s message resonate with one generation more than the other? What do the different generations of female attorneys think of each other, anyway? How can these differences be explored in a manner that fosters understanding and furthers women’s progress in the legal field?

II. The Need for Better Female Relationships

A. The Current Representation of Women in the Profession

According to an ABA Report published in January 2013, women comprise 33.3% of the legal profession.² In the 2012 academic year, women received 47.3% of all J.D.s awarded, while men received

1. Michelle Goldberg, *The Absurd Backlash Against Sheryl Sandberg’s ‘Lean In’*, THE DAILY BEAST (Mar. 1, 2013, 4:45 AM), <http://www.thedailybeast.com/articles/2013/03/01/the-absurd-backlash-against-sheryl-sandberg-s-lean-in.html>.

2. AM. BAR ASS’N, COMM’N ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW, 2 (2013), *available at* http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.authcheckdam.pdf [hereinafter *Women in the Profession*].

52.7%.³ And according to the latest statistics published by the ABA, women account for 46.3% of summer associates, 45% of associates, 19.9% of partners, 15% of equity partners, and only 4% of the 200 largest law firms' managing partners.⁴ In the judiciary, women comprise 33.3% of all Supreme Court justices, 30.9% of Circuit Court of Appeals justices, and 24.1% of Federal Court judges.⁵ In other words, as the prestige and demand of the position increases, the representation of women decreases.⁶

Pay inequality continues to hinder women's progress in the legal field.⁷ A report by the Commission on Women Lawyers of the American Bar Association found that at the 200 largest law firms, women equity partners earned 89% of what their male counterparts earned.⁸ The report also found that other women lawyers earn 86.6% of what male lawyers earn based on a weekly basis.⁹ Research shows that "[t]he pay gap starts right out of law school and continues even as women climb up the ladder to become equity law partners at the nation's largest law firms. Women lawyers cannot even count on their law firms to be fair in paying them the same as male lawyers."¹⁰ Women comprise just 15% of equity partners in private practice, according to a Report of the Seventh Annual National Survey on Retention and Promotion of Women in Law Firms, published in October 2012, and cited by the Commission on Women in the Profession.¹¹

B. Combating the "Female Exodus"

What's causing the thinning of women at the top? How are these inequalities in wages persisting? In *Lean In*, Sandberg discusses a 2007 survey of Harvard Business School alumni which found that only 49% of women who graduated in the early 1990s were working full-time.¹² She wrote that this "exodus of highly educated women is a major contributor to the leadership gap."¹³ Similarly, the mass exodus of female attorneys from the workplace has also been widely reported. An NALP study found that 57% of lawyers leave private firms before their fifth year of practice.¹⁴ Further, if females comprise 45% of associates and only 19% of partners, it is obvious that a large percentage of female attorneys are leaving private practice. Why?

The *New York Times* writer Anne-Marie Slaughter wrote in her Sunday Book Review for *Lean In*, that the problem is not women "leaning back," as Sandberg would say, but rather encountering what she calls a "tipping point." Slaughter described a "tipping point" as "a situation in which what was once a manageable and enjoyable work-family balance can no longer be sustained—regardless of ambition, confidence or even an equal partner"¹⁵ Slaughter writes:

3. *Id.* at 4.

4. *Id.* at 2.

5. *Id.* at 5.

6. The National Association for Law Placement (NALP) reported in December 2013 that women comprised 20.22% of partners, 44.79% of associates, and 45.32% of summer associates. Press Release, Nat'l Ass'n for L. Placement, Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners Continue to Make Small Gains, 1–2 (Dec. 11, 2013), available at <http://www.nalp.org/uploads/PressReleases/2013WomenMinoritiesPressRelease.pdf>.

7. *Gender Pay Gap Exists for Women Lawyers Too*, LEGAL SPEAKS (Apr. 4, 2013, 3:52 PM), <http://www.legalspeaks.com/2013/04/gender-pay-gap-exists-for-women-lawyers-too/> [hereinafter *Gender Pay Gap*].

8. *Women in the Profession*, *supra* note 2, at 6.

9. *Id.*

10. *Gender Pay Gap*, *supra* note 7.

11. *Women in the Profession*, *supra* note 2, at 2.

12. SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 99 (2013).

13. *Id.*

14. Marlis Silver Sweeney, *The Female Lawyer Exodus*, THE DAILY BEAST, July 31, 2013, <http://www.thedailybeast.com/witw/articles/2013/07/31/the-exodus-of-female-lawyers.html>.

15. Anne-Marie Slaughter, *Yes, You Can: Sheryl Sandberg's 'Lean In'*, N.Y. TIMES, Mar. 7, 2013, <http://www.nytimes.com/2013/03/10/books/review/sheryl-sandbergs-lean-in.html?pagewanted=all&r=0>.

Sandberg is right to say that it is easier to handle work-family conflicts from as high a position on the career ladder as possible, but if in fact it's the tipping points that tip women out of the work force, or at least prevent them from rising, then no amount of psychological coaching will make a difference.

The bottom line is this: Women need support, both from each other and from male attorneys, in order to continue to make strides in the workplace—to work past this “tipping point” and to continue to climb the ranks into partnership, equity partnership, chief judgeship, and other powerful positions. A cross-generational understanding of generational differences among female attorneys may help prevent female attorneys from reaching a “tipping point” — from wanting to opt out, and instead keep them in the workplace, working and supporting one another.

C. Mentoring and Generational Differences

Young female attorneys are constantly told that finding a mentor is a key to their success. Sandberg writes that talk of mentorship and sponsorship has been “topic number one at any women’s career seminar” and is the “focus of blogs, newspaper articles, and research reports.”¹⁶

For those that choose to stay in the legal profession, finding a mentor may be the key to their success. Sandberg’s mentoring chapter is titled “Are You My Mentor?” It begins by comparing mentor-hungry, desperate young women to the baby bird in the well-known children’s story, who, somewhat pathetically, asks anything and everything it comes into contact with (from a hen, to a dog, to a steam shovel), “Are you my mother?” The baby bird story ends with it being returned to its nest and reunited with its mother. Unfortunately, the story does not always end well for young women in the workplace.

Many can relate to Sandberg’s sentiment that for her, searching for a mentor had become the “professional equivalent of waiting for Prince Charming” and that, “[o]nce again, we are teaching women to be too dependent on others.”¹⁷ Sandberg’s piece of advice to women is essentially, in order to find a mentor, you must be the kind of person who attracts a mentor. She quotes Oprah Winfrey, who explained, “I mentor when I see something and say, ‘I want to see that grow.’”¹⁸ In other words, Sandberg recommends that the message, “Get a mentor and you will excel” be replaced with “Excel and you will get a mentor.”¹⁹

In 2013, women accounted for 20.22% of the partners at law firms nationwide while the percentage of female associates nationwide was 44.79%.²⁰ The relatively low representation of women in senior positions suggests that many female attorneys will find it difficult to follow Sandberg’s advice if they want to find an older female mentor. If women comprise approximately 45% of associates and 20% of partners, that means that young female attorneys seeking mentors of the same sex will have to share a mentor with another person — which means, in turn, less attention will be paid to them.

Understanding generational differences between mentee and mentor will help facilitate the existence and growth of these relationships, if and when female attorneys can find them. For instance, recent studies suggest that women may not want women mentors, and vice versa! An ABA article discussing mentoring tips for young female attorneys advises women to be aware of “Queen Bee Syndrome” or the tendency of senior females to be more critical of female subordinates than of male ones, the reluctance of senior females to assist in the career formation of more junior females, or

16. SANDBERG, *supra* note 12, at 65.

17. *Id.* at 66.

18. *Id.* at 65.

19. *Id.* at 68.

20. Press Release, Nat’l Ass’n for L. Placement, *supra* note 6, at 1.

both.²¹ Social scientists neither agree that this phenomenon exists nor do they agree on the reasons it may exist. Possible suggestions include the attitude of senior females of “I made it in a male-dominated industry without any help, so why should I help anyone else?” and “Women have to work twice as hard as men to achieve the same amount, so I will purposefully be more critical to prepare these young attorneys for that reality.”²²

A survey published in the ABA journal found that the answer to the question of whether women lawyers would rather work with men or other women may depend on the age of the female lawyer you are asking. Of the more than 1,400 respondents who answered the ABA survey, 58% said the gender of their colleagues did not matter, and 42% preferred working with one sex over the other.²³ Female supervisors aged forty and over who indicated that gender mattered to them preferred working with women.²⁴ Eighty percent said female lawyers take direction better, take constructive criticism better (59%), and have more discretion (79%).²⁵ However, younger female attorneys do not reciprocate the appreciation of older female attorneys. Among the female lawyers under forty who responded that gender mattered, 58% said male supervisors give better direction, give more constructive criticism (56%), and are better at keeping confidential information private (64%).²⁶

The report cites generational tension as the reason why the role of gender in the workplace may depend on the age of the female attorney asked. Specifically, the report notes, “Female lawyers entering the profession don’t want to make the same personal sacrifices as their predecessors, and they question whether such sacrifices are even necessary to succeed.” In turn, more senior women may not understand this mindset, nor do they realize that the “playing field has changed.”²⁷

In an article titled “Women Who Hate Other Women: The Psychological Report of Snarky,” Seth Meyers, Psy.D. provides several reasons why women report more critical views of other women than their male counterparts do with respect to male peers. Chief among them are women’s tendencies towards relational aggression (as opposed to males who are more prone to engage in physical aggression), anxiety (the majority of female criticism actually stems from feeling inadequate in an area of their life they value highly, e.g., their careers), or appearance (the pressure women feel from men and the media to fit certain physical types of thinness and beauty get transformed to the point that they turn it on one another).²⁸

All of these possible landmines in the world of finding a mentor, whether it be working with an older female attorney, an older male attorney, or simply trying to understand more about yourself in order to understand the type of mentor you need, can be eased by having a firm grasp of the perceptual differences that exist between generations. As we begin to understand how our worldview affects our workplace interactions, we begin to bridge gaps that can impede communication and hinder fruitful relationships, and in turn will positively impact our career paths and the opportunities available to us.

So, better relationships between the different generations of female attorneys may help prevent the “female exodus” from the legal profession, and may foster better mentoring relationship and provide routes to success for those that stay.

21. Laura Joy Lattman, *Mentoring: Insider Tips for Young, Female Attorneys*, A.B.A., http://www.americanbar.org/groups/young_lawyers/committees/mentoring_insider_tips_for_young_female_attorneys.html (last visited May 21, 2014).

22. *Id.*

23. Stephanie Francis Ward, *What Women Lawyers Really Think of Each Other*, A.B.A. J., Feb. 2008, at 48.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Seth Meyers, *Women Who Hate Other Women: The Psychological Root of Snarky*, PSYCHOL. TODAY (Sept. 24, 2013), <http://www.psychologytoday.com/blog/insight-is-2020/201309/women-who-hate-other-women-the-psychological-root-snarky>.

III. Generational Differences in Female Attorneys in the Workplace

A. What Creates Generational Differences?

History, or the “cohort effect,” a term used by gerontologists, provides the best explanation of why generational differences exist. Essentially, the cohort effect means your outlook on life is dependent on your “subconscious interpretation and understanding of the tensions, shifts and forces that dominated the years in which you became of age.”²⁹ Of course, the generalization tendencies detailed below are meant to be taken in broad strokes and will not apply to each individual. It is important to keep in mind the danger involved in stereotyping, as not all behavior can be or will be derived from generational influences. That being said, some patterns can be observed. Being aware of the differences is “valuable when designing strategies and interacting as team members, mentors/mentees, [career] coaches, and supervisors.”³⁰

B. What Effect Do They Have?

Our generational experiences and perspectives shape our values, motivations, approaches, work, ethics, and communication styles or preferences.³¹ The defining moments of our generation impact our outlook and perspective—how we filter life. The table below helps explain the role of history on the following three generations currently in the workplace.³²

Broadly speaking, suggestions for how to navigate these intergenerational issues include, firstly, paying attention to the environment in which you find yourself and adapting accordingly. Additionally, experts recommend that younger generations pay special attention and understand the impact of technology in how they interpret situations. For example, a Gen Yer is very likely to want immediate feedback, to use informal means of communication, and to expect quick answers. These tendencies may be off-putting to older attorneys, who did not grow up in the technology-laden environment of younger associates, and who often expect hard work and more patience. Finally, younger attorneys grew up with social media outlets at their fingertips, where sharing their opinion or perspective on an item became second nature. In order to blend with older generations, some suggest that younger attorneys should resist this honed tendency to express every thought they have, and instead use judgment to weigh whether their opinion adds specific value in the given situation.³³

The American Bar Association suggests that remembering the following points may facilitate easier communication between and among the generations currently in the legal workplace:

- Baby Boomers tend to prefer in-person contact and establishing relationships first. They consider themselves continual learners and want to work for intellectual stimulation. They consider themselves competitive and “in the game”—not “old.”
- Generation Xers are extremely self-reliant and are willing to learn as they go. They regard time as money so brevity is favored.

29. Nancy R. Peppard, *Closing the Generation Gap*, L. PRAC., June 2006, at 31.

30. Phyllis Weiss Haserot, *Gengagement: A Multigenerational Approach to Engagement and Retention*, L. PRAC., Sept.–Oct. 2012, at 44.

31. Peppard, *supra* note 29, at 30. Also of note: generational differences do not exist in a vacuum of inter-firm relationships; they expand into marketing efforts, client relations, jury selection and influence, and even trial outcomes. *Id.*

32. Kathleen Brady, *Attention Gen Y's: Understand Generational Differences in the Workplace*, L. PRAC. TODAY (May 2008), <http://apps.americanbar.org/lpm/lpt/articles/yl05081.shtml>.

33. *Id.*

Generation	Presence in a Typical Law Firm	Defining Events	Resultant Attitudes
Baby Boomers (born between 1946–1964)	<ul style="list-style-type: none"> • 45%–60% 	<ul style="list-style-type: none"> • Vietnam War, Civil Rights Movement, Women’s Liberation 	<ul style="list-style-type: none"> • Believe in “change of command”—question rules, challenged status quo • “Dress for success”—navy and gray pinstriped suits • Work for sense of personal fulfillment and find reward in status that comes with hard work • Frustrated by Gen Y’s “sense of entitlement” • Strong work ethic
Gen X (born between 1965–1980)	<ul style="list-style-type: none"> • 40%–50% 	<ul style="list-style-type: none"> • Bleak defining moments: “latchkey kids”; Watergate scandal, AIDS, Challenger disaster • Massive corporate layoffs and downsizing • Divorce rate tripled during their childhoods • Government and institutions fail to live up to expectations- self reliant 	<ul style="list-style-type: none"> • Described as being disloyal and disinterested • “Self-Command” • Dot com explosion: technical competence trumps seniority; hierarchy and rules are open to interpretation • Casual workplace; suits optional; first name basis • Work as a means to an end: reward for work is “freedom that money buys them to pursue outside interests”
Gen Y, “Millenials” (born between 1981–1995)	<ul style="list-style-type: none"> • Less than 5% 	<ul style="list-style-type: none"> • Ubiquitous technology—Do not know a time without technology: cannot remember life without cell phone, computer, internet • Grew up with 24-hour news, talk shows, reality TV • 9/11 terrorist attacks • Competition is about “showing up”—everyone gets a trophy! 	<ul style="list-style-type: none"> • Told they can “change the world”—with technology, “anything is possible” • Main philosophy: “Don’t command, collaborate!”

- Generation Yers or Millenials were raised in a transactional world and think in those terms. They live in the moment and were educated to ask questions. They expect the opportunity to express their views.

Equally as important for attorneys, learning styles largely differ between the generations. Older generations are familiar with the in-person lecture format, while Generations X and Y want interaction with the speaker, some sort of stimuli (i.e., video contests and videogames), and immediate feedback. These groups also prefer learning on their own time from wherever they choose, though Generation Yers want more guidance.³⁴

Generation Yers generally prefer to work collaboratively and want to get things done right the first time. The pace of change they have witnessed in their lifetime from the Internet and technology has obliterated their willingness to wait, whereas older generations have experienced a longer time frame for leadership and promotion.³⁵

Generation Xers, on the other hand, generally tend to prefer to work independently and desire a clear career path.³⁶

C. Generational Perspectives of Female Attorneys and “Leaning In”—or Out

Specific to female attorneys, career paths, and “leaning in,” the two main groups currently practicing are Gen X and Gen Y. The generational differences between these two groups impact how they view the progress made and the progress yet to take place.

1. Generation X (1965–1980)

Female senior partners from the baby boom generation express frustration that younger women do not want to give the same amount of blood for their careers. These women are from a generation that sacrificed to achieve what they did—and feel that younger attorneys should have to bear the same burden.³⁷ One woman who was interviewed for a study published in the *California Lawyer* expressed that she gave up her social life: that she had fewer friends, and had her first pedicure at age forty, in order to get where she wanted in her career.³⁸ Further, these women feel that they worked hard to generate business and made many sacrifices to put clients first—sometimes in front of friends and family, to make the gains they did. They perceive that the newest generation of female attorneys is not willing to do that. Additionally, older female attorneys do not feel their younger counterparts are carrying the ball forward: They feel that this generation has not demanded changes that would further the progress of women in the legal field. Generation Xers expressed that they felt an obligation to pave the way for women who would later come through the doors they opened.³⁹ Finally, this generation of female attorneys entered the legal profession for idealistic reasons and were “thrilled that they were the first generation of women able to make their way into traditionally male law firms in significant numbers.”⁴⁰ With progress has come less enchantment: Women no longer view their achievements as a privilege, but rather as an earned right.

34. Haserot, *supra* note 30, at 46.

35. *Id.*

36. *Id.*

37. Malaika Costello-Dougherty, *We’re Outta Here: Why Women Are Leaving Big Firms*, CAL. LAW. (Feb. 2007), http://www.oollaw.com/0207CL_Osterloh%20and%20Orta.pdf.

38. *Id.*

39. *Id.*

40. *Id.*



“I thought I could do it all. Why not? So many have done it before me. Then at a closer look I see, no, they haven’t. They cut corners; they just weren’t professional corners.”

2. Generation Y (1981–1995)

The newest generation of female attorneys has expressed an attitude of non-sacrifice: they want it all. They see no reason why they should not be able to have a family, a social life, and a high-powered position. In contrast to the advocacy mindset of the Generation X attorney, these individuals have a free agent mindset and are said to “speak loudest with silent departures”—meaning there is a generational tendency to leave rather than be proactive for change within an organization.⁴¹ These attorneys express no sense of need or obligation to pave the way for the next generation of women in the workplace and have different motivations for becoming attorneys. Additionally, because the slump in the economy and a growing distrust of corporate America were a part of their childhoods, this group has a different view of work. They saw their parents work their entire lives and get laid off without a second look. Many view partnership as a “pie eating contest, and the prize is more pie.”⁴²

Additionally, this group tends to resent work for interfering with their social or personal lives. As far as “work-life balance” goes, there is a joke that Generation Y “found the balance before ever finding the career.”⁴³ This group tends to gravitate towards law firms that offer remote options, alternative work schedules, and a “guaranteed” quality of life. Generally speaking, they do not feel that the apparent success of their elders is worth what they gave up. But, this group also tends to be confronting a harsh reality as they navigate the workplace. One attorney described her realization in the following terms: “I thought I could do it all. Why not? So many have done it before me. Then at a closer look I see, no, they haven’t. They cut corners; they just weren’t professional corners.”

IV. Conclusion

What can be done about these tensions? The first step in building unity between these two generations is fostering an understanding of where each group is coming from and a mutual respect for the attitudes and values of each generation. Younger attorneys indeed owe a lot to the generations before them who bore the brunt of the sex discrimination against female attorneys and broke down barriers to pave the way for future generations. In return, older female attorneys should resist the attitude of

41. *Id.*

42. *Id.*

43. Kimberly H. Smith & Corey T. Smith, *Generation Communication: How to Attract New Leaders, Keep Everyone Connected, and Not Fall into the Gap*, B. LEADER, Mar.–Apr. 2009, at 8, available at http://www.americanbar.org/publications/bar_leader/2008_09/3304/generations.html.

holding others to their same experiences, i.e., “I sacrificed, so you should too.” This mentality perpetuates the struggle for equality in the workplace and holds a younger generation to a standard they did not sign up for. Further, the sacrifice was made on a case-by-case basis. Not all attorneys are willing, should be willing, or will have to be willing to choose between a social life, a family life, and work.

The perceived attitude of young female attorneys to speak with their “silent-departures” and seek environments that offer work-from-home and part-time options is no doubt troubling to older generations who “stuck it out” to make important gains on behalf of a larger group. However, young attorneys are part of a generation that is used to multi-tasking and balancing different demands, and if enough of them speak together, the industry very well may respond—albeit more slowly than most would hope.

Finally, “Queen Bee Syndrome” must be directly addressed. If indeed female attorneys are harsher on their younger counterparts, this is directly working against the effort to foster mentor/mentee relationships and promote women into more senior positions. Law firms should explore this issue at women’s initiative events and create an open dialogue to address this issue, and any lingering effects it may have in the workplace.

Perhaps the best way to begin the conversation is to gather women from different generations, ask them about their experiences, their priorities, and what they think they—and others—could do to continue to advance the position of women in the legal field. This type of open forum would help eradicate some of the preconceived notions of how individuals in each generation “should” act and instead focus on what each person views as important, and what obstacles stand in the way of their success.



If indeed female attorneys are harsher on their younger counterparts, this is directly working against the effort to foster mentor/mentee relationships and promote women into more senior positions.

Cooking Up a Women's Initiative: A Tale of Stone Soup

Jennifer H. Zimmerman

Executive Director, Morgan Stanley

Affinity groups and networks are not a new idea but while some thrive, others founder. Jennifer Zimmerman analyzes the structural, philosophical, strategic, and political components of a successful women's initiative.

Starting a women's initiative (or growing an existing one) is a little like the old folk story, Stone Soup. There are many versions of this tale, some with buttons or an axe head instead of stones. But they all follow a similar storyline, which goes something like this:

After a long voyage, a stranger enters a village looking for a hot meal and a place to hang his hat. Everyone is suspicious; they all close their doors on him. He looks around for dinner and all he sees are stones. What to do? He puts a big pot on a fire, adds stones and some water, and starts singing about how wonderful his stone soup will be. The village folk watch warily, but soon become curious. Someone tentatively offers some carrots for a bowl of soup. The carrots go into the pot. Next, it is potatoes, and so on. Pretty soon, the wonderful scent of stew is wafting through the village. Some musicians come along and offer entertainment for a share. A juggler approaches, then a magician. Everyone wants to taste that delicious soup and soon the entire village has joined the party. When the soup is ready, everyone marvels at how delicious it is, with so many meats and vegetables and herbs. Never was there such a celebration in the village! The town-folk talk for years to come about the feast brought to the village by the stranger.

Similarly, you may start your women's initiative with few members, little experience and even less funding. But if you do it well, a remarkable thing happens. One woman raises her hand, and then the magic begins. Others join in. Soon, there's a buzz and women start asking how they can get involved. Senior management begins to notice and you find that you somehow have gotten the ever-important "buy-in." The initiative takes on a life of its own and becomes important to its membership, other women in the organization, and to the organization itself. And here's the kicker: at every step, from the first woman who raises her hand, to everyone else who joins the initiative, runs a program or participates in an event, skills are developed, networks are broadened, and careers are enhanced. Just like the stranger who comes to town empty-handed and creates a feast for all, your women's initiative starts with an idea and some coaxing and ends up impacting the whole organization.

Well, at least that's how it's supposed to work.

It's a little more complicated to start (or grow) a women's initiative, but not by much. We did it in our organization, and you can do it in yours. Here are some ideas that can help to make a delectable soup for and with the people in your corporate village.

Mission Statement. Think about what you want to accomplish, and then think about what you realistically can accomplish. Whatever fits into both buckets is fair game for your mission statement. Think especially hard about what your organization, your funding, and your membership will support. What do your organization's women want and need? What will your senior management



It is very important to know your one big goal. Make sure you can say it out loud in one breath, and make sure you do say it out loud in one breath often—especially to senior management.

support? For example, if your company is the type that would not support a quantitative analysis of pay and promotion practices across gender, don't include that. It may be important, but why risk alienating management or making coworkers uncomfortable about raising their hands? There are many other ways to make an impact, through career development, relationship building, skills, leadership, or business impact training. On the other hand, if your corporate culture is the type that responds to quantitative metrics, perhaps such an analysis can be impactful and empowering.

Don't skimp on this step: it is very important to know your one big goal. Make sure you can say it out loud in one breath, and make sure you do say it out loud in one breath often—especially to senior management. Make sure everyone who becomes involved in your women's initiative knows the tagline and also can say it in one breath. And when your initiative chooses which projects to support, analyze each project to make sure it syncs with your mission statement—without cutting corners. A spa event might be fun, but if your mission is to develop leadership skills, maybe you should skip the massages and opt instead for a panel discussion with firm leaders.

Note that your mission may, and probably should, evolve over time. As your initiative gains members, momentum, buzz, and management support, you should find that the goals both you and your members want to address, and what you can accomplish within your organization, will also change. You may be able to expand your mission, you may find that women's needs in your organization are different than what you originally thought or that your stakeholders have changed. Review your mission statement annually and make sure it stays up-to-date. But have only one mission statement at a time that you can reasonably accomplish—and clearly articulate in a single breath.

For the Women's Committee at my firm (called the WoCo), the first mission we selected was to ask members to make an impact on their own careers by getting involved in events. We designed a program that invited members to be leaders, for example, by running events, or learners, by attending them. We defined the program broadly to have wide appeal and entice members to engage in what truly interested them. The only limitation we imposed was that every event had to be professional and substantive.

We called our program "Back to Basics" because we wanted members to think about how they wanted to fundamentally affect their individual careers, and to build events around topics of importance to them. The expectation was that if two members thought a particular topic was so important

that they wanted to spend time creating a program, others would find it meaningful enough to attend. The results were a win for the company and for the WoCo membership: a year of programs that fostered self-empowerment, engagement, leadership, education, risk-taking, and connectivity.

Branding. I cannot overestimate the importance of branding. You want your initiative to be the “cool” committee, the lunch table where the popular kids sit, the group everyone wants to be a part of. And the good news is that there’s room at the table for everyone!

There are stacks of books on branding which attests to the importance of a catchy name for your initiative (like the WoCo) that you use over and over (and over and over). Just as your name becomes your identity, so does your initiative’s name. If you name your initiative something boring, it will be thought of as boring, or worse, it will not be thought of at all. If you name it something complicated it will be considered complicated. But if you name it something fun and cool, it will be thought of as fun and cool. Hint: go for fun and cool.

Imagine if Target department stores were instead named “Value Branded Consumer Product Superstore.” The latter is exactly what you get at a Target, but the name Target invokes an image of being “spot on” and does not have the unfortunate side effect of putting you to sleep. Neither should the brand you give to your women’s initiative. *Engagement.* The success of a women’s initiative really boils down to how engaged its membership becomes. If the same twelve people show up at every event you sponsor, your initiative simply is not maximizing its impact. Maybe you have the wrong mission or you are not articulating it clearly. If you do, you will find ways to get more women (and men) in the room.

You need one very important element to ensure engagement: fun. Just like the old saying, you get more flies with honey than with vinegar, every program you design must be something people will want to help plan and will be excited about attending. I am not suggesting that your events should be all about the fun—every event should be substantive and tie to your initiative’s mission. But in my experience, good food and drink (probably not through corporate catering) go a long way toward helping fill a room. If your events are fun, women and men will come back for more. You’re looking to create a buzz—so that when your women’s initiative sends an invitation or email, people can’t wait to open it, rather than automatically hitting the delete button. If you do an external event, make it geographically convenient and socially interesting. Chairs lined up in your company’s conference room and the same old chocolate chip cookies on a plastic platter probably aren’t going to draw as many people to come see your hotshot speaker as a swanky room in your city’s hottest new wine bar. The better known your speaker, the less important the venue; however, if you offer a fabulous program on authenticity or making it to General Counsel that is hosted by someone without widespread name recognition, an enticing venue becomes critical.

The flip side of engagement in the initiative’s events is the engagement of the initiative’s membership. You need to get your members involved in the planning and execution of your programs. This is critical because leadership skills are taught in two ways: through modeling and by actual leading. Get more people to take on responsibilities and you’ll be giving those people the gift of leadership training—whether they recognize it or not. And once they are more comfortable leading, they’ll want to do it more, for your women’s initiative and in their day-to-day jobs.

Also, those who become involved in running a part of your initiative also develop a vested interest in it. They will spread the word about your initiative’s good work, bring more people into the fold, and create goodwill.

When new members ask to join the WoCo, the first thing I tell them (after welcoming them) is that



You can't do it all by yourself, or even with a handful of deputies—and you shouldn't. The opportunities to step up belong to every woman in your initiative, so be sure to spread them around for maximum impact.

the WoCo is a working committee, not an affinity group, and as such, all WoCo members are expected to contribute actively. I also tell them that if they don't raise their hands to volunteer for something they are interested in, I will come calling when I need leaders for a project or initiative. This expectation is stated upfront. You can't do it all by yourself, or even with a handful of deputies—and you shouldn't. The opportunities to step up belong to every woman in your initiative, so be sure to spread them around for maximum impact. This will also assist with succession planning, which is vital to the long-term health of your initiative.

Planning. As stated above, you must ensure that your initiative's programming is singularly focused on your mission. Once you decide on your initiative's substantive programs and you determine that they are consistent with your mission, you have to execute. And planning is essential.

You must remember that your initiative's reputation is on the line each time you offer a program, send an email, or make a budget request. It is much harder to repair a damaged reputation than it is to make sure it never gets damaged in the first place. Ensure that there are checks and balances, timelines, identified individuals who are responsible for specific tasks, and documentation. You should approach each project your initiative takes up with the same organization, diligence, and eye to risk management that you would use when managing a project in your substantive job.

The WoCo staffs each program with two leaders, one of the WoCo co-chairs for oversight, and sometimes one or more additional team members for execution. Budget requests must be timely, professional, and detailed. Project plans are the first step and regular status calls are calendared at inception of the project. Feedback and participation are solicited from relevant groups, such as co-sponsoring firms, human resources, and other relevant affinity, diversity, or business groups, and leaders of prior WoCo events are tapped for advice and information.

Build Consensus. An important element of planning is consensus building—a skill at which women tend to excel. Involving the appropriate individuals and groups early on helps not only to build a buzz for your event, it also helps to build support among stakeholders and interested members of your company. And more input, particularly from a diverse group, will help you to head off reputationally expensive mistakes.

Think of this step as an insurance policy for your events and programs. If people provide input on



Too often, women's initiatives offer great programming and afterward no one collects, analyzes, and publicizes the results.

a program, and if their input is thoughtfully considered, they will likely support your program. They will develop a personal stake in it. And the more people who develop that vested interest, the more likely that your program will be a success. An added benefit: involving a number of stakeholders in the planning and consensus building stage is also a way for your project team to network with individuals they may not know or they may not ordinarily have access to.

Execute with Style. If you have properly conceived and planned your event and built consensus within your organization, this step should be easy. Charm, wit, and grace should be your mantra. Remain relaxed, and trust your project team. Present your initiative professionally, respectfully, and stylishly. Always thank your stakeholders, at and after your event. Don't forget a liberal dose of well-deserved praise for the team members behind the scenes that make your event a smooth-running success.

Report. Too often, women's initiatives offer great programming and afterward no one collects, analyzes, and publicizes the results. If you've done a terrific job, memorialize that in a report and make sure your management sees it. Find out what worked well and where improvements can be made, create a record of your successful programs, and show how your initiative has been impactful over time. Make sure you are reporting on measurable deliverables, such as attendance numbers, connections made, business generated, etc., rather than just qualitative feedback.

Your report should be viewed as a marketing piece as well as a record of your historical achievements. Next year, or the year after, it may be that the only thing your management knows or remembers about your initiative is what your report reminds them of. Write it with a view to marketing the importance, sustainability, and success of your initiative.

The WoCo has developed a process through which the project leaders must send out a five-question survey (always the same five questions) after each event and write a brief report on the success of the initiative, including a summary of the event, how it fits into the WoCo's mission, attendance data, survey results, and other feedback received. This is a great tool to give to company management to demonstrate the impact your initiative is making—especially when you are requesting funding for future events!

Grow. If your initiative is successful, you will need to reinvent it to maintain the same level of success. Programs or events that are too similar to past offerings are likely to generate less interest, be

less impactful, and be a drag on the buzz you've created for your initiative. Find ways for your initiative to stay fresh and relevant by updating your mission, asking new individuals to lead your programs and events, finding different venues, speakers and co-sponsors, and updating your messaging. In my experience, both the members of your initiative and other stakeholders have an abundance of ideas, virtually all of which are based on their own personal needs that they perceive are not being met elsewhere in the organization. If you make meeting those needs your goal, your initiative's mission will, by definition, always grow and stay fresh. It will also expand, as more people, with more ideas and energy, learn about your initiative's great work and want to be a part of it.

Repeat. In order for your initiative to be successful, it must be continuously active and relevant. As the pop song goes, "what have you done for me lately," you must keep your initiative on the radar of members, women in your organization, and company management. Keep your programming coming at a relatively constant rate. If the buzz you create is not refreshed, it will disappear, and it will do so quickly.

So how much programming does a woman's initiative have to do? And how much is too much? This depends on your organization, the engagement of your members, and the activities of other committees. There is only so much bandwidth, and it needs to be shared by all of your company's initiatives and affinity groups. Be sensitive to the needs of the organization when you are scheduling events, and try to cosponsor with other internal and external groups when appropriate. An added bonus of co-sponsorship is increasing the opportunity for your members to meet men and women in other divisions, departments, and organizations—i.e., networking.

In the initial year I led the WoCo, we held about a dozen events. That was a lot for our organization, but there was an enormous energy and engagement among our members; we almost couldn't stop them from pushing to plan more events. For the next year, we decided to limit our initiative to six events; the energy was such that we had nine scheduled by the end of January. If you've followed the other steps outlined above, this last step takes care of itself!

The moral of this story is that you can start an effective, impactful women's initiative, just as you can make soup from stones. Drawing on the natural skills and qualities that professional women bring to the office every day—organization, creativity, collaboration, efficiency, energy, intelligence, and desire to improve our positions—you will find that you can make a significant difference in your organization, your career and the careers of those around you, if you simply choose to put the first stone in the pot and start mixing up your own special soup.



Keep your programming coming at a relatively constant rate. If the buzz you create is not refreshed, it will disappear, and it will do so quickly.

IILP Review 2014:

Racial and Ethnic Diversity and Inclusion Issues in the Legal Profession

Because of our Success: The Race of Blacks Makes a Difference on LSAT Scores

Kevin Brown

Richard S. Melvin Professor of Law, Indiana University Mauer School of Law

Renee Turner

Judicial Law Clerk to the Honorable Wilma A. Lewis, United States District Court of the Virgin Islands

As the race or ethnicity of those Americans identified as “black” becomes more diverse, differences are becoming apparent in the LSAT scores of those blacks who are multiracial, those who are immigrants, and those who are the descendants of American slaves. Professor Brown examines the ramifications these differences have for blacks in America.

Until 2010, selective higher education institutions—institutions that only admit a subset of the students that apply, including law schools—generally placed all those of African descent into a unified category, regardless of race or ethnicity. Nevertheless, over the past dozen years, several studies have pointed to the overrepresentation of black multiracials (those who self-identify with black and at least one other racial or ethnic group) and black immigrants (those with at least one foreign-born black parent) among blacks attending selective higher education undergraduate institutions. For example, a study by Princeton researchers noted that, among blacks entering twenty-eight selective colleges and universities in 1999, which ranged from highly selective to moderately selective, 17% were black multiracials and 41% were either black multiracials or black immigrants.¹ Harvard professors Lani Guiner and Henry Louis Gates noted in the summer of 2003, that black multiracials and black immigrants comprised two-thirds of Harvard’s black undergraduate population.² A study tallied the 2007 reports from the Consortium on Financing Higher Education (COFHE) Enrolled Student Survey. COFHE is an institutionally supported organization of thirty-one highly selective private colleges and universities, including many of the most elite ones in the country.³ According to this study, 19% of the black students indicated that they had a parent of another race and an additional 4% answered “yes” to the Hispanic/Latino ethnicity question.⁴ As further evidence of the widespread nature of the increase in black multiracials at selective higher education institutions, statistics from the Vice President of Enrollment Services of Indiana University-Bloomington, who also controls the admissions office, showed that black multiracials comprised 18.4% of the black students on campus in the Fall of 2013.⁵

1. DOUGLAS S. MASSEY ET AL., *THE SOURCE OF THE RIVER: THE SOCIAL ORIGINS OF FRESHMAN AT AMERICA’S SELECTIVE COLLEGES AND UNIVERSITIES* 39 (2003).

2. Ronald Roach, *Drawing Upon the Diaspora*, DIVERSE ISSUES IN HIGHER EDUCATION (Apr. 25, 2005), <http://diverseeducation.com/article/4558/>. The following academic year, 350 of the 530 black undergraduate students who attended Harvard were either Black Multiracials or Black Immigrants. *See id.*

3. *See* Kevin Brown & Tom I. Romero, II, *The Social Reconstruction of Race & Ethnicity of the Nation’s Law Students: A Request to the ABA, AALS, and LSAC For Changes In Reporting Requirements*, 2011 MICH. ST. L. REV. 1133, 1176.

4. Kevin Brown, *Should Black Immigrants Be Favored Over Black Hispanics And Black Multiracials In The Admissions Processes Of Selective Higher Education Programs?*, 54 HOWARD L. J. 255, 262 (2011).

5. There were 1,298 black students on campus and an additional 318 “two or more races” students who also indicated black. Institutional Research and Reporting, *IPEDS Base Sets: Bloomington*, INDIANA UNIVERSITY (Sep. 9, 2013), available at https://www.iu.edu/~uirr/doc/reports/diversity/student/1-IU_BL_base_05_13.pdf.

There has been scant evidence of the changing racial and ethnic ancestry of blacks in law schools. However, in 2010, new regulations promulgated by the Department of Education (DOE) went into effect, which changed the way all educational institutions collect and report racial and ethnic information to the DOE. In response to these changes, the Law School Admissions Council (LSAC) changed the way that LSAT test takers designate their racial and ethnic identifications. While these changes do not allow the LSAC to separate out the performance of black immigrants from other blacks, it does allow the LSAC to separate out the LSAT scores of black multiracials from single-race blacks. This data reveals that the LSAT scores of black multiracials, particularly black/white ones, are significantly higher than those of single-race blacks. While black multiracials are two and one-third times more likely than single-race blacks to score over 160, black/white multiracials are almost four and a half times more likely to do so. No doubt higher LSAT scores improve an applicant's chances of admission. This essay will discuss the LSAC data. But, first, it will discuss how the DOE changed the way all educational institutions, including law schools, collect data on race and ethnicity, to demonstrate why the LSAC changed its procedures.

I. Federal Government's Initial Efforts to Standardize Racial and Ethnic Data

In the introduction to their groundbreaking book, *The Shape of the River*, William Bowen and Derek Bok noted, "[i]t is probably safe to say, . . . that prior to 1960, no selective college or university was making determined efforts to seek out and admit substantial numbers of African Americans. . . ."6 However, once selective higher education institutions began to employ special efforts to recruit black students, their numbers immediately increased. For example, in 1965, law schools began employing affirmative action admissions practices.7 Within ten years, the proportion of black students enrolled in the nation's law schools jumped from about 1% to about 4.5%.8

When affirmative action policies were first instituted, the racial and ethnic make-up of the United States was very different from what it is today. According to the 1960 census, whites constituted 88.8% of all Americans, with an additional 10.6% classified as black.9 Hispanic/Latinos were only classified by race.10 With regard to determining a person's racial classification, until 1960 the Census retained the instructions originally adopted in 1930, that "[a] person of mixed white and Negro blood was to be returned as Negro, no matter how small the percentage of Negro blood."11 In addition, census enumerators were still responsible for determining a person's racial classification based on phenotypical appearances.12 Thus, given the biracial nature of American society and the one-drop rule as the way to determine a person's race, an individual's racial identity was an ascribed identity that was socially imposed, not a function of self-identification.

Supreme Court rulings in the 1950s and 1960s outlawed racial and ethnic discrimination by governmental entities. Congress passed a number of civil rights measures in the 1960s, including the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act. Because of these court decisions, Congressional legislation, and other developments, the need and the purpose of employing racial classifications and collecting race and ethnic data changed. Governmental entities and private institutions

6. WILLIAM BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER* 4 (1998).

7. Ernest Gellhorn, *The Law Schools & the Negro*, 1968 DUKE L.J. 1069, 1077–85 (1968).

8. BOWEN & BOK, *supra* note 7 at 7 (footnote omitted).

9. See Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States*, at tbl.1 (United States Census Bureau, Working Paper Series No. 56, 2002), available at <http://www.census.gov/population/www/documentation/twps0056/twps0056.html>.

10. *See id.*

11. C. Matthew Snipp, *Racial Measurement in the American Census: Past Practices and Implications for the Future*, 29 ANN. REV. SOC. 563, 568–71 (2003).

12. In 1960, the Census Bureau began to move toward a system of self-identification for race, by sending advanced copies of the census form to over 80% of American households who filled them out and then gave them to census enumerators when they showed up. *See id.*

began to use racial and ethnic classifications not to segregate and exclude blacks and others, but to include individuals from previously discriminated against minority groups. Also, enforcement of federal, state, and local civil rights statutes required accurate racial and ethnic statistics to demonstrate the existence of legally recognized discrimination. In addition, the motivating logic of civil rights activists was that racism was not simply a product of isolated actions and decisions by individuals, but part of a much larger system of discrimination and oppression. To demonstrate the systematic nature of racial oppression, statistics of various social and economic differences based on race were crucial. Thus, as the 1960s unfolded, governmental entities, private institutions, and advocacy groups increasingly employed racial and ethnic classifications and used racial and ethnic statistics to benefit disadvantaged minority populations.

Even though the federal government had collected racial data since the ratification of the Constitution, before the 1970s no federal standards existed for the gathering of data on race and ethnicity that applied to all federal agencies.¹³ Largely because of civil rights measures noted above, many more federal agencies beyond the Census Bureau and the Immigration and Naturalization Service were collecting racial and ethnic information. In 1976, Congress also passed Public Law 94-311 in response to the undercount of Hispanic/Latinos during the 1970 census. That law required federal agencies to provide separate counts for the Hispanic population, in order to remedy discrimination against those of Hispanic origin.

The new concern for discrimination against racial and ethnic minorities generated the first effort by the federal government to standardize the collection and reporting of racial and ethnic data. On May 12, 1977, the *Race and Ethnic Standards for Federal Statistics and Administrative Reporting* was adopted. It required that all data collections by federal agencies comply with its terms and definitions by January 1, 1980.¹⁴ In 1978, these standards were renamed the *Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting* or “Directive 15” for short.¹⁵ Without question, the motivation for the adoption of Directive 15 “was the need for comparable data to monitor equal access, in areas such as housing, education, mortgage lending, health care services, and employment opportunities, for population groups that historically had experienced discrimination and differential treatment because of race and ethnicity.”¹⁶

In applying Directive 15, the DOE adopted regulations that required all educational institutions to gather racial and ethnic information about their students and report it to the DOE. Most colleges and universities used the one-question format to obtain this information from their students.¹⁷ Thus, a student had to select one, and only one, of the following racial/ethnic categories:

- American Indian or Alaskan Native;
- Asian or Pacific Islander;
- Black, not of Hispanic origin;
- Hispanic; or
- White, not of Hispanic origin.¹⁸

13. See Katherine K. Wallman et al., *Measuring Our Nation's Diversity: Developing a Common Language for Data on Race/Ethnicity*, 90 AM. J. PUBLIC HEALTH 1704 (2000) (The authors directed the review of the standards at the United States Office of Management and Budget).

14. *Directive No. 15 Race and Ethnic Standards for Federal Statistics and Administrative Reporting* (as adopted on May 12, 1977), U.S. CENSUS BUREAU [hereinafter *Directive 15*], available at <http://wonder.cdc.gov/WONDER/help/populations/bridged-race/Directive15.html>.

15. For a more complete retelling of the change of the name of Directive No. 15 see RAINER SPENCER, *SPURIOUS ISSUES: RACE AND MULTIRACIAL IDENTITY POLITICS IN THE UNITED STATES* 70-71 (1999).

16. See Wallman, *supra* note 14, at 1707.

17. See C. Anthony Broh & Stephen D. Minicucci, Paper presented at the 48th Forum of the Association for Institutional Research: Racial Identity and Government Classification: A Better Solution 5 (May 28, 2008), available at <http://www.massinc.org/Experts/~media/Files/Mass%20Inc/Experts/2008%20Racial%20Identity%20Govt%20Classification.ashx>.

18. *Directive 15*, *supra* note 15.

II. Movement to Self-Identification of Race and Redefinition of Racial and Ethnic Categories

With the 1970 census, the Census Bureau changed its practice of sending enumerators out to people's homes to fill out the forms. Instead, the head of households became responsible for filling out the forms and sending them to the Bureau. As the number of interracial marriages increased, especially those between blacks and whites, the number of mixed-race children also increased.¹⁹ The new census procedure had the unexpected side effect of raising the question among multiracial individuals and their parents, especially the parents of black/white biracials, of how they should classify themselves and their children. Many of these individuals objected to the requirement to select only one race, not only on Census forms, but on forms used by educational institutions, employers, and others.²⁰ By the late 1980s, multiracial groups were spearheading efforts to add a "multiracial" option to the collection of data on all local, state, and federal governmental forms, but especially for the 2000 census.²¹ Excluding student groups, there were about 3,500 adult members spread throughout the country involved in the Multiracial Movement at its height.²² However, only about twenty leaders of the Movement were responsible for the effort to add a multiracial category to the 2000 census.²³ As Kim Williams, who extensively studied the movement, stated, "Unexpectedly, I found that white, liberal, and suburban-based middle-class women (married to black men) held the leadership roles in most multiracial organizations."²⁴

Multiracial advocates, generally argued that mixed-race individuals viewed themselves as multiracial rather than belonging to a single racial or ethnic group. A "multiracial" designation was, therefore, a better reflection of the true understanding of the multiracial person's racial identity. These groups pointed to the psychological problems created for biracial children who were forced to identify with one parent more than the other. They also noted that the one-drop rule does not apply to any other racial or ethnic group in the U.S. and appears only to exist in the U.S.²⁵ In addition, they noted that the rule, used so long to classify any person with any black blood, as black, was inherently racist.²⁶

From 1993 to 1997, the federal government conducted an extensive review of the racial categories specified in Directive 15.²⁷ The review culminated on October 30, 1997, with the Office of Management and Budget (OMB) publishing its revisions to Directive 15 (1997 Revisions).²⁸ The 1997 Revisions provided that all federal programs adopt its standards of reporting racial and ethnic data.²⁹ Educational institutions not only have to report the race and ethnicities of their students to the DOE, but also the race and ethnicities of their employees to the Equal Employment Opportunity Commission (EEOC). The DOE, therefore, decided to wait until the EEOC enacted regulations before it proposed its own. Less than two years after the EEOC finalized its regulation, on October 19, 2007, the DOE adopted the "Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U. S. Department of Education" (hereinafter the "Guidance"), with a final implementation date of the 2010–2011 academic year.³⁰ The Guidance lays out the DOE's requirements for collecting and

19. KERRY ANN ROCKQUEMORE & DAVID BRUNSMAN, *BEYOND BLACK: BIRACIAL IDENTITY IN AMERICA* 1–2 (2002).

20. See Wallman, *supra* note 14, at 1704.

21. See Rockquemore & Brunsmann, *supra* note 20. See also KIM M. WILLIAMS, *MARK ONE OR MORE: CIVIL RIGHTS IN MULTIRACIAL AMERICA* 7–8 (2006).

22. See Williams, *supra* note 21, at 15 (footnote omitted).

23. *Id.*

24. *Id.* at 112.

25. See F. JAMES DAVIS, *WHO IS BLACK?: ONE NATION'S DEFINITION* 13 (1991).

26. Rockquemore & Brunsmann, *supra* note 20, at 1–17.

27. See Wallman, *supra* note 14, at 1704–05.

28. See *id.* at 1707.

29. See *id.* at 1706 fig.1.

30. Final Guidance, on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education, 72 Fed. Reg. 59266, 59267 (Oct. 19, 2007), available at <http://www.gpo.gov/fdsys/pkg/FR-2007-10-19/pdf/E7-20613.pdf>.



In the tallies of racial and ethnic data that educational institutions report to the DOE, it is impossible to tell the racial make-up of Hispanic/Latinos or the specific racial make-up of those reported in the Two or More Races category.

reporting data on race and ethnicity that all educational institutions must follow. Unlike the purpose for Directive 15, the stated purpose of the Guidance is to “obtain more accurate information about the increasing number of students who identify with more than one race”³¹

Since the effective date of the Guidance, educational institutions are required to collect racial and ethnic data using a two-question format.³² Educational institutions must raise an initial question about the respondents’ ethnicity that requires them to respond to whether they are Hispanic/Latino.³³ Then educational institutions are required to allow respondents to “mark one or more” categories of the following racial groups that apply to them: (1) American Indian or Alaska Native; (2) Asian American; (3) Black or African American; (4) Native Hawaiian or Other Pacific Islander; and (5) White.³⁴

The Guidance makes the Hispanic/Latino ethnic category the privileged category; therefore, it trumps all the racial categories.³⁵ Thus, like other educational institutions, law schools must report to the DOE as Hispanic/Latino any individual who answers “yes” to the Hispanic/Latino question, regardless of what racial group(s) they designate.³⁶ However, the Guidance requires that educational institutions report non-Hispanic/Latinos who identify with more than one racial category in a new racial category, “Two or More Races.”³⁷ The specific racial designations of those in the Hispanic/Latino or the Two or More Races category are not reported.³⁸ Thus, in the tallies of racial and ethnic data that educational institutions report to the DOE, it is impossible to tell the racial make-up of Hispanic/Latinos or the specific racial make-up of those reported in the Two or More Races category.³⁹ As a result, Hispanics/Latinos who also check the black racial box are not distinguishable from Hispanic/Latinos who check any other racial box(es).⁴⁰ Similarly, non-Hispanic/Latino individuals who check the black racial box and another racial box are not tallied separate from other individuals included in the Two or More Races category.⁴¹ Therefore, the DOE has required all educational institutions to abandon the one-drop rule.

31. *Id.*

32. *See id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

The Guidance, effectively, divides those with some black ancestry into three categories: black/African American (or Single-Race blacks), black Hispanics (who are reported as Hispanic/Latinos) and black Two or More Races (who are reported as Two or More Races). Throughout this essay, I have used the term “black multiracials” to refer to those who self-identify with black and at least one other racial/ethnic category. However, under the Guidance, black multiracials are considered either black Hispanics or black Two or More Races individuals.

III. 2012 LSAT Test Results of Blacks Broken Down by Race

As a result of the implementation of the Guidance, the LSAC changed its procedures for how test takers indicate their racial and ethnic ancestries to more closely follow the Guidance. Since at least 2010, the LSAC allows test takers to indicate whether they are Hispanic/Latino and to check all of the racial categories that apply to them. Thus, the LSAC can actually provide LSAT scores of blacks broken down by race into the following categories:

1. single-race blacks;
2. black Hispanic;
3. black/American Indian;
4. black/Asian;
5. black/white; and
6. black and two or more groups.



It is clear that black multiracials outperform single-race blacks on the LSAT. What is most interesting is that the median LSAT scores of black/white multiracials appear to exceed the LSAT median scores for all test takers.

Figures from the LSAC for 2012 showed that of the almost 10,400 LSAT test takers who indicated some black ancestry, 10.4% were multiracials.⁴² The number and percentage of each black racial group that scored over 150, 155, and 160 are listed in the table below.

BLACK LSAT SCORES BY RACE: 2012 ⁴³						
Racial Group	# over 150	% over 150	# over 155	% over 155	# over 160	% over 160
Single-Race Blacks	2,331	25.0	1,095	11.8	415	4.5
Total Black Multiracial	455	42.1	264	24.4	114	10.5
Black Hispanic	90	32.7	53	19.1	17	6.1
Black/American Indian	40	30.0	15	11.1	*	*
Black/Asian	39	41.9	16	17.2	10	10.8
Black/White	192	56.8	126	37.3	67	19.8
Black/Two or More Groups	94	40.5	54	23.2	20	8.6

From these statistics, it is clear that black multiracials outperform single-race blacks on the LSAT. What is most interesting is that the median LSAT scores of black/white multiracials appear to exceed the LSAT median scores for all test takers. For comparison, the mean LSAT score for over 105,000 test takers for 2011–2012 was 150.66.⁴⁴ However, almost 57% of black/white test takers exceed 150.⁴⁵

There is also a good possibility that the advantage that black multiracials, particularly black/white ones, have on the LSAT over single-race blacks is actually understated by the LSAC statistics. The LSAT relies on a purely applicant box-checking approach to determine race/ethnic identification. Normally, self-identification is the proper approach to determine a person’s racial/ethnic identification. However, in the context of applying to selective higher education institutions where admissions decisions are competitive, there is a distinct probability that many multiracial individuals will choose the box for their racial identification primarily for the strategic purpose of improving their admissions prospects. One website that provides minorities applying to law school with valuable advice, specifically states in its section for multiracial applicants, “If a school lets you identify only one racial category, check the box that indicates the most disadvantaged group: Native American or Black first . . .”⁴⁶ Thus, many of those with black ancestries who truly identify themselves as multiracial or Hispanic/Latino may decide to only select the black racial box because it is likely to improve their chances for admission. Since, on average, black multiracials score higher than single-race blacks,

42. According to statistics obtained from Josiah Evans, the Assistant Director of Social Science Research for LSAC (on file with author).

43. *Id.*

44. SUSAN P. DALESSANDRO ET AL., LAW SCHOOL ADMISSION COUNCIL, *LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 2005–2006 Through 2011–2012 Testing Years* 9 tbl.1 (2012), available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-12-03.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf).

45. The LSAT data on the mean is actually from 2011–12, whereas the scores of black multiracials are from 2012. In addition, while the *mean* LSAT score for all test takers in 2011–12 was 150.66, the *median* for black multiracials had to be higher than 150, since 56.8% scored 150 or above.

46. See *Race and Ethnicity*, DELOGGIO ADMISSIONS ACHIEVEMENT PROGRAM, <http://www.deloggio.com/diversty/race.html> (last visited February 24, 2014). In addition, some researchers have observed that multiracial individuals are more likely to identify with the minority component of their background when forced to choose in constrained, high-stakes settings and when they have specific knowledge of how such race-conscious data will be used—i.e., in the context of LSAT pre-law school testing, as opposed to being asked to “check all that apply” once in law school. A.T. Panter et al., *It Matters How and When You Ask: Self-reported Race/Ethnicity of Incoming Law Students*, 15 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 51, 63–64 (2009).

these black multiracials who are single-race black box-checkers will elevate the average scores of single-race blacks over what is revealed from the LSAC information.

IV. Conclusion

The higher test scores of black multiracials on the LSAT should come as no surprise. Studies have pointed out that “black/white intermarriages tend to occur when the white spouse trades the privilege of racial status for the higher status of a better-educated black partner.”⁴⁷ Census Bureau statistics indicate that black multiracials tend to come from parents with more education and live in families with higher incomes than single-race blacks.⁴⁸ Black multiracial students are also more likely to live with both parents⁴⁹ and live in families that own their own home.⁵⁰ Black multiracials, especially if their non-black parent is white or Asian, may also have less cultural discontinuities with educational institutions and school officials than other black students. This could also aid their academic performance.⁵¹

Regardless of whether higher LSAT test scores of black multiracials are the result of family economic conditions, family social factors, or both, the advantages that black multiracials have over single-race blacks is likely to last. In addition, the percentage of black multiracials among blacks approaching the age at which most apply to law school is on a steep upwards trajectory. According to census figures for 2012, the percentage of black multiracials among blacks between the ages of twenty and twenty-four was only 7.9%.⁵² However, the percentage of black multiracials among blacks between the ages of fifteen and nineteen was 8.9%, between ten and fourteen it increased to 10.9%, for those between the ages of five and nine to 15.0%, and for those under the age of five, it was 19.1%.⁵³

The reality that the LSAT advantage of black multiracials on the LSAT over single-race blacks and the increasing percentages of black multiracials among blacks in the ages where most apply to law school raises the significant issue of how to treat black multiracial applicants. In *Grutter v. Bollinger*, the Supreme Court specified that when selective higher education programs use racial and ethnic

47. Simon Cheng & Seena Mostafavipour, *The Difference and Similarities between Biracial and Monoracial Couples: A Sociodemographic Sketch Based On The Census 2000* 4 (January 2005), http://citation.allacademic.com/meta/p_mla_apa_research_citation/0/2/2/1/9/pages22192/p22192-1.php.

48. Kevin Brown, *Change in Racial and Ethnic Classifications is Here: Proposal to Address Race and Ethnic Ancestry of Blacks for Affirmative Action Admissions Purposes*, 31 *HAMLIN J. PUB. L. & POL'Y* 143, 149–51 (2009)

49. *Id.* (footnote omitted).

50. *Id.* at 151–52 n. 21.

51. See, e.g., JOHN H. McWHORTER, *LOSING THE RACE: SELF-SABOTAGE IN BLACK AMERICA* (2000); John U. Ogbu, *Immigrant and Involuntary Minorities in Comparative Perspective*, in *MINORITY STATUS AND SCHOOLING: A COMPARATIVE STUDY OF IMMIGRANT AND INVOLUNTARY MINORITIES* 3 (Margaret A. Gibson & John U. Ogbu eds., 1991). Other scholars downplay the socio-cultural differences as explanations for differences in educational performance. These scholars focus their attention on the family characteristics noted above. See Natasha Warikoo & Prudence Carter, *Cultural Explanations for Racial and Ethnic Stratification in Academic Achievement: A Call for a New and Improved Theory*, 79 *REV. OF EDUC. RES.* 366 (2009). There is a growing amount of literature that argues this cultural aspect is overemphasized. See, e.g., James W. Ainsworth-Darnell & Douglas B. Downey, *Assessing the Oppositional Culture Explanation for Racial/Ethnic Differences in School Performance*, 63 *AM. SOC. REV.* 536 (1998); Carolyn Tyson et al., *It's Not a "Black Thing": Understanding the Burden of Acting White and Other Dilemmas of High Achievement*, 70 *AM. SOC. REV.* 582 (2005).

52. According to the 2012 Census Bureau figures, of the 3,588,000 individuals between the ages of 20 and 24, who were classified as Black Alone or in Combination, 3,303,000 were Black Alone. Thus, the percentage of Black in Combination to total blacks was 7.9% (285,000 (3,588,000 – 3,303,000))/3,588,000. For Black Alone see *Race: The Black Alone Population in the United States: 2012* tbl.1 (numbers in thousands), U.S. CENSUS BUREAU, available at <http://www.census.gov/population/race/data/ppl-ba12.html>. For Black Alone or in Combination see *The Black Alone or in Combination Population in the United States: 2012* tbl.29 (numbers in thousands), U.S. CENSUS BUREAU, available at <http://www.census.gov/population/race/data/ppl-bc12.html>.

53. For ages fifteen to nineteen, the corresponding figures were 8.9% (322,000 (3,624,000 – 3,302,000))/3,624,000; For ages ten to fourteen the corresponding figures were 10.9% (384,000 (3,511,000 – 3,127,000))/3,511,000; for ages five to nine the corresponding figures were 15.0% (532,000 (3,545,000 – 3,013,000))/3,545,000; for under the age of five the corresponding figures were 19.1% (718,000 (3,769,000 – 3,051,000))/3,769,000. *Id.*



The Guidance's new categorization requirements raise the question, should admissions officials in their mental comparisons compare black Hispanics and black two or more races applicants with single race blacks?

classifications for determining admissions, they must employ an individualized admissions process.⁵⁴ Thus, all admissions officials will discuss the fact that their evaluations are based on a holistic evaluation of a particular applicant. Nevertheless, there is little doubt that admissions officials—at least in their minds—compare the standardized tests scores and grade point averages of a particular applicant from a given racial/ethnic group to the scores and grade point averages of other applicants of the same racial/ethnic group.⁵⁵ The Guidance's new categorization requirements raise the question, should admissions officials in their mental comparisons compare black Hispanics and black two or more races applicants with single race blacks? Alternatively, should admissions officials compare black Hispanics to other applicants in the Hispanic/Latino category and black two or more races applicants with others in the two or more race category? Or, should admissions officials at selective higher education programs employ a completely different method for treating the racial/ethnic identity of black Hispanics and black two or more races applicants?

How admissions officials resolve the treatment of black multiracials will have a dramatic impact on which blacks obtain legal degrees and go on to practice law. If they continue to employ the outmoded method of the one-drop rule and treat black multiracials as single-race blacks, then black multiracials, especially black/white ones, will come to dominate the number of blacks at the nation's law schools. If black Hispanics are compared to other the Hispanic/Latino applicants and black two or more races applicants are compared to others in the two or more races categories, then the increase in the numbers of black multiracials in law school will likely be halted and could even decline. Finally, in states where affirmative action is already illegal and in a future hypothetical world where the Supreme Court rules unconstitutional any consideration of race for admissions purposes, black multiracials, especially black/white ones, are likely to constitute the overwhelming majority of blacks who will attend law schools in those states and in the future.

54. *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003).

55. This was one of the points that Chief Justice Rehnquist stressed in his dissenting opinion in *Grutter*. *Id.* at 382–86 (Rehnquist, C.J., dissenting).

Diversity in Law Schools

Collette Brown

Associate, Neal, Gerber & Eisenberg LLC

Given that the numbers of African Americans entering law school and law firms has never been large, it is not uncommon for African American law students and lawyers to experience feelings of isolation. Here, Brown examines the effects of that isolation and strategies to address it.

I. Introduction

There are 994 students currently enrolled in UCLA's School of Law.¹ Only thirty-three of those students are black.² They represent approximately three percent of the student body. On February 10, 2014, a group of African American students from the law school created an eight-minute video to "raise awareness of the disturbing emotional toll placed upon students of color due to their alarmingly low representation within the student body."³ Below are quotes from the video:

I feel like an outsider constantly. And I don't feel like, at my own school, I can solely focus on being a student.

It feels isolating . . . it feels horrible . . . it feels like there's a lot of pressure, a lot of weight . . . it feels like I don't belong . . . it feels unwelcoming and hostile.

I feel like I get here and I'm one of three black students in my section and I'm told that's impressive . . . I'm one of eleven black students in my class and that that's impressive. And I wasn't impressed.

I feel my classmates' eyes on me. Particularly if we are discussing something that brings race, especially race and gender, into play. It's so far from being a safe space that it almost feels like staying at home would be better for my mental health, for myself, than being in class.

I have never felt the burden before to have to represent my community until I came to law school and it's not a good feeling to have.

It's a constant burden of pressure . . . I'm constantly policing myself . . . just being aware of what I say and how it can be interpreted because I essentially am the representation of the black community.

I felt like if there were maybe more black women in the class, maybe just five of us, people could've seen more of a variation in our responses to what was going on in class . . . Maybe I could've not been the angry black woman but I could've been the moderately angry black woman and then we could've had a

1. Rhonesha Byng, *Video Shines Light on the 'Disturbing Emotional Toll' of Being Black at UCLA Law School*, THE HUFFINGTON POST (Feb. 18, 2014), http://www.huffingtonpost.com/2014/02/14/ucla-law-school-diversity_n_4789763.html (referring to figures in Spring, 2014). Of the 1,110 students referred to in the video, 994 were enrolled in the J.D. program.

2. *Id.*

3. 33, YouTube (Feb. 10, 2014), <http://www.youtube.com/watch?v=5y3C5KBcCPI>.

nice black woman . . . if there were some more variation, I think it would've been good for the classroom environment.

I think if I could look around my classroom and see faces that I identified with, I wouldn't feel so alone. I wouldn't feel so afraid being there.

This poignant video places a voice, and a face, to the costs of the dwindling number of minorities in law schools and, more broadly, in private practice. The video highlights the pressure and psychological toll the students experience as a result of their gross under-representation at the law school.

II. Diversity in Law Schools

This is not the first time a viral YouTube video has outlined the racial disparity at UCLA. Last year, twelve UCLA undergraduate students appeared in a video titled "The Black Bruins [Spoken Word]."⁴ In this video, a group of African American male students highlight the fact that African American male students make up only 3.3% of the male student population. But UCLA is not the only school where African Americans are underrepresented. Nationwide, minorities, especially African Americans, remain severely underrepresented in colleges and graduate schools. The "33" are a representation of African American law students all over the country. UCLA is currently ranked number sixteenth of the nation's top law schools;⁵ numbers one through ten also have a dearth of African American students:⁶

Law School:	Total Enrollment:	African American Enrollment:	Percentage of African Americans in Total Enrollment:
1. Yale University	625	42	6.7
2. Harvard University	1741	156	8.9
3. Stanford University	574	43	7.5
4. Columbia University	1248	88	7.0
5. University of Chicago	612	37	6.0
6. New York University	1418	80	5.6
7. University of Pennsylvania	786	53	6.7
8. University of Virginia	1048	61	5.8
9. University of California-Berkeley	854	43	5.0
10. University of Michigan	1055	36	3.4
10. Duke University	629	46	7.3

4. *The Black Bruins [Spoken Word]*, YouTube (Nov. 4, 2013), <http://www.youtube.com/watch?v=BEO3H5BOIFk>.

5. *Best Law Schools*, U.S. NEWS & WORLD REPORT, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings?int=992008> (last visited Aug. 31, 2014).

6. Am. Bar Assoc., *Statistics*, AMERICANBAR.ORG, http://www.americanbar.org/groups/legal_education/resources/statistics.html (follow "2009-2013 Total Full-Time Enrollment by Gender and Ethnicity" hyperlink) (last visited Sept. 6, 2014).

The “33” brings the issue of declining numbers of minorities in graduate schools, specifically law schools, to the forefront. The legal profession can no longer ignore them. Nor can the profession ignore the fact that, in 2013, African Americans represent less than ten percent of the student body of each top-ranked law school. Worse, these numbers have remained steady for decades. A 1998 Columbia Law School study revealed that from 1993 to 2008, the percentage of African American law students declined in that period.⁷ Although over 3,000 additional seats became available in law schools and African Americans improved their college grade-point averages and their scores on the Law School Admission Test, there were fewer African American matriculants in the 2008 class than existed in the 1993 class.⁸

The words of the “33” undoubtedly resonate with many African American law students—both past and present. Studies have shown that “lack of diversity in the student population, faculty, staff, and curriculum often restrict the nature and quality of minority students’ interactions within and out of the classroom, threatening their academic performance.”⁹ Minority students at predominantly white institutions experience additional stress in higher education that comes from being a minority, which in turn can result in serious psychological and academic ramifications.¹⁰ Similar to the concerns expressed by the “33,” minority students at predominantly white institutions identify issues such as insufficient students and professors of the same race, racist and discriminatory policies, as well as rude and unfair treatment because of race.¹¹ Thus, minority student isolation is more extreme than that of a traditional law student, which can have far-reaching effects on self-esteem, motivation, and overall psychological well-being.¹²

III. Diversity in Large Law Firms

Unfortunately, the reality is that it does not get any better after graduation. The same dismal numbers are reflected in the employment patterns of African American attorneys in private practice. There is still an enormous disparity between the percentage of minorities in the U.S. and the percentage of minority law firm partners and associates. The number of minorities has been so small over the last few decades that there has not been any significant change in the racial composition of large law firms. Despite the growing recruitment and retention efforts, this discouraging trend continues to grow in the legal profession. Most alarming, a 2003 U.S. Equal Employment Opportunity Commission (EEOC) study reported only a 2.1% increase in the number of African Americans in large law firms from 1975 to 2002.¹³ In 1975, African Americans accounted for 2.3% and in 2004 they accounted for 4.4%.¹⁴ The EEOC study revealed that employment of African Americans in large law firms did not keep pace with the amount of law degrees conferred during the twenty-year period. Further, the study revealed that African Americans employed as associates have “lower odds” of being promoted to partner.¹⁵

7. Conrad Johnson, *A Disturbing Trend in Law School Diversity*, BLOGS.LAW.COLUMBIA, <http://blogs.law.columbia.edu/salt/graphs-data/> (follow “93 to 2008 Comparison” hyperlink) (last visited Sept. 6, 2014).

8. *Id.*

9. Watson Scott Swail, Kenneth E. Redd & Laura W. Perna, *Retaining Minority Students in Higher Education*, ASHE-ERIC HIGHER EDUC. REP., Feb. 2003, at viii, available at http://www.educationalpolicy.org/pdf/Swail_Retention_Book.pdf.

10. *Id.* at 57; Cathaleen A. Roach, *A River Runs Through It: Tapping Into the Informational Stream to Move Students From Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 675 (1994).

11. Roach, *supra* note 10, at 675.

12. *Id.*

13. U.S. EQUAL EMP’T OPPORTUNITY COMM’N, *Diversity in Law Firms* 10 (2003), available at <http://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/lawfirms.pdf>.

14. *Id.*

15. *Id.* at 33.



It's no secret that minorities leave law firm jobs at a significantly higher rate than their male, non-minority counterparts.

Similarly, a National Association for Law Placement (NALP) survey in 2001 revealed that, nationwide, African Americans accounted for 1.28% of partners and 4.24% of associates.¹⁶ Twelve years later, African Americans still only account for 1.78% of partners and 4.10% of associates.¹⁷ Specifically, in Chicago, African Americans accounted for 1.11% of partners in 2001¹⁸ and 2.02% in 2013.¹⁹ Currently, of the 3,473 partners currently in Chicago, only 219 (6.31%) are minorities. Of that number, only 27 are African American women.²⁰ Similarly, in New York City, African Americans represented 0.99% of partners in 2001²¹ and 1.83% in 2013.²² In each category the increase was less than 1%.

One could easily replace the law students in the video montage of the “33” with current minority attorneys all over the country, as many minority lawyers deal with similar situations each day. A 2004 American Bar Association study revealed that minorities continue to face significant obstacles to “full and equal” participation in the legal profession.²³ The study validated what many already know: minorities continue to suffer from a lack of access to clients and business networks outside the firm.

Further, it's no secret that minorities leave law firm jobs at a significantly higher rate than their male, non-minority counterparts. Minority attrition rate is at an all time high in large law firms even though a large percentage of minorities enter private practice after graduation. In 1982, 43.5% of minority graduates entered private practice.²⁴ Of that number, 21.3% took jobs in law firms of more than 100 lawyers.²⁵ That percentage continued to climb through 2004: 51.7% of minority graduates entered private practice—39.2% at firms with more than 100 lawyers.²⁶ In 2010, the percentage jumped to 50.8% and 39.9% respectively.²⁷ Despite the influx, law firms are bleeding minority associates. Law

16. Nat'l Ass'n for L. Placement, *Representation of Attorneys of Color at Law Firms Today*, NALP.ORG (Jan. 2002), <http://www.nalp.org/2002janattorneysofcolor> [hereinafter *2001 NALP Study*].

17. Nat'l Ass'n for L. Placement, *Women and Minorities at Law Firms by Race and Ethnicity—An Update*, NALP.ORG (Feb. 2014), <http://www.nalp.org/0214research> [hereinafter *2013 NALP Study*].

18. *2001 NALP Study*, *supra* note 16.

19. *2013 NALP Study*, *supra* note 17.

20. *Id.*

21. *2001 NALP Study*, *supra* note 16.

22. *2013 NALP Study*, *supra* note 17.

23. ELIZABETH CHAMBLISS, AM. BAR ASS'N, *MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION* 4 (2004).

24. Nat'l Ass'n for L. Placement, *Employment Patterns—1982–2004*, NALP.ORG (June 2006), <http://www.nalp.org/2006junemploymentpatterns>.

25. *Id.*

26. *Id.*

27. Nat'l Ass'n for L. Placement, *Employment Patterns—1999–2010*, NALP.ORG (Aug. 2011), <http://www.nalp.org/employmentpatterns1999-2010>.



For these students, the isolation caused by the underrepresentation of their race begins in college (or before) and continues on through law school and into their careers at large law firms.

firm attrition rates for minority women are higher than for any other group. Over 12% of minority women leave their firms within the first year of practice and over 75% leave within the first five years.²⁸ For African American males, 29.6% leave their firms within twenty-eight months and 68% leave within five years.²⁹ The percentage for African Americans are higher than for men and women as a whole, particularly their white counterparts.

Of course, the views of the “33” are not reflective of every minority law student—nor of every minority lawyer practicing at a large law firm. Some minority lawyers have flourished at large law firms and honestly enjoy their practice and thrive in a large law firm environment. Likewise, some firms have achieved a true atmosphere of inclusiveness. Still, the numbers don’t lie: the low retention rates and high attrition rates are significant problems in private practice.

IV. The Effects of Isolation

Based on the videos, law school data, and low law firm retention rates, we must ask ourselves: Are these students prepared for what lies ahead or is the profession perpetuating the myth that life will get better once they matriculate? These are hard questions and perhaps there are no correct answers.

What we do know is that a lack of racial diversity affects the psychological well-being of many minorities. The “33” expressed isolation so deep that it overshadows their entire law school experience. The video highlights the debilitating psychological effect that such a gross lack of racial diversity has on many minority students. For these students, the isolation caused by the underrepresentation of their race begins in college (or before) and continues on through law school and into their careers at large law firms. It is not only the legal profession and clients that suffer from a lack of diversity, but the individual attorneys as well.

Moreover, the isolation of minority law students is undoubtedly compounded by the bleak job prospects and a debt-laden future due to massive student loans. According to American Bar Association data, a typical law student borrows a total of \$75,728 to attend a public law school or \$124,950 to attend a private one.³⁰ For minorities, the student debt burden is heavier: 81% of African American students and 67% of Latino students earn bachelor’s degrees leaving school with debt in comparison to 65% of white students.³¹ Thus, many minorities enter law school already straddled with debt and then incur tens of thousands of dollars of more debt while earning their law degree. To make matters

28. See Chambliss, *supra* note 23, Executive Summary, ¶ 5.

29. U.S. EQUAL EMP’T OPPORTUNITY COMM’N, *supra* note 13, at 4.

30. Heather Jarvis, *Getting a Grip on Your Student Debt*, A.B.A. L. STUDENT LAW., Nov. 2012, at 22.

31. ANNE JOHNSON, TOBIN VAN OSTERN & ABRAHAM WHITE, CTR. FOR AM. PROGRESS, THE STUDENT DEBT CRISIS 21 (2012), available at <http://www.americanprogress.org/wp-content/uploads/2012/10/WhiteStudentDebt-5.pdf>.

worse, the number of need-based scholarships offered at law schools has decreased in the last few years.³²

Further, the median salary for 2012 law graduates was \$61,245.³³ Jobs paying \$160,000 accounted for 16% of reported salaries, while jobs paying \$40,000–\$65,000 accounted for 51% of salaries.³⁴ And yet, society continues to tell aspiring lawyers to attend the best (i.e., top ranked) law schools. For African Americans and other minorities, they will constitute a true minority, representing less than 10% of the student body. Isolation will often ensue. After graduation they will be straddled with student loan debt and an unpredictable legal job market.

These dire statistics beg the question: We have to diversify this profession, but, at what costs? Undoubtedly, the profession and law schools have a duty to help shoulder the psychological and financial burdens faced by many minorities.

V. Strategies for Law Schools and Law Firms to Increase Diversity

There are a myriad of actions that need to be taken to increase diversity in the student body and faculty of law schools as well as decrease the financial burden on current minority students. Law schools need to increase the availability of diversity scholarships and need-based grants available to minority students, both current and prospective, to ease the financial burden of attending law school. By increasing the aid available to minority students, law schools will be able to recruit and retain more minority students. This will decrease the effects of isolation for current and prospective students as well as improve the overall law school experience for all students.

Additionally, law schools need to increase their efforts to achieve diversity. This can be achieved through implementing programs that will increase the general minority population at both the undergraduate and graduate levels, improve retention rates of minority students, and improve the recruitment and promotion opportunities for minority faculty.

Likewise, law firms need to ramp up their retention efforts by leveling the playing field for current minority associates. In order to attract and retain minority attorneys, law firms need to establish a good track record of hiring and advancing minority attorneys. Law firms must demonstrate that they take the issue of diversity seriously. In addition to mentoring programs, law firms should institute a formal program that ensures that minorities do not fall between the cracks or get lost in the world of big law.

Due to the small number of minority partners in big law firms, many minority attorneys leave practice because they do not see a future in the upper echelon of their firms. To address this problem, law firms should ensure that current minority associates have equal access to sophisticated assignments and substantive billable hours. To achieve this, law firms should create an official position akin to a dean. This person's duties would include monitoring minority associates' hours and assignments and ensuring that they are comparable to all associates at the firm. This person would not only monitor the hours of minority associates, but all associates. However, because minority associates tend to bill lower hours than their non-minority counterparts, by default the focus would revolve around minority associates. While law firms may monitor hours and assignments on an annual or bi-annual basis, oftentimes it is not enough. By having an official, designated person who monitors

32. David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, Apr. 30, 2011, at BU1, available at http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=all&_r=0.

33. Nat'l Ass'n for L. Placement, *Starting Salaries—Class of 2012*, NALP.ORG (Sept. 2013), http://www.nalp.org/starting_salaries_class_of_2012.

34. Nat'l Ass'n for L. Placement, *Class of 2012 Salary Distribution Curve*, NALP.ORG (Sept. 2013), http://www.nalp.org/class_of_2012_salary_distribution_curve.



By having an official, designated person who monitors the hours and assignments of minority associates on a regular basis, law firms can flag issues early and rectify them before it is too late.

the hours and assignments of minority associates on a regular basis, law firms can flag issues early and rectify them before it is too late.

By investing in minority attorneys' development through mentoring and official monitoring of opportunities, law firms will enforce their commitment to diversifying the legal profession and leveling the playing field for minority attorneys.

VI. Conclusion

The status quo has very real consequences and effects on minorities: psychologically, financially, and physically. This creates a crisis not only for the profession, but also for current minorities in the pipeline as law schools and the legal profession have continually fallen short of their goals to recruit and retain minorities. The perpetuation of isolation by law schools fosters continued long-term segregation in the legal profession.³⁵ As a profession, it is utterly unacceptable to continue to expose minorities to this atmosphere . . . especially while insisting that diversifying the profession is a key objective of every law school and law firm.

The profession has a responsibility to address the concerns of minorities both in law school and during the transition to practice. The videos and statistics reveal the stark reality of how far we still have to go to accomplish a legal profession that truly reflects this nation's diverse population. And not only just in the number of minorities, but a profession that provides an equal, welcoming, and inclusive environment for all attorneys—regardless of race or ethnicity. A commitment, without resulting diversity is really just that: a commitment. It is time for action—concrete, tangible action that produces results. By providing an educational and professional experience that is welcoming, inclusive, and representative of this country's diverse population, law schools and law firms will provide attorneys of all backgrounds with the tools needed to change the landscape of the legal profession's current dearth of meaningful diversity.

The profession has come a long way since the days of *Sweatt v. Painter*.³⁶ But entry through the doors of the legal profession is not the same as feeling welcomed; there is much work to be done to transform this house into a home for African Americans and other minorities.

35. See Roach, *supra* note 10, at 668.

36. See *Sweatt v. Painter*, 339 U.S. 629 (1950) (opening the doors of the University of Texas Law School to African American students).

The Pipeline to Law School: Uplifting Students of Color from the Negativity Surrounding Racial Identity, Racial Diversity, and LSAT Scores

Leonard M. Baynes

Dean and Professor of Law, University of Houston Law Center

Do the burdens and presumptions of intellectual inferiority cause a “stereotype threat” that becomes a self-fulfilling prophecy for African American and Hispanic students? Does the overwhelming pressure of negative stereotypes contribute to poor performance on standardized tests? How can we combat this?

With tears running down her cheek, an African American female student who graduated *magna cum laude* and was working on a master’s degree in her field of study, said “I am not my 148 LSAT score.”

I. Introduction

The concurring opinion written by Justice Lewis Powell in 1979 in *Regents of University of California v. Bakke* legitimated the diversity rationale and the use of race as a permissible factor in deciding whether to admit a student to college, graduate school, or law school.¹ In 2003, in *Grutter v. Bollinger*, the U.S. Supreme Court reaffirmed and further embedded the diversity rationale in equal protection analysis by upholding the use of race as one factor used in law school admissions.² In 2013, in *Fisher v. University of Texas at Austin*, the Supreme Court revisited this issue and found that diversity is still a compelling governmental interest but remanded back to the district court for further findings on whether the University of Texas diversity plan was narrowly tailored.³ Despite this legal wrangling, diversity has become a clearly articulated goal and objective of virtually every American law school and is quite concretized in equal protection analysis.

Despite the legal validity of using race as one factor in admitting students to law school, many law schools have failed to increase the number of students of color in their student bodies. Despite an increasingly diverse population in the United States, the percentage of students of color in law school has in essence stayed flat for the past decade but the constituency of that percentage has not. Indeed, the percentage of African American, Mexican American, and Puerto Rican law school students declined in the fifteen years preceding 2010⁴ even though their LSAT scores and undergraduate grades improved during that period.

1. 438 U.S. 265, 313–14 (1978).

2. 539 U.S. 306, 336–38 (2003).

3. 133 S. Ct. 2411, 2419–22 (2013).

4. Press Release, African-American and Mexican-American Enrollment at U.S. Law Schools Continues to Drop, Study Finds (Jan. 5, 2010), available at, http://www.law.columbia.edu/media_inquiries/news_events/2010/january2010/lawschool-enrollment.

Many law schools and their deans express a deep commitment to diversity. They want to make sure that there is more than a token representation of students of color in the class; however, they find themselves in a bind when providing admissions opportunities to some students of color whose LSAT scores may have a deleterious consequence on the law school's *U.S. News & World Report* rankings. Although having a professed commitment to diversity, many of these deans would sacrifice that commitment in an effort to improve the law school's overall rankings. Some faculty members have expressed legitimate concerns that students of color who do not perform well on the LSAT are unqualified to attend law school.

This essay discusses the historical and persistent questions about students of colors' academic ability regularly confronting them while applying to law schools. It also discusses the effect of this questioning on their performance on standardized exams. Finally, the essay provides an overview of what this author learned about law school applicants of color through running pipeline programs and how well-structured and skill-based pipeline programs can help students of color overcome their self doubt, succeed in law school, and increase their numbers attending and graduating from law school.

II. Race, Inequality, and the Burden of Being a Black Law Student

There is a long tradition of questioning the intellectual competencies of people of color, especially African Americans. In the 1990s, two Harvard scientists wrote *The Bell Curve* where they "found" that approximately two-thirds of intelligence, as measured by IQ, is genetic.⁵ The authors concluded that the United States is a genetic meritocracy, and those on the bottom of society are there because they belong there. As a consequence, the authors concluded that affirmative action and other types of programs designed to provide opportunities to African Americans are doomed to fail. More recently, UCLA Law Professor Richard Sander has argued that affirmative action programs hurt African Americans because they are "mismatched" with higher ranked law schools than they are "qualified" to attend, and as a result graduate at the bottom of their classes or fail the bar exam.⁶ Professor Sander has made similar arguments about African American performance in major corporate law firms.⁷

Since people of African descent were enslaved in the Western Hemisphere, they have been burdened with notions of intellectual inferiority. It was a way to justify their bondage. The studies discussed above also need to be analyzed through that prism, and for what they are, i.e., a justification for dismantling affirmative action programs. African American students bear the burden of a presumption of inferiority, not just from reading such scholarship, but also sometimes from the actions and comments of prelaw advisors, undergraduate and law school faculty, and classmates. The notion of African American inferiority is often thick in the air all around these students. Despite their qualifications, some of these students are told by classmates that they were admitted to law schools solely because of their race. Once in law school, some of these students are told that they took away someone else's seat; some have been told by prelaw advisors not to mention overcoming racial or economic disadvantage, to avoid the perception that they got into law school based on their race. Some prelaw advisors tell students of color that they need a score of 160, which is a score in the top twentieth percentile, to get into any law school despite the law school's rank. Much of this endured psychic pain has been highlighted by a recent video of UCLA African American law school students' experience.⁸

5. RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE* 127–42 (1994).

6. See RICHARD H. SANDER & STUART TAYLOR, JR., *MISMATCH: HOW AFFIRMATIVE ACTION HURTS STUDENTS IT'S INTENDED TO HELP, AND WHY UNIVERSITIES WON'T ADMIT IT* (2012).

7. Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. Rev. 1755, 1817–18 (2006).

8. See Carrie Healy, *UCLA's Black Law Students Struggle with Lack of Diversity*, THE GRIO (Feb. 14, 2014, 11:19 AM), <http://thegrio.com/2014/02/14/uclas-black-law-students-struggle-with-lack-of-diversity/>.

This burden and presumption of inferiority enhances the “stereotype threat” that sometimes causes students of color to underperform in a manner consistent with the negative stereotype associated with his or her ethnic identity. This particularized anxiety stems from the fear of confirming the negative stereotype, for example by scoring badly on a standardized exam like the LSAT. This may be one reason why African Americans and Latinos do not perform as well as some other groups on standardized tests like the LSAT. As the following table shows the mean LSAT score for African American and Puerto Rican test takers lags behind that of other racial and ethnic groups.⁹

Race and Ethnicity of Test Takers	Mean LSAT score, 2011–2012 ¹⁰
African American	142
Hispanic or Latino	146
Puerto Rican	138
White	152

The overall mean LSAT score is in the low 150s.¹¹ Thus, having a score above 150 puts a test taker near the top half of all test takers and tends to increase his or her opportunities for law school admissions, especially if the student has a very robust undergraduate GPA in a strong major, superior letters of recommendations, and a well written personal statement highlighting factors which might have contributed to the student’s lower LSAT score.

As law schools increase standards by raising median LSAT scores and median GPAs, you can see starkly the challenge that law schools face since the vast majority of African American, Puerto Rican, and Hispanic or Latino LSAT test takers fall below the mean score. This explains why studies by Columbia University Law School Clinical Professor Conrad Johnson show that only 40% of African American applicants and 55% of Latino applicants are accepted to at least one law school as compared to 63% of white applicants.¹²

III. Pipeline to Law School

The Ronald H. Brown Law School Prep Program for College Students (Prep Program) is a two-year program for students (who are first generation college students or from underrepresented backgrounds) who have completed their sophomore and junior years of college.¹³ After their sophomore year, for three weeks, students learn about a wide variety of legal topics, which they are tested on. Then for two weeks, the students intern with state court judges, and then for another four weeks, the students intern with other legal employers such as District Attorneys’ offices, Legal Aid Society, and several corporate firms. During exit interviews the students receive feedback on their academic and internship performance with suggestions and recommendations on how they can improve their academic performance in college and their prospects to attend law school.

9. Susan P. Dalessandro et al., Law School Admission Council, *LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 2005–2006 Through 2011–2012 Testing Years* 24 (2012), available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-12-03.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf).

10. *Id.* 4.

11. *Id.* at 13.

12. See Conrad A. Johnson, *The State of The Legal Pipeline* at 7–8, (on file with author).

13. Legal Outreach’s high school program was the inspiration for the Prep Program but with a focus on college students interested in going to law school. See <http://legaloutreach.org/>. The goal was to do more than inspire students, but to make a real difference in their lives outcomes. Like Legal Outreach, the Prep Program formally recognizes students early in their academic careers, putting them on track in going to law school.

The students then return after their junior year and complete a specially designed LSAT prep class where they are in session eight hours a day, five days a week, for nine weeks. During this time, they are instructed in writing a personal statement by a legal writing professor; they receive group and individual counseling sessions from two licensed psychologists, and are assisted by career development professionals in writing a resume. They also are paired with lawyers (and alumni of the Prep Program) who serve as mentors as they go through the law school application process.

The Prep Program provides formal recognition of talented and qualified students of color early in their undergraduate academic careers. It provides inspiration and practical skills. The skills acquired foster inspiration for students when they make substantial progress. It provides students with a formal structure for success as opposed to what many African American students have, which is more often a haphazard trajectory that relies often too much on being in the right place at the right time. The goal of the Prep Program is to empower students so they can make informed choices in their budding legal career.

The results have been outstanding! The students who participate in the Prep Program start with a median diagnostic score of 138 and sometimes lower, which would put them outside the reach of most ABA accredited law schools. The students who complete the junior program see an average median score increase of eight to twelve points, which puts the vast majority of these students in the law school acceptance range. In fact, there are some students who see a more than twenty point increase in their initial diagnostic scores. There are now approximately 100 alumni of the Prep Program who either graduated from law school or are enrolled in law school. They have received millions of scholarship dollars to finance their education. Many are attending (or have graduated from) highly competitive law schools: Boston College, Emory, Fordham, George Washington, Georgetown, Harvard, NYU, UC Berkeley, UCLA, and Yale. In 2011, the Ronald H. Brown Center won the coveted ABA Alexander Award for Pipeline Excellence, which is a marker of the Prep Program's national reputation and success.

IV. What I Learned About Law School Applicants of Color from Running a Pipeline Program

A. Misconceptions about The LSAT

The LSAT is the biggest challenge for pipeline programs. Although there is a 3.0 minimum GPA for participation in the Prep Program, the actual participating students have a median GPA of 3.5–3.6. However, their initial median LSAT diagnostic score is only 138, and sometimes lower.

The students often have unrealistic expectations about the LSAT. First, everyone wants a perfect score of 180. They are informed that a score of 172 is in the top 1st percentile, that we would love for them to get a perfect score, but realistically 99% of test takers do not get a 172 or above. It is important to have goals, but they have to be realistic, especially considering where many of them are starting from.

Second, this desire to get a perfect LSAT score may be caused by the fact that the students want to overcompensate for what they think they lack. Moreover, they often think that the LSAT percentile is a percentage. So they believe that if they score in the 70th percentile, it is a "C," and they have gotten 70% of the test right, and if they score at the 80th percentile level, they received a "B," and have gotten 80% of the test right. They do not realize that the score is a percentile, and their score is often contingent on how the other test takers have done. In reality, the LSAT is a zero-sum game in which some people taking the test are destined to be on top, and some on the bottom. They can maximize and improve their performance, but it is constricted by this zero-sum game.



Because of the stereotype threat, many African American and Latino students suffer from a particularized kind of racialized test taking anxiety.

B. Speed Versus Accuracy

For many of the students in the Prep Program, they have played life and school by the rules. They have gone to college and gotten good grades; many work part-time while in college. Some are, in fact, principal breadwinners for their families. Prior to participation in the Prep Program, some students may not have had much experience with standardized tests (or experience doing well on them). So when an LSAT instructor tells them to guess, to read the questions before reading the whole passage, and to take some other shortcuts, it is often alien to them. It also requires a certain degree of confidence and self-knowledge to make a choice quickly on an LSAT question and not doubt your choice. It requires a degree of confidence to know what you know well and go through the test maximizing those questions so you can ensure that you rack up those points before going back to the questions that you do less well at.

This is a skill that has to be trained and reinforced. They have to learn to be fast yet accurate. But many students also do not read in this particular manner. They have been taught to read without any particular purpose. Many do not read outside the school setting. They often do not read newspapers or magazines with a higher reading level. After they complete their sophomore year, the Prep Program suggests that the students regularly read the *New York Times*, *the Economist*, and any materials that they are familiar with. We also suggest that, after their sophomore year they take courses that will force them to read and write more. By reading more, and reading for accuracy, students can start working on their skills before they come back for the LSAT component of the Prep Program.

C. Students Often Do Not Know That They Suffer From Anxiety

Anxiety is a condition that causes a person to have apprehension or fear about some event or situation. The feelings of panic or dread may be so overwhelming that the sufferer has problems making decisions or remembering important information. Anxiety may lessen the sufferer's concentration because the individual may become preoccupied with worry. The anxiety may cause a student to perform below his or her potential on a standardized exam like the LSAT. Because of the stereotype threat, many African American and Latino students suffer from a particularized kind of racialized test taking anxiety. Unfortunately, some of these students do not even realize that they suffer from this anxiety until they are in the experience. Some of the students may appear self-assured in their usual environments where they have done well. Some may scoff at efforts to treat their anxiety in advance. Many of the students are unused to taking a high stakes exam. Despite all the preparation

and counseling, each year we still may have one to two students during the administration of the actual LSAT who panic and do not live up to their performance on the diagnostic exams. That is why the Prep Program provides the students with mandatory individual and group counseling services.

D. The Student Is Not His or Her LSAT Score

Students are never satisfied with their LSAT scores; it does not matter how high they score. Even students in the top 10th percentile may be dissatisfied with their score. They often have an immediate urge to retake the test. They often have to be dissuaded by having them analyze where they were scoring on diagnostic tests scores as compared the actual LSAT. If they score significantly below where they scored on the diagnostic test, then there might be a real justification for retaking the test. Maybe they had a bad day. But they are always cautioned to think about whether they have the time and resources to actually do better the next time. If they retake it, they need to think about whether they can be more prepared than when they first took the LSAT. They do not want to take the test over and have their score go down. Fortunately law schools do not average LSAT scores anymore, but you do not want to give admissions officers any ammunition to deny admissions because they see a downward spiral in test scores.

Despite preparation, many very talented African American and Latino students find themselves scoring below the median on the LSAT. Sometimes even those above the median are significantly disappointed. For instance, one Haitian American student would not initially tell us her LSAT score. Given her demeanor and behavior, one would think that she had done really badly on the LSAT. We had to drag her score out of her; she actually whispered to us that she scored a 153. She was distressed about the score because she had her heart set on going to Northwestern Law School. She secretly retook the LSAT in February and increased her score to 157. She delayed applying to law schools until she retook the test. She ultimately was accepted by several law schools. Despite her four point LSAT score increase, she was still rejected by Northwestern Law School. If this student was upset over a 153 and a 157, imagine the torment that students who score below 150 often put themselves through. These dashed dreams and aspirations are often a hard pill to swallow. Some students never get over a sense of loss. They leak out of the pipeline. They may internalize the LSAT score. With a score below the median, they believe that they will not get into any law school. This is not true. Without proper support, many of them will give up their dreams. It is during these times of doubt that they need constant reassurance that there is a law school out there for them.



Despite preparation, many very talented African American and Latino students find themselves scoring below the median on the LSAT.

E. The Power of the Personal Statement

Students are more than their LSAT scores and should not let the LSAT define them. Instead, they need to define the LSAT in the context of their lives. The Prep Program students are high achieving students who have stellar grades and many other accomplishments. Many of the students were raised by single parents with incomes below the poverty line. Some grew up in crime-ridden neighborhoods. Some are children of immigrants, and English was not the first language of their parents. Some have faced the pain and anguish of physical and sexual abuse. Others have faced discrimination based on race, ethnicity, sexual orientation, or economic status. Their personal statements allow them to discuss their triumphs over their circumstances. It also helps the law school admissions committees to see that they are more than their LSAT score, and that they have the fortitude and drive to succeed because they already have done so.

V. Conclusion

Despite societal discrimination faced by many students of color and enrollment by some of these students in inferior public high schools, there are many talented students of color who have above average undergraduate grades, strong extracurricular experiences, and compelling personal stories demonstrating their capacity to overcome adversity. Yet many of these students struggle to score in the top range of the LSAT. Their initial diagnostic scores put them outside the range of accepted law school applicants; many cannot afford LSAT prep classes; and many do not have the structure in their lives to study successfully for the LSAT. Their struggle may be hampered by the “stereotype threat” that they face when they take standardized exams like the LSAT. Without pipeline programs, many of these very talented students would neither apply to nor be accepted by law schools, and thus would “leak” out of the pipeline. Pipeline programs can help by tackling the damage that some of these students have had to endure, and by countering messages that they are intellectually inferior, or do not have the capacity to do well in law school. Pipeline programs also can help address the possible lack of preparation and skill that some students have because of their attendance at inferior childhood schools.

Pipeline programs, like the Prep Program, help increase the pool of students of color with higher LSAT scores. Pipeline programs increase the range and rank of law schools to which the students are accepted. Most importantly, the work of the Prep Program has forever changed students’ lives, and many of them would not be in law school but for the Prep Program’s intervention.

The success of students of color in the law school admission cycle is individual to that student and requires more than an LSAT prep class. It requires bolstering each student’s self-esteem and confidence (and attempts to insulate them from negative stereotypes about people of color) in the process of taking the LSAT, writing the personal statement, and actually applying to law school.

An Exercise in Limiting the Pipeline: How the Application of the Standard of Excellence in Large Law Firm Diversity Initiatives Eliminates Black Attorneys

Tiffany R. Harper

Associate, Polsinelli PC

Chasity A. Lomax

Associate, O'Hagan LLC

The rigid application of supposedly race-neutral hiring and performance review criteria only to minority law students and associates enhances the likelihood of their attrition from the very law firms seeking to retain them. Harper and Lomax explore how this happens and suggest strategies to address it.

Diversity in the legal profession, and the lack thereof, has been the topic of many studies, articles, and initiatives. In particular, many diversity initiatives implemented at large law firms have focused on the firms' commitment to hiring, promoting, and retaining diverse attorneys who embody a standard of excellence. And while no one would disagree that large law firms should always aspire to recruit and retain attorneys of varied backgrounds who embody a spirit of excellence, it appears that the way the excellence standard is being applied to black attorneys serves to limit the diversity pipeline by only seeking black attorneys of a certain pedigree. Conversely, it appears that the same pedigree and excellence standards are more loosely applied to white attorneys, which results in little to no growth in the number or promotion of black attorneys at large law firms. This thought piece posits that if large law firms truly want to see movement and growth where black attorneys are concerned, then diversity initiatives will have to be broadened to seek candidates who embody excellence in areas beyond traditional markers of pedigree, which is similar to how these law firms seek nondiverse candidates.

Prior to the 2008 economic recession, the discussion surrounding the lack of diverse attorneys at large law firms centered around a theory that large law firms were relaxing or eliminating their hiring standards in an effort to recruit and retain more minorities and meet the diversity demands of corporate clients. In fact, one 2006 study found that the pool of black lawyers with excellent law school grades is so small that firms must relax their standards if they are to have new associates who resemble the pool of new lawyers.¹ This debate continued up until the point of the recession with much discussion focusing on the perceived double standard for black attorneys who did not meet large firms' hiring criteria with regard to class rank and grade point average.²

1. Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1756, 1819 (2006) (concluding that aggressive racial preferences in law firm hiring undermines young attorneys' careers and contributes to the large numbers of white partners); see Adam Liptak, *Lawyers Debate Why Blacks Lag at Major Firms*, N.Y. TIMES, Nov. 29, 2006, at A1.

2. See Liptak, *supra* note 1.



This notion that all attorneys are created equal and should be held to the same standards is antiquated and ignores cultural differences that are the cornerstone of diversity.

Subsequently, the United States economy was thrust into an economic recession that nearly eradicated years of diversity progress at large firms. Large firms quickly shed attorneys in an effort to reduce costs, but this reduction overwhelmingly and disproportionately impacted attorneys of color, especially black attorneys. According to a study by the National Association of Law Placement, diverse attorneys were displaced at much higher rates than their white counterparts despite law firms' alleged commitments to diversity.³ It appears that large firms' commitment to diversity was conditioned upon a stable economy and became nonexistent when economic concerns increased.

Now, the economy is on the rebound; however, it does not look like large firms have returned to their perceived pre-recession hiring practices where standards seemingly were relaxed in an effort to maximize the number of attorneys of color. Instead, large firms have recommitted to diversity initiatives and hiring diverse attorneys with one caveat—these attorneys must be the *crème de la crème* of attorneys. These candidates must increasingly come from top-ranked law schools, have high grades and class rank, and have all of the markers of a top-pedigree attorney—law review, CALI awards, substantive and relevant work experience prior to attending law school, and an Ivy League, or similar, undergraduate education. The number of black attorneys with these credentials pales in comparison to majority students, and while many would applaud large firms for sticking to their guns and refusing to relax hiring standards for diverse attorneys, a comparison between the pedigree of diverse and nondiverse attorneys at large law firms in 2014 would likely reveal a stark reality—not all white attorneys are being held to these high pedigree and excellence standards before landing a job at a large firm. To the contrary, some white attorneys are being hired at large firms from third-tier schools, with mediocre grades, and no markers of excellence to show for themselves. And while this might have always been the case to some extent, the impact of requiring standards of excellence from diverse attorneys, and black attorneys in particular, but not adhering to the same standard for all white attorneys severely impacts the diversity pipeline in a number of ways.

First, the standards of excellence are inherently injected with underlying biases such that while they might appear to be race-neutral on their face, when applied across the board they have a disparate impact on black law students and attorneys. This notion that all attorneys are created equal and should be held to the same standards is antiquated and ignores cultural differences that are the cornerstone of diversity. It ignores the challenges faced by the first-generation law students and others who come from backgrounds that are different from the status quo. Additionally, due to the cautionary tape placed

3. Press Release, Nat'l Ass'n of Law Placement, Law Firm Diversity Among Associates Erodes in 2010, (Nov. 4, 2010), available at <http://www.nalp.org/uploads/PressReleases/10NALPWomensMinoritiesPressRel.pdf> (determining that the overall representation of minorities in large firms declined significantly between 2009 and 2010).

on open and honest discourse about racial stereotypes and cultural differences, law firms are not applying real analysis to correct their inability to recruit, maintain, and promote minority attorneys. If large firms are going to seriously address the diversity pipeline, they must endeavor to think differently about the way diverse attorneys are hired and the criteria set forth for each attorney should bend to account for the subtleties that make us all different. Large firms should eliminate the “one size fits all” approach when formulating hiring standards for attorneys and law students, especially diverse attorneys.

Second, black attorneys who do meet these excellence standards are often isolated and alone at the top, making them much less likely to remain and grow at large firms when other options become available. Law firms take a position of checking off the proverbial box once a black attorney is hired without recognizing there is no system in place to nurture and develop the attorney into a law firm partner or rainmaker. Further, these attorneys often struggle to receive meaningful and substantive work assignments due to underlying biases, despite the fact that they meet the very excellence standards set forth by the firms. It still holds true that partners often unconsciously staff projects with attorneys who resemble themselves, instead of the *crème de la crème* diverse attorneys that the firm has recruited. The result is black attorneys biding their time in large firms until a better opportunity arises rather than being incorporated into the firm fabric, culture, and tradition like their white counterparts.

Finally, and similarly, the diversity pipeline for black attorneys depends on large firms having a fundamental understanding of what it takes to make a successful, diverse attorney who can serve clients well. Despite firms’ readiness to boast about hiring Ivy League graduates and law review editors, if the hiring of white attorneys tells the story, attorneys who are successful at large firms do not necessarily have all of the top-pedigree attributes. Studies have consistently shown that using diverse perspectives to solve legal problems is mutually beneficial. The client benefits by the development of a solution that is functional in this multicultural society, while the firm benefits from increased profitability. Diverse attorneys bring different experiences and outlooks which allow for a varied approach to legal and business impasses. Without a solid understanding of the diverse attorney’s value beyond grades, law review, and law school rank, law firms will continue to miss the mark.

In conclusion, large law firms should be challenged to redefine the recruitment and retention process in relation to their stated diversity initiatives. Value should be placed on an individual’s life experience, the ability to overcome the difficult transition into the rigorous routine that is law school, and the ability to think critically and rationally about problems the clients are facing. Surely, the candidate who received low marks during the first semester of law school, but problem solved and raised his or her GPA by learning to think critically can be an asset for large law firms. Firms must also re-evaluate their mentor programs and assignment procedures to account and allow for an attorney’s diversity, taking into consideration the varied, yet valuable, experiences that each attorney brings to the table. Most importantly, the criteria used to determine excellence and suitability for a large law firm career must be rewritten. The current standards limit the access to capable black candidates and reinforce stereotypes and biases which must be shattered if firms seek to obtain and maintain a thriving legal practice which resembles today’s society and global economy. There must be more than a surface concern and commitment to diversity. And honestly, as two minority attorneys who have been quite successful to date in our legal practices, we can attest that there are very good minority attorneys despite what their law school transcripts and class rank may suggest.

The “Invisible” Associate

Emmanuel U. Obi

Dallas Transactional Attorney

Large law firms are not renowned for offering young lawyers a warm and nurturing environment. For minority associates, there may also be a keen sense of social isolation. Not surprisingly, this can lead to disproportionately high levels of minority associate attrition. Here are a minority associate’s suggestions as to ways to address this.

A young African American girl, inspired by positive role models like the legendary Thurgood Marshall and the more contemporary Claire Huxtable (famous *Cosby* Show character), grows up with the dream to become a lawyer. From a young age, her parents work hard to nourish this aspirational seed by instilling character traits into her impressionable psyche, including hard work, integrity, and faith. They constantly remind her that America is a country flowing with milk, honey, and most importantly, *opportunity*. She works hard, and quickly develops a track record of success in nearly every endeavor she pursues. Finally, she reaches a critical juncture in her academic pilgrimage—law school. There, after the initial excitement dissipates, she quickly becomes cognizant of her minority status and the social isolation and antagonism that it engenders. Yet, her resolve remains firm. With a resilient spirit of self-determination and perseverance reminiscent of what the legendary Maya Angelou wrote about in her powerful poem, *Still I Rise*, she continues to excel. Relying on her parents’ critical life lessons and a steadfast faith in God, she eventually graduates at the top of her law school class. She emerges with a big firm offer in hand, exuding eagerness for a fair opportunity to put her newfound knowledge to work as she starts a new chapter in her legal career.

Sadly, the initial intoxicating exuberance of a realized dream slowly morphs into a nightmare from which she cannot seem to awake. Within the first few months at the firm, it becomes clear that the welcoming summer clerkship experience has now been replaced with an appreciable level of institutionally-sanctioned indifference. As the months and years pass by, the situation worsens as work assignment asymmetries begin to manifest, professional and social marginalization within the firm incrementally reaches a crescendo, and it becomes clear that a distinctly unfair evaluative standard will forever constrain her trajectory. As the emotional toll of this heavy realization settles in, her life is forever changed and a painful inquiry is triggered: *Why do they not like me? Why are they so hard on me when I make mistakes? Do they really want to mentor me and see me succeed? Why does it feel as if they just want to use me for my diversity?* As this destructive introspection begins, she starts to consider herself the modern-day incarnation of Ralph Ellison’s famous protagonist: *The “Invisible” Associate*. Similar to Ellison’s character, her invisibility is not a physical condition, as she is obviously not really invisible. Rather, this is institutional invisibility and results from the refusal of others to see and fully acknowledge her.

Who is this “Invisible Associate?” Is it someone you know? Is it you? What can we, as members of the legal profession, do to alleviate her pain and the professional tribulations of others similarly situated? I recently asked myself this question after experiencing the most recent deluge of diversity disappointments in the form of numerous articles and reports citing sobering statistics that call our individual and collective level of commitment to progressive change into question, once again. Against the gloomy backdrop, I want to offer potential solutions as follows.

Action Item 1: We need to develop stronger and more persuasive arguments for increased diversity and inclusion.

By now, we have all heard the arguments about why diversity is important. Would it not be refreshing to hear these arguments more frequently from the firm's senior leadership—and not just during a periodic visit with the firm's Diversity Committee? Too often, the "voice" of diversity within firms has been delegated to the firm's diversity liaison—a role that usually comes with limited real power to effect actual change within the firm. Quite simply, the impact of these diversity proclamations would be greater if they consistently came from members of the firm's true power nucleus and were then backed up with sincere and consistent actions.

Additionally, diverse associates often get the sense that many within the firm are uncertain of the true value of diversity and inclusion efforts. These colleagues certainly do not have a completely apathetic disposition towards diversity and inclusion. Rather, they are just not clear on how diversity is really going to help the firm economically. In a sense, they lack an objectively quantitative perspective. This is not surprising considering that we rarely hear "business case" diversity arguments that are substantiated by objective metrics specific to the firm. Quite the contrary. The "business case" is usually articulated in terms of unquantified prospective business opportunities and/or "anonymous" client demands with generic reference to basic economic implications (e.g., retention related turnover costs).

Consider, for a moment, how much stronger "business case" diversity arguments would be if they included particularized firm data and information. To illustrate, which of the following arguments do you find more compelling? Argument one: "As a firm, we value diversity and promote inclusion because it helps us increase retention and avoid turnover costs." Argument two: "As a firm, we value diversity and promote inclusion because it helps us increase retention and avoid turnover costs. Every attorney lost before the "zone of profitability," diverse or not, costs the firm \$X dollars. For the past several years, our retention-related expenses (including, turnover and litigation or settlement expenses) amounted to a total of \$X dollars or approximately \$X dollars per partner." Clearly, the second argument's inclusion of objective firm-specific data points creates a stronger "business case" that can be easily digested and that will more likely motivate desired conduct at all organizational levels.

Action Item 2: Expand the definition of "diversity" to cultivate organizational cultures where everyone is valued for the unique aspects of diversity he or she brings to the table.

Most firms promote diversity and inclusion by periodically circulating marketing materials that communicate their commitment, and in some cases, provide itemizations of specific initiatives. These diversity statements are prominently displayed on firm websites and/or distributed to both internal and external stakeholders in glossy brochures featuring an array of seemingly content diverse associates living the proverbial big firm dream. Unquestionably, these materials are a part of a well-rounded marketing strategy because they serve to inform clients and other key stakeholders of the firm's purported commitment to advancing diversity and inclusion. However, some would argue that these marketing materials often amount to nothing more than misleading and superficial propaganda. To such critics, these materials are often aimed at creating an external impression that the firm is concerned about diversity while a close assessment of internal realities sharply contradicts this conclusion. How then can a firm transform what some affectionately refer to as empty diversity rhetoric into a transformative and impactful diversity agenda?

One potential solution is to create processes that permit and encourage all firm stakeholders to take a part in the development of the firm's or organization's diversity identity. One way to do this is by using a survey or other mechanism that solicits input from such firm stakeholders. Facilitating this participation is critical because, as well-established organizational behavior theory informs us, firm constituents are much more likely to support diversity and inclusion goals when they are involved in the development of such goals. This universal engagement approach will also create opportunities for critical dialogue and lead to the production of statements and articulations that are reflective of a broader internal consensus.

Action Item 3: Promote diversity by embracing reciprocity.

Most diverse associates realize firms are under a great deal of pressure to diversify. However, this pressure, as appropriate as it is, often creates a catch-22. On one hand, it undoubtedly creates opportunities for diverse associates. Conversely, it can also trigger heightened scrutiny of a firm's true motivations and cause many diverse attorneys to enter the relationship with apprehension. Maybe the firm will truly value them as an intelligent, hardworking individual with an academic and professional record replete with evidence of competence and the capacity for hard work. On the other hand, they may be viewed as mere diversity statistics to be tactically deployed in a "quick-fix" diversity strategy. These feelings of distrust and skepticism are further exacerbated by a distressing phenomenon anecdotally described as "*diversity for the pitch; get the work and associates switch.*" This common scenario occurs when a firm strategically uses a diverse associate (or its overall diversity profile) to pitch legal work to a diversity-conscious client. Then, when the legal work is ultimately secured, the diverse associate is not involved in actually servicing the client's needs. The result is a lack of substantive development, the inability to forge meaningful client relationships, and psychological and emotional scars inflicted by a sense of being used.

So, what is a possible solution? The answer may be an enhanced focus on notions of diversity reciprocity. Most diverse associates, realizing the importance of diversity, are more than happy to be a team player and do what is reasonably expected of them in order to advance the firm's diversity objectives. This loyalty and commitment to the firm persists, even in spite of the disproportionate pressure that is generally placed on diverse associates to serve as diversity ambassadors. However, when this commitment to scratch the law firm's proverbial back is not reciprocated by meaningful work assignments, impartial and bias-free review processes, and critical exposure to client development opportunities, a breakdown in the diversity partnership occurs. Thereafter, what was once loyal willingness is readily converted into reluctance and, in extreme cases, indifference, when it becomes clear that the firm is not going to meaningfully invest in the associate's substantive development and long-term career prospects.

To remedy this, firms need to implement objective and transparent work distribution processes. *Question:* What would happen if partners and senior associates were evaluated based on whether their responsible associates met developmental milestones that every firm promulgates? *Answer:* Enhanced substantive development for all associates, including diverse associates. Increased development equals elevated efficiency, which in turn leads to higher productivity and profitability.

Another way we can address this problem is by having a deeper "diversity ambassador" bench. Many junior diverse associates complain about disproportionately being asked to participate in firm diversity programs and events. At first, we eagerly answer each call and take every assignment very seriously. Then, we wonder (with a great deal of frustration), why our non-diverse peers are not asked to participate in these programs. Why are they not tapped to make presentations during Black History Month? Why are they busy with substantive work, while the diverse associates are preoc-



While commonalities may make it easier to launch a mentoring relationship, many African American and other diverse associates would absolutely welcome sincere mentoring regardless of the package in which it comes.

cupied developing talking points for a partner's speech on diversity? Quite simply, diversity reciprocity means spreading the diversity responsibility around.

Diversity-advancing relationships must be rooted in notions of reciprocity and the fundamental golden rule. Both diverse attorneys and their firms must faithfully execute their respective diversity enhancing responsibilities. By doing this, we engender trust, encourage candor, and foster greater mutual respect.

Action Item 4: Increase cross-cultural mentoring by working to debunk “uni-cultural” and “uni-gender” mentoring preferences.

Unfortunately, there appears to be an accepted truism (the “Homogeneity Truism”) that the cultivation of effective mentoring relationships is only feasible when the mentor and the mentee share surface level demographical characteristics (i.e., same gender and/or race). While commonalities may make it easier to launch a mentoring relationship, many African American and other diverse associates would absolutely welcome sincere mentoring regardless of the package in which it comes. We want knowledgeable, experienced, and successful lawyers to help *us* become knowledgeable, experienced, and successful lawyers. When there is a lack of real mentoring, from the associate's perspective, this void infuses distrust and fears of actual overt or, even worse, subversive prejudice. Thus, as a critical first step and as a profession, we can and should strive to understand and dispel (or at least address in an honest and candid way) the misconceptions that are commonly associated with cross-cultural mentoring.

A few years ago, I had the opportunity to participate in a diversity and inclusion experiment that consisted of an innovative diversity project known as the Dallas Managing Partners Diversity Initiative (the “Project”). The Project was initiated when one progressive managing partner of a large law firm decided that he would take the initiative and bold steps toward addressing persistent diversity retention issues evident within large firms. Fueled by the moral imperative, on one hand, and the “business case” rationale, on the other, this brave and progressive partner reached out to the J.L. Turner Legal Association (JLTLA), the African American Bar Association of Dallas, and expressed his desire to form a strategic partnership aimed at exploring solutions. Seeking to further its mission to improve the quality of life in its community through education, service, and scholarship, JLTLA agreed to participate in the Project. As JLTLA's liaison, I functioned to solicit input and communicate to JLTLA members on a variety of topics under consideration by the Project members. At the start, the initiating partner, a powerful Caucasian male attorney well-known and respected locally and

nationally, convened a meeting and invited a number of his peers—i.e. other powerful managing partners—to discuss a common objective: the increased retention of diverse legal talent at large Dallas law firms.

At the onset of this process, I was pessimistic about the likely outcome of the kickoff meeting and the entire project. While I remained steadfastly committed to the ultimate goals of the Project, vis-à-vis my liaison role, an inner voice constantly wondered how long it would be before the participating partners would grow tired of this new shiny diversity toy.

The scheduled kickoff lunch meeting was literally packed with some of the most powerful and influential attorneys in the Dallas legal community. During this lunch and subsequent meetings, these powerful and influential men collaboratively brainstormed and strategized on a variety of significant diversity issues. To my surprise, one topic in particular garnered a great deal of the group's time and focus—developing and implementing effective strategies for increased cross-cultural mentoring.

As I looked across the room at the individuals in attendance, the sharply tailored custom suits and auras of “professional significance” radiating from nearly every face, a few observations immediately struck me. First, participation in the Project signaled a willingness (on some level) to be involved in the progressive diversity dialogue. This is underscored by the time investment and associated economic considerations. In fact, on the day of the kickoff luncheon, I joked with others about how the cost of that meeting in terms of billable hours was arguably greater than the gross domestic product of a small third-world country. We know time is money in our profession, and even more so if you are a prominent law firm partner or managing partner. So the fact that these influential managing partners with great power, privilege, and resources took time out of their undoubtedly busy and hectic schedules to attend the catalyst meeting and subsequent meetings that were to follow, evidenced their level of commitment to embracing a proactive diversity stance. This belief was further fueled by the fact that they were not under any direct pressure to do so (i.e., that was not a client-initiated program). Quite the contrary. These were influential legal leaders engaged in progressive dialogue with only each other to hold themselves accountable.

Second, I truly felt from my involvement that a critical mass of the powerful Caucasian men involved in the Project realized that a key requirement to increasing retention is a renewed focus on mentoring, specifically the cross-cultural variety. Accordingly, the group invested an inordinate amount of time discussing and cultivating various initiatives aimed at increasing both the frequency and effectiveness of cross-cultural mentoring.



An inner voice constantly wondered how long it would be before the participating partners would grow tired of this new shiny diversity toy.

Finally, based on my experiences as the JLTLA liaison, I believe that increasing strategic alliances between minority bar associations and law firms is absolutely imperative to advancing diversity in a meaningfully sustainable way. As discussed below, one area in which these strategic alliances can be of greater benefit is facilitating mentoring initiatives focused on the legal pipeline. For example, in November 2013, JLTLA collaborated with several area high schools, colleges, law schools, and law firms to develop and implement its inaugural Pre-Law Initiative. During this program, a number of aspiring lawyers attended a dynamic series of events that included a law school admissions panel, law firm tours, and a networking mixer during which attendees had a chance to meet and interact with local attorneys. The inaugural program was a huge success as seen on the highlight video.¹ This success was inextricably linked to the availability of strategic partners (e.g., law firms and corporations) willing to contribute sponsorship dollars, access to their offices, and other valuable resources. JLTLA would like to expand this program and increase the number of aspiring attorneys in the legal profession pipeline. Unfortunately, JLTLA's ability to do this is constrained by the availability of sponsorship dollars and more importantly, human capital. One critical way we all can assist with fostering greater cross-cultural competency is to find meaningful outlets (financial or otherwise) to advance pipeline initiatives, including by mentoring a diverse individual aspiring to become an attorney.

Action Item 5: Stop attempting to sprint, because achieving diversity and inclusion progress requires a marathon mentality.

While the Project brought powerful minds together around the topic of diversity and generated a great deal of media attention, like many innovative diversity programs, it soon faded into the background. How then do we ensure sustained commitment? I think in part the answer is a greater focus on strategic partnerships between minority bar associations, prominent diversity institutes, and organizations like the Institute for Inclusion in the Legal Profession. Law firms provide legal services and, as such, their business is the “law” and efficiency requires maximizing the basic metric of profitability—the billable hour. Therefore, law firms are required to focus on what they do best: *provide professional legal services*. Outside this, firms can substantially and meaningfully support (financially and otherwise) cross-cultural mentoring and other diversity programs, developed and administered by external strategic partners. In many cases, these external partners are often in a better position to develop these programs based on their proximity to critical data and/or the intended beneficiaries of such programs.

For example, as the JLTLA Liaison, one suggestion made involved partnering with a prominent diversity non-profit organization that would facilitate a comprehensive study of the mentoring methodologies utilized by the participating firms, conduct in-depth surveys of both the mentee and mentor populations, and assist the Project participants with formulating realistic goals and appropriate objective metrics. I made this suggestion because I was cognizant of the fact that as leaders of their respective firms and extremely busy practicing attorneys, these partners did not have the bandwidth to keep up with all aspects associated with developing, implementing, and tracking an effective mentoring program, specifically one that facilitates greater cross-cultural mentoring.

The suggested approach would have enabled Project participants to retain oversight and control over the Project, while the strategic partner would undertake the more arduous day-to-day administrative management of the program—an efficient result for all involved. Ultimately, the partners elected not to pursue this option and instead focused on developing more generalized mentoring best-practices within their respective firms. This decision may have contributed to the eventual discontinuation of the Project and the increased severity of the diversity retention issue faced by Dallas

1. See J.L. Turner Legal Association, *2013 Pre-Law Initiative* (Nov. 5, 2013), <http://vimeo.com/79847341>.

law firms. The key take-away is simple. Law firms should focus on what they do best—provide professional legal services. When it comes to developing and administering substantive diversity programs, firms should consider increasing reliance on collaborative partnerships that enable them to retain oversight while transferring the day-to-day mechanics to optimize efficiency and impact.

Action Item 6: Mentor cross-cultural mentees in a way that addresses their primary concerns and impediments to success.

Assume you are a prospective cross-cultural mentor who is fed up with the deplorable status quo as it relates to the retention of diverse associates. Like countless others, you are disgusted by the recent (and repeated) accounts of how bad the numbers are, the perpetuation of persistent bias, and overall diversity stagnation. Responding to the voice that has been echoing in the depths of your conscience for quite some time, you have a newfound resolve to make your own personal contribution. You are aware of many Invisible Associates in your firm and are peripherally familiar with their struggles. You want to mentor one of them and make a difference in the process. There is only one thing holding you back. This is unfamiliar territory and you have no idea how to start this cross-cultural mentoring process. Here are a few considerations.

Make a full commitment: For mentors, your primary goal should be establishing a meaningful relationship that evolves naturally and not mechanically. When it comes to mentee interactions, employ a “just be genuine” strategy. Do not allow the mentee’s gender or ethnicity to dictate a mentoring approach derived from stereotypes. Rather, be natural and approach the relationship in the most genuine manner possible. A mentor must continuously strive to demonstrate a true commitment to his or her mentee—not just during National Mentoring Week. This commitment should include more than mundane meetings and interactions and extend to encompass every aspect of the mentee’s socialization and integration into the firm. In short, to be an effective cross-cultural mentor, simply recall an inspiring and impactful mentor who had a profound and long-lasting impact on your career. Recall a mentor who fought to gain opportunities and provided counsel on how to deal with politically sensitive issues. Then, harness and channel that mentor’s impactful actions and instill this into your mentee. It is that simple and, as a mentor, if you do this, you will be successful and your mentee will most likely flourish and succeed. In the process, your example will encourage others to follow your lead—fostering a diversity domino effect.

Advocate for substantive opportunities: Any effective mentor must take a strong interest in and promote the mentee’s substantive development. This means ensuring the mentee has opportunities to do the right work for the right partners to remain on the right track for potential partnership opportunities. As a mentor, this “substantive opportunity advocate” requirement breaks down into two smaller components: quantity and quality. The *quantity* prong focuses on making sure that your mentee is getting enough work to enable the satisfaction of applicable internal billing requirements. If the mentee is habitually not fully utilized, a prudent and effective mentor would investigate and consistently work to ensure that the work allocation system is not operating in a biased fashion. In addition, a mentor should also work with the mentee to ensure that the *quality* of each assignment and project contributes to the systematic development and grooming of the associate to optimize future firm opportunities. An integral aspect of this is ensuring the mentee has access to develop client relationships and gain insights on the business of the law. This is especially important in our current environment in which the legal services delivery paradigm is radically and continually shifting, requiring adaptability and ingenuity.

Ensure unbiased feedback: Related to substantive opportunities, constructively critical feedback is an essential component to firm success. As a cross-cultural mentor, this is one of your more important



Consider for a moment, the impact we could have on diversity and inclusion if we developed programs that targeted potential diverse attorneys as early as high school or before.

imperatives because if a mentee does not have access to unbiased substantive reviews, his or her professional growth and development will be undoubtedly stunted. As a mentor, another role is to provide quality feedback when directly working with the mentee and assist the mentee to develop ways to solicit such feedback from other partners and associates. Obtaining this feedback is only half the battle. Once secured, the mentor should counsel the mentee on how the critical insights must be processed, internalized, and synthesized into the mentee's future work assignments. Here a mentor must play a critical role in shielding the mentee from any potentially adverse effects of certain unspoken biases that operate in the law firm environment.

For example, a leadership consulting firm recently conducted a study that confirms the existence and operation of biases that resulted in more negative appraisals of the written work product submitted by African American associates.² As a cross-cultural mentor, you have a two-fold obligation here. First, you must endeavor to leverage your role within the firm to attempt to limit (and eventually eradicate) the effects of these adverse biases. This may come in the form of probing follow-up questions about the negative critiques your mentee receives. Additionally, the mentor should also endeavor to put such "feedback" into the proper context for a mentee struggling to understand how a seemingly minor mistake could become the basis for such harsh and biased review appraisals.

Action Item 7: Refocus our attention on purposefully priming the legal profession pipeline.

Another area in need of renewed focus and innovative solutions is the legal pipeline. We absolutely must increase the numbers of diverse attorneys at various stages of the legal pipeline. Traditionally, many firms have employed what I like to call the "Cash and Dash" approach (i.e., award a few scholarships here and there and maybe sponsor a few Black Law Students events). These are desired and helpful, but our profession needs much more.

Consider for a moment, the impact we could have on diversity and inclusion if we developed programs that targeted potential diverse attorneys as early as high school or before. Imagine the positive change we could effect if every firm would commit to hiring a number of diverse high school students as summer interns, continue a relationship with them as they advance through college and eventually enter law school. Assume further that at the law school level, these interns would then be eligible for a substantial scholarship to help defray law school expenses and would be paired with mentors who assist with the law school process—academically and otherwise. At the end

2. See Debra Cassens Weiss, *Partners in Study Gave Legal Memo a Lower Rating When Told Author Wasn't White*, ABA JOURNAL, Apr. 21, 2014, http://www.abajournal.com/news/article/hypothetical_legal_memo_demonstrates_unconscious_biases.

of this program, assuming the student satisfies the basic objective requirements, (including a GPA component and the normal summer clerkship process), he or she receives a permanent offer. Programs like this can provide all of the key ingredients necessary to successfully prime the legal pipeline with diverse associates, including: (i) financial assistance in the form of scholarship money and employment, (ii) long-term mentoring, and (iii) early and sustained exposure to the legal profession and the inner workings of a law firm. If all firms, corporations, and law schools, would employ innovative strategies like this, our pipeline will be near bursting with bright young minds headed toward a career in law.

I know an associate who started a career with a law firm as a high school intern. Over the next several years, the bond and the connection was maintained and nurtured through undergrad, then on to law school at an impressive Ivy League institution and now as a senior associate in an AM Law 100 law firm. She is admired and praised for her incredible professionalism and substantive competence. She is poised for a strong run at partnership and is a clear example of what can happen if we engage diverse attorneys earlier in their academic journey and nurture them as they make their way through the process.

Action Item 8: Stay positive—A concluding note for my fellow diverse associates.

For diverse mentees, one of the most important things to remember is to always keep an open mind and a positive outlook. While day-to-day experiences may infuse apprehension, frustration, and anger, give your mentor a fair opportunity to earn your respect and trust. Additionally, be strategic and proactive. As a first year associate, I often wondered why my mentor seemed distant because he rarely reached out to me, invited me to lunch, or initiated any of the other basic activities in which mentors and mentees routinely engage. Then one day, it dawned on me like the proverbial light bulb coming on, that the mentor/mentee relationship is a two-way street. After all, he is a busy partner with significant demands on his time. Maybe his silence and distance was not part of a racially-motivated conspiracy to undermine my progression. Maybe he was simply busy and I slipped off his radar. The takeaway is, you should not go into a mentoring relationship with pre-established conclusions or an apathetic approach. This is your career and as a wise friend always reminds me, a mentee generally needs the mentor more than the mentor needs the mentee. Whatever you do, never engage in the psyche-debilitating process of self-doubt that enters every diverse associate's mind at some point in his or her career, especially after a few negative experiences. Remember, the large firm environment is a rough and tumble world. Everyone is under some form of extreme pressure or stress. Find escape in faith, family, and the future. The emotional cycles associated with a lack of mentoring



For diverse mentees, one of the most important things to remember is to always keep an open mind and a positive outlook.



Invariably, the cumulative effect of this cycle will often have a taxing mental and emotional effect on diverse associates.

(and life as a diverse associate) generally start with increasing frustration that turns into pervasive disappointment, which can later manifest itself in the form of self-doubt, resentment, and anger (not in that particular order). Invariably, the cumulative effect of this cycle will often have a taxing mental and emotional effect on diverse associates. However, failure to control these emotions and at all times “play the game” and “play it to win,” can often trigger an early law firm exit or other untimely and avoidable professional adversity. As trite as this may sound, you must never forget the pioneers’ shoulders on which you stand. Press on, remembering always to stay strong and keep your head up. This too, shall pass and you will be stronger for it.

Conclusion

As an African American attorney practicing law in 2014, issues of diversity and inclusion have impacted me both in the past and currently, and will undoubtedly continue to do so. At every stage of my academic and professional journey, I have been in the minority. But, I have never allowed this objective reality to impede my professional climb or erode my confidence in the notion that most people are decent, God-fearing individuals. Rather, during each stage, I focus on core tenants implanted in my psyche by my parents and borne of our immigrant experience: hard work, integrity, and faith. I believe I have a duty and obligation to contribute to the enhanced diversification of my profession. Quite simply, my goal with this article is to contribute something important, yet at the same time candid, authentic, and objective to the diversity and inclusion discourse. While periodically punctuated with parenthetical references to empirical data, the foregoing is certainly not an example of comprehensive academic or scholarly exposition. Rather, it merely represents my honest and heartfelt insights derived from my nearly seven years of practice. Whatever you make of it, please let it inspire you to take bold progressive action. We all know how bad it is. Enough! Now, let us live up to the unwavering American ethos and find ways to rise above this persistent stagnation.

In closing, as the legendary civil rights leader and icon Dr. Martin Luther King, Jr. once remarked, “[w]e are caught in an inescapable network of mutuality tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.” This powerful quote has direct application in the realm of civil rights and social justice, and is also germane to advancing critical diversity and inclusion objectives. By recalibrating how law firms make arguments for diversity and track overall institutional success, modifying how firms approach diversity marketing with an aim to minimize the unintentional alienation of other groups (especially Caucasian men), and by diligently working to dispel the Homogeneity Truism and any other impediments to increasing cross-cultural mentoring, we, as a profession, can get closer to realizing a mutual destiny marked with optimal levels of diversity and inclusion. To get there, we cannot throw in the towel now and, more importantly, we must never forget that we are in this together!

ABAs in La-La Land: The Rise of Asian American Bar Associations in Los Angeles

Mia Yamamoto

Law Offices of Mia F. Yamamoto

Steven K. Yoda

Managing Associate, Orrick, Herrington & Sutcliffe LLP

Asian Pacific Americans are comprised of a multitude of ethnic groups so it is not surprising that in many metropolitan areas, there may be any number of Asian ethnic-specific bar associations in addition to a pan-Asian bar. Many of these bar associations are relatively inactive and rely upon the leadership of the same individuals year after year. In Los Angeles, however, there is a multitude of Asian ethnic-specific bar associations as well as pan-Asian bars, all of which appear to have active programming and a vibrant and robust leadership pool that population numbers alone cannot explain. To what can this vitality be attributed? Is this level of bar association engagement and participation replicable in other metropolitan areas?

I. Introduction

Many from outside Los Angeles have observed that the minority bar scene—particularly the Asian American bar scene—in Los Angeles is unique. Unlike other geographic regions, which typically feature only one Asian American bar association at most, Los Angeles boasts at least nine such organizations, including: the Asian Pacific American Bar Association (APABA), the Asian Pacific American Women Lawyers Alliance (APAWLA), the Japanese American Bar Association (JABA), the Korean American Bar Association (KABA), the Philippine American Bar Association (PABA), the South Asian Bar Association (SABA), the Southern California Chinese Lawyers Association (SCCLA), the Thai American Bar Association (TABA), the Taiwanese American Lawyers Association (TALA), and the Vietnamese American Bar Association (VABA).¹ Some of these organizations (like SCCLA and JABA) are among the oldest Asian American bar organizations in the country. Others (like TABA) are among the newest.

Rather than Balkanize these ethnic communities, this proliferation of organizations appears to have increased the overall number of active participants in Asian American bar organizations. That is, by all anecdotal accounts, the total number of members in these individual organizations is believed to be greater than the number of members that a single Asian American bar organization might otherwise attract. Furthermore, this large number of Asian American bar organizations provides the added benefit of offering more leadership opportunities to the community as a whole than a single organization could offer. Perhaps the most impressive feature of these Asian American bar organizations in Los Angeles is the genuine camaraderie and solidarity among themselves and among non-Asian American minority bar organizations.

1. Colloquially, these organizations sometimes are referred to collectively as the “-ABAs” because many of their names end with the words “American Bar Association.”

How did this unique structure come to be? In this article, we explore the history of Asian American bar organizations in Los Angeles and their relationship with other local minority bar organizations. We suggest that the current structure of Asian American bar organizations in Los Angeles and their relationship with other non-Asian American minority bar organizations is a product of (1) peculiar decisions made at the time the first Asian American bar organizations in Los Angeles were formed, and (2) the history of Los Angeles itself.

II. The First Minority Bar Organizations in Los Angeles

The first minority bar organization formed in Los Angeles was the Langston Law Club, founded in 1943.² Named after John Mercer Langston (1829–1897), a pioneering African American abolitionist, attorney, and politician, who also served as the first dean of Howard University's School of Law, the Langston Law Club was founded by a group of African American attorneys who were dedicated to serving the African American legal community.³ At the time, mainstream bar organizations, like the Los Angeles County Bar Association, excluded attorneys of color from membership.⁴ The formation of segregated bar organizations, like the Langston Law Club, therefore, was a natural and necessary result of this exclusion. African American attorneys, like all attorneys building their practices and developing professionally, needed a forum within which to network, provide and receive mentorship, and discuss community issues. In 1959, a group of Mexican American attorneys followed suit and founded the Mexican American Bar Association (MABA).⁵

By 1968, the Los Angeles County Bar Association officially recognized the Langston Law Club (which, by then, was known as the John M. Langston Bar Association) and other minority bar organizations as dues-paying affiliates.⁶

III. The Formation of the Southern California Chinese Lawyers Association and the Japanese American Bar Association

Among Asian Americans, Chinese Americans were the first to organize their own bar organization, SCCLA, in 1975.⁷ Two years later, a group of Japanese American attorneys formed JABA.⁸ Although these two groups had discussed the possibility of joining forces to form a single Asian American bar organization, as their Asian American colleagues in the Bay Area did in 1976, that did not occur. This may be for several reasons.

First, in the 1970s, the Asian American Movement itself was still gaining momentum. Rooted in the ideology of Black Power, the origins of the Asian American Movement can be traced back to 1968 and 1969, when Chinese American, Japanese American, and Filipino American (and later Korean American and Vietnamese American) student-activists at various college campuses began recognizing their commonalities and organizing around them. In 1968, for example, at the University of California, Berkeley, Asian American students formed the Asian American Political Alliance (AAPA), a

2. *About the John M. Langston Bar Association*, BLACK COUNSELOR, <http://blackcounseloronline.com/events/langston-barassoc/> (last visited Apr. 1, 2014). Technically, the origins of the Langston Law Club itself can be traced to yet another organization, known as the Blackstone Group, which was founded in the 1920s.

3. *History of the Bar Association*, JOHN M LANGSTON BAR ASSOCIATION OF LOS ANGELES, <http://www.langstonbar.org/#!history/c1uyq> (last visited Jun. 24, 2014).

4. *See id.*

5. *See About Us: Our History*, MEXICAN AMERICAN BAR ASSOCIATION, <http://www.mabaattorneys.com/about-us> (last visited Jun. 24, 2014).

6. *See History of the Bar Association*, *supra* note 3.

7. *See About Us*, SCCLA, <http://www.sccla.org/page-1426579> (last visited Jun. 24, 2014).

8. *See About JABA*, JAPANESE AMERICAN BAR ASSOCIATION, <http://www.jabaonline.org/about/>, (last visited Jun. 24, 2014).



It is worth remembering that anyone coming of age before 1968 would not have had an “Asian American” consciousness.

group dedicated to political education and the “advancement of the movement among Asian people.”⁹ (It was the first self-named group to utilize the term “Asian American.”) Later that same year, at San Francisco State University, Asian American students formed a multiethnic coalition known as the Third World Liberation Front, which, along with the Black Student Union, organized a five-month strike that ultimately resulted in the creation of a college of ethnic studies, including an Asian American Studies department.¹⁰ In 1969, a group of students at the University of California, Los Angeles formed a progressive publication known as *Gidra*. Calling itself “the voice of the Asian American movement,”¹¹ *Gidra* served as an important forum for art, poetry, and articles about drug abuse, the Vietnam War, prison conditions, and the redevelopment of Los Angeles’ Little Tokyo, thereby solidifying Asian American identity. By 1970, there were dozens of campus and community organizations around the country utilizing the term “Asian American.” Still, the Asian American Movement largely was seen as a youth movement. And the unfortunate murder of Vincent Chin, which many view as the catalyzing point of the Asian American Movement, was still over ten years away.¹²

Second, prior to the Asian American Movement, Asian Americans had, for many decades, organized around their specific ethnic groups. The Chinese American Citizens Alliance (CACCA), for example, was founded in 1895 in San Francisco to promote the welfare of Chinese Americans.¹³ Likewise, the Japanese American Citizens League (JACL) formed when several preexisting Nisei organizations in California and Washington merged in 1929.¹⁴ By the 1970s, both organizations had developed numerous chapters around the country. Thus, in many ways, the formation of SCCLA and JABA was consistent with this historical pattern.

Third, while it may seem odd today, there were some Chinese Americans and Japanese Americans, who, given the traditional way of doing things, strongly believed that their respective communities should focus first and foremost on themselves. On this point, it is worth remembering that anyone coming of age before 1968 would not have had an “Asian American” consciousness. To illustrate: As late as 1987, Mike Masaoka, a controversial and outspoken leader of the JACL before, during, and after World War II, in his own autobiography, stated:

I have reservations about Japanese Americans in an Asian-Pacific movement . . . [A] multiethnic alliance based on common Asian heritage is . . . beset with problems as well as benefits. In reality,

9. VOICES OF THE ASIAN AMERICAN AND PACIFIC ISLANDER EXPERIENCE: VOLUME 1 17–18 (Sang Chi & Emily Moberg Robinson eds., 2012) (citation omitted).

10. See *id.* at 13–14.

11. Glen Kitayama, *Gidra in JAPANESE AMERICAN HISTORY: AN A-TO-Z REFERENCE FROM 1868 TO THE PRESENT* 146 (Brian Niiya ed. 1993).

12. See generally *Chin, Vincent case in JAPANESE AMERICAN HISTORY: AN A-TO-Z REFERENCE FROM 1868 TO THE PRESENT* 117 (Brian Niiya ed. 1993).

13. See *History of CACA*, CHINESE AMERICAN CITIZENS ALLIANCE, <http://www.cacanational.org/history> (last visited Jun. 24, 2014).

14. See *History of the Japanese American Citizens League*, JAPANESE AMERICAN CITIZENS LEAGUE, <http://www.jacl.org/about/jacl-history.htm> (last visited Jun. 24, 2014).

Japanese Americans have more in common with the greater American society than with immigrants from Korea or Taiwan or Indochina, even though we may admire their courage and energy and support their aspirations.¹⁵

While this viewpoint may not have represented a majority viewpoint in the Chinese American or Japanese American communities, it nevertheless was a viewpoint held by some. Given that by 1975 SCCLA already had formed and JABA was on the verge of forming, one can see how, through simple organizational inertia, these two separate organizations came to be. In the ensuing years, attorneys of Filipino and Korean descent in Los Angeles would, respectively, organize PABA and KABA, all but solidifying a local tradition of forming bar organizations around specific ethnic communities.

IV. The Rise of Asian American Identity and Coalition-Building

By the 1980s, Asian American law students, many of whom self-identified as Asian American and were active in Asian Pacific American Law Student Associations, began to demand that bar organizations focus more on broader issues of social and racial justice. In response, JABA, with the support of its Board, created an Asian Concerns Committee (ACC).¹⁶ The ACC represented a paradigm shift within JABA from a “trade model” (focused primarily upon the promotion and development of its members within the legal profession) to a “community model” (focused more upon issues facing the community at large). JABA’s ACC eventually grew into a *de facto* Asian American bar organization in Los Angeles.

In 1986, in response to a right-wing challenge to the reelection of California Supreme Court Chief Justice Rose Elizabeth Bird and Associate Justices Cruz Reynoso and Joseph Grodin, young lawyers from SCCLA, JABA, PABA, and KABA converted the ACC from a JABA committee into a *joint* committee between their organizations specifically for the purpose of defending the California Supreme Court and the justices being challenged.¹⁷ This was the first formal collaboration, on a campaign of community-wide interest, between these Asian American bar organizations. Although Chief Justice Bird and Justices Reynoso and Grodin did not win reelection in 1986, the ACC’s efforts demonstrated that the bar organizations could work together for a progressive cause. From that point forward, the ACC continued to meet, investigate issues, and coordinate joint responses among the bar organizations to challenges facing the Asian American community.

By the 1990s, members of the ACC began to explore the idea of formally merging SCCLA, JABA, PABA, and KABA into a single Asian American organization. However, again, largely because of inertia, the individual bar organizations resisted the idea of merger because some wanted to protect their hard-earned organizational identities, resources, and influence. In order to address these concerns, a new organization, APABA, was formed in 1998, with SCCLA, JABA, PABA, and KABA designated as founding members entitled to representation on APABA’s Board of Governors.¹⁸

V. The Los Angeles Riots of 1992 and Coalition-Building Beyond Asian America

On March 16, 1991, Latasha Harlins, a fifteen-year-old African American girl, entered a South Los Angeles store, the Empire Liquor Market, to purchase a beverage.¹⁹ Harlins put an orange juice into

15. MIKE MASAOKA & BILL HOSOKAWA, *THEY CALL ME MOSES MASAOKA: AN AMERICAN SAGA* 355 (1987).

16. See *APABA’s History*, ASIAN PACIFIC AMERICAN BAR ASSOCIATION, <http://apaba.org/mission> (last visited Jun. 24, 2014).

17. See *generally Community Concerns Committee*, ASIAN PACIFIC AMERICAN BAR ASSOCIATION, <http://apabala.org/committees/asianconcerns.php> (last visited Jun. 24, 2014).

18. See *APABA’s History*, *supra* note 16.

19. *People v. Superior Court (Du)*, 7 Cal. Rptr. 2d 177, 179 (1992).



Their organizations needed to come together to show that they were united against racism and committed to dialogue, cooperation, and reconciliation.

her backpack and walked toward the counter with money in her hand.²⁰ The Korean American shopkeeper, Soon Ja Du, who was working behind the counter, mistakenly thought Harlins was shoplifting.²¹ Du confronted and then attempted to grab Harlins.²² Harlins then struck Du two times, knocking her to the ground.²³ Du then threw a stool at Harlins, but missed.²⁴ Harlins placed the orange juice on the counter and turned to walk away.²⁵ Du then reached under the counter, retrieved a handgun, and shot Harlins in the back of her head, killing her instantly.²⁶ The security videotape, which depicted the shooting, was played over and over again in the media and enraged the African American community. Harlins' death came just thirteen days after the videotaped beating of Rodney King, an African American man, at the hands of Los Angeles Police Department officers, which also had received extensive media coverage and placed the community on edge.

Almost immediately, bar leaders from the John M. Langston Bar Association, the Black Women Lawyers Association (BWLA), and the ACC (which collectively represented SCCLA, JABA, PABA, and KABA) met to discuss what they saw as a crisis in the community. They concluded that their organizations needed to come together to show that they were united against racism and committed to dialogue, cooperation, and reconciliation. Thus, what began as a narrow Black–Korean conflict quickly resulted in an African American and Asian American coalition, which organized outreach efforts to schools, churches, and community groups in South Los Angeles and Koreatown. Along the way, this coalition gathered additional supporters from other concerned individuals and groups who wanted to help. In addition to all of the aforementioned organizations, the coalition was joined by the Women Lawyers Association of Los Angeles (WLALA), MABA, and Lawyers for Human Rights (later known as the Lesbian and Gay Lawyers of Los Angeles (LGLA)).

On October 11, 1991, a jury convicted Soon Ja Du of voluntary manslaughter.²⁷ On November 15, 1991, the judge sentenced her to five years of probation with time served, a \$500 fine, and 400 hours of community service.²⁸ This lenient sentence exacerbated growing tensions between the African American and Korean American communities in Los Angeles.

20. *Id.*

21. *Id.* at 179–80.

22. *Id.*

23. *Id.* at 180.

24. *Id.*

25. *Id.*

26. *Id.*

27. Andrea Ford & Tracy Wilkinson, *Grocer Is Convicted in Teen Killing: Verdict: Jury Finds Korean Woman Guilty of Voluntary Manslaughter in the Fatal Shooting of a Black Girl.*, L.A. TIMES (Oct. 12, 1991), http://articles.latimes.com/1991-10-12/news/mn-152_1_voluntary-manslaughter.

28. Tracy Wilkinson & Frank Clifford, *Korean Grocer Who Killed Black Teen Gets Probation*, L.A. TIMES (Nov. 16, 1991), http://articles.latimes.com/1991-11-16/news/mn-1402_1_straight-probation.



Even after the riots subsided, the Multicultural Bar Alliance continued to press for communication and unity.

On April 29, 1992, another jury, composed of ten Caucasians, one Latino, and one Asian American,²⁹ acquitted three of four LAPD officers, who were accused of assault and excessive force in connection with the beating of Rodney King.³⁰ As to the fourth officer, the jury acquitted on the assault charge, but was unable to reach a verdict at all on the excessive force charge.³¹ The verdicts were issued at 3:15 p.m.³² By 3:45 p.m., a crowd of more than 300 people appeared at the Los Angeles County Courthouse protesting the verdicts.³³ Between 5:00 p.m. and 6:00 p.m., a group of two dozen officers confronted a crowd at the intersection of Florence and Normandie Avenues in South Los Angeles.³⁴ The outnumbered officers retreated and the crowd started looting and attacking vehicles and people.³⁵ Among the people attacked in that intersection was a Caucasian truck driver, Reginald Denny, who was dragged from his vehicle and savagely beaten until an unarmed African American man, Bobby Green rescued him, with the help of three others, and drove him to a hospital.³⁶

Similarly, a Latino man, Fidel Lopez, was attacked and beaten at that intersection only to be rescued by an African American man, Rev. Bennie Newton, who covered Mr. Lopez with his body and, while brandishing a Bible, told the rioters: "Kill him and you have to kill me too."³⁷

A Japanese American man, Tak Hirata, was also dragged from his vehicle at that same intersection and beaten before he, too, was rescued by an African American man, Gregory Alan-Williams, who carried Hirata to a place of safety, where another African American man drove him to the hospital.³⁸

While the riots raged, the coalition of bar leaders that had responded to the Latasha Harlins crisis continued to meet to discuss ways to defuse the chaos that was sweeping the city. They officially named their coalition the Multicultural Bar Alliance (MCBA), and they continued to call for calm and dialogue. Even after the riots subsided, MCBA continued to press for communication and unity.

29. Seth Mydans, *Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES, Apr. 30, 1992, at A1.

30. *After the Riots; A Juror Describes the Ordeal of Deliberations*, N.Y. TIMES (May 6, 1992), <http://www.nytimes.com/1992/05/06/us/after-the-riots-a-juror-describes-the-ordeal-of-deliberations.html>.

31. *Id.*

32. *Charting the Hours of Chaos*, L.A. TIMES (Apr. 29, 2002), <http://articles.latimes.com/2002/apr/29/local/me-replay29>.

33. *Id.*

34. *Id.*

35. *See id.*

36. Madison Gray, *The L.A. Riots: 15 Years After Rodney King: Key Figures: Bobby Green*, TIME, 2007, http://content.time.com/time/specials/2007/la_riot/article/0,28804,1614117_1614084_1614518,00.html.

37. Sonia Nazario, *Mourners Say Farewell to One of Riots' Heroes: Funeral: The Rev. Bennie Newton, an Ex-Convict, Had Built a Reputation for Saving Lives Long Before He Threw Himself over a Man Being Beaten by a Mob*, L.A. TIMES (May 2, 1993), http://articles.latimes.com/1993-05-02/local/me-30352_1_peace-rally.

38. Carla Hall, *Hero Role in Riots Pushes Actor onto a Larger Stage: Human Relations: 'I Can't Be a Bystander Anymore,' Says Gregory Alan-Williams. He Writes of Life-Jolting Changes*, N.Y. TIMES (Mar. 23, 1994), http://articles.latimes.com/1994-03-23/news/mn-37533_1_gregory-alan-williams.

In the over twenty years since its inception, MCBA has continued its mission of intercommunity dialogue, social justice, and equality. Today, it is a coalition of eighteen diverse bar organizations in the Los Angeles area, and it is a haven for all minority groups as well as a unified force advocating justice for all, with no community left behind. Since the riots, MCBA has championed three core issues: affirmative action, marriage equality, and justice for immigrants. These are not easy topics for a diverse coalition of organizations, which includes the following: APABA, the Arab American Bar Association of Southern California, BWLA, the Iranian American Lawyers Association, the Italian American Lawyers Association, LGLA, WLALA, and others. Affirmative action, with its deliberate inclusion of women and minorities, did not sit well with groups like LGLA, whose members were mostly white males. Marriage equality was not initially accepted by groups whose members' religions adhered to anti-gay beliefs. And justice for immigrants was not embraced by groups who saw liberal immigration policies as antithetical to the economic interests of their communities. Nevertheless, through its struggle and hard work, MCBA has promoted dialogue and worked hard to build a consensus among its member organizations.

VI. Conclusion

The Asian American bar scene in Los Angeles is unique because its history is unique. Rather than form a single, overarching Asian American bar association, early bar leaders, following historical tradition, opted instead to form separate organizations centered around specific ethnic communities. This, in turn, set a precedent for other minority groups to form similar organizations. Ultimately, though, the power of the Asian American Movement and Asian American identity pushed these disparate organizations to work together. Their joint community work through the ACC forged strong bonds of friendship such that, even though the organizations declined to formally merge themselves into a single organization, they still formed a pan-Asian-American bar organization and supported (and continue to support) each other in practically all endeavors. Their successes in working together in the 1980s positioned them to expand their coalition *beyond* the Asian American community by the time of Los Angeles' civil unrest in the early 1990s. Thanks to the cooperation of African American and other minority bar organizations, Los Angeles' minority legal community was able to do its part to maintain peace. The lasting legacy of this period is the culture of friendship and mutual understanding, which can be seen in Los Angeles' minority bar scene to this day.



The lasting legacy of this period is the culture of friendship and mutual understanding, which can be seen in Los Angeles' minority bar scene to this day.

The Stephen Lawrence Murder Twenty-One Years On

Max Hill QC

Head of Chambers, Red Lion Chambers

Max Hill QC explains the legal proceedings surrounding what is arguably one of the most pivotal cases in race relations in the United Kingdom.

London. 3rd January 2012. Two men are found guilty of one of the most notorious murders of the twentieth century, the racist killing of Stephen Lawrence. The murder occurred in April 1993. What took so long?

Every murder changes the lives of those closest to the victim. When eighteen year-old Stephen Lawrence was stabbed to death as he stood at a bus stop in south London on an April night, as many years ago as the span of his too-short young life—his parents, family, and friends knew that things would not be the same for them.

Not every murder has an impact upon an entire nation, and an influence upon the way that society sees itself. The killing of Stephen Lawrence was different. So different, that the Acting Deputy Commissioner of the Metropolitan Police¹ wrote in the London Guardian newspaper on the evening of the guilty verdicts against Gary Dobson and David Norris:

No murder has been subject to such extraordinary levels of scrutiny over such a long period. And no murder has resulted in such wide-ranging changes in the police, the law, government and other agencies and society itself.²

It is no exaggeration to say that the case of Stephen Lawrence is, therefore, unique in British legal history. This short article looks at some of the components of the eighteen-year story that has given the name of Stephen Lawrence worldwide recognition, his legacy after death. Any article, and this is no exception, can only hope to make a selection of the key aspects of the case. Anything written about the Stephen Lawrence case, however, would surely be worthless if it did not pay tribute to the extraordinary courage and persistence demonstrated by his parents Doreen³ and Neville Lawrence. They paid the heaviest price the night they lost their son, yet it is to them that we owe our admiration and gratitude for showing the way to justice, and through justice to changing British society in ways that make it at least a little better.

Stephen Lawrence was killed as he waited for a bus in Eltham, south London, in April 1993.⁴ The milestones of the investigation that was to take eighteen years include:

22nd April 1993. As Stephen stands at a bus stop with his friend Dwayne Brooks, he is set upon in an

1. Cressida Dick, herself no stranger to controversy as the senior officer in charge of the surveillance operation that ended with the tragic death of Jean Charles de Menezes in 2005.

2. Cressida Dick, *Stephen Lawrence Murder: Nothing in the Met's History Had a Greater Impact*, THE GUARDIAN, Jan. 3, 2012, <http://www.theguardian.com/global/2012/jan/03/cressida-dick-stephen-lawrence-verdicts>.

3. Doreen Lawrence has become an icon for the cause of justice. Mrs. Lawrence was one of those chosen to carry the Olympic flag at the Opening ceremony for London 2012. See <http://www.theguardian.com/uk/2012/aug/12/doreen-lawrence-i-got-quite-emotional>.

4. See *Stephen Lawrence murder: A Timeline of How the Story Unfolded*, BBC NEWS, Mar. 6, 2014, <http://www.bbc.com/news/uk-26465916> [hereinafter *Lawrence murder*].

unprovoked attack by a group of white strangers and stabbed to death.⁵ The police are given the names of the suspects within days.⁶

May 1993. The Lawrence family holds a press conference to complain about police delays.⁷ They meet Nelson Mandela in London.⁸ The police conduct five arrests: Dobson and Norris together with Jamie and Neil Acourt and Luke Knight.⁹ The last two are picked out by Dwayne Brooks at identification parades, and charged with Stephen's murder.¹⁰

July 1993. The Crown Prosecution Service (CPS) declares that the identification evidence is unreliable, and the case against Acourt and Knight is dropped.¹¹

December 1993. The inquest into Stephen's death is halted amidst claims of dramatic new evidence.¹² By April 1994, however, the CPS decides there is not enough evidence to justify recommencing a prosecution.¹³

September 1994. The Lawrence family commences their own, private prosecution of Dobson, Neil Acourt and Knight.¹⁴ However, when the case comes to trial in April 1996, it fails when the identification evidence by Dwayne Brooks is ruled inadmissible.¹⁵

February 1997. The inquest resumes, and culminates in a finding of unlawful killing "by five youths."¹⁶ The next day the London Daily Mail newspaper takes the unprecedented step of naming all five suspects as "Murderers."¹⁷

March 1998. A public inquiry opens, chaired by Sir William Macpherson.¹⁸ In February 1999 the Macpherson report is published, in which the Metropolitan Police are accused of "institutional racism."¹⁹ The report recommends changes to policing and to the law, aimed at shutting down racial discrimination.²⁰ Doreen Lawrence comments, "black people are still dying on the streets and in the back of police vans. To me institutional racism is so ingrained and it is hard to see how it will be eradicated out of the police force."²¹

May 2004. The CPS announces that, following a further review, there is still insufficient evidence for a criminal prosecution.²²

April 2005. The ancient legal principle of *autrefois acquit*—better known as the double jeopardy rule—is abolished, meaning that in certain circumstances those who have been tried once can now be charged and tried again for the same crime.²³

5. *Id.*

6. *Id.*

7. *Id.*

8. *See id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* ("A private prosecution is the same as a standard criminal trial but not brought by the CPS.")

15. *Id.*

16. *Id.*

17. *See id.*; see also Josh Halliday, *Stephen Lawrence Front Page 'Was a Monumental Risk' Says Daily Mail Editor*, THE GUARDIAN, Jan. 2, 2012, <http://www.theguardian.com/uk/2012/jan/03/stephen-lawrence-daily-mail-paul-dacre>.

18. *Lawrence murder*, *supra* note 4.

19. *Id.*

20. *Id.*

21. *Doreen Lawrence's Statement to the Press*, THE GUARDIAN (Feb. 24, 1999), <http://www.theguardian.com/uk/1999/feb/24/lawrence.ukcrime>.

22. *Lawrence murder*, *supra* note 4.

23. For more background on this change in the law, including the effect of Stephen's murder, see Sally Broadbridge, *Double Jeopardy*, Standard Note/Home Affairs/1082 (2009), available at www.parliament.uk/briefing-papers/sn01082.pdf.

November 2007. The Metropolitan Police announce that a fresh investigation has been underway since 2006, centered upon new forensic evidence in the case.²⁴

February 2009. The tenth anniversary of the Macpherson Report sees a number of commentaries. Whilst the Minister for Justice, Jack Straw, claims that the Metropolitan Police are no longer guilty of institutional racism, Doreen Lawrence responds that the police are still failing young black British citizens.²⁵ A multi-million pound center, primarily aimed at encouraging young and diverse teenagers to study architecture, as Stephen had wished to do, has been open in south London for a year.²⁶

May 2011. The Court of Appeal, using the new law after double jeopardy, decide that the case against Dobson and Norris—who were charged in September 2010 under a media blackout—can go ahead.²⁷

14th November 2011. The trial of Dobson and Norris commences. The central evidence is the finding of Stephen's DNA on the defendants' clothes.²⁸

3rd January 2012. Dobson and Norris are convicted. They are sentenced to life imprisonment.²⁹ Applying the rules on sentencing tariffs relevant to their age and circumstances in 1993, they receive minimum terms of fifteen and fourteen years.³⁰

March 2014. The publication of "The Stephen Lawrence Independent Review," by Mark Ellison, who had been leading prosecution counsel at the trial of Dobson and Norris.³¹ The "Ellison Review" considered the possibility of corrupt practices by a police officer involved in the original criminal investigation, criticized the Metropolitan Police Service for failures in disclosure to the Public Inquiry, criticized the deployment of an undercover officer within the Lawrence family "camp," and criticized the covert recording of a meeting between Duwayne Brooks and his solicitor. The ramifications of the Ellison Review, as to all of the above and as to the retention and disclosure of police documentation, will take some time to develop.

This chronology serves to demonstrate the seismic changes this case has seen, indeed has brought about, in order to secure convictions and a measure of justice for the Lawrence family.

It might be tempting to concentrate upon the advances in forensic evidence which the case crystallizes. Microscopic analysis of blood, hair, and fibers from the clothing of the deceased and the defendants tell almost the whole story of the final, successful trial at the Old Bailey. As one member of the defense, Tim Roberts, put it "[t]he actual evidence upon which this charge is brought, the fibers and the fragments, would not fill a teaspoon."³² A trial on such evidence alone would not have been possible just a few decades ago, and the technology used to secure the convictions became cutting-edge between Stephen's death and the trial.

But, however fascinating the forensic evidence and advances may be, it is in changes to British race relations that Stephen Lawrence's legacy looms large. And in changes to the rights and expectations of defendants before our courts—with double jeopardy no longer a given protection, larger still.

24. *Lawrence murder*, *supra* note 4.

25. *Id.*

26. *See id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *See id.*

31. Mark Ellison, *Stephen Lawrence Independent Review*, HOME OFFICE (Mar. 6, 2014), available at <https://www.gov.uk/government/publications/stephen-lawrence-independent-review>.

32. *Stephen Lawrence Murder: Dobson and Norris Found Guilty (Evidence)*, BBC NEWS, Jan. 3, 2012, <http://www.bbc.com/news/uk-16257377>.

Unlike the Macpherson Report itself, this article can only scratch at the surface by noting the scale of the changes to policing in London that have come about in the Report's wake.

The Inquiry and Report's recommendations are well known. They pointed to institutional racism within the police, compounded by failure of leadership and professional incompetence. Substantial changes were needed, both within the police and in the context of police-community relations. The Home Secretary in 1999 set up The Lawrence Steering Group, to carry the Report's recommendations into effect.³³

Six years later, the Home Office Research Development and Statistics Directorate was able to point to five fundamental changes in policing.³⁴ Significant improvements were introduced in:

- The recording, monitoring, and responses to hate crime
- The organization, structure, and management of murder investigation
- Liaison with families of victims of murder
- Consultation with local communities, and
- The general excision of racist language from the police service

Any one of these improvements might be seen as a startling change to come about from a single case. But Stephen Lawrence's killing unearthed so much that required change. The need for change perhaps resonates from just one paragraph of the Macpherson Report, worth remembering here. It is the Report's definition of institutional racism:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.³⁵

If the diagnosis was bleak, there are signs for hope in the changes to policing since. However, the 2005 Home Office Study was also to reach this conclusion:

The Stephen Lawrence Inquiry generated strong feelings within the police service. In sites outside London the Inquiry, though it was perceived to have been an important moment in policing, appeared to have less resonance. These forces collectively, and officers individually, distanced themselves from the Inquiry and its recommendations by seeing the [Metropolitan Police Service] as the main focus of criticism and, by implication, that forces outside London did not exhibit the same problems. Officers in London sites, as well as those outside, also distanced themselves from accusations of institutional (and individual) racism by arguing that the main problem experienced in the Lawrence case was incompetence—the implication, often made very explicitly, that incompetence is colour-blind.³⁶

The impact of the Lawrence case, then, seems to vary between its resonance in the areas of racism and professionalism. Are the two entirely separate, or does one “enhance” the other? Certainly, it is worth recalling Macpherson's words on the scale of the incompetence:

33. Carole F. Willis, *Foreword* to JANET FOSTER, TIM NEWBURN & ANNA SOUHAMI, HOME OFFICE, RESEARCH STUDY 294, ASSESSING THE IMPACT OF THE STEPHEN LAWRENCE INQUIRY, at i (2005), available at <http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs05/hors294.pdf>.

34. JANET FOSTER, TIM NEWBURN & ANNA SOUHAMI, HOME OFFICE, RESEARCH STUDY 294, ASSESSING THE IMPACT OF THE STEPHEN LAWRENCE INQUIRY (2005), available at <http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs05/hors294.pdf>.

35. WILLIAM MACPHERSON, THE STEPHEN LAWRENCE INQUIRY, 1999, Cm. 4262-I, at ¶6.34 (U.K.), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf.

36. Foster, Newburn & Souhami, *supra* note 34, at 33.

Anybody who listened to the evidence of the officers involved in the initial police action after the murder would . . . be astonished at the lack of command and the lack of organisation . . . It is difficult to reconstruct with any accuracy or confidence what exactly was done and when it was done. This is because there was almost a total lack of documentation and record in connection with the whole of the first night's operations.³⁷

Little wonder that the Stephen Lawrence case is often referred to as a "landmark" case. Whether blighted through "institutional racism" alone, or by that factor in combination with unprofessional organization and lack of leadership, there was clearly a need for change. On the day of the guilty verdicts in January 2012, a journalist with the Independent newspaper wrote as follows:

The case is a landmark in British life because of what it taught us about race. In small ways and in big ways, it exposed reflexes of denial and defensiveness in our society that most white people didn't even know we had. Did it end racism? Of course not, but it shifted the whole argument into new and healthier territory. It made a lasting difference.³⁸

A fresh perspective was provided, on the tenth anniversary of Macpherson, by one of the panel members on the Macpherson Inquiry. He pointed to one of the basic failings of policing in 1993:

In 1993 five police officers were in a position to perform First Aid for Stephen Lawrence. None of them did. None of them knew anything about First Aid. They had all been on First Aid courses, with refresher courses every three years since. Yet none of them were able even to recall the ABC of First Aid, which stood for Airway, Breathing, and Circulation.³⁹

A damning indictment of policing in London. The fact that things have changed since, particularly in the aftermath of the 7th July 2005 London bombings when fifty-two innocent lives were lost, should not mask the startling limitations of policing on the streets of London a decade earlier.

There was another authoritative review, also written ten years after Macpherson, this time by the Equality and Human Rights Commission.⁴⁰ The premise of this report was clear:

Unquestionably the brutal death of 18-year-old Stephen by a gang of white youths as he waited at a bus stop in Eltham, south-east London, on 22 April 1993 did eventually become the driving force to improve race relations in Britain.⁴¹

The report saw signs of progress:

In some areas the police service is making clear progress, and there are reliable statistics to back up that assertion. This includes recruitment, training, elements of promotion, and tackling racist crimes. In others there is some data and examples— sometimes anecdotal—to suggest that things are improving, such as the treatment of racist harassment.⁴²

But the report concluded in measured and cautious terms:

37. Macpherson, *supra* note 35, at ¶¶11.1–11.2.

38. Brian Cathcart, *The Killing of Stephen Lawrence Ended Britain's Denial about Racism*, THE INDEPENDENT, Jan. 4, 2012, <http://www.independent.co.uk/voices/commentators/brian-cathcart-the-killing-of-stephen-lawrence-ended-britains-denial-about-racism-6284484.html>.

39. RICHARD STONE, STEPHEN LAWRENCE REVIEW: AN INDEPENDENT COMMENTARY TO MARK THE 10TH ANNIVERSARY OF THE STEPHEN LAWRENCE INQUIRY 5 (2009), available at http://richardstonesli.files.wordpress.com/2012/02/slr_report.pdf.

40. JAMES BENNETTO, POLICE AND RACISM: WHAT HAS BEEN ACHIEVED 10 YEARS AFTER THE STEPHEN LAWRENCE INQUIRY REPORT? (2009), available at <http://www.equalityhumanrights.com/sites/default/files/documents/raceinbritain/police-and-racism.pdf>.

41. *Id.* at 10.

42. *Id.* at 37.

The police service has undoubtedly undergone a fundamental overhaul in the past 10 years in an attempt to improve race equality, both in terms of racism within its own ranks, and how it deals with the public and racist incidents. There have been many successes, but more work is still needed. We are still seeking answers to such troubling questions as: why are so many black men stopped by the police and why does it vary so much across the country; why do more black police officers resign or are sacked, proportionally, than their white colleagues; are racists still getting into the police service; do all the initiatives work; and ultimately what can be done next to make things better?⁴³

Has there ever been such a case, a single crime that has generated so many Reports and so much reportage? It is hard to think of another that has excited such comment in the United Kingdom, nor one that has heralded so many changes.

The legal framework for criminal cases in England and Wales has been changed by Parliament, through Part 10 of the Criminal Justice Act 2003. The long-standing principles of *autrefois acquit* and *autrefois convict*⁴⁴ remain in general, but are overtaken by sections 75–83 of the Criminal Justice Act 2003. Retrials for serious offenses are now permissible.

Serious offenses are broadly defined. They include certain offenses against the person (preeminently murder), sexual offenses, drugs offenses, war crimes and terrorism, and conspiracy.

Prosecutors may trigger the new procedure by applying to the Court of Appeal for an order quashing a person's acquittal:⁴⁵ something never previously possible.

A successful application by the prosecution requires "new and compelling evidence," which is in turn defined as reliable, substantial, and in the context of the outstanding issues, appearing highly probative of the case against the acquitted person.⁴⁶

When presented with an application backed by new and compelling evidence, the Court of Appeal must apply the interests of justice. What are they? The interests of justice are also defined to include whether existing circumstances make a fair trial unlikely, the length of time since the alleged offense was committed, whether it is likely that the new evidence would have been introduced at the earlier trial but for a failure on the part of the prosecution, and whether at any time the prosecution has failed to act with "due diligence or expedition."⁴⁷

The new test was applied in full in relation to Dobson, who of course had been "acquitted" in the sense of the failed private prosecution. The Court of Appeal found that the new forensic evidence (from analysis of clothing) passed all of the tests, but added that the interests of justice as listed in section 79 of Criminal Justice Act 2003 were not exhaustive; they added that the court was also concerned with the question whether there should be a retrial because the acquittal was transparently wrong and was damaging to the criminal justice system.⁴⁸

In short, the case of Stephen Lawrence not only fits the change to the law in England and Wales, it plainly defines the need for such a change. Could there be a clearer example of a case which needed to be solved, a wrong which needed to be put right?

On 1st June 2012, the day after the Metropolitan Police released the findings of an internal review which said it could find no evidence of corruption and that the force had passed all relevant material to the

43. *Id.* at 37–38.

44. Confirmed in *Connelly v. DPP* [1964] A.C. 1254 (H.L.): a man may not be tried for a crime in respect of which he has previously been acquitted or convicted.

45. Criminal Justice Act, 2003, c. 44, § 76 (U.K.).

46. *Id.* at § 78(3).

47. *Id.* at § 79(2).

48. *R v. Dobson* [2011] EWCA (Crim) 1256.

Macpherson Inquiry back in 1998, the current Home Secretary, Theresa May, ordered yet another review; an independent review into allegations that police corruption protected the killers of Stephen Lawrence in and after April 1993. The terms of this latest review were set out by the Home Office: "The Home Secretary has asked for a QC-led review of the work the Metropolitan Police has undertaken into investigating claims of corruption in the original Stephen Lawrence murder investigation."⁴⁹ So it is back to the start, all over again. In the nineteenth year since his death, an investigation which has lasted longer than Stephen's life itself, may yet turn new corners and unearth hidden materials.

Doreen Lawrence's reaction to this news was characteristically forthright:

Firstly, it will be conducted by someone independent of both the police and the IPCC⁵⁰, organisations in which I have little faith and confidence and secondly, the person conducting the review, Mark Ellison QC⁵¹, is someone who has already shown his commitment in getting justice for me and my family.⁵²

The Independent Review reported in March 2014. Doreen Lawrence's faith in its author, Mark Ellison, was surely well placed. The Ellison Review findings, however, must have further tested the Lawrence family's belief in justice, a belief for which they have strived for so long. Corruption within the original police investigation into Stephen's murder? Failures in disclosure by the Metropolitan Police to the Public Inquiry a decade later? Undercover officers deployed to watch and to report back upon the Lawrence family? Covert recording of a legally privileged meeting between Duwayne Brooks and his solicitor? None of this can have been easy reading for Doreen Lawrence or her family. None of it came as welcome news for the current Metropolitan Police Commissioner, Sir Bernard Hogan-Howe. We shall all watch the consequences of the Ellison Review as they unfold.

Finally, a positive note to a long and tragic story. In the Spring of 2012, shortly after Dobson and Norris commenced their sentences of Life Imprisonment, the Stephen Lawrence Charitable Trust held its inaugural criminal justice lecture. The keynote speech was given by Lord Ian Blair, Metropolitan Police Commissioner at the time of the July 7th bombings. He shared the platform with Doreen Lawrence, former Attorney General Baroness Patricia Scotland, and Paul Dacre, the editor of the Daily Mail who commissioned the headline "Murderers," denouncing all five of the key suspects in February 1997, after the inquest verdicts of unlawful killing.

An illustrious panel, gathered to celebrate the announcement that henceforth the new "Stephens" (the collective terms used for students who benefit from the Charitable Trust) would seek entry not only to the architecture profession (echoing Stephen's personal ambition in 1993), but to the legal profession, too.

How very fitting. This appalling racist murder, which has dominated headlines for two decades, and which has changed race relations and the law in England and Wales, has not run out of influence yet. Somewhere, far above the rain-soaked streets of Eltham, which he left twenty years ago, Stephen must be smiling.

49. *QC to Review Lawrence Police Probe*, THE EXPRESS, Jun. 1, 2012, <http://www.express.co.uk/news/uk/323890/QC-to-review-Lawrence-police-probe>.

50. Independent Police Complaints Commission. A body whose foundation owes much to the Lawrence case itself.

51. Former First Senior Treasury Counsel at the Central Criminal Court, and Senior Prosecution Counsel at the trial of Dobson & Norris.

52. Vikram Dodd, *Stephen Lawrence: Theresa May Orders Review into Police Corruption Claims*, THE GUARDIAN, Jun. 1, 2012, <http://www.theguardian.com/uk/2012/jun/01/stephen-lawrence-theresa-may-review-police-corruption>.

Paul | Weiss

is proud to support

IILP Review 2014:

The State of Diversity and Inclusion in the Legal Profession

Paul, Weiss, Rifkind, Wharton & Garrison LLP

www.paulweiss.com

NEW YORK | BEIJING | HONG KONG | LONDON | TOKYO | TORONTO | WASHINGTON, DC | WILMINGTON

Self-Identity: Report From An Indian-American Working in India

Mona Mehta Stone

Of Counsel, Greenburg Traurig, LLP

An American lawyer of Indian ancestry examines the identity issues that can confront minority lawyers when they are based in the country of their ethnic origin.

I. Introduction

A recent work assignment in India made me reconsider my self-identity and my views about the cultural differences between Indians and Americans. Born in India, my family and I immigrated to the United States when I was three years old. My native language is Hindi, and I learned to speak English by watching *The Flintstones*.

Like many immigrants, I sometimes struggle with not fitting in entirely with Caucasian Americans because of my Indian ancestry. On the other hand, I occasionally feel that people from India view me as not “Indian enough” because, while I was reared with traditional Indian values, I also absorbed Western beliefs (for instance, we celebrate both Diwali and Christmas). In grade school I once identified myself as an Indian, and a Caucasian friend of mine corrected me and said, “No. You’re an American, just like me.” That proclamation struck me, as it was the first time I realized that I best identify myself as Indian American.

Both my parents are highly educated and accomplished professionals, and they taught me the importance of a good education. They also raised me to be independent, confident, and assertive. Many of my female relatives my age, who live in India, however, were discouraged from pursuing education and, instead, raised to be submissive and obedient housewives. Curious as to how Indian society has evolved, I jumped at the chance to work on an extended project in India when it arose.

II. My Assignment

In late 2012, I was fortunate enough to earn a coveted spot on my law firm’s team that was assigned to represent a Fortune 50 client in the India market. This assignment involved extensive travel and was time-intensive, challenging, but also highly rewarding. A group of about twenty U.S.-based Greenberg Traurig lawyers were tasked with assisting a multinational, public corporation design and implement Foreign Corrupt Practices Act (FCPA) compliance policies and procedures, trainings, and risk assessments throughout India.

The team was comprised of Greenberg attorneys from offices across the United States, including Boston, Denver, Houston, Miami, Phoenix, San Francisco, and Tampa. There was an equal distribution of men and women. We had four Indian American women, six Caucasian women, and one African American woman. We also had one Indian American man, eight Caucasian men, one Turkish man, and one African American man on the team.

Once we obtained our travel visas, we were deployed to various segments of the country for weeks at a time. After each trip to India, I became more enlightened. Although the traveling aspect of the project wound down in mid-2013, I have continued to work with many of the Indian clients and attorneys. Our group often discusses matters of culture, gender, and ethnicity. This article is intended to be a very broad overview of my experience and examines the following topics: (1) business and legal culture in India; (2) traditional and emerging roles of Indian women; and (3) lessons I learned from my experiences, including some surprises.

III. Business and Legal Culture in India

One view of India is that it is a third-world, highly religious, corrupt, and violent country. On the other hand, some people perceive India as having a very intellectual workforce, making it an emerging global leader, with strengths in information technology and outsourcing. Other people merely view India as a land of exotic food, Bollywood, and the Taj Mahal. While none of these impressions is totally correct, as India's once-closed economy continues to encourage foreign direct investment, it is important to understand these perceptions of the country and to be mindful of the cultural differences when conducting business in India.

A. Ethics and Ease of Doing Business

India opened its borders in 1991 to permit multinational corporations into the country through numerous economic and financial reforms.¹ At the Indian government's invitation, several Fortune 500 companies began to invest in the country during this period of economic liberalization. Notably, as of 2011, all but one of the top ten Fortune 500 companies in the United States had a presence in the Indian market.² However, there have been perceived impediments to conducting business in India.

Transparency International's "Corruption Perceptions Index" ranks countries and territories based on how corrupt their public sector is perceived to be.³ The score indicates perceived level of public sector corruption on scale of 0–100, where a 0 score means that a country is perceived as highly corrupt, and a score of 100 means it is perceived as very honest. A country's rank indicates its position relative to other countries and territories included in the index. In 2013, the United States received a score of 73 out of 100 and ranked 19 out of 177 countries.⁴ India, meanwhile, scored 36 out of 100 and ranked 94 out of 177 countries.⁵

According to a 2010 study by the World Bank titled *Doing Business 2011: Making a Difference for Entrepreneurs*, India ranked 134 out of 183 nations in terms of ease of doing business worldwide.⁶ Challenges facing foreign companies doing business in India include red tape, corruption, and cultural differences.⁷ India's bureaucracy has been criticized as having limited access to government offices, numerous and cumbersome forms to complete, long waiting periods for approvals, and confusing rules.⁸

1. See Christine Garg, *Affiliations: Foreign Law Firms' Path into India*, 56 N.Y.L. SCH. L. REV. 1165, 1169 (2011); Rodney Sebastian, Ashvin Parameswaran & Faizal Yahya, *Doing Business in India*, N.Z. J. OF ASIAN STUD., June 2006, at 17, 18.

2. Garg, *supra* note 2, at 1166.

3. *Corruption Perceptions Index 2013*, TRANSPARENCY INT'L, <http://cpi.transparency.org/cpi2013/results> (last visited July 20, 2014).

4. *Id.*

5. *Id.*

6. THE WORLD BANK, *DOING BUSINESS 2011: MAKING A DIFFERENCE FOR ENTREPRENEURS* 4,(2010), available at <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf>.

7. See Sebastian, *supra* note 2, at 23, 29; Mark B. Baker, "Awakening the Sleeping Giant:" *India and Foreign Direct Investment in the 21st Century*, 15 IND. INT'L & COMP. L. REV. 389, 416 (2005).

8. See Sebastian, *supra* note 2, at 29.

Nevertheless, a history of double-digit economic growth, a young workforce,⁹ and widespread use of English, at a time when India has a “proactive, business-oriented government,” make India potentially one of the world’s fastest growing economies.¹⁰ In the next ten years, with both younger people and more women entering the workforce, India expects to add an additional 110 million people to its labor pool.¹¹

B. Factors Impacting Indian Business and Legal Culture

Indian business and legal culture is shaped by thousands of years of Hinduism and Islam, the British colonial rule, the caste system, strong family ties, and now Western society. While some people regard Indian business and legal cultures as old-fashioned, others view them as evolving into more modern models. Explanations for an outdated society include unchangeable obstacles such as the caste system and family-owned businesses.¹²

Geert Hofstede, a Dutch social psychologist and researcher, characterized “power distance” as the unequal spread of power in society and how people react to the resultant inequality.¹³ A larger power distance indicates that members of the society are more willing to accept inequality.¹⁴ On an index from 1 to 100, India scored 71, while the United States scored 31.¹⁵ These results may be derived, in part, from Indians’ view that people from different castes are unlike, and therefore hierarchy and inequality are not inherently bad.

Even today, many successful people in India have cooks, landscapers, maids, and even drivers. These service providers are generally from the lowest caste and are treated with indifference. The class of poor untouchables in India (known as “Dalits”) consists of more than 166 million people, or 16.2% of India’s population.¹⁶ Discrimination based on caste is illegal, but prejudice and bias against Dalits in South Asia remains.¹⁷ The level of tolerance for inequality in India versus the United States has some interesting influences on how business is conducted, as noted in the chart below.

Additionally, India’s corporate culture is shaped by familial bonds and the high number of family-owned and -run businesses and even law firms. Extended members of a family will often occupy executive, managerial, and employee level positions. As a result, there can be a tendency to resist adopting professional management practices or disciplining and terminating poor performers.¹⁸

Those individuals who view India’s business culture as evolving, on the other hand, recognize that there are some institutional obstacles to change, but note that there is a generational change coming about as multinational corporations increasingly hire younger Indian workers who are educated and less indoctrinated by traditional values.¹⁹ Factors that promote modern business attitudes include the industry at issue (e.g., information technology is regarded as an advanced sector of the economy), the

9. *Women in the Labour Force in India*, CATALYST (July 9, 2012), <http://www.catalyst.org/knowledge/women-labour-force-india> [hereinafter *Catalyst*].

10. *Nomura Forecasts 6% Growth in 2015 for India*, ECON. TIMES (July 20, 2014, 2:51 P.M.), <http://economictimes.indiatimes.com/news/economy/indicators/nomura-forecasts-6-growth-in-2015-for-india/articleshow/38727218.cms>.

11. *Catalyst*, *supra* note 10.

12. Sebastian, *supra* note 2, at 23–24.

13. See Sebastian, *supra* note 2, at 23.

14. *National Culture: Dimensions*, THE HOFSTEDE CENTRE, <http://geert-hofstede.com/dimensions.html> (last visited July 20, 2014).

15. *Cultural Tools: Country Comparison*, THE HOFSTEDE CENTRE, <http://geert-hofstede.com/united-states.html> (last visited July 20, 2014).

16. *Scheduled Castes and Scheduled Tribes Population*, THE REG. GEN. & CENSUS COMMISSIONER, INDIA, http://censusindia.gov.in/Census_Data_2001/India_at_glance/scst.aspx (last visited May 21, 2014).

17. P.V. Srividya, *Discrimination Against Dalits Prevalent: Study*, THE HINDU (Mar. 7, 2011), <http://www.hindu.com/2011/03/07/stories/2011030762870900.htm>.

18. Sebastian, *supra* note 2, at 24.

19. *Id.* at 27.

type and size of the company, highly skilled and professional non-resident Indians, and investment in a more junior workforce.²⁰

C. Practice of Law in India

Indian law schools produce about 80,000 attorneys,²¹ or advocates, per year, and the country has more than 1,000,000 advocates.²² To practice law in India, students must first complete a five-year course of study at a university (compared to four years of undergraduate study and three years of law school in the United States). Similar to students in the United Kingdom, Indian students receive a Bachelor of Laws or LL.B. Upon graduation, students must take a national examination to appear before a particular court and are then designated as “Advocates on Record.”

The predominant legal service providers are individual advocates and small or family-based firms. Most of the private law firms handle domestic law and general litigation cases. There are also some large law firms, and many of the bigger Indian law firms have formed affiliate relationships with foreign firms.

A recent report entitled *Progress of the World’s Women: In Pursuit of Justice* observes that India lags far behind the rest of the legal world in terms of women in the legal profession.²³ Incredibly, women make up 50% of the country’s population, yet comprise only 3% of the Indian judicial system and are underrepresented as judges.²⁴ However, as discussed below, the presence of women in the Indian workforce is a relatively recent phenomenon. While some senior male attorneys in India feel that qualified women advocates should be promoted and appointed as judges to the Supreme Court, female advocates report that they have felt pressured to resign upon marriage or after having children.²⁵ Some women are discouraged by their parents to pursue law as a career “because it might reduce their prospects of marriage, as a lawyer is seen as a threat.”²⁶ Not every woman advocate agrees, however, and many have found success working in their relatives’ law firms.²⁷

D. Business and Cultural Attitudes in India versus the United States

It is impossible to generalize about foreigners doing business in India, as a host of factors can impact work experiences. While there are exceptions, the following chart compares some of the common traits in Indian versus Western business settings²⁸:

20. *Id.* at 26–28.

21. Luigi Benetton, *Few Law Firms in Canada Are Outsourcing Legal Work to India*, THE LAWYERS WEEKLY (Nov. 23, 2007), <http://www.lawyersweekly.ca/index.php?section=article&articleid=580>.

22. *Constitution, Government, and Legislation*, THE LEGAL EDUC. NETWORK, <http://www.jurist.law.pitt.edu/world/india.htm> (last visited May 21, 2014).

23. Nilima Pathak, *Only 3% Women in Legal Profession*, GULFNEWS.COM, (Dec. 13, 2011), <http://gulfnews.com/news/world/india/only-3-women-in-legal-profession-1.949643>.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. See, e.g., Sebastian, *supra* note 2, at 23; Kavitha Rao, *Inside Indian Business Culture*, KAVITHA RAO, Sept. 2011, available at http://www.kavitharao.net/journalism/Inside_Indian_Business_Culture.pdf (originally published in EXECUTIVE TRAVEL magazine); *Doing Business in India*, WORLD BUS. CULTURE, <http://www.worldbusinessculture.com/business-in-india.html> (last visited July 27, 2014).

Indian Characteristics	Western Characteristics
The “yes sir” phenomenon is rampant. It is considered rude to say “no” to someone in the business setting, and people often say “yes” to avoid an awkward situation. Accordingly, an Indian who responds that he or she “will try” or “it may happen” is actually saying “no” in a polite fashion.	“No” means “no”, which means other ideas, solutions, or timelines must be identified and implemented.
Time is relative; delays are expected and deadlines are postponed frequently.	Time is of the essence; delays and missed deadlines may signal inefficiency and poor time management.
With the booming economy, the business environment is changing rapidly, creating a fast-paced environment.	The economy is recovering, but still sluggish.
People value relationships and face-to-face meetings, even if requiring travel.	Text or email is preferred to in-person meetings
Business relationships are very hierarchical and authoritarian, and subordinates may be afraid to speak out of turn. Decisions typically are made by the top boss.	Brainstorming and diversity of ideas are valuable to doing business.
Businesses are still very paper-intensive, and technology for overseas business visitors can be a challenge. Even in such a technologically-focused country, many businesses have outdated or no office equipment such as printers, scanners, projectors, etc. Moreover, periodic power outages are frequent.	Electronic files save time, space, and expense. Any downtime attributable to power or technology failures is seen as wasteful.
In India, personal space is much smaller; people crowd each other in elevators and in lines and bump one another physically. Men will not wait for women to exit first. Office spaces are often shared or open.	Personal space is valued, and people offer courtesies when exiting or entering common areas.

IV. Traditional and Emerging Roles of Indian Women

In traditional Indian societies women historically have taken on very subservient roles. Indian women have struggled to gain more rights in recent decades, with mixed success. In modern-day India, professional women have developed into an educated, hard-working, and career oriented group. However, even with women leaders like former Prime Minister Indira Gandhi, writer Anita Desai, and actress/former Miss World Aishwarya Rai Bachchan, Indian women have had to overcome many biases and prejudices within their society.

A. Traditional Beliefs

- Ancient and medieval India had a tradition called “sati,” requiring a recently widowed woman to immolate herself on her husband’s funeral pyre.

- As a sign of respect, Indian wives never spoke their husband's name or called him directly by his name. Rather, when calling him or referring to him, the woman used several indirect references such as "ji," "he," "him," or just referred to her husband as "the father of her child."
- Even today, arranged marriages are common. With exceptions among the urban middle class, families typically find spouses for their children, and the couple often is wed after only limited interaction. The many regions and religions differ in terms of marital views, but the arranged marriage is a traditional characteristic of virtually every community throughout India. Arranged marriages and their correlate, caste endogamy, enable parents to exercise control not only over their adult children, but also over the social structure and the caste system. Marriages that are not arranged by the couple's families (known as "love matches") are often disfavored.
- When a woman marries, she leaves her birth family and goes to live with her husband's family, even including sisters-in-law and brothers-in-law and their children. Accordingly, several generations commonly live in the same house as an extended family.

B. Marriage and Divorce

On one of my recent trips to India, I was stunned to see billboard advertisements for divorce attorneys—I quickly realized times have changed since I last visited a mere fourteen years before. As little as a decade ago, dating in India used to be considered taboo and divorce was considered a family stigma. Fear of social isolation, obligations to the extended family members, and financial needs made it almost impossible to break arranged marriages.²⁹ Moreover, women who wanted a divorce risked receiving no support from relatives.

As women declare less tolerance for parental interference and begin to assert economic independence, love matches are more popular and the country is seeing its divorce rate is rising. Estimates indicate that 1 in every 100 Indian marriages will end in divorce, compared to about half of U.S. marriages ending in divorce.³⁰ In the 1980s, the capital city of Delhi had only two divorce courts; today there are sixteen.³¹ With growth and progress the "rigid boundaries governing traditional Indian life are beginning to fall, especially among the growing urban middle class."³²

C. Education and Careers

During 2009 and 2010, women accounted for 26.1% of all rural workers in India, and they made up only 13.8% of all urban workers.³³ Gender equality laws guarantee Indian women equal pay, but pay discrepancies do exist.³⁴ The Indian Judiciary is viewed as highly progressive and working towards safeguarding women's legal rights to overcome patriarchal prejudices, male chauvinism, and religious orthodoxy.³⁵ Women are entering and participating in various careers, including the legal, teaching, medical, accounting, military, and information technology sectors.

With respect to women in the workplace, their roles vary widely across the Indian subcontinent, but as India's economy continues to grow, women are increasing their roles as entrepreneurs and business professionals and breaking down traditional male-centric barriers. In terms of dress, many

29. Muneeza Naqvi, *India's Divorce Rate Rising*, THE HUFFINGTON POST, (Apr. 12, 2011), http://www.huffingtonpost.com/2011/04/12/india-divorce-rate-rise_n_848201.html.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Catalyst*, *supra* note 10.

34. Infosys, *India Culture Guide: Women and Business*, <https://sites.google.com/a/global.t-bird.edu/india-culture-guide/doing-business-in-india/women-and-business> (last visited July 28, 2014).

35. *Id.*

Indian women in lower positions may still wear the traditional salwar kameez (a long tunic and pants), but female leaders and those in urban settings are influenced by Western attire and will wear business suits, dresses, or slacks and a blouse. While the majority of senior managers in India are men, women continue to work their way up in companies and law firms. This trend is expected to grow as Western multinational corporations continue to enter the business and legal landscape in India.

V. My Experience

Before my late 2012 trip to India, the last time I had visited India was in 1999. Given the number of years that had passed, I was curious to see how men and women interact in the workplace, how women leaders are regarded, and how foreigners and Indian Americans are treated.

A. Indians View Me as American, not Indian

I was curious as to whether Indian lawyers would see/treat me as an Indian or American. Indian lawyers and clients with whom I deal usually instantly identify me as an Indian appearance-wise, but overall they treat me as an American lawyer because of my mannerisms and accent. I also think my Westernized way of case management analysis and project organization makes them view me as an American.

B. Advantage of Indian Ancestry

I definitely believe that being of Indian descent is a benefit when working with Indian clients and lawyers! From my perspective, the business people and attorneys in India are more open with me than my non-Indian colleagues. In the United States, I often abbreviate my middle name (which is my maiden name) just to the initial "M". However, in communicating with people in India, I write out my full name, Mona Mehta Stone, because "Mehta" is a common Indian surname, akin to "Smith" in America. Using my full name helps people identify that I am of Indian origin in advance of meeting them, and often sparks dialogue as to which part of India my family and I are from and establishes an immediate rapport. My colleagues who are not Indian do not benefit from this type of informal relationship building.

I also believe that my appearance and language ability help me because people can identify that I am Indian and converse with me. As a result, Indian lawyers and business people seem to trust Indian Americans a little more because the communication gap is smaller. We understand each other's slang, and we can recognize Indians' customs, accents, and gestures better. I believe that my Indian ancestry makes my job easier because the Indian lawyers and businesspeople are more at ease in explaining things to me.

C. Treatment of Foreign Women Lawyers by Indian Lawyers and Clients

My perception is that foreign women lawyers from the U.S., U.K., and Canada, in general, do not have difficulty being accepted by Indian lawyers. Having said that, one of the most interesting exercises for me involved a training session that another female Indian American attorney and I conducted before one of the larger business units in the client's company. The audience was comprised entirely of Indian men, and we presented to a group of about sixty middle and senior level employees. The men were generally respectful towards us, asked questions, and followed our instructions. There were times when people in the audience would start talking over each other loudly, but I attributed that to more of an Indian way of conducting large meetings than the fact we were women leading the training. Candidly, I do think the dynamic would have been different if we were non-Indian women leading the session; I think being Indian gave us instant credibility, whereas I am not sure the

audience would have taken the session as seriously or engaged in questions if non-Indians had conducted the training.

One of my female Caucasian colleagues thought that Indian men were less courteous towards foreign women, and that they were more willing to accept input from non-Indian men on our team. At times, however, I think the treatment depended more on respective personalities than on race. Men and women who were respectful of the Indian culture and who were not overly aggressive seemed to be treated the same. One Indian client confided that a person's title is more important than gender, so long as the person performs well. He noted that women lawyers may face resistance in rural parts of India, but Western women are accepted by urban businesspeople, many of whom have studied abroad or have relatives living overseas.

D. Benefits of Assigning India-Based Work to Female Indian American, British, or Canadian Lawyers

I think it has been extraordinarily helpful to have Indian American lawyers on our team.

I think we provide a channel of communicating and understanding that derives from our Indian backgrounds. My colleagues also observed that, if our team had been comprised of completely non-Indian Americans, we might have been met with a more guarded skepticism.

As a female Indian American attorney, I also think that I am able to better communicate with clients and further their business objectives. Despite the strong English language skills of the Indian business people we work with, many of my non-Indian colleagues encounter language problems more than they anticipated. They find that communicating by email is sometimes difficult as a result, whereas I am more easily able to understand and respond quickly without unnecessary clarification or delay.

A few of my male non-Indian team members have been surprised at how difficult it often can be to get a straight, direct, and unchanging answer to a question. They shared that perhaps this experience has been limited to some of the business people with whom we are working, but they encountered it even when working with staff at the hotel where we were staying. One of my fellow attorneys revealed, "I'm not suggesting that we were being given incorrect information, but rather that the response to a question often turned out to be somewhere on a spectrum between correct and incorrect." Another colleague shared that he had trouble communicating because of "the manner in which we were often told what we wanted to hear, versus what the truth was. I don't know if that is a result of it being in India, but that is the first thing that comes to mind. Other than that, I found it to be a fun and fascinating experience."

Being familiar with the fashion in which Indians communicate, I am better able to understand the meaning of what we are being told and to distinguish "fact from fiction," which enables me to direct conversations accordingly. For example, during witness interviews, I was able to more readily ascertain that someone was not being entirely forthright. In such a case, I would use certain techniques (e.g., rephrasing questions, speaking in Hindi, or using cultural examples) to encourage them to communicate with us. Similarly, during anti-corruption compliance trainings, I would use scenarios based on Indian traditions, such as giving laddus (Indian sweets, pronounced "lúd-doo") to visitors and inspectors. My non-Indian colleagues do not have this advantage.

E. What Surprised Me the Most by Handling a Matter in India

To me, this project has been fascinating because of the wide-ranging reactions of the U.S. lawyers who traveled with me on the project. I had a strong sense of instant familiarity, such as the food, Indian women in saris, tilak and Aarti ceremonies (Aarti in India has a religious meaning, but also is a way to welcome hotel guests by using lit lamps called niranjanas). This knowledge and awareness make

it easy for me to adapt to the culture. My colleagues who have traveled to other parts of the world before are generally accepting, but still curious to learn about Indian traditions. In my view, those people who have not experienced international travel before had a longer adjustment period.

Additionally, I am mindful of the fact that Indians take great pride in themselves, their work ethic, and their country. They do not appreciate condescending attitudes, particularly when discussing India's social and economic woes. When negotiating with Indians, I find it advantageous to identify the benefits that they will receive from a proposed course of action rather than pointing out demands.

Also, I incorrectly thought the Indian men would look down on the women attorneys but they treated us equally, if not with more respect than our male counterparts. Interestingly, however, two of my Caucasian male colleagues felt that, while the women attorneys were not treated poorly, male clients and lawyers would look to other men first. On a few occasions a businessperson would come into the room and start addressing the men only. Still, one of the women on my team felt that Indian men recognized American women in senior roles on our team as leaders and authority figures.

Having my own preconceived idea that love marriages are frowned upon in India, especially for interracial couples, I was surprised when one client asked me about my name, "Mona Mehta Stone," after receiving my business card. He recognized that I was an Indian living in America, and then asked me whether I was married to a white American. I responded yes. I was prepared to get a look of disapproval from him, but instead he smiled and said, "That's great!" He proceeded to ask me questions about my life in America, my husband, and my career. We established an instant friendship.

F. Challenges Facing Women Lawyers in India

There are several challenges that Indian women advocates face, including male dominance, gender bias and hiring discrimination, family obligations and pressure, and compensation. While women attorneys from other countries may face some male dominance and gender bias when handling matters in India, I feel these issues are more endemic career-related obstacles specific to the Indian legal market. I will discuss each of these issues in turn:

1. Male Dominance

Male dominance is a challenge for Indian women attorneys. For example, I met one female Indian associate who was smart, confident, and amicable. Whenever I spoke with her one-on-one, she was not shy and seemed ambitious and knowledgeable. An Indian male partner from her firm and she attended a few meetings with lawyers from the United States in which I participated. I was surprised that during these meetings, when questions were posed to the partner and to her, she would whisper the answers in his ear rather than voice them herself. In fact, the partner parroted everything she said, which made her seem credible, but not assertive enough. When I asked her about this interaction later in private, she simply remarked, "That is just how we communicate."

A recent article provided some indicative (anonymous) quotes from Indian women lawyers on the topic of male domination in the profession³⁶:

Hasn't anyone wondered why though the percentage of women lawyers doing well is more than their male counterparts, the promotion list is always full of males?

Gender bias is something that women [in the legal profession] discuss often and it exists. One can see the records of the last few decades and know how many women have risen in position. But then to rise, women are required to please both politicians and judges.

36. Pathak, *supra* note 25.

2. Gender Bias and Hiring Discrimination

Women advocates in India have reported that they are often made to feel incompetent compared to their male colleagues, are overlooked for promotions, and denied benefits.³⁷ Similar to women practicing law in the United States, another challenge is the lack of Indian women lawyers as role models. According to one survey, 26.2% of Indian women compared to 9.0% of Indian men cited a lack of role models as a barrier to advancement.³⁸ Women have to work harder to prove themselves. Working Indian women feel that men do not respect female bosses and would rather have them as subordinates, not supervisors.³⁹ Women also feel that they are excluded from informal networks and relationship building, which creates barriers to advancement.⁴⁰

While questions about marital status and children are illegal in the United States under Title VII and in the United Kingdom under the Equality Act 2010, in India there are no such laws. Indian women advocates are often subject to hiring discrimination when questioned during interviews about marriage, children, and their willingness to travel in connection with work, and they feel that steps to promote a work-life balance are not implemented well.⁴¹ Additionally, when applying for positions online, women are denied the opportunity to even apply. When the job requirement for the position expressly states, “Only male candidates shall apply for the post” or “Preferably male candidates,” women advocates feel humiliated and disheartened.⁴²

3. Family Obligations and Pressure

Female advocates in India, just like working women everywhere, struggle with achieving a work-life balance. However, Indian women attorneys are asked outright about their commitment, dedication, and loyalty to their jobs when they get married or take maternity leave.⁴³ One Indian female advocate advises that marrying someone in the same profession could be advantageous due to a shared understanding of hectic work schedules, long hours, and frequent travel.⁴⁴ Female litigators in India who take maternity breaks find it difficult to be away from the courtroom because it is “the integral place” to be to secure clients and work.⁴⁵ Long absences disadvantage women who need to be visible in court and to clients. Unfortunately, female litigators in particular face bias and prejudice, including inadequate restroom facilities and overcrowded women’s work rooms in courthouses.⁴⁶

A recent survey revealed that, of nearly 400 senior advocates designated by India’s Supreme Court since 1962, only five have been female.⁴⁷ The report found that female lawyers in India, just as in other countries, may face delays in career advancement and compensation increases because of maternity leaves.⁴⁸ [H]owever competent or deserving they may be, they often are denied promotion or other benefits to which they are entitled.⁴⁹

37. Anumita Sarkar, *Challenges Faced by Women in Legal Profession*, ASM LEGAL BLOGGER (Nov. 24, 2012), <http://asmlegal.blogspot.com/2012/11/challenges-confronted-by-women-in-legal.html>.

38. *Catalyst*, *supra* note 10.

39. *Id.*

40. *Id.*

41. *Id.*

42. Sarkar, *supra* note 39.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *India Survey: Women Battle Bias in Legal Profession*, THE GLOBAL LEGAL POST (Aug. 10, 2012), <http://www.globallegalpost.com/global-view/india-survey-women-battle-bias-in-legal-profession>.

48. *Id.*

49. Sarkar, *supra* note 39.

4. Compensation

Women attorneys in India face discrimination from clients based on fees paid. Female advocates often have to fight hard for their earned fees—while their male counterparts face no barriers to payment—because women senior advocates’ professional abilities are seen as inferior.⁵⁰ In fact, clients will go so far as to choose female advocates because they feel they can get away with paying lower fees, or they will select male advocates with less experience rather than pick women with more skill.⁵¹

G. Opportunities for and with Indian Female Advocates

Only in recent years have women advocates in India taken action to eliminate the foregoing challenges. Organizations like the Society of Women Lawyers-India (“SOWL-India”) are targeting hurdles faced by women in law.⁵² Formed in 2010, one of SOWL-India’s goals is to support women in the profession by giving them a platform to interact on personal and professional development.

Also, in August 2012, Rainmaker published a report on the challenges faced by female advocates in India based on a survey of eighty-one working mothers in the legal profession from Mumbai, New Delhi, and Bangalore.⁵³ Remarkably, this report is the first of its kind in India and includes a survey of women in law firms, litigation practice, and the legal departments of companies.⁵⁴ The report includes data on work-life balance, gender bias in the legal industry, maternity leave policies, and rates employers on their policies and practices. Importantly, the report offers recommendations to help employers retain talent and make the workplace conducive for working mothers.⁵⁵

Organizations like SOWL-India are connecting Indian women lawyers with female attorneys in other parts of the world to promote rainmaking and networking opportunities. As more of these types of groups form and raise awareness, they will help create opportunities for even greater collaboration and networking among women lawyers from the U.S., U.K., Canada, and India.

H. Tips to Building an Indian Practice

I think being prepared is essential. In order to build an Indian practice within an American, British, or Canadian law firm, I think it is critical to expect, understand, and appreciate cultural and gender ideologies. Women lawyers can take several important steps to build and strengthen relationships with Indian clients and lawyers:

- Maintain an open mind. Expect the unexpected, remain optimistic, and have a sense of humor.
- As in any international practice, study the business culture as much as possible and learn what to expect, including attitudes toward women.
- Anticipate equality issues.
- Avoid clothing that reveals too much; act and dress conservatively. While business people in India are generally respectful, outside the office environment you may encounter staring and you may hear sexual comments about your appearance; learn to ignore these remarks. It is important to maintain professionalism at all times.

50. *Id.*

51. *Id.*

52. See SOC’Y OF WOMEN LAW.-INDIA, <http://sowlindia.com/index.php> (last visited July 28, 2014).

53. Malia Politzer, *Family Responsibilities, Rigid Hours Block Women Lawyers’ Career*, LIVE MINT (Aug. 2, 2012), <http://www.livemint.com/Politics/387FfrkuuNRL5SYncoVH8J/Family-responsibilities-rigid-hours-block-women-lawyers-ca.html>.

54. Sonal Makhija & Swagata Raha, *Challenges Faced by Indian Women Legal Professionals*, RAINMAKERINDIA (Aug. 6, 2012), <http://www.scribd.com/doc/102128508/Challenges-Faced-by-Indian-Women-Legal-Professionals-Full-Report>.

55. *Id.*

- Expect to stand out. Even as an Indian American, people noticed me as a “foreigner.”
- Show respect and understanding for local traditions, mannerisms, and cuisine. It is fine to ask interested questions, and you should be prepared to answer questions about yourself—even personal ones about your family, lifestyle, etc.
- Deal with generational attitude differences towards women. Not all Indian men are comfortable doing business with women given that women in the workplace is a relatively recent development. Women may have to work a little harder to get men from the older generation or from socially conservative backgrounds to be more at ease.⁵⁶
- Maintain a formal demeanor with male colleagues, as any overt signs of friendship, affection, or touching may be misconstrued.
- Be mindful of traditional gender conventions, but appreciate that, as a foreigner, you can speak with men without being formally introduced first and can transcend other gender biases against Indian women with impunity.
- Be prepared to work hard and be very flexible with your time. The time difference is severe and requires either the client or the attorney (or both) to be incredibly flexible about workflows and deadlines. In our case, attorneys in the U.S. were flexible in accommodating the needs of the client, even when that meant working over weekends to meet the client’s Monday evening deadline (Monday morning in the U.S.). As a result, many of the women attorneys on our team with young children did not travel as much to India as those without kids.

Interestingly, one of my male Caucasian colleagues felt that lawyers from other countries are generally looked at in a negative light by Indians. He did not think race was a factor, but rather that most of the Indians’ interactions with foreign lawyers are negative ones. For instance, U.S. lawyers typically are there to clean up a mess, investigate some form of wrong-doing, or to make sure everything is operating in compliance with laws. He observes, “I don’t think they look at U.S. lawyers with any joy in general. More of a fear for their jobs.”

If groups of attorneys from other countries will be traveling to India together, one of the biggest challenges can be the experience of basically living and traveling with co-workers. On our project, we often traveled together, ate meals together, worked together, and socialized together on weekends. Another one of my team members comments, “We’re accustomed to leaving professional relationships behind at the end of the day, but the intensity of the work in India meant that we spent enormous amounts of time with each other at all times of day and in a variety of situations. Minor tension between colleagues can seem unduly important in that environment. At the same time, that experience was also the greatest opportunity of the trip, as we developed strong personal and professional relationships very quickly.”

VI. Conclusion

No two people will have the same experience when traveling to working in India. Overall, I have found the project to be one of the best assignments of my professional career. I learned a lot about the client, gained insight into Indian business and legal practices, and appreciated how my Indian ancestry helped me establish critical relationships and friendships with business people and Indian lawyers.

56. See *Infosys*, *supra* note 36.

¿Quién soy yo?—Staying True to Your Unique Voice

Elizabeth Espín Stern

Partner, Mayer Brown LLP

How important is one's cultural identity to one's ability to find satisfaction in one's professional life? Do those who come from non-northern European cultures need to separate themselves from their cultural heritage in order to thrive within the American legal profession? How can one maintain an authentic identity while still achieving professional success?

I. Introduction

I started practicing law in 1986, at a time when the “glass ceiling” was a critical concern for women in the law and before diversity and inclusion was a strategic goal for major law firms. At the time, navy blue suits and linen shirts with bowtie equivalents were the garb of choice for successful women lawyers, alongside the occasional three-piece gray pinstripe. As a woman who grew up in the Latin American diplomatic environment (my dad is a retired Ecuadorian diplomat), my sense of style veered much more to vivid colors and softer lines. What I did not know at the time was how much of a differentiator that fashion choice represented; it reflected a style of expression in all facets—including communications—that was inextricably tied to my roots.

With twenty-seven years of law practice under my belt, I now know that those cultural and family identifiers—the genetic code in each of us—are essential to a career that brings fulfillment. Trying to emulate others who are inherently from a different background is unlikely to work; that just won't come naturally. But it would be naive to assume that a distinctively minority voice will be understood, accepted, and approved. Absent a focused, mutual effort of the minority representatives and the broader corps of leaders and peers in an organization, minority groups are likely to temper or even mask their originality.

Achieving this type of genuine inclusion of diverse voices requires us to appreciate four essential points. First, cultural background matters; it defines each individual's manner and perspective. Absent an appreciation of cultural differences, we will fail to elicit authentic communications, which ultimately can lead to challenges in retention of minorities. Second, peer pressure has an impact on everyone. Even with protocols and systems designed to foster diverging views, a pervasive majority view, particularly one tied to the legacy of the organization, can quell dissent and perpetuate old hierarchies. Third, until habits and routines are redirected, the traditional “code” of an organization will default to that legacy majority. Fourth, only with the inclusion of a critical mass of minorities and women in leadership is an organization likely to succeed in creating that redirected habit and routine.

With these four issues accepted and addressed, today's law firm or legal department may achieve an unparalleled success. It may foster a celebration of cultural heritage, elicit the strongest contribution from its diverse ranks, and refresh its strategy and vision to match the globalized economy that is our new reality today.



If the minority voices hold back, the workplace will lose the huge benefit of diversified points of view, fresh ideas, and a broader base of analysis that is more likely to match our globally-dynamic client base.

II. Cultural Background Matters

The image we portray and the perception we derive is intimately related to our roots. Our culture and background can influence and even change the way we establish relationships. For example, Deborah Tannen, the Georgetown University professor whose book, *You Just Don't Understand: Women and Men In Conversation*, moved couples all over America to reevaluate the nuances of male and female conversation, has studied how interruptive speech affects different cultures. Dr. Tannen has noted that in many North American or Anglo cultures, interruption is a sign of disrespect, indicating to the interrupted speaker that the listener prefers to dominate the discussion or is simply not interested. The same patterns of interruption, however, are both acceptable and expected in many Latin American cultures, where the constant flow of speech demonstrates engagement and intimacy—i.e., interruption becomes a relationship builder.¹

Sensitizing ourselves to the nuances of cultural differences is essential in today's globalized business, especially when the impact of a cultural gaffe can be magnified in the faceless e-communications that dominate our business hours. It is equally important that individuals feel free to demonstrate their unique approach to communications and decision-making. If the minority voices hold back, the workplace will lose the huge benefit of diversified points of view, fresh ideas, and a broader base of analysis that is more likely to match our globally-dynamic client base.

III. Peer Pressure Has an Impact on Everyone

While multiple factors are cited in studies as to why the proportion of women in equity partner positions has remained largely static over the past eight years, one is the pressure of coming across the way the workplace expects rather than the way the lawyer is most naturally likely to be. In their bestselling book, *What Works for Women at Work*, Joan C. Williams (a longstanding consultant on women in the workplace) and her daughter, Rachel Dempsey, address the "tightrope" women have to walk to come across as feminine or masculine.² If a woman is nice, warm, and nurturing, she may be perceived as too soft for serious leadership. If she is confident, driven, and assertive, she may be perceived as unlikeable and a power grabber.

Inherent in the analysis is the thought that individuals have to refine their manner to match that of the legacy majority. From a talent management perspective, this has two adverse impacts. First, it dilutes the impact of new ideas, making the corporate dialogue overly homogeneous and

1. See DEBORAH TANNEN, *YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* 188–215 (1st ed. Ballantine Books 1991) (1990).

2. JOAN C. WILLIAMS & RACHEL DEMPSEY, *WHAT WORKS FOR WOMEN AT WORK* 60 (2014).

perpetuating traditional approaches that are not aligned with the changing demographics of the business world. Second, it creates retention risks. Minorities who feel constrained to camouflage their natural behavior will eventually not feel fully welcome, and thus may elect to move elsewhere.

A key example of the consequences is in the gender arena. This year's National Association of Women Lawyers survey found that women comprise only 17% of equity partners despite women being a significant majority (64%) of staff attorneys in the country's 200 largest firms.³

In the hugely successful *Lean In*, Sheryl Sandberg opines that the disparity stems at least in part from women themselves opting out of key positions.⁴ To what extent women interpret the cues of the organization based on traditional male stereotypes is hard to measure, but certainly one can envision that a more open embrace of feminine approaches to management, advancement, and schedule would make women more likely to "stay in."

IV. The Importance of Routine and Habit

Human behavior is largely based on our routine and our day-to-day habits. Repetitive behavior consumes much of our daily lives. We have a sleep cycle, meal times, workout regimens, and preferences for the types of tasks we undertake in our profession at certain times of day. We often think of how to train our children to sleep, wake up, eat, bathe, and brush their teeth based on predictable, repetitive routines.

The predictability factor is key. Human beings like to know what to expect. Divergent events and behaviors can be startling. For a workplace to celebrate different voices, it has to infuse viewpoints from different cultures, generations, personalities, genders, and orientation. And it has to infuse that dialogue regularly, as part of every communication outlet: meetings, emails, chat rooms, announcements, and so forth. The habit needs to be accepted: the organization welcomes the free flow of ideas, shared with respect but not with undue deference to uniformity.

The more the "habit" occurs, the more new voices will speak up. Getting the ball rolling requires some concerted planning. Management teams need to host meetings that invite debate, and leaders may need to start by tapping representatives of different groups to speak up in each meeting. The habit can then be augmented by tasking some of the more comfortable speakers with leadership responsibilities, such as forming a task force to develop a new business development or pro bono initiative. They, in turn, can develop membership corps that are cross-generational, cross-gender, cross-cultural, and so forth.

In parallel, the organization can make a habit of eliciting and celebrating ideas that challenge the status quo. An ethos of "let's try something new" and "every voice should be heard" can stimulate today's law firms and build a true esprit de corps. Not every idea will be adopted, but the habit will help surmount the fear of making the "wrong" point and create widespread empowerment and accountability.

V. Leadership Must Be Populated with Minorities and Women

A couple of years ago, I read an article that addressed the top ten signals that an enterprise is hitting middle age and becoming desensitized to the need to change. The article analogized to a human

3. Press Release, National Association of Women Lawyers, Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (2014), available at <http://www.nawl.org/p/bl/et/blogid=10&blogaid=56>.

4. SHERYL SANDBERG, *LEAN IN* 12–26 (1st ed., 32d prtg. 2013).



Until law firms and legal departments have a critical mass of minorities and women populating their ranks, the “we’ve always done it this way” mantra can become unyielding.

lifespan, noting that businesses which have had successful histories can get set in their ways, assuming that historical formulas for success will be sustainable despite changing market conditions. The “top ten” included concepts like, “We’ve always done it this way,” “When you’ve been here longer, you’ll understand,” and “How dare you suggest the way we have been doing it is wrong?” All of these signals combat divergent views and make their proponents feel disruptive.

Until law firms and legal departments have a critical mass of minorities and women populating their ranks, the “we’ve always done it this way” mantra can become unyielding. The people who don’t wear the equivalent of today’s navy blue suit or gray pinstripe are likely to feel out of place. The habit of open dialogue and debate is likely to be encumbered by fear of seeming provocative. And the organization is likely to lose the stimulation of a vibrant, empowered workforce that encourages individuals to contribute their unique strengths and diverse capabilities.

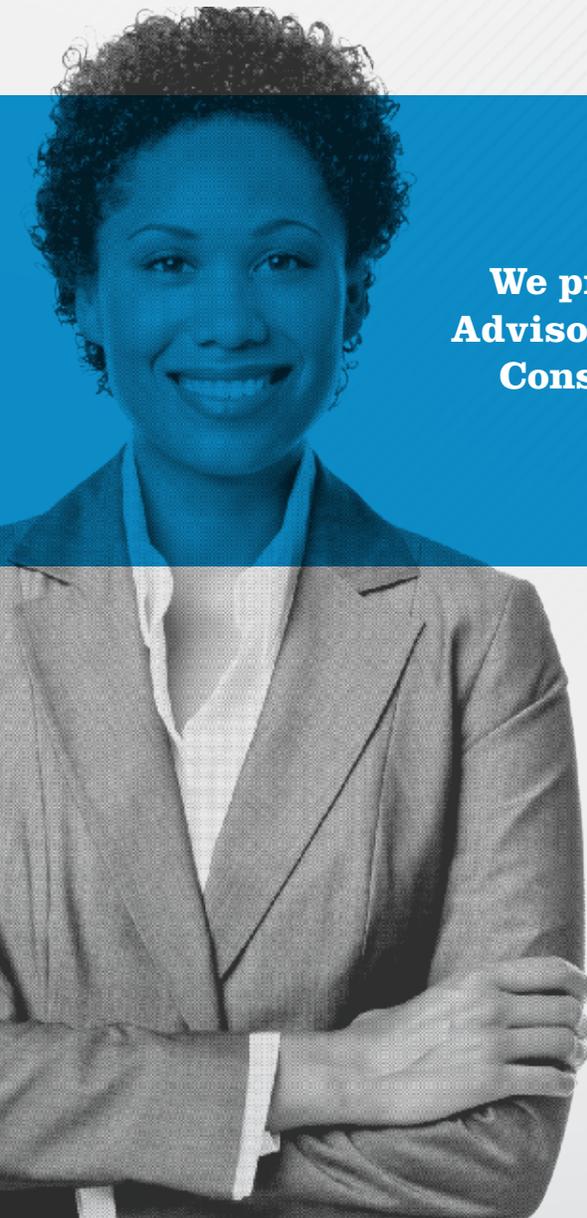
The business success that stems from this type of empowerment is evident in a wealth of studies influencing the corporate world’s increasingly robust mandates for inclusion and diversity. Several examples in my own life reinforce the precept. A particular example that I’ve retained for years stems from one of the first major global pitches I had the opportunity to lead, one for a major company seeking a single, consolidated global immigration provider. In putting together my pitch team, I assembled a variety of people with different strengths and backgrounds, absolutely convinced that their combination of skills would epitomize the versatility of our capabilities. Our team included Asian American, African American, British, Canadian, LGBT, and female representatives at the associate and partner levels, as well as myself, a Latino female partner. The client’s team included a similarly richly diverse group. We finished our presentation, feeling that we had demonstrated the gusto of our cross-cultural, diversified backgrounds. As we left the pitch, we ran into the next contender’s pitch team—a group of four white male partners. I happened to know one of the other team’s members, who called me a month later to congratulate me on the selection of our team by the client. He said, “Liz, what were we thinking? We brought a singularly white male group to a global pitch. Well, congratulations, you brought it home.” Diversity is not just a term of art—it’s a way of doing business that our clients welcome.

I have had the great pleasure in my life of being invited to the leadership table to contribute in my own way. I have had to keep a sense of humor at times when I have perceived that my exuberant style of communication can take getting used to by some of my peers. Ultimately, I’ve savored the richness of different modes of thinking, analyzing, and vocalizing, and I’m so grateful that I’ve been able to learn from superbly talented lawyers of so many different backgrounds. ¿Quién soy yo?—who am I?—is a question answered distinctively by each individual, but the excitement in one’s workplace can stem from getting to know the many different varieties of “yo” with whom we have the privilege to work.

The Claro Group is

a privately owned financial and management consulting firm focused on delivering value to our clients with clarity and integrity.

We provide value-added services and solutions to address complex matters. As a private, self-funded company, the only external stakeholders we answer to are our clients.



**We provide Financial
Advisory & Management
Consulting Services
including:**

- Insurance Claims & Consulting
- Economic & Litigation Consulting
- Corporate Recovery Services
- Government Contract Consulting
- Healthcare Provider Solutions
- Sourcing & Procurement

Our diverse team of more than 150 professionals includes C.P.A.s, M.B.A.s, and Ph.D. economists, and is enhanced by a world-class network of academic and professional affiliates who are recognized thought leaders in their fields. On average, each of our senior managing directors has more than 20 years of expertise. For our clients, this experience translates into results.



312-546-3400 | theclargroup.com

Insurance Claims & Consulting

- Asbestos Claims
- Pollution Claims
- Human Health Claims
- Business Interruption Claims
- First-party Insurance Claims Solutions
- Third-party Insurance Claims Solutions
- Creditor/Policyholder Claim Recovery Services - Insolvent Insurers
- Captive Advisory Transaction Services
- Risk Management Consulting
- Property Damage

The Claro Group is a leader in helping clients resolve insurance disputes.

Through extensive financial and economic analysis, we assist our clients in documenting and presenting claims to facilitate recovery of losses under their coverage. We have world-class credentials in all aspects of major insurance claims and extensive experience in negotiating claims with a number of national and international carriers. Our clients look to us for project and data management, critical data analysis, and superior reporting to process and share information. Over our team's history, we have assumed a lead role in the recovery of more than \$8 billion for our clients, many of whom are among the Fortune 500.



Economic & Litigation Consulting

- International Fraud and Corruption Investigations
- Accounting Litigation and Investigations
- Economics Litigation Consulting
- Finance Litigation Consulting
- Intellectual Property Consulting
- Insurance Litigation
- Government Contract Disputes
- Risk / Uncertainty Analysis
- Marketing Litigation
- Valuation

Our Corporate Recovery Services leadership team

has unparalleled credentials and experience providing support and solutions across many different case settings. The combination of our substantial expertise across multiple industries and disciplines, coupled with our work on some of the largest and most complex cases in the country, uniquely qualifies us in the restructuring arena. Our objective is to provide a comprehensive array of bankruptcy and insolvency expert services that allow effective and efficient administration of cases, resolution of complex issues, and justification for the difficult decisions that need to be made.

When corporations and law firms need assistance on large and complex litigation,

they turn to The Claro Group's economic and litigation consulting services. Our team of C.P.As, M.B.As, Ph.Ds, engineers and finance professionals, together with our extensive network of academic and professional affiliates, delivers solutions across a multitude of case types. We excel in quantifying complex issues and providing insight and analysis along various stages of litigation, mediation, and arbitration matters including: pre-trial strategy, deposition assistance, expert reports, expert testimony, mediation, and arbitration. This comprehensive analytical approach and viewpoint provide our clients with value-added strategic solutions; credible, well-supported information; opinions; and findings to present to the trier of fact.

Corporate Recovery Services

- Bankruptcy & Insolvency Accounting Services
- Business Valuation
- Asset Liquidations
- Negotiations with Lenders
- Reorganization Development & Implementation
- Operational Performance Improvement

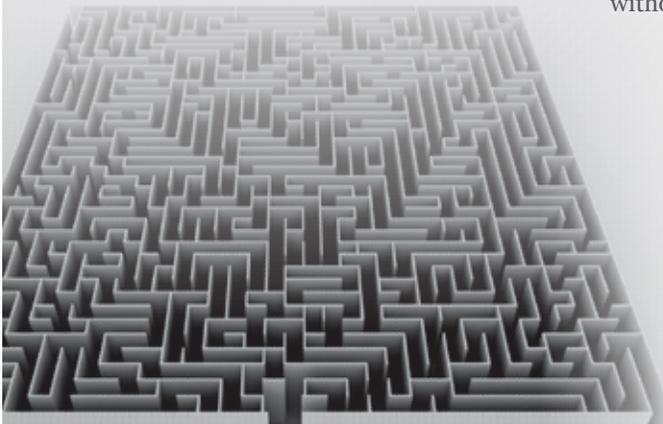
Government Contract Consulting

- Federal Acquisition Regulation (FAR) Compliance
- Cost Accounting Standards (CAS) Compliance
- GSA & VA Multiple Award Schedules
- Bid & Proposal Preparation Assistance
- Bid Protest Support
- DCAA, DCMA & IG Audit Assistance
- Business Systems Compliance Assessment
- Contract Termination Claims
- Contract Change Order Claims
- Qui Tam Litigation Support
- Expert Testimony
- FCPA Compliance Assistance



The Claro Group's Government Contract Consulting practice

stands ready to help an organization understand and address the necessary regulatory requirements to successfully operate and compete in this lucrative yet challenging marketplace. Claro's diverse group of experienced professionals brings a wealth of technical accounting, pricing, and contract administration knowledge to each engagement. Our comprehensive portfolio of services can help organizations address the wide variety of opportunities and issues that arise in any stage of the government-contracting process. We specialize in making compliance achievable, without being cost-prohibitive.



312-546-3400 | theclarogroup.com

When the Native American Invitation to the Diversity Table Gets Lost in the Mail: Who's Got Our Six?—A Cautionary Tale

Lawrence R. Baca

Former Deputy Director, Office of Tribal Justice, U.S. Department of Justice Civil Rights Division

Is there a racial hierarchy in America? Do we place a greater value upon the diversity represented by some racial groups over others? If we do, what are the ramifications for groups who are excluded? Is there a way to halt its perpetuation?

I. Introduction

I have often posed the question, “Are American Indians really accepted as a part of the discourse on diversity or are we just the novelty act of race relations?” More often than not, we are forgotten¹—even by our fellow racial and ethnic minorities. We have to remind them that we are here too.

Perhaps Felix S. Gohen said it best in 1953 when he wrote:

It is a pity that so many Americans today think of the Indian as a romantic or comic figure in American history without contemporary significance. In fact, the Indian plays much the same role in our American society that the Jews played in Germany. Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith.²

II. Who's Got Our Six?³

What I am about to record happened almost twenty years ago. I guess I'm telling this story because I don't believe that much has changed in twenty years. And because I know Santayana was right: “Those who cannot remember the past are condemned to repeat it.”⁴ The story that I am going to tell you is demonstrative of the domino effect in mistakes. It is of a series of incredible failures where each failing helped create the next.

On June 14, 1997, President William Jefferson Clinton announced his program One America in the 21st Century: The President's Initiative on Race, and failed to include an Indian on the initiative's

1. Even the Bureau of the Census did not report the number of American Indian lawyers in the 2010 Census.

2. Felix S. Gohen, *The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy*, 62 YALE L.J. 348, 390 (1953).

3. This is a military term of art. Picture yourself at the center of a clock face. The area directly in front of you would be 12:00. That's your “twelve.” 6:00 is what lies behind you, the potential peril you can't see. On a battlefield, your 6:00 position is the most vulnerable. So, when someone tells you that they've “got your six,” it means they're watching your back.

4. GEORGE SANTAYANA, *THE LIFE OF REASON*, BOOK 1, at 172 (Marianne S. Wokeck & Martin A. Coleman eds., MIT Press 2011) (1905).

Advisory Board on Race. But this story is not about Bill Clinton. I liked Bill Clinton as president and I like the post-presidency Bill Clinton. This story is about a program he put in place to do good that went badly where Native Americans were concerned. While I do blame the President for starting off on the wrong foot, there was plenty of blame to share with many other people for tripping over that foot and for not having the National Native American Bar Association's (NNABA) back.

President Clinton, you may remember, loved to say that there really is no such thing as race because we are all 99.9% genetically alike. Only someone who has never lived a day in America as a person of color could make such a pronouncement. My response to his remark at the time was: "Yes, Mr. President, and we are also 97% genetically the same as chimpanzees but we wouldn't let one be the President—well, at least not without a five to four vote of the Supreme Court."⁵ That one-tenth of one percent has caused tremendous upheaval throughout the history of America. Race may not exist, but for centuries those in power have used it to justify discrimination in many forms. If race is only a social construct, it is nonetheless a powerful and enduring social construct.

America has always been hung up about race and it remains today hung up about race. I had a good-paying job at the United States Department of Justice for thirty-two years because some people in America continue to do vile things to other people in America because of race.⁶

President Clinton thought that he would try to do something about racial strife in America. He launched the One America Initiative and created and named an Advisory Board on Race to assist him. The Board had John Hope Franklin as its director. Professor Franklin was an icon among African American scholars. The other six members of the Board were an African American woman, an Asian woman, a Hispanic woman, and three white men. The prestige of their resumes included two former governors, an executive vice president of the AFL-CIO, a former dean at Harvard University, and a founding member of the National Asian Pacific American Bar Association.

Below the Advisory Board was The Commission on Race—those who would get the work done, the worker bees. The White House selected as the Executive Director of the Commission the highest-ranking African American female civil rights lawyer in all of government. She had three deputies: an Asian woman, a Hispanic woman, and a white man.

There were two patterns emerging here. First, with the exception of Chairman Franklin, all of the men were white and all of the women were racial and ethnic minorities. I'll leave the Freudian psychologists to deal with what that means. Second, every race was represented but one: mine. There was no American Indian on the Advisory Board and no American Indian on the Commission.

The President announced the Initiative in a speech at the University of California, San Diego. I happened to be in San Diego the day the President named the Board. All of their names and photographs were in the local newspaper when I got to the airport the next morning. I was offended that my race was left off the Board. I spent the flight back to Washington, D.C., writing letters. I pointed out that American Indians are a racial group that has faced discrimination on a very high level, the same as the racial and ethnic groups represented on the Board, and asked that an American Indian be appointed to the Board.

5. I know what you are thinking. And you are wrong. During the George W. Bush administration, I got investigated by the Office of Professional Responsibility at the United States Department of Justice (Department) for writing that in a magazine article. Someone in the Attorney General's Office said I'd engaged in professional misconduct by calling the President of the United States a monkey. I pointed out to the investigators that if my accuser had bothered to look at the date of the article, he or she would have seen that it was published before George W. Bush won the Republican nomination for president, and significantly before *Bush v. Gore*, 531 U.S. 98 (2000). The investigation exonerated me, of course, but the Department did ask me to not use the joke any more for speeches I might give while representing the Department.

6. The author was an attorney in the Civil Rights Division, United States Department of Justice, for thirty-two years.

I sent a letter to President Clinton. He didn't write me back. While you may think I shouldn't be surprised, I was. In my work at the Department of Justice, I had answered countless letters to the President alleging civil rights violations. They all start with the sentence, "As you know, the President cannot personally answer all of his correspondence, so your letter has been forwarded to this agency for response . . ." In fact, when I wrote the letter, I considered the potential irony of being assigned to draft the response to myself.⁷ I didn't even get one of those.

There was an individual designated by the White House as the Principal Advisor to the President on Race. He and I were classmates at law school. He was also, at the time, a full professor at Harvard Law School, so I wrote him at his Harvard address so I could be sure he'd get the letter. He didn't write back either. I guess law professors get more mail than I think they do.

The woman who was the Executive Director of the Commission was the General Counsel at the Office for Civil Rights, U.S. Department of Education. We knew each other through our agencies' work in civil rights enforcement. She was also Chair of the Federal Bar Association's General Counsel's Section. I was Chair of the Federal Bar Association's Indian Law Section and we'd known each other for over a decade through the bar. I wrote to her at her home address so that I could be sure she got the letter. She too did not write back.

I don't know about other people; I personally don't mind being debated with, I don't mind being disagreed with, but I do not take being ignored quietly. I will also tell you that I didn't take it as personal; I took it as racial. I took it to mean that an Indian wasn't important enough to respond to.

And, perhaps most importantly, none of these individuals publicly raised a voice about there being no Native American representation on the Race Advisory Board.

Of course, I wrote Professor John Hope Franklin. He wrote back. He probably shouldn't have. He definitely shouldn't have written the letter he sent me.

I would not pretend to put words in such a fine scholar's mouth. He has now departed this earth and is not here to defend himself, so let me give you the response that I received from Professor Franklin, word for word (typos in original).

Dear Mr. Baca,

I am pleased to receive your letter of June 30 in which you stated so eloquently the case for Native Americans. I, too, would have been delighted to see a Native American on the Advisory Board on the President's Initiative on Race. I had nothing to do with the naming of the Board, and it is my distinct impression that no other member had any voice in the make-up of the board.

I was born in Oklahoma, and my father was born in the Indian Territory in 1879. We are descendants of Choctaws and Chickasaws who were expelled by President Andrew Jackson in the 1830's. That confers on me no special authority, but as a historian, I am fully aware of the treatment of Native Americans. As someone who is primarily African American, I yield to no other group in the claim of greater humiliation or discrimination. I experience it from day to day in 1997. That, however, is not the point.

What I pledge with all my heart is that under my leadership, the Advisory Board will give every possible consideration to the task of the elevation of Native Americans to a position of full equality in every way. We did not name the Board, but we as a Board will speak and work for Native Americans and all Americans. Best wishes.

Sincerely yours,

John Hope Franklin

7. Civil Rights Division logic: The letter was written by an Indian; an Indian should write the response.



To me the failure to have my race represented was a signal to America that some racial and ethnic minority groups are important but one can be left out of the discourse.

Now let me translate what that letter says to me. First: I didn't pick the Board—it's not my fault that one of you isn't on it. (Subtext: I bear no responsibility to try and get one of you on the Board.) Second: I'm part Indian, so I feel your pain. Third: I'm a historian, so I know your pain because I've read about it. Fourth: I'm African American and we had it worse than anybody else, so in fact you really don't count. Fifth: We've got you people covered—we don't need one of you on the Board. (Subtext: Anybody can speak for the Indians.)

I did what any Indian with a mailing list would do. I sent my letter to Professor Franklin and his letter to me to all 450 members of the Indian Law Section and invited them to respond. The two letters got significant circulation beyond my original mailing. Professor Franklin got cards and letters at his home and American Indian protesters at virtually every public meeting the Board held for eighteen months.⁸

No member of the Advisory Board ever stood up and said that it was a mistake to not have an American Indian on the Board. To me the failure to have my race represented was a signal to America that some racial and ethnic minority groups are important but one can be left out of the discourse. On the Race Advisory Board, no one had our six. A year and a half later the Board issued a report and said in it that one of the greatest problems facing American Indians was a failure of the education system to teach any correct information about tribal governments and that "[t]his lack of understanding is particularly problematic when it involves those who are developing and implementing government policies and programs—at the Federal, State, and local levels."⁹ Yes, and one would also imagine that it's a problem for commissions on race.

III. All of This So Far Sounds Bad, but It Actually Got Worse

I would have seen from the outset that Native Americans were not even in the race consciousness of the board members had I been at the press conference following the President's announcement. A review of the transcript from that day shows a discussion including "the slavery question," "Black America," and "the Tuskegee experiments." A reporter asked if this study would be more difficult than the Kerner Commission because it "includes Hispanics and Asian Americans."¹⁰ A board member responded that "there will be a concentration on the African American race and the black and white issue," but that they would include diverse issues.¹¹ Angela Oh responded that "As an Asian American, I feel that I am somewhat of an intruder on a dialogue that has been a black/white sort of

8. Curiously, when I called the university where Professor Franklin worked and asked for his contact information, they gave me his home address.

9. ADVISORY BOARD TO THE PRESIDENT'S INITIATIVE ON RACE, ONE AMERICA IN THE 21ST CENTURY: FORGING A NEW FUTURE 39 (1998), available at <http://clinton2.nara.gov/Initiatives/OneAmerica/PIR.pdf>.

10. William J. Clinton: Press Briefing by Presidential Advisory Board on Race (June 14, 1997), THE AMERICAN PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=48648>.

11. *Id.*

paradigm for all of the time that we have ever talked about race and racism in this country.”¹² She followed that by saying that “There are elements in our communities that would not like to hear from Asian America, that would not like to hear from the Hispanic or Latino community, however you want to identify it—and you will learn, as we engage in this dialogue, why I even make that very small remark. And it’s because there’s a sentiment that by allowing people like myself into this dialogue there will be some sort of a dilution.”¹³ The last board member commented on being white in the “segregated South.”¹⁴

Native Americans never made the discourse that morning. While Angela Oh may have felt like an outsider, American Indians were invisible. How do you do that? How do you define yourself as an outsider to the discourse on race and not see the one race that is completely left out?

Following the first salvo of letters to the White House and Professor Franklin—and to be sure, I was not the only person in Indian Country to feel slighted—someone decided they needed some Indians on the Commission staff. Not on the Board and not even as a deputy director, the first ranking Native American was going to be at “worker bee” level. Someone from the White House called over to the Department of Justice, Civil Rights Division, and said (I’m paraphrasing here), “Do you have an Indian lawyer we can borrow for a year and a half?” The Assistant Attorney General for Civil Rights pulled the name John Hughley (not his real name—NHRN) out of the air. There are many interesting things about this fact. First, his name isn’t John Hughley, it is John Running Elk (NHRN). He changed his name when his daughter was born because Running Elk is the historic family name and he wanted her to grow up with a greater connection to her tribal heritage. Second, of the five American Indian lawyers working in the Civil Rights Division at the time, John was the only one who was not involved in race work. He worked in a unit that investigated conditions of confinement. Race is not relevant to a prosecution in his unit. He was a very fine lawyer, however, and could have contributed had he been picked.

Third, and this is the best part, John went to the interview, and after the woman conducting the interview called him Mr. Hughley, he explained to her that his name is Running Elk. She looked at him and said with a straight face, “Oh, Running Elk, that’s actually good; it sounds so much better than Hughley. We’re going to hire you or Jackie Wilson’s (NHRN) daughter.”¹⁵

When John stopped by my office to relate the tale of his interview, I quoted Mr. Shakespeare to him. You remember Juliet to Romeo:

‘Tis but thy name that is my enemy:
Thou art thyself, though not a Montague.
What’s Montague? It is nor hand nor foot,
Nor arm nor face, nor any other part
Belonging to a man. O be some other name!
What’s in a name? That which we call a rose
By any other word would smell as sweet;¹⁶

12. *Id.*

13. *Id.*

14. *Id.*

15. As reported to me by John (NHRN).

16. WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act 2, sc. 2. .

Ah, yes, “John, what is more important to the Advisory Board on Race—an attorney with a cool animistic Indian name like Running Elk, or someone who is the daughter of one of the most influential Indian women in Indian Country?”

I found it curious that the woman John interviewed with didn’t know which of Jackie’s daughters they might hire, the one with a law degree or the one with a high school diploma, only that she was Jackie Wilson’s daughter. Influential mother won out over Indian-sounding name.¹⁷ To be certain, there were a couple of other Native American staffers with strong credentials at the Commission, but no one in a position to effect or influence policy or direct the Commission’s outreach. In fact, one of them, a woman with a Ph.D. in Sociology, complained to me that they weren’t doing actual research on Indian Country issues, just compiling a bibliography of previous research. The fact that American Indians have seldom been the subject of such research meant nothing moved forward for American Indians.

IV. Once Again, as Bad as All of This Sounds—It Actually Gets Worse

I spent a lot of time, a lot of ink, and a lot of verbs criticizing the President for not having an American Indian on the Race Board. What I said was that this was a signal from the highest level of government that it’s okay some of the time to leave some of the people away from the table. As I asked all of my audiences then, and the question remains valid today, “If it is okay to exclude my race today, how long before it is ok to exclude your race?”

Most of my Indian Country attorney friends said, “Why do you care, Baca? Our government-to-government relationship is much more important. This Initiative is just going to end with a report that goes on library shelves and no one will ever read it.”

Not so fast, my friends.

Following the issuance of the final report, President Clinton decided that what was necessary to bring America together was a renewed “call to lawyers” to become involved in race and civil rights issues. President Kennedy had made such a call and it had led to the formation of the Lawyers Committee for Civil Rights Under Law, a legendary force for civil rights and equality in America that continues the struggle in the present day.

The duty to issue the call and bring important people together to develop the call to lawyers was assigned to the Deputy Attorney General’s (DAG) office at the United States Department of Justice. A letter of invitation was sent out saying that a group of the most prominent civil rights and bar association leaders in the country was being called together for meetings in the DAG’s office. NNABA didn’t get an invitation. I was President-Elect of the National Native American Bar Association at the time and I heard about the letter from the President-Elect of the Hispanic National Bar Association (HNBA) in a cab ride to the Chicago airport. She was as angry as she could possibly be and regaled me with a tale about attending a meeting in the DAG’s office and seeing [her words now] “a sea of Black faces” around the conference table. She complained to me vociferously that she was the only Hispanic in the room. When she got done with her tirade, I asked if there were any Indians in the room. She said, “Oh, my god, I didn’t notice that you guys weren’t invited.” I said, “Susanna (NHRN), if the National Native American Bar Association had been there and the Hispanic National Bar hadn’t been invited, we would have noticed. And we would have said something.”

I asked her if I could get a copy of the letter and the attached list of who else was invited. She

17. They didn’t hire the daughter who had a law degree.

hesitated. The President-Elect of one of the bars of color, a fellow bar in the Coalition of Bar Associations of Color (CBAC),¹⁸ hesitated, and then said, “I have to think about it.” It was three weeks before I got a copy of the invitation letter and the attached list of invitees. On the copy she faxed to me, Susanna had blacked out her name and address with a marker. Apparently she didn’t want the DAG of the United States Department of Justice to know that it was she who shared the letter with the Indians.

Every other national minority bar association had been invited. None of them noticed that NNABA was not on the list. None of them noticed that there were no Indian organizations on the list of invitees. None of them noticed that there were not any Native Americans at the meeting. And if they did, none of them stood up and asked why.

Let me not single out our CBAC partners. No one else at the table asked “Why aren’t the Indians here?” either. No one on the list told NNABA that the meeting had occurred. No one from some of the most significant civil rights organizations in the country had noticed that one race didn’t have a seat at the table. If they did, they certainly didn’t speak up. And they certainly didn’t call us.

I wrote the DAG a vituperative three-page letter detailing the many sins of the DOJ and the administration where the civil rights of Indians were concerned. Kalyn Free, who was NNABA President at the time, wrote the DAG a letter that made mine seem chatty. I was called in to the DAG’s office, NNABA received an oral apology, and the National Native American Bar Association was finally invited to attend the meetings.

When I attended the first meeting as the NNABA representative, there was a non-Indian at the table who said he was there “to represent Native American interests.” He’d found out about the call to lawyers because his wife worked at the White House. He noticed there were no Native American interest groups on the list and got himself invited to the second meeting. My curiosity, of course, was, why didn’t he get NNABA invited? Why didn’t he call NNABA to tell us the meetings were occurring?¹⁹

V. Once Again, It Actually Gets Worse

I know the DAG didn’t put the list together or send out the letters of invitation. The DAG didn’t purposefully leave NNABA off the list. But I know who did. It was a man who worked on the DAG’s staff. I mention this solely because the man had the audacity to call me and blame it on someone else. I didn’t reach out to him; he reached out to me for the sole purpose of lying to me. In his lie, he made three classic mistakes. First he said, “Well I’m from India and no one from my group was at the table.”²⁰ I said, “You were at the table.” [long pause] Then he told me that it was Barbara Arnwine’s fault for not putting us on the list, that the Lawyers’ Committee for Civil Rights Under Law was responsible for creating the list of invitees. Barbara was, and is, the President and Executive Director of the Lawyers’ Committee. If you want to lie to me, don’t lie about one of my oldest friends in the civil rights community. It only took a phone call for me to confirm that NNABA was, in fact, on the

18. The Coalition of Bar Associations of Color, known generally as CBAC, is a loose association of the four bar associations of color, the National Native American Bar Association, The National Asian Pacific American Bar Association and the National Bar Association. CBAC meets annually to discuss important issues common to all bar associations of color. We united under the theory that we need to support each other in our common cause to bring diversity to the legal profession and the bench

19. His defense was that he wanted to see what was going on before calling NNABA. To his credit, he worked very hard for NNABA throughout the existence of the planning group and Lawyers for One America that followed.

20. So, how am I to regard this defense? You were in charge of the final list, you didn’t invite anyone from any Indian American bar association, and so that makes it okay that you also didn’t invite NNABA? The “real Indians” didn’t get invited, so American Indians didn’t either? Neither way does this ring true for me.

original list. And lastly, the same man then told another friend of mine who is a Commissioner on the ABA Commission on Racial and Ethnic Diversity in the Profession (the Commission) that “We couldn’t invite everybody, so I had to cut [NNABA].” I’m not with the NSA and wouldn’t pretend to have their access to information, but within civil rights circles we pretty much do all know each other. I was also a member of the Commission at the time. Did he really think that she wouldn’t tell me what he said?

VI. OK, Last Time: Believe It or Not, It Actually Gets Worse

This group of forty-five or so prominent lawyers and civil rights leaders had several meetings. After months of planning, a decision was made that there would be a big kick-off dinner where the President of the United States would attend and deliver a major address on race in America. He would issue a call to lawyers to help bring about positive social change in America. A team was formed to draft the President’s speech and an advisory committee was appointed to review the draft. The presidents of each of the four national minority bars all got assigned to the review committee. When the draft of the speech was circulated, it was obvious to me that it created and displayed a minority racial hierarchy. Everywhere that it mentioned all four of the major racial and ethnic minority groups, it was always African Americans first, Hispanics second, Asians third, and Native Americans last. If only one group was mentioned, it was always African Americans. If two groups were mentioned, it was African Americans and Hispanics. And it was always in the same order throughout the speech.

At one place in the speech, it mentioned important civil rights leaders naming only Dr. Martin Luther King, Jr. and Caesar Chavez. The president of the National Asian Pacific Bar Association inserted after Chavez the name of an Asian civil rights leader and then parenthetically wrote “Ask Baca for the name of an American Indian.” I said to him, “Sam (NHRN), do you realize they have created a racial hierarchy in this speech? Can’t you see how insidious it is? They got you to buy into it without realizing that you did it.” Sam reflected for a moment and said, “No, I saw that it was happening. I guess I just accepted our place.” I told him, “Never do that again!” and I promised him that I would not tell that story at the National Asian Pacific American Bar Association annual meeting while he was still president.

I took two actions. First, I made numerous edits where I put American Indians first and rotated the other groups so that everybody was first and last somewhere in the speech. Second, I e-mailed the two men that were the primary drafters off-list, and in a private e-mail that was just to the two of them, I pointed out that they were creating a racial hierarchy with my race at the bottom, and I stated affirmatively that I would not sit quietly by and watch it happen. I suggested ways to correct the problem.

They could just rotate the order in which the groups were mentioned each time the groups were mentioned. They could let the subject matter be their guide to who’s first and who’s last. If the President wanted to talk about low education rates, the list would be framed one way if you go highest to lowest educational achievement, and another if you go lowest to highest. If you speak about incarceration rates and an unequal justice system, the highest to lowest would shift the groups’ relation to each other. Either of the above approaches would be preferable to the hierarchy that had been created and consistently repeated.

Three things happened following my e-mail. The language of the President’s speech was changed, the appearance of a minority racial hierarchy disappeared, and the two men that were responsible for the draft never spoke to me again at any of our face-to-face meetings. I took that last part as payback

for being an uppity Indian. If I take it personally, I don't care. If I take it racially, when I write my memoirs I'll publish their names.²¹

I was told later by the fellow whose wife worked at the White House that when the President was given the final draft of the speech, the only question he asked was, "Do I talk about the Indians in this?"

I have also been told that the President's advisors on race actually thought about having an Indian on the Board and advised him to not do so because the Supreme Court has decided that for some purposes being Indian is a political status not a racial status. The Supreme Court had previously held that when the federal government creates preferences in employment at the Bureau of Indian Affairs, that it does so not for the race of Indians but for members of federally recognized tribes. That group constitutes a political group, not a racial group, and therefore the preference does not violate the Fifth Amendment.²² The President's advisors thought that if the President called us a racial group, the Supreme Court might find all of Title 25 to the United States Code unconstitutional.²³

The analysis is simple. As Native Americans we are all members of the race of Indians. Some of us are enrolled members of a federally recognized tribe. One is a subset of the other. When an American Indian goes into a bank to apply for a loan and gets turned down or sits down at a restaurant only to be denied service no one says, "Excuse me, are you a member of a federally recognized tribe? We don't serve Indians who aren't members of federally recognized tribes." No, they make a facial racial decision that someone is an Indian in a place Indians aren't allowed.

As Cornell West has said, "Race matters."²⁴

I was disappointed in my President that he left us off of the Race Advisory Board, but I was more disappointed in all of the other organizations involved that didn't pay attention or just didn't care. Who, indeed, has got our six?

I should end on the positive note that ultimately it got better. Following President Clinton's speech, Lawyers for One America was formed and NNABA was invited to the table as a full and desired partner from day one.



The Supreme Court has decided that for some purposes being Indian is a political status not a racial status.

21. The working title is: "Diary of One Mad Indian," with apologies to every other author of a diary about being mad about something.

22. See *Morton v. Mancari*, 417 U.S. 535, 553-54 (1974).

23. They didn't, of course, ask the lone Indian woman who worked at the White House.

24. See CORNELL WEST, *RACE MATTERS* (1993).

The Decline in African American Law Partners: A Wake Up Call

E. Macey Russell

Partner, Choate Hall & Stewart LLP

The decline in the numbers of African Americans who are partners in America's largest law firms is reaching an epic crisis. Macey Russell explains why the problem is growing and what can be done to correct it.

I. Introduction

There is a concerning decline in the percentage of African American partners at major U.S. law firms. With back-end baby boomers turning fifty years old and many front-end boomers (born in 1946) nearing retirement or already retired, this downward trend does not bode well for an already small cadre of African American partners.

Boston illustrates this trend. An October 16, 2013 article in *CommonWealth Magazine* entitled "Diversity Lacking at Boston Law Firms" reported that there are only *four equity* African American partners out of 716 partners in the *ten* largest Boston firms (with three firms declining to provide information).¹ The January 2009 *National Association of Law Placement (NALP) Bulletin* reported that in 2008 the Boston area had twenty African American partners (equity and non-equity) at forty member law firms.² The February 2014 *NALP Bulletin* reported only fourteen African American partners (at thirty member firms), or a mere 0.075% of Boston partners overall. This represents a 30% decrease (the loss of six partners) in five years.³ Those partners may not be replaced in the foreseeable future unless there is a concerted effort by the Boston legal community to be more inclusive and to provide meaningful opportunities for African American attorneys to compete for business and succeed.⁴

Dallas provides another example. An October 15, 2013 *Dallas Morning News* article entitled "Large Dallas Law Firms Flunking Diversity," citing a recent Dallas Diversity Task Force Report, reported that, ". . . not only is diversity not improving at the city's biggest firms, it is getting worse Only 1 percent [8] of the 799 equity partners at the largest law firms in Dallas are African-American. Thirteen of the 19 firms have no African-American partners and five of the firms only have one." And in a city with a substantial Hispanic population, "[o]nly 2.5 percent [20] of the partners are Hispanic, and eight of the large firms have no Hispanic partners."⁵

1. Colman M. Herman, *Diversity Lacking at Boston Law Firms*, COMMONWEALTH MAGAZINE, Fall 2013, <http://www.commonwealthmagazine.org/News-and-Features/Features/2013/Fall/005-Diversity-lacking-at-Boston-law-firms.aspx>.

2. National Association for Law Placement, *Women and Minorities in Law Firms by Race and Ethnicity*, NALP (January 2009) [hereinafter 2009 NALP Bulletin], <http://www.nalp.org/jan2009womenminorities>.

3. National Association for Law Placement, *Women and Minorities at Law Firms by Race and Ethnicity—An Update*, NALP (February 2014) [hereinafter 2014 NALP Bulletin], <http://www.nalp.org/0214research>.

4. NALP DIRECTORY OF LEGAL EMPLOYERS, <http://www.nalpdirectory.com> (last visited Feb. 13, 2014). As of February 2014, the NALP Directory's law firm statistics show that fifteen of the top twenty-five NALP Boston reporting firms do not have any African American partners, equity or non-equity. And there is no pipeline of African American attorneys to speak of, as those twenty-five firms employ only forty-four (2.85%) African American associates out of 1,543 associates. Ten of those twenty-five firms do not have any African American associates. Only four firms employ more than four African American associates. Collectively, they employ 24 (3%) African American associates out of 775 associates in those firms.

5. Mark Curriden, *Large Dallas Law Firms Flunking Diversity*, DALLAS MORNING NEWS, Oct. 15, 2013, <http://www.dallasnews.com/business/headlines/20131014-large-dallas-law-firms-flunking-diversity.ece>.

African American partners are also losing ground in major law firms across the country,⁶ and there are fewer African American associates in NALP law firms today than in 2008.⁷ Why are there fewer African American partners in major law firms today at a time when more African Americans are enrolling in law school?⁸ Will there be a “next generation” of African American partners?

This article explores the problems and challenges associated with the decrease in the number of African American partners and suggests approaches for making the legal profession more diverse and inclusive.

II. The Expanding Definition of Diversity Masks the Decline in African American Partners

A law firm today can be “diverse” without African American partners because the way we think about diversity has changed over the past twenty-five years. Today’s definition of “diversity” is broad and inclusive, representing Native Americans, African Americans and blacks, Asian Pacific Americans, Hispanics and Latinos, disadvantaged Caucasians, women, disabled persons, and LGBT individuals.⁹ Over the past twenty-five years, African American attorneys have gone from being referred to as “minority attorneys” (a smaller and defined subset), to “attorneys of color,” to the current “diverse attorneys.” This recent classification places them in a much broader category and arguably lessens their significance.¹⁰ Expanding the definition of diversity makes it easier for in-house counsel, when pressed to consider hiring diverse outside counsel, to simply “check a diversity box.” African American attorneys are now just one of the many types of diverse attorneys from which in-house

6. In 2008, the NALP reported 1,053 African American partners at 1,572 member firms. In 2013, the NALP reported only 886 at 1,127 member firms; a loss of 167 partners. In 2008, the NALP reported there were 3,645 minority partners (5.92%). In 2013, however, the NALP reported only 3,535 partners (7.10%); a drop of 110 partners overall. While the number of minority partners decreased by 110, the number of African American partners decreased by 167. During the same time period the number of Asian American partners increased by 67 from 1,262 (2.05%) in 2008 to 1,329 (2.67%) in 2014.

In Boston, the number of Asian American attorneys was 25 (1.24%) in 2008 and 22 (1.45%) in 2014, a decrease of 3. In the comparison years, however, the percentage of Asian American attorneys increased. The number of Hispanic American partners nationally was 1,034 (1.68%) in 2009 and 991 (1.99%) in 2014, a decrease of 43 attorneys. In Boston, the number of Hispanic American partners was 16 (0.80%) in 2009, and 16 (1.06%) in 2013, no change in the number of partners. In the comparison years, the percentage of Hispanic American attorneys increased. See 2009 NALP Bulletin, *supra* note 2; 2014 NALP Bulletin, *supra* note 3.

7. The pipeline of African American associates also is on a steep decline nationally. In 2009, the NALP reported there were 62,939 associates in 1,572 member firms and 2,990 of those (4.75%) were African Americans. In 2014, NALP reports 45,808 associates at 1,127 member firms and 1,878 (4.10%) were African Americans. The overall drop of 1,112 African American associates represents a 37% decrease in NALP firms’ numbers since 2008. See 2009 NALP Bulletin, *supra* note 2; 2014 NALP Bulletin, *supra* note 3.

8. Vera Djordjevic, *Are African American Attorneys Losing Ground?* VAULT BLOGS (Feb. 28, 2013), <http://www.vault.com/blog/workplace-issues/are-african-american-attorneys-losing-ground> (“While the number of Asian Americans and Hispanics among summer associates, for example, is increasing, the percentage of African-American law students hired has declined—even as the number of black students enrolled in law school has grown . . . African-Americans consistently report the lowest levels of overall job satisfaction among racial/ethnic groups.”).

9. See, e.g., U.S. OFFICE OF PERSONNEL MANAGEMENT: OFFICE OF DIVERSITY AND INCLUSION, GOVERNMENT-WIDE DIVERSITY AND INCLUSION STRATEGIC PLAN 2011 5 (2011), available at <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reports/governmentwidedistrategicplan.pdf> (defining workforce diversity as including “national origin, language, race, color, disability, ethnicity, gender, age, religion, sexual orientation, gender identity, socioeconomic status, veteran status, and family structures”).

10. Another example of how the diversity discussion has changed over the years is seen in the membership of the Minority Corporate Counsel Association (MCCA) founded by Lloyd Johnson in 1997. The MCCA was founded for the purpose of supporting “minority attorneys in corporate legal departments and the law firms that they retain.” The MCCA is a much different organization today. The MCCA’s membership is more inclusive and has LGBT and disabled attorneys as active members, which is consistent with the expansion of the umbrella of diversity to benefit all. As times change, the changes in the focus of organizations should be recognized and understood in the context of the MCCA’s work in the area of diversity and inclusion. See *generally About MCCA*, MINORITY CORPORATE COUNSEL ASSOCIATION, <http://www.mcca.com/index.cfm?fuseaction=Page.viewPage&pageId=485> (last visited Jun. 12, 2014).

counsel can select and receive “diversity credits.” This change may make it more difficult for African American attorneys to develop business, become partners, and sustain their positions.¹¹

III. Race and Market-Based Challenges

African American partners may encounter implicit and unconscious bias, as well as indifference and diversity fatigue, when seeking to develop business. These challenges may also arise even when African American attorneys seek business from African American in-house counsel who may fear that: (i) something will go wrong or (ii) they will be labeled as doing favors instead of hiring the most qualified attorney.¹²

African American attorneys may also face barriers to success within their own law firm environment where they must compete for institutional clients’ business, which the firm may direct to select partners or service partners. A service partner usually has a specific expertise required by the firm, and there is often enough work already at the firm to keep those partners busy without their having to develop their own book of business. African American equity partners may be less likely to serve as service partners at major law firms because many service partners are home grown from the summer associate program. Like many other associates, most African American associates leave their first law firm within five years.¹³ When a law firm seeks to expand the ranks of African American partners, it may seek to hire an African American attorney (sometimes from a government agency) as a contract partner and provide him or her with an opportunity to develop business, but less often to serve as a service partner. However, it is common to hear later that the attorney left the firm because he or she could not, even with the firm’s support, develop a sustainable book of business.¹⁴ In June 2013, *The American Lawyer* reported that minority lateral partner hiring was down 6.3% over the prior year.¹⁵

11. There is some data to suggest that African American partners are falling behind other diverse attorneys in the business generation arena. The Institute for Inclusion in the Legal Profession’s 2011 survey of 1,032 diverse partners shows that (i) in 2008, 87% of diverse partners had a book of business of \$500,000 or less per year; (ii) only 48 out of 402 respondents had a book of business between \$500,000 and \$1,000,000, and 31 of the 48 (65%) of respondents were LGBT Caucasian; and (iii) only 5 out of 402 respondents had a book of business over \$1,000,000 per year, and 2 of the 5 were LGBT Caucasian. It is possible that the LGBT attorneys had this business before the survey and were only reporting it for the first time. The other possibility is that when faced with the decision of which diverse attorney to “check off” and hire, LGBT Caucasian partners are winning out over other diverse partners, such as African Americans. See *The Business Case for Diversity: Reality or Wishful Thinking?* INSTITUTE FOR INCLUSION IN THE LEGAL PROFESSION 68 (2011), <http://www.theiilp.com/resources/Documents/IILPBusinessCaseforDiversity.pdf>.

12. David B. Wilkins, *Brown at Fifty: From “Separate is Inherently Unequal” To “Diversity is Good for Business:” The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 Harv. L. Rev. 1548, 1578–79, (2004) (“Similar barriers confront black in-house lawyers when they seek to direct important legal work to black lawyers. My interviews provide strong support for the proposition, pressed by diversity advocates, that black corporate counsel actively look to provide opportunities for black lawyers inside firms. There are, however, important constraints on their ability to do so. *The practice of law is fundamentally a relationship business, and most companies already have strong relationships with outside counsel. Even the most concerned black in-house lawyer will find it difficult to disrupt these existing relationships.* Moreover, when corporate counsel do select new lawyers, they face tremendous pressure to hire those whose “merit” is beyond question, in part to protect themselves in case something goes wrong. This pressure may be especially acute for black in-house lawyers, who, like black politicians, face charges of favoritism if they select less prominent black lawyers over better-known whites—even if the black lawyers are arguably better qualified to handle the case.” (emphasis added) (footnote omitted)).

13. See THE NALP FOUNDATION, UPDATE ON ASSOCIATE ATTRITION: FINDINGS FROM A NATIONAL STUDY OF LAW FIRM ASSOCIATE HIRING AND DEPARTURES – CALENDAR YEAR 2007 11 tbl.5 (2008).

14. See Nelson D. Schwartz & Michael Cooper, *Racial Diversity Efforts Ebb for Elite Careers, Analysis Finds*, N.Y. TIMES, May 27, 2013, http://www.nytimes.com/2013/05/28/us/texas-firm-highlights-struggle-for-black-professionals.html?ref=texas&_r=0 (discussing diversity fatigue, impact of the recession on diversity efforts, and how “black lawyers leave big firms to strike out on their own or to join the public sector”).

15. Brian Zabcik, *Same As It Ever Was*, THE AM. LAWYER, June 2013 (“Our survey shows a sharp drop in minority lateral hires, and a smaller decline in minority partner promotions. Minority Attorneys accounted for 10.1 percent of all lateral partners last year, down from 16.4 percent the year before—a decrease from 348 minority laterals to 211.”).

African American partners also face challenges common to all law firm partners seeking to develop a book of business,¹⁶ such as the shrinking number of law firms used by corporate law departments,¹⁷ the tightening of controls over selection of outside counsel, an increasing focus on selecting firms handling work nationwide at discounted rates,¹⁸ and a resistance to disrupting long-standing firm relationships. Corporate law departments are also increasing their own staff and use of specialty legal service providers such as e-discovery firms,¹⁹ as well as handling more matters in-house.²⁰

Opportunities may also be affected by changes in local and national economies. For African American attorneys in Boston, there are now fewer corporations headquartered in Boston, which has resulted in the reduction of certain business opportunities. For example, Gillette merged with Procter & Gamble based in Cincinnati, Ohio; John Hancock Insurance Company with Manulife in Toronto; and Fleet Bank with Bank of America in Charlotte, North Carolina.²¹ These consumer-oriented companies were often viewed by African American attorneys as more likely to embrace diversity and to hire diverse outside counsel because of their diverse customer base. Control over the legal work once handled in Boston by local law firms may shift away from Boston to the corporate headquarters of these corporations or other locations other than Boston. In some instances, the work is being handled by national firms without Boston offices and with or without the assistance of local African American attorneys.

IV. Diversity Fatigue

African American partners regularly confront diversity fatigue of in-house counsel when attempting to develop business.²² Some in-house counsel have grown weary of their company's diversity agenda and prefer to focus solely on work.²³ The diversity proposition of "doing the right thing" may

16. GENERAL COUNSEL ROUNDTABLE OF THE CORPORATE INTEGRITY PRACTICE, FIVE FORCES THAT WILL CHANGE LEGAL 3 (Corporate Executive Board, 2011) (discussing "New Market Supply" and competition between "Large Law Firms," "Experience Contract Attorneys," "Legal Process Outsourcers," "Small/Medium Law Firms," and "Technology Vendors"; as well as the "Best of Breed" legal supply model).

17. Press Release, Altman Weil, Inc., *Corporate Law Departments Focus on Cost Control*, Oct. 23, 2013, <http://www.altmanweil.com/CLOPR13> ("Chief Legal Officers are trying to find a new, more cost-effective and efficient balance of resources. They are reformulating the mix of in-house lawyers and staff, outside law firms, new technology tools, and non-law-firm vendors, in order to deliver quality and value to their corporate client' The survey found that 78.5% of CLOs negotiate price reductions from outside counsel to control costs The 2013 survey reports 42% of corporate law departments plan to add in-house lawyers in the next 12 months, compared to only 5.4% who plan a decrease. At the same time 29% of law departments plan to decrease their use of outside counsel while only 15% plan an increase. Of those who plan to decrease their use of outside counsel, 82% say they will shift the work to in-house legal staff.").

18. *See id.*

19. Press Release, ALM Media, LLC, *Corporate Law Department Hiring is Up and Expense Cuts Continue to Decline, According to New ALM Survey*, Sept. 26, 2013, <http://www.alm.com/about/pr/releases/corporate-law-department-hiring-and-expense-cuts-continue-decline-according-new> (announcing the results of a survey "which analyzed data from 70 in-house law departments at U.S. Companies with median global revenues of \$3.3 billion" and "found that 59 percent of respondents hired new lawyers in the past year, up from 51 percent in last year's survey, and just 44 percent and 39 percent in the prior two years.").

20. *See supra* text accompanying note 17.

21. Sasha Talcott, *Gillette Merger Opens Wounds, Possibilities*, THE BOS. GLOBE, (Jan. 30, 2005), http://www.boston.com/business/articles/2005/01/30/gillette_merger_opens_wounds_possibilities/?page=full.

22. Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 Geo. J. Legal Ethics 1079, 1081 (2011) ("[T]he advancement of the 'business case for diversity,' while well-reasoned and well-intended, has backfired, ending up weakening and eroding the meaning of diversity. Meant to enhance the normative case for diversity with utilitarian grounds, and motivate large law firms and other legal employers to pursue diversity vigorously, it led to debates over the instrumental value of diversity, increasingly overlooking other compelling grounds for it." (footnote omitted)).

23. *Id.* at 1110–11 ("Consider diversity fatigue, referring to the weariness felt by those who bear the responsibility for leading diversity initiatives, those who are the supposed beneficiaries of diversity measures, those who believe they pay the price and experience the negative consequences of diversity, and even those who are but bystanders to the diversity debates. Diversity fatigue may be explained in part by the fact that efforts to diversify institutions are difficult in that they are costly and may be seen by some as a threat to existing structures, and in that progress is bound to be incremental, costly, and slow. Consequently, diversity fatigue may constitute a barrier to minority advancement within institutions, and is increasingly cited by diversity proponents as an increased threat to diversity efforts." (footnotes omitted)).

no longer be a powerful enough motive for in-house attorneys to move business away from established relationships to someone diverse whom they do not know or trust. The “business case for diversity” has not been definitively proven even though proponents claim that diverse teams yield better client results and increase corporate profits.²⁴ For example, one study looked at corporations with the most diverse boards to determine if they were more profitable, and the results were inconclusive.²⁵ Another study examining law firm profitability and the percentage of diverse attorneys yielded no conclusive evidence because it was impossible to discern whether profitable law firms spent more money on diversity or whether they became more profitable because of diversity.²⁶

A more recent argument is that law firms should be more diverse because that is the “ethical thing to do.” Proponents claim that attorneys should make decisions consistent with their core values: namely, civil rights and liberties. It follows that in-house counsel should want to hire diverse outside counsel because it is consistent with supporting equal opportunities for all. Notwithstanding these propositions, African American attorneys are losing ground and their ability to contribute to making the profession more diverse and inclusive is also at risk.

V. The Nature of Referral Networks Within Law Firms May Inhibit Change

African American attorneys are underrepresented in some circles of close relationships that may influence the flow of business from in-house counsel to law firm partners, which is how much law firm business is generated.²⁷ Absence from these networks may be a major barrier to increasing the number of African American partners, as networks can affect who gets business and why.²⁸

The clear majority of partners at the nation’s top law firms and their in-house counterparts are white males.²⁹ It is well documented that whites dominate the partnerships of *The Am Law 200* and NALP member law firms. According to the *2014 NALP Bulletin*, 93% of the partners in 1,127 member firms are white.³⁰ Among equity partners in 2013, 83.5% are men and 94.6% are white.³¹ Likewise, about 84% of all in-house counsel are white.³²

24. Donald O. Johnson, *The Business Case for Diversity at the CPCU Society*, CPCU SOCIETY, 2007, <http://www.cpcusociety.org/sites/dev.aicpcu.org/files/imported/BusinessDiversity.pdf> (discussing the various theories supporting the business case for diversity, including a Harvard Business School study, Professor Herring’s study, and a Wharton Business School study, which examined major corporations that expressed support for supplier diversity).

25. Lisa M. Fairfax, *Board Diversity Revisited: New Rationale, Same Old Story?*, 89 N.C. L. REV. 855, 859–863 (2011).

26. See Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. Legal Prof. 1 22–23 (2009).

27. The circle of close relationships often first develops while one is in prep school or high school, college, and law school. After law school, additional factors come into play such as whether you (i) played sports in college, (ii) are a member of a fraternity or sorority, (iii) are a member of a social or country club, (iv) golf, ski, or sail, and (v) even where you vacation.

28. See Jessica Holden Sherwood, *Talk About Country Clubs: Ideology and the Reproduction of Privilege* 6–10 (2004) (unpublished Ph.D. dissertation, North Carolina State University) (on file with North Carolina State University), *available at* <http://repository.lib.ncsu.edu/ir/bitstream/1840.16/3016/1/etd.pdf>; see also JESSICA HOLDEN SHERWOOD, *WEALTH, WHITENESS AND THE MATRIX OF PRIVILEGE: THE VIEW FROM THE COUNTRY CLUB* (2010).

29. To be fair, white in-house counsel do send work to minority/diverse partners. There are some minority in-house counsel who do *not* send work to minority partners. And there are minority in-house attorneys who send work to white attorneys because they do not value or support diversity efforts designed to create opportunities for African American partners.

30. See *2014 NALP Bulletin*, *supra* note 3.

31. National Association for Law Placement, *The Representation of Women and Minorities Among Equity Partners Sees Slow Growth, Broad Disparities Remain*, NALP (April 2014).

32. MINORITY CORPORATE COUNSEL ASS’N, *A COMPREHENSIVE EXAMINATION OF DIVERSITY DEMOGRAPHICS, INITIATIVES, AND POLICIES IN CORPORATE LEGAL DEPARTMENTS* 4, 9 (2011) [hereinafter *2011 MCCA Survey*], *available at* https://www.mcca.com/_data/global/images/Research/MCCA_CLDD_Book.pdf (finding 16% of corporate law departments are of a racial/ethnic minority and 84% are white (non-Hispanic) in a survey of 765 corporate law departments during the first quarter of 2011).



African American attorneys may also feel themselves unable to form the basis of a close business and social relationship with majority partners as they may not share the same upbringing and backgrounds as many members of the firm's internal network.

Those within a law firm's internal network work hard to maintain and increase their current income levels. The legal profession even has a yearly scorecard. *The Am Law 200* tracks law firm per partner profits annually. The profit of almost every partner in the ranked firms (197 out of 200) puts them in "The 1% Income Club."³³ In the June 1, 2013 *Am Law* report, Wachtell ranked number 1 with per partner profits of \$4,975,000, while Frost Brown ranked number 197 with per partner profits of \$405,000.³⁴ Not surprisingly, these partners are not anxious to transfer their business to anyone else.

In some cases majority partners can influence the selection of those within law firms who will work on institutional client business and inherit that business when the relationship partner retires or otherwise leaves the firm. The firm business may sometimes pass down from the mentor partner to his mentee partner. African American partners are statistically far less likely to be the mentee. The in-house counsel attorney also plays an important role in this transfer when he or she accepts the mentee partner as the successor partner responsible for the company's business.

In addition to these challenges, some African American attorneys believe their access to work is not always determined by their legal skills. Some feel they must always be on their best behavior to fit in and get along. African American attorneys may also feel themselves unable to form the basis of a close business and social relationship with majority partners as they may not share the same upbringing and backgrounds as many members of the firm's internal network.

Is it also possible that majority partners are not trained or socialized to develop meaningful relationships with African Americans? As Peggy Macintosh, author of *The Invisible Knapsack*, might say, "The members can pretty much be assured they will work with people that look, dress, and think like them, and their successes or failures are not tied to their race or ethnicity."³⁵

33. See Paul Wiseman, *Top 1 Percent Took Biggest Since 1928*, ASSOCIATED PRESS, Sep. 10, 2013, <http://bigstory.ap.org/article/top-1-percent-us-took-biggest-share-1928> ("The top 1 percent of American households had income above \$394,000 last year.").

34. Am. Lawyer, *The 2013 Am Law 200: Firms Ranked by Profits Per Partner*, AM. LAWYER (2013), available at <http://www.americanlawyer.com/id=1202601383296>.

35. See Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE & FREEDOM 10 (July/August 1989) reprinted in 49 INDEF. SCH. 31 (1990).

African American attorneys are not the only ones who may feel excluded from the benefits of a law firm's internal network. There are other diverse attorneys, including white attorneys, who grew up less privileged, and, like African Americans, may feel they are less likely to be part of, or benefit from, the network. Perhaps those attorneys grew up in working-class families with modest means. These attorneys might have attended public schools instead of private colleges and universities or gone to law school at night while working full-time during the day. Even if they graduated in the top of their class, major law firms may shy away from hiring them because they attended a lower-ranked law school.

Corporate law departments are more diverse (as broadly defined) than law firms. Their law departments have a higher percentage of minorities, white women, disabled, LGBT, and socioeconomically disadvantaged white attorneys. Is there an argument that diverse in-house counsel should give more focused support to diverse outside counsel in handling the corporation's work? Perhaps those who fall into the expanded definition of "diverse" should reconsider whom they empower and apply constructive pressure to encourage their outside firms to become more diverse.

Some law firm partners may make insufficient effort to promote diversity and inclusion because they enjoy success without diversity. Perhaps the key to making the legal profession more diverse is for in-house counsel to increase their support for law firm attorneys who would support them as individuals. In my view, this proactive approach by outside counsel may not only lead to an increase in the number of African American partners, but in the number of diverse partners overall.

VI. Social and Emotional Intelligence and Leadership Skills May Make a Big Difference

Enhancing the social intelligence of partners may be another way to increase the number of diverse partners in law firms. Social intelligence (SI) is generally defined as the "ability to understand and manage people,"³⁶ and emotional intelligence (EI) is a "subset of social intelligence that involves the ability to monitor one's own and others' feelings and emotions, to discriminate among them and to use this information to guide one's thinking and actions."³⁷ For an African American partner to be successful in a law firm where 99 out of 100 of her colleagues are different from her, she must learn to navigate the environment and make others feel comfortable in her company. African American partners must have "people skills" to survive. Those skills were likely developed by necessity at a very young age and suggest that they must have enhanced social and emotional intelligence to succeed.

In contrast, what if a real barrier to "diversity and inclusion" is that white attorneys in law firms and corporate law departments, through no fault of their own, do not have a sufficient level of SI and EI permitting them to develop meaningful relationships with someone who looks and acts differently than they? White attorneys are not required as a pre-condition to their professional success to enhance their SI or EI or risk losing their jobs. Therefore, there may be a link between the SI/EI of majority partners and their apparent difficulty mentoring African American associates to partnership.

If white partners committed to diversity and inclusion would consider ways to enhance their SI and EI as well as their leadership skills, then maybe they would become better mentors, teachers, and partnership sponsors of African American (and other) attorneys. The level of a partner's EI may have an impact on that partner's ability to (i) be an effective leader, (ii) develop talent, (iii) provide exceptional client service, and (iv) be profitable. An effective leader knows how to evaluate the strengths and weaknesses of each team member, how to utilize the talent of each team member, is open to new

36. Peter Salovey & John D. Mayer, *Emotional Intelligence*, 9 IMAGINATION, COGNITION, & PERSONALITY 185 (1989-90), reprinted in PETER SALOVEY, MARC A. BRACKETT, & JOHN D. MAYER, EMOTIONAL INTELLIGENCE: KEY READINGS ON THE MAYER AND SALOVEY MODEL 4 (2d prtg. 2007) (citation omitted).

37. *Id.* at 5.



If good lawyers are made and not born, it may help African American associates to develop into partners if they are exposed to the insights and experiences of mentors who can help them better understand how best to provide sound client advice.

ideas, and is calm and reassuring under pressure. An effective leader should be able to communicate and motivate each member to reach his potential regardless of race, ethnicity, sexual orientation, or gender. In doing so, the team performs better and produces better results. An article entitled *The Changing Nature of Leadership in Law Firms* discusses the intersection between enhancing leadership skills and the emotional intelligence of attorneys, and states, “[A]lthough technical excellence and intellect are critical factors for success as a lawyer, emotional intelligence is a differentiating factor for successful leadership.”³⁸ This takes the form of understanding “putting people at ease,” “straightforwardness and composure,” and “building and mending relationships.”³⁹ Another article offers that, “Legal training develops excellence in technical skills, legal analysis, reasoning and writing. *This narrow emphasis on technical competence neglects many of the skills that make a good lawyer; as lawyers climb through the ranks, client handling skills and managerial skills assume increasing importance.*”⁴⁰

If this assessment is accurate, the law firm’s narrow emphasis on technical competence may be producing “technical partners” who lack the adequate level of SI and EI needed to effectively mentor and train African American attorneys. In the end, law firms may lose talented African American associates and reward the elevation of technical partners to partnership despite the fact that they lack intangible skills to make the firm more diverse and profitable.

In 1996, Harvard Law School Professor David B. Wilkins made an important observation in a California Law Review Article entitled *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*. Professor Wilkins offers that “good lawyers are made, not born.”⁴¹ In support of this proposition he states:

First, legal work contains a core element of *discretionary judgment*, which is the product of both contingent external factors and the lawyer’s own character, insight, and experience. Second, partly as a result of this core discretionary element, good lawyering is a practice that ultimately

38. Roland B. Smith & Paul Bennett Marrow, *The Changing Nature of Leadership in Law Firms*, 80 N.Y. ST. B.A.J. 33, 36 (2008) (emphasis added) (citing Center for Creative Leadership, *Leadership Skills and Emotional Intelligence* (2003), available at http://www.ccl.org/leadership/pdf/assessments/skills_intelligence.pdf).

39. *Id.* at 37.

40. JONATHAN MIDDLEBURGH & LUCY BUTTERWORTH, EMOTIONAL INTELLIGENCE: WHAT CAN LEARNED LAWYERS LEARN FROM THE LESS LEARNED? 2 (2013), available at http://www.huronconsultinggroup.com/Insights/Whitepapers/Legal/~media/Insights-Media-Content/PDF/Legal/Emotional_Intel_whitepaper.pdf.

41. David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 496, 524 (1996).

cannot be reduced to principles or rules that can be taught in the classroom. These two related characteristics render judgments about a lawyer's quality inherently subjective and provisional.

Lawyers have long asserted that one of the most important distinctions between their "calling" and other "occupations" is the link between lawyering and judgment.⁴² . . . "Indeed, for many, this ineluctable element of discretionary judgment is a defining feature of professionalism generally."⁴³ . . . But an effective lawyer must also be a good judge of character, a quick and accurate calculator of costs and benefits, an empathetic listener, and a thorough, balanced, and calm deliberator who nevertheless does not lose sight of the important role that passion plays in human affairs.⁴⁴

Thus, if good lawyers are made and not born, it may help African American associates to develop into partners if they are exposed to the insights and experiences of mentors who can help them better understand how best to provide sound client advice. And, if good lawyering is not taught in the classroom, African American associates can only develop this intangible skill in the workplace with the assistance of white partners as mentors and teachers. However, we know that the training of African American associates in law firms by white partners remains a challenge.⁴⁵ In 2009, MCCA surveyed minority associates from the top ten law schools and reported as follows:

Minorities who attended Top 10 law schools reported having less access to mentoring, coaching, and sponsorship than did white lawyers from all law schools. These responses underscore a startling fact: The reality experienced by "top minorities" (*i.e.*, graduates of elite law schools) in law firms is inferior to that of whites who graduated from second- and third-tier law schools.

The good news is that the majority of women and minorities *do not* believe that they are victims of discrimination based upon their gender or race. Many did report, however, that various forms of subtle and often-unconscious bias permeate workplaces today as opposed to the more-traditional forms of discrimination that involve overt and explicit articulation of stereotypes and prejudice.⁴⁶

In order for law firms to manage diverse attorneys and to maximize their potential for the benefit of the firms and their clients, law firms need partners to become effective leaders, which may be accomplished by enhancing their EI.

According to Goleman, the most effective leaders are those who have the traditional leadership skills coupled with High EI. ". . . [R]esearch has shown that those with *higher EI scores are more likely to be highly profitable, and that higher EI scores are related to improved teamwork and conflict management* . . . Unfortunately, however, lawyers typically score lower than the general public in EI." Specifically, lawyers

42. *Id.*

43. *Id.* at 524 n.91 (emphasis added) (citation omitted).

44. *Id.* at 524–25 (footnote omitted).

45. Amy Langfield, CNBC, *When It Comes to Diversity, White Male Managers Not Doing So Hot*, The Today Show, Apr. 4, 2013, <http://www.today.com/money/when-it-comes-diversity-white-male-managers-not-doing-so-1B9229783> ("Lack of candor was a key culprit identified in the "Study on White Men Leading Through Diversity & Inclusion" [sic] which compiled results of anonymous surveys of about 700 leaders at eight major companies. 'This is a baseline, first-of-its-kind study,' said Chuck Shelton, the report's author and managing director at Greatheart Leader Labs in Seattle. Asked to rate the diversity effectiveness among white male leaders in their companies, 45 percent of white men gave a positive rating. Among women and people of color, only 21 percent agreed. Wide gaps were also found in the perception of white men's abilities to coach and improve the performance of diverse employees (33 points difference); build strong, diverse teams (36 points); promote diverse talent on merit (36 points); and include diverse voices in decision making (40 points).")

46. MINORITY CORPORATE COUNSEL ASSOCIATION, *SUSTAINING PATHWAYS TO DIVERSITY: THE NEXT STEPS IN UNDERSTANDING AND INCREASING DIVERSITY & INCLUSION IN LARGE LAW FIRMS* 28, 7 (2009), available at http://www.mcca.com/_data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf (emphasis added) ("Minorities who attend top-ranked law schools (*i.e.*, the Tier 1 law schools, which include elite institutions such as Harvard, Yale, Columbia, NYU, Michigan, and Stanford) report having less access to mentoring, coaching, and sponsorship than did white lawyers from all law schools.").



Majority partners should be open to improving their skills, as it will lead to better mentoring, training, and sponsorship of diverse attorneys and the development of “good lawyers.”

are generally low on the social side of EI when compared to the general population.⁴⁷

Thus, if law firm partners want to be effective leaders and become more profitable, they should be open to enhancing their SI and EI.

The firm may benefit from having more partners with higher SI and EI. It may enhance their mentoring and training skills, which may result in an increase in the number of diverse associates and partners coming to the firm and staying because they feel connected. African American attorneys with star potential may be more likely to stay, and the performance of struggling African American associates may improve dramatically because they finally feel respected for their contributions to the team and are motivated to succeed.

The firm should consider using SI and EI criteria to evaluate associate and partner candidates and place more emphasis on leadership skills. The firm should also seek to develop associates with these key skills early in their careers. As the firm becomes more diverse, this may attract more business from corporations seeking diverse outside counsel teams.

Enhancing the SI and EI and leadership skills of law firm partners can be learned through participation in training programs, one-on-one coaching, workshops, and leadership development programs.⁴⁸ Majority partners should be open to improving their skills, as it will lead to better mentoring, training, and sponsorship of diverse attorneys and the development of “good lawyers.”

VII. Closing Comments

African American attorneys are confronted with daily obstacles and challenges to developing business, becoming partners, and sustaining their positions. Looking at how business in law firms is sometimes transferred, the importance of leadership skills, and improving social and emotional intelligence must be part of the diversity dialogue. It is important that in-house counsel resist diversity fatigue to help create a more diverse legal community. Internal law firm referral networks and their recipients need to become more diverse. The attorneys of Generation X are up next. What they say and do about diversity and inclusion will have a profound effect on the profession going forward and whether there will be a next generation of African American partners. Generation X in-house counsel must seek to apply constructive pressure to cause more outside law firms to become more inclusive.

47. *Supra* note 40, at 4, 5 (emphasis added) (citations omitted).

48. *Id.* at 5–6.

Perspective on Lawyering in Non-Native Language

Jen C. Won

Judicial Clerk for Hon. Larry Alan Burns, U.S. District Court for the Southern District of California

Words and language are the tools of lawyers. When those words and language are not one's first language, what kinds of additional challenges are encountered and how might they be addressed? What role does culture play?

I am a litigator. I write, argue, and practice law in Chicago. What most people don't know about me is that I grew up in Korea and did not learn English until I was in high school. In the last few years, I've realized there are a number of attorneys in America who grew up elsewhere and learned English as their second language. (We will call them "ESL lawyers" in this article.) They may be white males or Asian females like me who learned English when they were quite old. Similar to racial or ethnic minorities, these ESL lawyers face unique challenges, yet they are rarely included in discussions about diversity. ESL lawyers may encounter not only a language barrier but also face cultural disparity. Understanding ESL lawyers' backgrounds and finding a solution to help them integrate into the legal community will be an important step in enriching diversity.

I. Legal Writing in Your Second Language

Ever since college I was concerned that my writing was not "fluent enough." Even when I was getting good grades in class, I often wondered whether the style of my writing would signal to readers that I was not a native English speaker. Even though I worked in public policy after college, this worry followed me to law school.

It was only in law school that I realized that legal writing was not a serious obstacle for ESL lawyers like myself. In fact, I think there are many ways that ESL lawyers can take advantage of the fact that they are practicing in a foreign language. Because most ESL lawyers are not used to thinking and writing in English, they get to approach legal writing in a more technical and careful manner. For ESL lawyers, legal writing in English might feel like a scientific equation: you carefully choose each word and apply it in the most logical manner, following grammatical rules. In areas of legal writing where a system of rules is important, this technical, principled approach may provide an advantage. ESL writers may be terser than most people, but I've learned that that's okay, too. Judges often prefer it that way. Similarly, because most ESL lawyers learn English in an academic setting, they are likely to have an easier time avoiding too much colloquialism in their briefs or contracts.

Looking back, I do not understand why I was so concerned about whether my English was good enough to be a litigator. I realized I was holding myself back, imposing unnecessary negative feedback on my own work.

Of course, I do not mean to suggest that it does not require herculean efforts and time for a lawyer to practice in a foreign language, especially at first. I am suggesting that, contrary to popular belief, practicing law in your second language can be an advantage in some respects. To help ESL lawyers succeed in America, it is extremely important for both ESL lawyers themselves and other lawyers to



I feel that if I don't sound "right," my colleagues or clients will question my English proficiency or legal skills.

understand that learning English as a second language does not present an obstacle for one to become a great lawyer or jurist.

II. Oral Arguments and Negotiations in English

In contrast to writing in a second language, oral arguments or negotiations present a very different challenge. When I write a brief, my goal is to not show that English is my second language. I want to be solely judged by the quality of my writing and the strength of my legal argument. And most times I am certain that a reader can't tell that I did not write in English most of my life.

On the other hand, if you have a distinct accent as a result of your native tongue, it can make you stand out as an ESL lawyer. I am self-conscious about that. I know that my "th" sounds different from how most people pronounce it. I am constantly working on my consonants so as to sound more crisp and eloquent. I feel that if I don't sound "right," my colleagues or clients will question my English proficiency or legal skills.

In law school, whenever I had a mock trial in front of a random jury or moot court competition, I always wondered whether my foreign accent and appearance would make me less relatable and less credible. The day before my first mock trial before a randomly selected jury pool, I was extremely worried: What if the jury thinks I am foreign? What if the jury thinks I am an "outsider" and not trustworthy? Despite my anxiety, the mock trial went fine, and I don't think anyone paid more attention to my accent than my presentation.

Nowadays, whenever I have a chance to make a presentation before other professionals or attend a hearing, I welcome it as an opportunity. I hope my appearances in court will help me overcome my fright. I am also secretly hoping that my arguments will help the audience overlook the fact that I have a foreign accent. If I can convince the jury about my position, it may impact the jury's perception of ESL lawyers.

Whether the solution is to help ESL lawyers feel more comfortable speaking in English, or finding ways to measure or minimize the impact of a foreign accent on the audience, including them in the diversity discussion is a good place to start. If we can understand the impact of foreign accents in various legal settings, we may be able to address or overcome potential bias.

III. Cultural Conditioning

In addition to the language barrier, some ESL lawyers who used to live in a different culture may face difficulty adjusting to an American legal environment, especially in a professional setting. Even though I have been living in America for almost a decade now, I am still surprised by how my upbringing in Korean culture affects my demeanor in a professional setting.

One day when I had a call with opposing counsel and a partner in my firm, the partner sat me down for advice after the call. His advice was simple and clear: speak your mind. He went on to explain that he had noticed I tended to downplay my knowledge in meetings and withhold from expressing my opinions. This was really an eye-opener for me. I did not realize that I was coming off as more reserved than I actually was. His comments were puzzling to me at first, because I am not a particularly shy person in a social environment.

After reflecting on the partner's advice and my behavior, I realized that my reserved demeanor may be a product of my upbringing. Korean culture conditioned me to be more timid in a professional setting compared to a social one. In Korea, good students tend to be quiet in class. Professionals typically wait for an invitation to speak when their superiors are present at a meeting. I am not used to taking credit for what I know or promoting myself, but I rather hope that my work will speak for itself. Whereas some of these background cultural expectations may be useful in certain situations, I realized they do not serve me as an associate at a large U.S.-based law firm. They might make me come across as timid, unsure about myself, or worse yet, lacking knowledge about the case.

Luckily, I had a mentor who helped me recognize this behavior and encouraged me to be more assertive. I think other ESL lawyers can benefit from receiving similar advice. Some native U.S. lawyers may refrain from commenting on ESL lawyers' demeanors or etiquette because they do not want to come across as less tolerant or judgmental. However, recognizing these cultural differences may help ESL lawyers become more self-aware and learn how they can promote themselves in a professional setting in the U.S. I am not advocating that everyone should adopt the majority behavior. I am suggesting that sometimes, recognizing cultural differences and making bold suggestions may help ESL lawyers acclimate to a newly adopted culture. On the other hand, understanding cultural differences may also benefit non-ESL lawyers who work with ESL lawyers. A mutual understanding of cultural differences will be conducive to a more productive and collaborative work environment.

In my case, I came to recognize an aspect of my behavior that was invisible to me. This recognition helped me cultivate my professional presence and become more proactive about other areas for improvement. Until today, that simple advice—speak your mind—remains one of the best pieces of career advice I've ever received.

IV. ESL Lawyers in the Legal Community

Above are just a few examples of challenges that ESL lawyers face. It is important for ESL lawyers to recognize that language or cultural differences do not necessarily present a disadvantage. Similarly, it can be equally important for non-ESL lawyers to recognize that there are unique challenges that ESL lawyers face. Understanding ESL lawyers' perspectives and differences will promote a more productive, inclusive legal community.

IILP Review 2014: Disability Diversity and Inclusion Issues in the Legal Profession

Technology for Lawyers Who Are Visually Impaired

Denise Avant

Assistant Public Defender, Law Office of the Cook County Public Defender

Technology is making it easier for lawyers who are visually impaired to realize their full potential and to be lawyers who are just as effective as their colleagues who have their sight. Here's how.

I have been an attorney for almost thirty years, twenty-seven of which I've spent as an Assistant Public Defender, representing indigent clients in appellate and post-conviction cases. I am also blind.

When I first began working, my office employed a reader for me, even though the Americans with Disabilities Act had yet to be enacted. My reader read every document that crossed my desk: memos, letters, cases, motions, and briefs. Reading a trial transcript, researching issues, and filing a brief was cumbersome, but I was able to do the work. Although I typed documents using a Braille computer, my secretary had to retype them because my Braille computer was incompatible with that of my secretary.

Beginning in the late 1980s, technology developed and changed the way I practiced law. The screen reader, software that converts text into speech, made it possible for blind people to use computers. Screen enlargement software made it possible for people who had difficulty with small print to see. Braille software and hardware allowed blind users to easily access documents in Braille.

Adaptive technology has made it possible for me to work independently, productively, and efficiently. Since I no longer require a reader to read everything to me, I find it easier to meet deadlines. Today, I can readily access and exchange documents with others because my office uses Microsoft products that are compatible with all of my adaptive technology.

Knowing when and how to use adaptive technology is critical to my job performance. I use JAWS for Windows as my screen reader to read e-mails, perform legal research, and read and write briefs and other documents so long as they are in an accessible format. I have a forty-cell Braille display, which is a device that converts a line of text on the computer screen into Braille. I am able to print documents in Braille using a Braille embosser that the office paid for years ago. Others will have to decide what the best reasonable accommodations are for them, given their job duties.

Most of my cases result in filing memoranda or briefs or supplemental post-conviction petitions. I do a lot of legal research. Fortunately, both the Illinois Supreme Court and Lexis Research Systems have accessible websites, so that I can obtain cases, court rules, and statutes myself. I write the legal document, and then work with my reader to check for typographical errors and ensure the accuracy of all citations and compliance with Illinois Supreme Court Rules. If oral arguments are granted in any of my cases, I print my notes in Braille for reference at the bench. Prosecutors have been cooperative in sending me their briefs or motions in an accessible PDF or Word format. This saves time because I do not have to scan the document or have someone read it to me.



Stereotypes, biases, and prejudices about the abilities of persons with disabilities remain.

At times, the court reporter sends me the transcript in an electronic format. Other times, I use software to scan the transcript into a text file, which I read with speech or Braille.

Even with adaptive technology, I need a reader in certain situations. For instance, all correspondence from my incarcerated clients is handwritten. Attorney notes and medical and police reports are also handwritten. And, certain databases, like our clerk's system, are not accessible with screen readers.

I also need my reader in court. She helps me identify witnesses, opposing counsel, and other court personnel. She describes things happening in the courtroom that can only be seen, such as the demeanor of the parties. She also describes photographs and exhibits and reads information in court files and documents presented in court.

While I have been successfully practicing for many years, I still encounter attitudinal barriers because of my disability. Stereotypes, biases, and prejudices about the abilities of persons with disabilities remain. People are not accustomed to seeing blind lawyers in court. I have been questioned regarding my presence at counsel table. When I am in an area reserved for attorneys, judges and other court personnel, the sheriffs have informed me that the area is not open to the public. As for my clients, none have ever questioned my abilities directly. However, I'm fairly sure that some wonder if I can actually represent them.

So how do I deal with these stereotypes, biases, and prejudices? I work doubly hard to be well prepared and effectively represent my clients. As Albert Einstein said, "setting an example is not the main means of influencing another, it is the only means."



We are proud to sponsor the
IILP Review 2014: The State of Diversity
and Inclusion in the Legal Profession.



IILP Review 2014: LGBT Diversity and Inclusion Issues in the Legal Profession

The Diversity Experience: A Path to an Inclusive and Productive Workforce

Brian J. Winterfeldt

Head of Internet Practice, Katten Muchin Rosenman LLP

Merilee J. Arevalo

Staff Attorney, Katten Muchin Rosenman LLP

Emily D. Murray

Manager of Internet Practice Services, Katten Muchin Rosenman LLP

Diversity issues from the perspective of LGBT lawyers are more complex and nuanced than simply a decision about whether to be out or not. If lawyers who are LGBT are to be fully productive lawyers in the workplace, and to rise to leadership levels within their organizations, there needs to be a greater understanding of their similarities to and differences from other types of diversity in order to effect meaningful inclusion for all lawyers.

Diversity continues to be a common buzzword in the legal community, particularly in large firms. Not only is the promotion of diversity a social and moral good, but corporate clients increasingly seek diversity statistics from their outside counsel and request that their matters be staffed by diverse attorneys. Organizations have responded over the years with various initiatives to recruit and attract diverse attorneys. Law firms and corporations alike have initiated scholarships, fellowships, and mentoring programs to attract and recruit bright, diverse law students.¹

According to statistics compiled by the ABA Section of Legal Education and Admissions to the Bar, racially diverse law student enrollment during the 2012–2013 school year was 35,914 total students, or 25.8% of total enrollment in Juris Doctor programs in accredited law schools, up from 27,169 (20.4%) ten years prior, and 21,266 (16.6%) during the 1992–1993 school year.² During the same academic years, the number of enrolled female students was 65,387 total students or 47.0% of total JD enrollment in accredited law schools for the 2012–2013 school year; 65,179 (49.0%) for the 2002–2003 school year; and 54,644 (42.6%) for the 1992–1993 school year.³ Corresponding statistics for students identifying as disabled or LGBT were unavailable for the relevant period.

1. See A.B.A. Ctr. for Racial & Ethnic Diversity, *Minority Law Students*, A.B.A. http://www.americanbar.org/groups/diversity/resources/minority_law_students.html (last visited June 14, 2014).

2. A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, Total Minority JD Enrollment*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Total Minority JD Enrollment”) (for minority enrollment data); A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Enrollment: Longitudinal Charts, First-Year-Enrollment/Total Enrollment/Degrees Awarded*, A.B.A. (2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf [hereinafter *Total Enrollment*] (for total enrollment data).

3. *Total Enrollment*, *supra* note 2.



It seems that the focus of the diversity initiative requires a shift from recruitment alone toward retention and inclusion at all levels of practice.

While these numbers indicate that the pool of diverse attorneys entering the profession is increasing, the reality in law firm settings is that social minorities remain underrepresented at senior levels, and this imbalance is most readily apparent at the partner level. According to recent NALP data, in 2013, 44.8% of law firm associates were women and 20.9% of associates identified as a racial minority.⁴ In contrast, 20.2% of partners were women and only 7.1% of partners identified as a racial minority.⁵ Once again, corresponding statistics for attorneys identifying as disabled or LGBT were unavailable for the relevant period.

With the numbers of talented minority law students and law firm attorneys increasing, it seems that the focus of the diversity initiative requires a shift from recruitment alone toward retention and inclusion at all levels of practice. This article will briefly consider the historical underrepresentation of social minorities in the legal profession and examine, specifically from the LGBT perspective, related reasons for the slow progression of minority attorneys to law firm leadership positions.

I. A (Present) History of Exclusion

The lack of representation of diverse leadership in law firms, particularly with respect to women and racial minority groups, is rooted in actual policies of discrimination intended to exclude attorneys on the basis of race, ethnicity, religion, and gender. Historically, the legal profession has openly welcomed only white men, who remain the majority today. Accredited law schools did not eliminate discriminatory exclusion on the basis of race until 1964.⁶ Similarly, it was not until 1972 that discriminatory policies against women were eradicated.⁷

Decades later, negative attitudes and stereotyping continue to persist and hinder the progress of an inclusive workforce and the promotion of diverse attorneys to leadership positions. Black and Hispanic associates report feeling perceived as less qualified for their positions or as seemingly hostile in their interactions with colleagues and clients. Asian associates, while lauded as bright and qualified, are seen as lacking confidence and assertiveness. Women are viewed as too soft and lacking inherent

4. National Association for Law Placement, Press Release, Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners Continue to Make Small Gains, NALP (Dec. 11, 2013) http://www.nalp.org/lawfirmdiversity_2013.

5. *Id.*

6. Deborah L. Rhode, *Women and the Path to Leadership*, 2012 MICH. ST. L. REV. 1439, 1440 (2012) (footnote omitted).

7. *Id.*

leadership ability, and female attorneys with children are perceived as distracted or less committed than their male counterparts. Accordingly, female and minority attorneys continue to face barriers to advancement opportunities, client development, and choice work assignments—sometimes even in ways that might seem innocuous, if not for their cumulative long-term impact.

Professor Jerry Kang, a noted authority on diversity issues, very aptly describes a phenomenon known as “ingroup favoritism,” whereby individuals inherently favor others with whom they share common social characteristics or affiliations.⁸ Ingroup favoritism is one potential explanation for why law firms remain old boys’ clubs. Choice work assignments continue to be allocated by white male partners to white male associates to the exclusion of anyone who does not fit that description.

Another explanation may be the implicit biases held by those in the position to distribute the choice work assignments, which later lead to advancement opportunities within firms. Implicit biases are the subconscious attitudes and stereotypes collected throughout a person’s life that shape one’s social interactions and perception of others. Implicit bias is what prompts an individual to automatically assign others specific social tags or categories immediately upon visual inspection. All subconscious memories of other people or experiences sharing common tags come to mind and influence one’s attitude about the person appearing before him or her in the present.

Implicit bias can be a useful tool in developing connections with others. For example, a person will certainly feel more relaxed around a new acquaintance who, for some indescribable reason, reminds him or her of a favorite teacher. However, implicit biases may also lead to awkward and unwelcome discriminatory behaviors. In this instance, implicit bias may prompt the person to begin his or her conversation with the new acquaintance by saying, “So you’re Korean? My favorite teacher in high school was a real math whiz. How quickly can you recite the 12 times table?” Although seeking to initiate a positive social interaction, the person has unknowingly offended the relative stranger standing before him or her.

As the example above illustrates, one of the problems with implicit bias is that most people are wholly unaware of their own subconscious attitudes and impressions. In our socially astute, pro-diversity modern society, most people would not consciously recall and share with others the potentially negative stereotypes residing deep within their psyches. Few people would openly admit to embracing racist or chauvinistic ideologies but, through subconscious, implicit biases, discriminatory incidents occur every day in the workplace. Partners and other senior-level attorneys make internal judgments about the associates available to assist with their client matters. A male partner may choose not to assign a female associate to his biggest client, not overtly because she is a woman, but because the partner possesses an implicit bias against confident, ambitious women. In a vacuum, this experience may seem to characterize interactions with one partner and one potential assignment in a firm full of partners with work to dispense. However, over the course of that female associate’s career, several lost opportunities and missed chances cumulatively make the difference between promotion and stagnation—or even termination.

While women and attorneys of color may regularly experience exclusion based on negative perceptions by white male colleagues, because there is usually an absence of overt discrimination, there is rarely a tangible way to quantify the marginalization experienced by diverse attorneys in firms today. Attorneys who are not a part of the majority may often feel isolated or unwelcome in their respective workplaces. They may experience high stress from potentially insensitive comments of colleagues. Often, they may be afraid to speak out about their bias-based encounters out of fear of the

8. Jerry Kang, Professor of Law, UCLA School of Law, Fixing Bias at the Firm Lecture at Katten Muchin Rosenman LLP Washington, DC office (June 10, 2014).

potential negative impacts, including additional unwelcome comments, the loss of work, and further decreased opportunity for choice work assignments. Regardless of actual or perceived exclusion, female and racially diverse attorneys remain at a professional disadvantage in law firms.

II. Is There Something Different About Sexual Orientation?

Generally, the qualities that categorize someone as diverse are inherent and not something that a person can change or decide. However, a person's sexual orientation may not be readily apparent to others. An Asian woman or a black man can report to job interviews, and the interviewers will see immediately that both candidates are members of racial minority groups, but the interviewers may never know which of the two candidates is also gay.

Perhaps because of the seeming opportunity for members of the LGBT community to remain closeted or possibly due to unclear organizational perceptions of diversity, non-conforming sexual orientation was not included among the categories of underrepresented minority groups until late into the diversity movement of the legal profession. As recently as the early 2000s, LGBT attorneys found themselves blatantly excluded from diversity programming in law firms. For example, a white, openly gay man shared his experience as a young associate of being asked not to attend diversity events at his firm because he was neither female nor of a racially diverse background. (That trailblazer did not accede to the request, but continued to encounter opposition for several subsequent years from others who felt he did not belong as a member of the diversity group.)

On the surface, it may seem that members of the LGBT community generally have the freedom to choose how open they wish to be about their sexual orientation. Moreover, the choice to be out, closeted or somewhere in between, need not be consistent across all areas of a person's life. A gay man can choose to be out and proud among family and friends but very much closeted in his professional career.

LGBT attorneys may choose not to out themselves in the workplace for many reasons. Understanding one's own sexual identity is complicated enough. It is a very personal journey often fraught with doubt and insecurity. Fear of the reactions from colleagues is a real concern for gay men and women contemplating whether or not to out themselves professionally. Fear of professional and personal rejection, alienation, and even physical violence are common anxieties.

Once out professionally, LGBT attorneys determined to advance their careers may face the same bias-based stereotypes as their female and racial minority colleagues. A gay man may be perceived by his straight counterparts as effeminate or too weak to command a tough, multifaceted negotiation. A lesbian woman may be viewed as unable to connect emotionally with her client in a custody dispute. As such, LGBT attorneys may choose to not out themselves to avoid jeopardizing their ability to progress within the ranks of their firms.

At a fundamental level, some LGBT attorneys simply do not want their sexual orientation to be at the forefront of their identities. Particularly at the beginning of their legal careers, where working hours may be long and professional obligations often take precedence over one's personal life, LGBT attorneys may be uncertain as to how to begin a discussion about their sexual orientation with their colleagues. "Gay Attorney" is not a title that some want appended to their names when referred to in every professional setting. It is certainly not unusual for a person to describe him or herself as a spouse, son, friend, marathon runner, or avid reader before listing his or her sexual orientation.

In a related way, gay individuals may feel that once they are out professionally, they then have a duty to lead and to champion LGBT efforts at every opportunity. For example, a talented corporate



Pride in one's whole self lies at the center of the decision to come out in the workplace.

finance associate who also happens to be a lesbian may feel that her colleagues would expect her to spearhead the representation of a pro bono client seeking estate planning assistance for an elderly transgender man. While the associate should have the option to represent the firm's client, she should not feel compelled to do so based solely on their common membership in the LGBT community.

The foregoing are only some of the many workplace-related issues to consider when deciding to what extent, if at all, LGBT attorneys may choose to disclose their sexual orientation in their professional lives. Those job-related considerations should, of course, be weighed against some very important considerations in favor of coming out in the workplace. While coming out may seem to be fraught with risk, in the long term, not doing so may result in greater personal and professional harm.

First and foremost, coming out professionally brings the great freedom to live one's life openly and honestly. By choosing to be out and proud in the workplace, an LGBT attorney eliminates any occasion to be involuntarily outed by someone else. Moreover, the stress from "hiding in plain sight" dissolves completely. Particularly for those LGBT attorneys who work in the same firm over a long period of time, it becomes increasingly difficult to conceal one's sexual orientation. Colleagues inevitably ask one another about their personal lives. Once out as an LGBT attorney, gone are the difficulties of keeping stories and lies straight about weekend plans or lists of excuses as to why a person is not bringing a date to a particular professional event. While not discussing one's personal life at work may, in the short term, appear to be the best way to avoid taking the focus at the office away from work-related priorities, over a period of months and years appearing very secretive—thus prompting gossip and speculation among colleagues—may result in a greater disruption. In addition, as an attorney gains experience and begins interacting more with clients or other outside personnel (including socially), avoiding discussion of his or her personal life may become increasingly difficult.

Pride in one's whole self lies at the center of the decision to come out in the workplace. Accepting and embracing the unique qualities of ourselves and others are important steps in advancing the cause of diversity in the legal profession. As we continue to increase the numbers of LGBT-identifying attorneys in law firms, we bring a louder voice to the need for a more inclusive workplace environment for all members of the legal profession. Of course, conversely, organizations and their leaders must promote inclusiveness in order for LGBT attorneys to feel comfortable with being out in the workplace.

III. A Shared Diversity Experience

The notion of pride carries across all affinity groups. By exhibiting personal pride in one's minority status, an individual can open up a dialogue of greater understanding and acceptance of diverse perspectives in the workplace. Pride and self-acceptance can also inspire colleagues—whether diverse or not—to reexamine their own participation in and commitment to diversity efforts. Pride in diversity will encourage continued participation and action among the younger generations of diverse attorneys within the legal pipeline.

In an environment where the old boys' club rules continue to dominate, those who are not part of the club are at a disadvantage. Anyone who is able to check the demographic boxes for female, black, Asian, Hispanic, disabled, LGBT, or "other" has probably encountered some reminder in the workplace that he or she is not part of the club. As such, it is particularly important for members of all of these affinity groups to share their experiences with one another. When members of diverse minority groups participate collectively in the promotion of diversity and inclusion, we are able to highlight the shortfalls of existing diversity efforts and, in turn, create opportunities for achieving a more inclusive workplace. With candid information from diverse attorneys, law firms have a greater ability to develop programming to support and train diverse attorneys and, in a similar way, train others to reduce bias-based interactions in the workplace.

Diverse attorneys can and should serve as allies for one another across affinity groups. Day-to-day we can be a source of strong support for one another and create opportunities for networking and business development. Those of us who progress to leadership roles in our organizations have a particular responsibility to provide this support to continue to promote and build a safe environment for diversity. Collectively, we can help to redefine the bias-based perceptions of those in the majority and replace negative associations with positive, empowering attitudes to help reshape the implicit biases of the decision makers in the workplace.

IV. Creating an Inclusive and Productive Workplace

Through a genuine commitment to promoting diversity, the legal profession has made great progress in attracting underrepresented minorities. However, the profession, particularly within law firms, is a long way from achieving a truly inclusive work environment that will fully support the promotion of diverse attorneys to more senior roles, specifically to leadership positions. The great challenge for employers is developing mechanisms to promote diversity at all levels without sacrificing the high quality of service owed to and expected by clients.

Below are some recommendations for starting and continuing an effective dialogue regarding diversity:

- There is often a lack of information in firms about diversity programming. Firms should openly promote events aimed at creating a more inclusive workplace, whereby everyone has the opportunity to showcase their skills and abilities. Internal announcements should make clear that diversity and inclusion information and programming are open to ALL participants, regardless of status or membership in a diverse group. Organizational leaders and mid-level managers should also make clear that participation in diversity events and activities is a valued and supported use of time at work.
- There may be an unclear understanding of what diversity means within a particular organization. Firms should attempt to offer regular diversity training to all employees. Training could help to educate colleagues who may not be aware that their bias-based behavior is insensitive or damaging to others in the workplace. Similarly, firms should work to make the definition of diversity as inclusive as possible, so as not to exclude, inadvertently or otherwise, employees who wish to self-identify as diverse.
- There is a need for increased accountability in law firm diversity and inclusion programs. Firms should not simply encourage participation in diversity programs but should reward participants and similarly discourage disrespectful comments or actions directed at colleagues based on a person's diverse status. Accountability fosters more thoughtful and careful interactions, particularly when following from diversity training programs and dialogues that provide all employees with the necessary tools and vocabulary.



The promotion of diversity is the business of the entire firm or organization, not merely its recruiters.

- It is crucial that all people, regardless of status or affinity, have a mechanism by which they can express concerns related to diversity in the workplace. Firms must develop clearly defined processes whereby anyone who wishes to express a concern or report a negative bias-based incident can do so safely.
- Mentoring programs can indeed be quite effective in preparing diverse attorneys for leadership and management positions. However, the mentoring programs must be structured and specific in order to be effective. Firms should discourage the “call me when you have questions” approach to mentoring and, instead, develop defined guidelines or checklists for discussion between mentors and mentees.
- Corporate clients must continue to encourage diversity among their outside legal teams. In response, firms should seek to determine how their clients define diversity and tailor their efforts to each client’s request.
- A greater flexibility among firms to accommodate the personal needs of attorneys at all levels—via alternative schedules or telecommuting—can help to reduce attrition rates. Not only applicable to diverse attorneys, workplace flexibility allows individuals to strike a better balance between their professional and personal lives. When employees feel valued as whole persons, they will likely be happier and more motivated to advance their careers.

As the goals of the diversity initiative in the legal profession continue to evolve, those with even a small interest in the promotion of diversity must remain active in their efforts to foster an environment conducive not only to recruitment but also to the retention and advancement of diverse attorneys. The collective participation of all stakeholders is invaluable in alleviating the lingering impact of negative biases in the workplace. The promotion of diversity is the business of the entire firm or organization, not merely its recruiters.

Out in the Workplace: Career Management Considerations for LGBT Lawyers

K. Steven Blake

Co-Founder, The Governance Partners, LLC

Steve John

Principal, Korn/Ferry International

Increasingly, LGBT lawyers are feeling comfortable coming out in the workplace. But are there longer term career ramifications for openly LGBT lawyers? What kinds of career management issues need to be considered by openly LGBT lawyers?

I. Introduction

There have always been LGBT lawyers, of course. But it's only in the last twenty years or so that those lawyers—like their peers in other professions—began to feel comfortable coming out in the workplace. One of the first books to examine the impact of our status as LGBT professionals on our careers was *The Corporate Closet*, by James D. Woods,¹ which was published in 1993. The book begins its very first chapter with the story of an attorney who outed himself during a law firm interview and, predictably for the era, did not receive an offer. Though he regretted the whole experience, keeping his LGBT identity hidden during interviews seemed like the only option. But in recounting his unplanned outing, it suddenly hit him: any employer who did hire him wouldn't really know him, "So the person they hire is not me, it's someone I've made up."²

LGBT lawyers may still decide to hide their sexual orientation in the workplace. Coming out is an intensely personal decision. And in some respects, things were indeed much simpler when the professional closet was the preferred location for LGBT legal careers. But the incredible changes in the legal, political, and professional landscape since 1993 make smart career management for LGBT lawyers a much more deliberate process today. Our aim in this paper is to help you spot the right issues when making career decisions, and give you some tools to use as you reach for career success.

II. The State of the Profession for LGBT Lawyers in 2014: What Does it Mean for Your Career?

It's sometimes hard to believe that as a group, LGBT lawyers have come so far in such a short span. Recent court decisions continue to accelerate the pace of change. But who are we? How many of us are there? Where do we work? These are important questions, the answers to which are not always within easy reach.

1. JAMES D. WOODS WITH JAY H. LUCAS, *THE CORPORATE CLOSET: THE PROFESSIONAL LIVES OF GAY MEN IN AMERICA* (1993).

2. *Id.* at 4.

As LGBT lawyers, we are truly everywhere: law firms, in-house, government practice, and also non-traditional careers (e.g., those of us not involved in the practice of law). The obvious challenge for any census is that our status as LGBT lawyers requires that we each take the first step of self-identifying. Of course, the closet has long been a barrier, not only to counting ourselves, but also to any kind of meaningful career assessment and management as a result. James Leipold, Executive Director of the National Association for Law Placement, recently published a law review essay in which he recounts the evolution of the LGBT lawyer demographic.³ According to 2012 law firm data sourced by Leipold for his article, just over 2% of lawyers nationwide identify as LGBT, though that number rises to almost 3% of all law firm associate attorneys and almost 3.5% when you look at just self-identified LGBT summer associates.⁴ And looking at Law School Admissions Council application data from the last ten years, Leipold concludes that the number of out LGBT law students is somewhere between 4 and 5%.⁵ As Leipold notes, all of these numbers likely represent an undercount,⁶ and there are no reliable estimates of the total number of LGBT attorneys (including those holding in-house, government, and non-traditional roles) who are actively practicing. Yet we *are* out here, and our presence, whether we self-identify as LGBT or not, will likely have a significant impact on the path and trajectory our careers take.

Let's take a quick look at the landscape of legal protections available to LGBT lawyers, depending on where you live and whom you work for today, courtesy of the Human Rights Campaign:

- Nineteen states, the District of Columbia, and the federal government recognize same-sex marriage.⁷
- Seventeen states and the District of Columbia (and a growing number of municipal or local governments⁸) provide some form of non-discrimination protection in private employment for LGBTs, plus an additional twelve states provide protections for public sector employees.⁹
- 91% of the Fortune 500 companies reported in HRC's 2014 Equality Index have policies prohibiting LGBT discrimination, 67% offer benefits to the partners of LGBT employees (regardless of marital status) and 300 major employers and law firms publicly supported pro-LGBT equality legislation at the state and federal level, either through contributions to candidates or direct political action.¹⁰

That's the good news. On the flip side are the many places and employers that remain indifferent or openly hostile to LGBT persons. If your state or local government didn't make the list of LGBT-inclusive jurisdictions noted above, you should assume that you likely have no legal recourse for any adverse employment action. In other words, you can be fired for just being who you are. And if your employer doesn't rate on HRC's Equality Index with a score that reflects a commitment to the most

3. See John G. Leipold, *Stand and Be Recognized: The Emergence of a Visible LGBT Lawyer Demographic*, 42 SW. U. L. REV. 777 (2013).

4. National Association for Law Placement, *LGBT Representation Up in 2012*, NALP (January 2013), http://www.nalp.org/lgbt_representation_up_in_2012.

5. *Supra* note 3, at 788.

6. *Id.*

7. *Marriage Equality and Other Relationship Recognition Law*, HUMAN RIGHTS CAMPAIGN (2014), http://hrc-assets.s3-web-site-us-east-1.amazonaws.com//files/assets/resources/marriage-equality_6-2014.pdf.

8. *Municipal Equality Index: A Nationwide Evaluation of Municipal Law*, HUMAN RIGHTS CAMPAIGN 12 (2013), http://issuu.com/humanrightscampaign/docs/mei_2013_report/15?e=1357809/5671399.

9. *Statewide Employment Laws and Policies*, HUMAN RIGHTS CAMPAIGN (2014), www.hrc.org/files/assets/resources/employment_laws_1-2014.pdf.

10. *Corporate Equality Index 2014: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality*, HUMAN RIGHTS CAMPAIGN 8 (2014), <http://www.hrc.org/campaigns/corporate-equality-index> (click "Read the Report").

basic elements of the ratings criteria¹¹ (and there are plenty of major employers who don't, plus countless smaller companies without any meaningful protection for LGBT employees), your career prospects could be seriously impacted by your willingness to openly identify as LGBT.

But it is 2014 and few of us are willing to accept life in the closet. As attitudes have shifted and LGBT acceptance has become commonplace, we as a group are increasingly choosing to live out our lives in a public way. For the purposes of career management, these legal and employer-based protections play a significant role. Where you choose to live as an LGBT lawyer can obviously have serious implications, as does the decision about whom to work for. When you are deciding on the best place to build a career (and a life), you can't overlook the strength of these protections. Of course, no one—not even a lawyer—wants to think about prospective workplaces in the context of how future employment discrimination litigation might play out. Not only is that unproductive, it's downright unhealthy. But it is reasonable to map out a career plan that takes into account where you will find the most support as an LGBT lawyer. Fortunately, when it comes to building your plan, the best employers for LGBT lawyers these days tend to have locations in the best cities and states for LGBT equality.

III. The Gay Bradley Effect

One particular consideration that every LGBT lawyer must at least be aware of is the difference between what an employer says with respect to LGBT non-discrimination and employee support, and what that employer actually does about it. Unfortunately, even in 2014, there are employers who take the time to develop best-in-class LGBT-friendly policies and protections, yet fail to put those policies into practice. In other words, they say one thing and do something different. While there haven't been any empirical studies completed to help us spot employers who appear supportive, but whose track records on retention and promotion of LGBT lawyers belie their policy statement, there are some steps you can take to weed out the pretenders.

We call this phenomenon the Gay Bradley Effect in reference to the well-studied fallout from the 1982 California gubernatorial election. In that race, Los Angeles mayor Tom Bradley, who is black, was running against a white opponent, George Deukmejian, who was then serving as California's attorney general. While polling up until Election Day generally showed Bradley with a comfortable lead over Deukmejian, Bradley lost by nearly 100,000 votes.¹² Post-election researchers concluded that California voters had likely overstated their preference for the African American candidate in public, but once in the privacy of the voting booth, pulled the lever for Deukmejian. For LGBT lawyers, there can be a similarly career-limiting effect when the words and deeds of an employer fail to sync.

What leads an employer to overstate its commitment to LGBT equality? For most, it's likely tied to a combination of peer pressure, business competition, and the need to gain a recruiting advantage based on the employer's perceived commitment to an inclusive workforce. At its most extreme, the Gay Bradley Effect can result in a CEO who publicly supports her company's LGBT-inclusive workplace policies and recruiting strategies, but who in the privacy of the executive suite would never tolerate an LGBT member in her inner circle. Unfortunately, data to help support this conclusion is largely nonexistent. Groups like Building a Better Legal Profession¹³ have done a good job of collecting and publishing data revealing law firms' willingness to promote (or not) women and lawyers of color to the partnership ranks. But as James Leipold notes in his *Southwestern Law Review* essay,¹⁴

11. *Id.* at 13–15.

12. See *General Election*, JOIN CALIFORNIA, www.joincalifornia.com/election/1982-11-02 (last visited June 9, 2014).

13. BUILDING A BETTER LEGAL PROFESSION, www.betterlegalprofession.org (last visited June 9, 2014).

14. *Supra* note 3.

while NALP and others have made great strides in capturing a high-level sense of how large the LGBT legal community may be, lawyer retention and promotion data for LGBT attorneys, even in large firms, will never truly reflect the state of our profession, particularly so long as the closet continues to exist.

So in order to effectively navigate around this potential career pitfall, an LGBT lawyer should take the time to engage in some thoughtful due diligence. When you're looking at potential employers—whether law firms, corporations, NFPs, or government employers—you need to dig underneath the data that the employer chooses to publish on its LGBT-related policies and affinity groups. Look beyond the number of LGBT lawyers employed there and see how many are partners, members of senior management, or otherwise hold senior policymaking roles in the organization. Find out what the organization's reputation is for LGBT lawyer advancement. Talk to people inside the organization who can connect you with LGBT lawyers who have been promoted, and then reach out to them. What was their experience? Did they face any hurdles as LGBT employees, and how did they overcome them? Figure out who the decision-makers are and google each of those people extensively. And don't stop with the first page of results—read through eight, nine, or ten pages of search results to find out as much as you can about their memberships, activities, or even their political contributions. You can learn a lot about a person's likely attitude toward you as an LGBT lawyer from a little forensic sleuthing.

Reach out to the organization's LGBT affinity group, to bar associations, and to trusted members of the LGBT legal community. Don't hold back about your purpose. Most people feel honored when asked to help someone with whom they share a common identity, particularly when they are asked to share employment-related experiences.

Don't forget about social media. Facebook, Twitter, Instagram, and many others offer a treasure-trove of intelligence on people, what they like (and dislike) and with whom they associate (good and bad user data lives forever on these sites). What you find may not always be pretty, but you owe it to yourself to know as much as you can about the people you may be working for. Then collect and review all of your diligence results to make an informed decision. In the end, research alone can't predict your career outcome with 100% certainty; you will still need to use your best instincts too. So don't underestimate the role your gut reaction to any workplace environment should play, especially when it comes to your immediate supervisors, as they will make or break your future in that organization. After all, only you can decide what will ultimately work for you and for your career.

IV. Is There One Career Path That's Better Than Another for LGBT Lawyers?

Sexual orientation is complicated. The scientific literature today still hasn't settled on a biological basis, fundamental reason, or even a series of factors that would form the basis for an individual's sexual orientation. But we don't need to understand the origins of our identities as LGBT individuals in order to know that the career decisions we make may indeed be influenced by our sexual orientation.

Career decisions are complicated too. And for most lawyers, they are the product of a number of factors. In some cases, what you do with your JD is the result of a deliberate decision-making process. Perhaps you have a passion for a favorite subject in law school; so if you loved securities law, you may want to work for the Securities and Exchange Commission's enforcement division. Or maybe you've dreamed about living in California, so you move to the Golden State after law school and take the California bar, destined to live out your dreams as a California lawyer. Maybe moot court was your thing, so you want to become a Big Law litigator. Or perhaps public service is your calling and nothing less than a career with a community-based non-profit organization will satisfy you. Whatever you have done with your career, you've made it because you dreamed it.

But for others in our profession, career paths can be a bit less deliberate. Perhaps you only got one job offer, so you took it even though it was in a place you swore you could never live. Or maybe you followed the love of your life around the world so he or she could pursue a dream of career fulfillment as a member of the Foreign Service? When it comes to your career, you've gone with the flow.

Stereotypes aside, the career paths available to LGBT lawyers are no different. And our career success is largely dependent on who we work for, where we live, and of course, how we perform. But there is one other factor that still has an influence, even in 2014: whether or not we choose to live our professional lives in the closet. It's a complicating factor we all face and, as we note, coming out is the most intensely personal decision any LGBT person can make.

Perhaps ironically, a decision either way—whether to live your life in or outside the closet—can significantly impact your career. In other words, depending on the career path you plan to pursue, being out can cut both ways. Living in a jurisdiction hostile to LGBT equality or working at a company with an HRC Equality Index score of zero may make being out extremely difficult. Getting clients, professional opportunities and recognition, job promotions and advancement—all could be at risk depending on where you live and the kind of employer you work for if you are out as an LGBT lawyer. Plus, as we've discussed, the Gay Bradley Effect can have real and lasting consequences for LGBT lawyers who are looking for advancement in the wrong organization.

Your career with an organization that not only values LGBT diversity, but also actively seeks to promote it on the other hand, could be significantly enhanced by a decision to live your life out of the closet. Of course, very few career paths are linear, and there are plenty of unforeseen (and uncontrollable) factors that can impact your career. But for those decisions and circumstances you do control, make the most of each one. Be informed. Take charge. There is no career path that you as an LGBT lawyer will not find wide open if you are willing to ask the right questions, do some effective due diligence, and carefully consider the results before you make a decision. LGBT lawyers can thrive wherever we chose to work. Just make sure your choice is an informed one.

V. Where Are the Best Jobs? The Internet vs. Professional Recruiters

It sounds like a cliché, but like with so many things over the last fifteen years, the Internet has revolutionized the way lawyers look for jobs. Employers often advertise their open positions and candidates seek new opportunities on company and law firm websites, hundreds of unaffiliated online job boards, and on popular for-profit career sites like LinkedIn and CareerBuilder. There are even LGBT-specific career sites connected with many of the best legal professional associations, some of which are discussed in our "Finding Support" section below. But professional legal recruiters remain an integral part of the career management landscape for both LGBT lawyers and their potential employers.

All of the larger executive search firms have practice groups dedicated to legal recruiting, and there are a number of smaller, regional boutique recruiting firms that focus exclusively on lawyers. While some of the online job boards purport to focus exclusively on LGBT lawyers, the reality is that employers don't (and usually can't under the law) recruit someone based on a singular characteristic, whether it's sexual orientation, race, gender, or the like. Rather, both employers and recruiters understand that creating a thriving, diverse, and LGBT-inclusive workplace is one way to attract the best and brightest, regardless of which diverse community they may identify with. The best legal recruiters champion diversity in all its forms and have deep and lasting connections with the LGBT legal community. They know that employers who value LGBT inclusiveness expect to have LGBT lawyers (along with lawyers from other diverse communities) on the interview schedule, so having access to the best lawyers will naturally include some who identify as LGBT.

Working with a professional recruiter adds a level of personal interaction to the job search—one that is usually absent when searching for a job online. Employers know that recruiters can help streamline and professionalize the search process, giving them access to better-qualified candidates, more quickly than if they had to source those candidates on their own. As a candidate, it's important to understand how legal recruiters work. Who pays their fee? How should you interact with the recruiter before, during, and after the job search?

Legal recruiters come in three forms: contingent, retained, and a hybrid of the first two, colloquially referred to as “container” recruiters. Contingent fee recruiters are paid once a candidate is successfully placed. The fee is agreed to up front and contingent assignments may be handled by more than one recruiting firm simultaneously. Since contingent fee recruiters are not hired by employers on an exclusive basis, they compete with each other for the placement fee, and you as a candidate can be presented by more than one recruiter for the same job. The downside of having your resume floating around too freely is developing a reputation as frequent flyer candidate and potentially losing control of your candidate profile.

Retained search firms, on the other hand, are hired by the client employer on an exclusive basis, and receive their fee regardless of whether a candidate is successfully placed at the end of the search. Hybrid container search firms typically receive a portion of their full fee at the time of their engagement by the employer, with the remaining portion paid contingent on a successful candidate hire. Regardless of the fee structure, it's important to remember that the employer is the client of the recruiter. You as a candidate are obviously a critical part of the recruiting process, but the recruiter's duty of loyalty is to the employer. Remember that recruiters don't find jobs for candidates; rather they find candidates for jobs.

So how can an LGBT lawyer engage with a legal recruiter and have the best possible experience? If you have done your research on the employer, you will already know whether it's an employer who will value and support you, including your LGBT identity. If the position the recruiter is pitching is one you want to pursue, consider whether you want to make certain the recruiter knows that you self-identify as LGBT. If you know that diversity is important to the employer (and thus to the recruiter too), then outing yourself may indeed be helpful. Of course, if you are already an out LGBT lawyer, that fact may be obvious from your professional activities, affiliations, and interests.

- A few other important tips to consider when working with a legal recruiter:
- Make the recruiter's job easy—be responsive, professional, and courteous at all times.
- Read the position description either provided by the recruiter directly or posted on the recruiter's website—ask yourself: do I fit?
- Focus on those jobs for which you are qualified and viable—don't waste time.
- Don't pitch yourself for every position posted on a recruiter's website—you will lose credibility.
- If you get to interview with a recruiter, treat it just like you would an interview with the employer directly—prepare, research, impress, connect.
- Never disparage a former employer.
- Understand the recruiter's expectations from the beginning regarding contact frequency, when to follow-up with new information, and expense reimbursement.

- Never mention the recruiting process, the recruiter, or the potential employer on social media.
- If you are asked to sign a non-disclosure agreement, read it carefully and consider whether you need to consult an attorney before you sign.

Above all else, stay positive. The job-hunting journey has its peaks and valleys, but always show the recruiter that you are up to the challenge. In the end, if the current search doesn't work out, you want the recruiter to have you at the top of her list for the next one. And if you successfully land the job, think about the recruiter who helped you get there. A future business referral is often the best thank-you a legal recruiter can receive.

VI. Finding Support

Fortunately, there are many more opportunities to connect with other LGBT lawyers and find support for your career objectives today as compared with just ten years ago. Not ironically, the rise of social media and its ubiquitous presence in our daily lives can actually serve to make face-to-face networking seem quaint by comparison. But while an exchange of tweets may lead to an offer to interview for that coveted job, you surely won't actually land the job without some good old fashioned, in-person interaction. And while we highly recommend using online tools to make connections with LGBT lawyers and our allied support networks, we also encourage you to turn those online interactions into personal relationships whenever you can.

So where can you go in search of job leads, professional support, and career management advice? Let's take a look at some of the best places (caveat: we don't intend to provide an exhaustive list of options here, just some of the better ones, based on our experience):

- **LGBT Professional Networks:** PDN's *Out Professional Network* (www.outpronet.com)—an affiliate of the Professional Diversity Network, OPN offers a platform that provides an easy way to connect with employers looking specifically to hire LGBT lawyers via a seamless LinkedIn portal. OPN also offers networking opportunities, specialty group membership, and career management articles and advice. Others include *Out & Equal Workplace Advocates* (www.outequal.org), *The Leadership Council on Legal Diversity* (www.lcldnet.org), Out Leadership's just-launched sub-group, *Out In Law* (www.outleadership.org), and Mark Luber's wonderful alternative career site for lawyers, *JD Careers Out There* (www.jdcareersoutthere.com).
- **Bar Associations:** The National LGBT Bar Association (www.lgbtbar.org)—founded in 1987 and an affiliate of the ABA since 1992, serves as a platform for thought, leadership, networking, and news of interest to LGBT law students and practicing lawyers. In addition to regional activities throughout the year, the LGBT Bar coordinates the annual Lavender Law conference in August. The LGBT Bar also hosts an online job board. Other leading local LGBT Bar associations include BALIF (www.balif.org), Lesbian & Gay Lawyers Association of Los Angeles (www.lgla.net), LGBT Bar Association of Greater New York (www.le-gal.org), and Stonewall Bar Association of Georgia (www.stonewallbar.org).
- **Employer-Sponsored LGBT Affinity Groups:** WEGALA-*The LGBT Association of Weil* (www.weil.com)—New York-based law firm Weil, Gotshal & Manges LLP leads in the integration and promotion of its affinity group for LGBT lawyers. WEGALA actively promotes its people, LGBT-specific programs and benefits, sponsorships and community service, and pro bono activities. Other important examples include Hinshaw & Culbertson LLP's Affinity Network (www.hinshawlaw.com), General Electric's *GLBTA Alliance* (www.ge.com/careers/culture/diversity/glbta-alliance), and Deloitte's Gay, Lesbian, Bisexual, Transgender Employees & Allies (*GLOBE*)



Our perspective is unique and shaped by our experiences in dealing with our sexual orientation. And it's those collective experiences—common and unique—that define us as individuals, not just as LGBT lawyers.

(www.deloitte.com). There are now hundreds of such groups supported by law firms, corporate employers, and government agencies in the US and globally.

Lastly, we don't want to end our comments about finding support without noting the incredible value colleagues and mentors can provide. For many of us, the process of simply finding and approaching someone to serve as a mentor can be intimidating. But as with any relationship, the best way to connect with someone is to find something in common with him or her; then you have the basis for a more meaningful conversation. The very fact that we self-identify as LGBT lawyers gives us a solid basis for a professional connection, and in our experience, the overwhelming majority of the LGBT legal community, particularly more senior lawyers, are just not well-positioned to serve as mentors, they're thrilled to do so! So get out there. Be bold. Don't be afraid to ask for help and build the kinds of professional relationships that will benefit you for the rest of your career. You will likely find yourself on the receiving end of a similar mentorship request one day as well. Hopefully you'll make the most of that too. That's called giving back!

VII. Conclusion

In most ways, the career options we have as LGBT lawyers are no different from those available to our straight colleagues. We all share the common experience of a tough three years in law school, the rite of passage that is affectionately known as the bar exam, and a personal desire to serve the distinguished and noble profession that is the law. But once we self-identify as LGBT, we immediately set ourselves apart in the professional legal world. Our perspective is unique and shaped by our experiences in dealing with our sexual orientation. And it's those collective experiences—common and unique—that define us as individuals, not just as LGBT lawyers. Yet for many of us, our choice to become lawyers means that we want to maximize the positive impact we have on the lives of others. So managing our careers is a means to that end. Doing so successfully is the result of spotting the right issues, using the tools at our disposal, and making informed decisions. Sounds eerily similar to the skill set we need to be successful lawyers too, doesn't it?

IILP Review 2014:

The Intersection of Diversity and Inclusion Issues in the Legal Profession

The “Super Minority”: The Status of Latina Lawyers in the Legal Profession

Dolores S. Atencio

Commissioner & Scholar in Residence, University of Denver

While anecdotal evidence about the experience of racial minorities abounds, documenting those experiences and placing them into the context of representation within the legal profession has proven far more challenging. Here, Atencio explains how the Hispanic National Bar Association’s Latina Commission tackled the problem and what they discovered.

I. Introduction

By the early 1990s, we instinctively and anecdotally knew what was confirmed in 2009 with the release of the first national study on the status of Latina lawyers in the legal profession: that the number Latina lawyers is very small, and consequently, Latina lawyers are significantly underrepresented across all sectors of the legal profession. *Few and Far Between: The Status of Latina Lawyers in the United States* (2009 Study)¹ was the brainchild of Ramona Romero, the sixth female president of the Hispanic National Bar Association (HNBA), and the first work product of the newly formed Commission on the Status of Latinas in the Legal Profession (“Latina Commission”).² Recently, the status of Latina lawyers reported in the 2009 report was reaffirmed by a study released by the National Association of Law Placement (NALP) on December 11, 2013.

II. Background on the Commission and Study Need

In the summer of 2008, the HNBA Board created the Latina Commission, whose mission was to identify and address the obstacles facing Latina lawyers in the United States.³ Co-chairs were to serve two-year terms with membership comprised of two distinct categories: annual appointees selected by the incoming HNBA President; and the former female HNBA presidents who, as life-long appointees, were to serve as mentors and *Madrinas* to the Commission.⁴ Clarissa Cerda (Illinois) and Dolores Atencio (Denver) were the first co-chairs, chosen for their leadership and past experience with the American Bar Association (ABA), which was to prove useful to the early formation of the Latina Commission and in effectuating the 2009 Study.⁵

1. Ramona E. Romero, *President’s Message* in JILL L. CRUZ & MELINDA S. MOLINA, *HISPANIC NAT’L BAR ASS’N, FEW AND FAR BETWEEN: THE REALITY OF LATINA LAWYERS* (2009) [hereinafter *2009 Study*], available at <http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1051&context=plr>.

2. The name was changed by the HNBA Board in December 2013 to the Latina Commission.

3. HNBA Bylaws, Section 5, Designation, Jurisdiction and Special Tenures of Standing Committees, (f) Standing Commission on the Status of Latinas in the Legal Profession.

4. At the time of creation, former HNBA female presidents also were “few and far between”: Ambassador Mari Carmen Aponte (1982–83), Dolores Atencio (1991–92), Mary Hernández (1995–96), Lillian Apodaca (1997–98), Alice Velasquez (1998–99), Ramona Romero (2008–09), and Diana Sen (2010–11). *Madrina* means godmother and implies an affectionate and caring but instructive relationship.

5. Cerda has held various national positions in the ABA, including co-chair of the ABA’s Science and Technology Law Section’s Privacy Committee. Atencio served on the ABA’s Commission on Women (1993–96) and in 1996 chaired the Commission’s Minority Women Attorney Network (MWAN) that produced the second study on women attorneys of color, “*The Burdens of Both: the Privileges of Neither*.” Ambassador Aponte, incidentally, was a member of the MWAN Committee that produced the first such study.

President Romero's sole request was that the Latina Commission conduct a study on the status of Latina lawyers in the legal profession during her tenure.⁶ As the sole Latina in a law firm for her first ten years of practice, she succeeded but "not without making many 'political' mistakes, or without feeling like a flower trying to bloom in the desert."⁷ She "yearned for a road map, for a clear articulation of the rules."⁸ To her, "change [was] impossible without understanding."⁹ The need for such a study, captured in the 2009 Study *Introduction*, was obvious to those in the Latina lawyer community who, as one of few, legitimately shared the same feeling of isolation:

" . . . the legal profession needs to better understand and address the barriers Latinas face, including the impact of gender, ethnicity, and race on success and advancement in the legal profession. Despite the need for this information, Latina lawyers remain grossly understudied. While numerous studies have examined the issues and barriers women encounter in the legal profession—women attorneys of color in general, and Black women attorneys specifically—very little research has been conducted on the unique gender, ethnic, and racial issues and barriers Latina lawyers experience. Moreover, there are no data with detailed information about Latina/o subgroups based on country of national origin. With only limited demographic and statistical data and information on Latina lawyers available, a critical informational void exists. Additional information—both quantitative and qualitative—is sorely needed to better understand the factors affecting the underrepresentation of Latina lawyers across the legal profession. Armed with this information, the profession can begin to address those factors directly."¹⁰

The type of study proposed by President Romero could cost literally thousands of dollars and the Latina Commission had no funding or budget. What the Latina Commission lacked in funding, however, was overcome through fortitude, a supportive HNBA leadership, and a network of very resourceful Latinas. Understanding from their ABA experience what it meant to produce a professional study, let alone without funding, Atencio and Cerda solicited and obtained the pro bono research services of Ph.D. candidate Jill Cruz of JLC Consulting, LLC and law professor Melinda Sommers Molina.¹¹ Cruz and Molina were chosen because of their academic qualifications and experience in working with, and conducting research on, Latina/o lawyers. For Cruz and Molina, the study presented a unique opportunity to broaden their research and publish the first study of its kind. Atencio, Cerda, Cruz, and Molina constituted the core "study group" (pun intended), which recommended initial decisions tendered to the Latina Commission or HNBA leadership, or both, for approval, as necessitated.

III. Methodology

Immediately, it was decided that the study should consist of a mixed-method transformative design in two distinct phases: focus groups across the United States followed by a national survey. A sequential exploratory strategy was chosen because it gave priority to exploring the experiences and

6. In its inaugural year, the Latina Commission also established the annual Latina Lawyers Luncheon (the first one was held in 1993 in San Francisco); created an annual award; and revived the *Primeras* research project on the first Latina lawyers started by Atencio in 1993, converted into a video documentary, *Las Primeras*.

7. 2009 Study, *supra* note 1, at 1.

8. *Id.*

9. *Id.*

10. 2009 Study, *supra* note 1, at 11 (footnotes omitted).

11. Jill Cruz has over twenty years of senior-level human resources experience, most within the legal profession, and completed her doctorate in Organization and Management at Capella University in 2011. She is the founder and president of JLC Consulting, LLC, Maryland. Professor Molina was a Research Professor and Fellow of the Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law where she taught, among other courses, Latinas/os in the Law. Currently, Professor Molina is an Assistant Professor of Law at Capital University Law School.



While numerous studies have examined the issues and barriers women encounter in the legal profession very little research has been conducted on the unique gender, ethnic, and racial issues and barriers Latina lawyers experience.

perceptions of this understudied Latina lawyer population.¹² Quantitative data would be obtained through a national study of Latina lawyers licensed in the United States that would help to interpret and contextualize the overall findings.

As this would constitute the first national study done exclusively on Latina lawyers, the study had to meet the most stringent academic standards. Through Professor Molina the Commission obtained the support of St. John's University Law School. An application for the research study was submitted to, and approved by, the Institutional Review Board of St. John's University. The Research Department of St. John's University also agreed to host and administer the survey web link and compiled the majority of the descriptive statistics from the survey data. To serve an ethnically diverse community and meet qualitative research standards, the Latina Commission decided to conduct eleven focus groups. The focus group phase of the 2009 Study required the Latina Commission to first identify and recruit Latina lawyer participants on a nationwide scale never before attempted by the HNBA.¹³ At least 300 email invites were sent to potential participants in each of the eleven cities, starting with the HNBA membership list, local and state bar associations, and HNBA affiliates, and to individual practicing attorneys. The goal was to recruit fifteen to twenty participants for each focus group. To maximize objectivity of the data, no HNBA Commissioners, officers, regional (or regional deputy) presidents or chairs were permitted to participate in the study. Commissioners served as conveners and were present at the focus groups.

From December 2008 through April 2009, focus groups were held in cities across the United States, including Albuquerque, Chicago, Denver, Los Angeles, Miami, New York, Philadelphia, Phoenix, San Antonio, San Francisco, and Washington, D.C., with 121 Latina lawyers participating. These cities were chosen to reflect the geographic and ethnic diversity of Latinas from distinct sub-groups that included, for example, Mexican Americans, Chicanas, and Spanish Americans from the Southwest; Cuban-Americans from Miami; and Puerto Rican and Dominican Americans from New York,

12. See JOHN W. CRESWELL, *QUALITATIVE INQUIRY AND RESEARCH DESIGN: CHOOSING AMONG FIVE TRADITIONS* 125–29 (1st ed. 2007). Qualitative studies use “purposeful sampling” strategies whereby the researcher(s) select the sites and participants in the study because the selected individuals are believed to best inform an understanding of the research problem.

13. The identification and recruitment of Latina lawyers and orchestration of the focus groups, undertaken by Atencio and paralegal Yvonne Rico, took countless hours and resources provided by their firm, GCR, LLP (now Garcia, Hernández, Sawhney & Bermudez, LLP), with critical support from founding partner and former HNBA president Mary Hernández. This effort was undertaken at a time when the actual number of Latina lawyers still was unknown.



In 2008, the Latina Commission was able to move from anecdotal (but fairly accurate) estimates to a quantifiable number of employed Latina lawyers in the United States: 13,000.

Washington, D.C., and Philadelphia. Law firms and law schools generously offered their facilities; Alderson Court Reporting, LLC recorded and transcribed the sessions pro bono. The Group created a Focus Group Protocol that asked standard questions intended to generate further discussion. One hundred twenty-one Latina lawyers (Focus Group Participants) participated in the focus groups. All were required to sign an Informed Consent Form, guaranteeing confidentiality and anonymity, and complete a Demographics Form that provided basic demographical information.¹⁴

With the completion of phase one of the study, the Group created an online national survey and formulated the process for administering and analyzing the data collected. The survey was sent to 5,000 Latina lawyers who were members of the HNBA and thirty-three HNBA Affiliate Bar Associations; there were 543 Respondents (Survey Respondents).¹⁵ In total, over 600 Latina lawyers participated in eleven focus groups and an online national survey (Study Participants). Through the pro bono services of RR Donnelley Global Services Company, the 2009 Study was released at the HNBA's annual convention in Albuquerque, New Mexico on September 3, 2009. With the HNBA's permission, Pepperdine Law Review republished the 2009 Study in its entirety as a Special Report.¹⁶

While many issues arose among the Group and Latina Commission during the construction of the 2009 Study, the topic of racial and ethnic self-identification generated the most discussion and controversy. During the formulation of the Demographics Form and national survey, whether and how Study Participants should be asked to self-identify was debated vigorously. Options ranged from suggesting no ethnic or racial choices—permitting Latina lawyers to freely self-identify—to offering multiple choices in an effort to obtain as much information as possible about self-identity and self-perception. If options were offered, a further debate ensued about what descriptions should be included, e.g., *Mestiza*, *Criolla*, *Chicana*, among others. The conversations were revealing. Ultimately, the Latina Commission offered options in choosing ethnicity and race with additional space provided in both categories for “other” identities.¹⁷

IV. 2009 Study Findings: The Numbers and Profile

In 2008, the Latina Commission was able to move from anecdotal (but fairly accurate) estimates to a quantifiable number of employed Latina lawyers in the United States: 13,000.¹⁸ Since 2008, there has been *de minimus* change in the actual number of Latina lawyers, though any increase is meaningful. For this reason, unfortunately, the 2009 Study results remain relevant today.

14. These forms are included in the 2009 Study as Appendices B, C, and D.

15. The HNBA Affiliate Bar Associations are listed in the 2009 Study in Appendix A.

16. See *SPECIAL REPORT: Hispanic National Bar Association: National Study on the Status of Latinas in the Legal Profession: Few and Far Between: The Reality of Latina Lawyers*, 37 PEPP. L. REV 971 (2010).

17. See *infra* Figure A.

18. See 2009 Study, *supra* note 1, at 10 (endnote omitted).

Nearly half of the Study Participants were of Mexican origin, which closely mirrors the U.S. Latina population. Over half identified as racially “White” and many identified as “Mestiza” and “Other.” Most were born in the United States with half identifying as second-generation and 33% as third-generation American. Eighty-four percent of the Survey Respondents listed English as their primary language with one-third indicating English was their only language. Over half, 60%, of the Study Respondents consider themselves bilingual in both English and Spanish.

Figure A.¹⁹

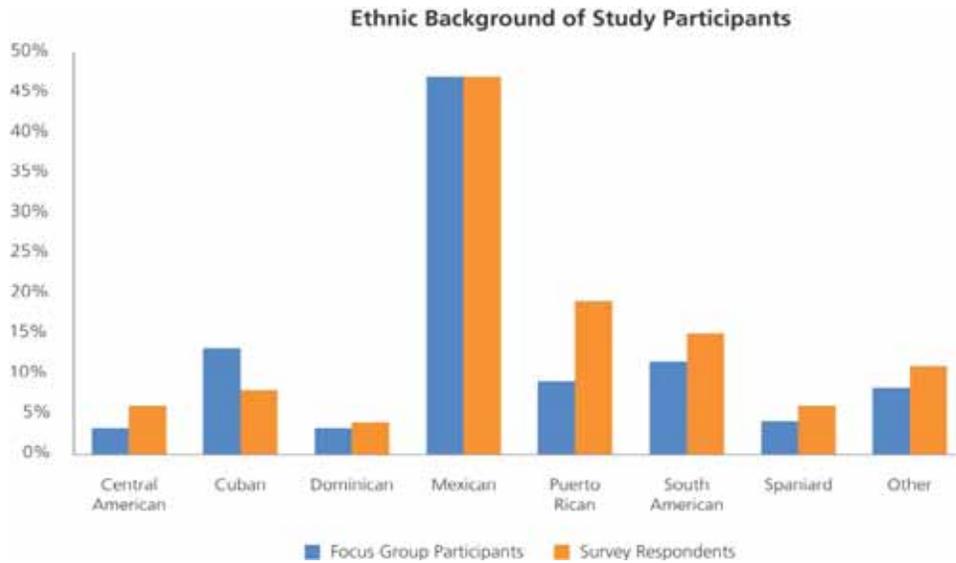
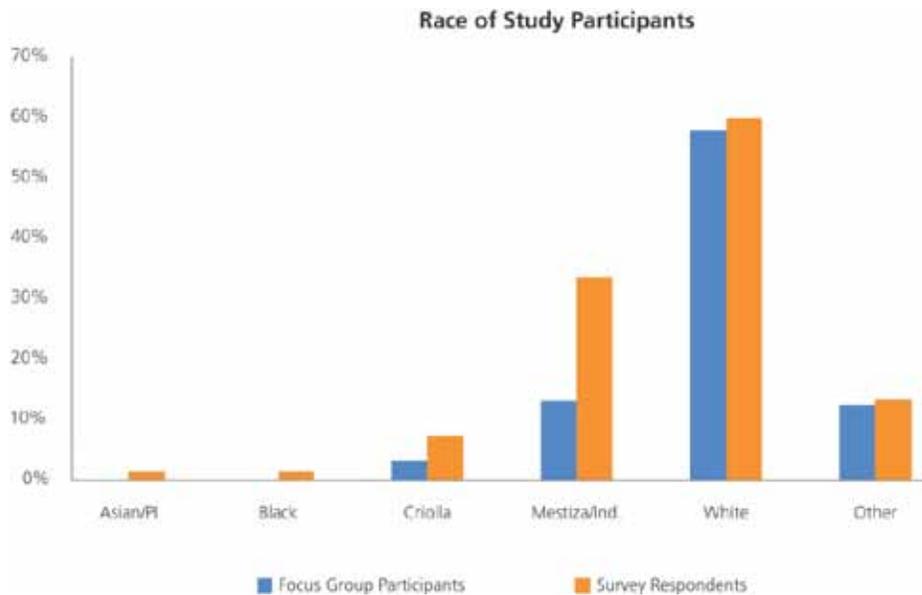


Figure B.²⁰



The majority of Latina lawyers who participated in the study were between the ages of thirty-one and forty years old and more than half were married or in committed relationships. The majority had

19. *Id.* at 19.

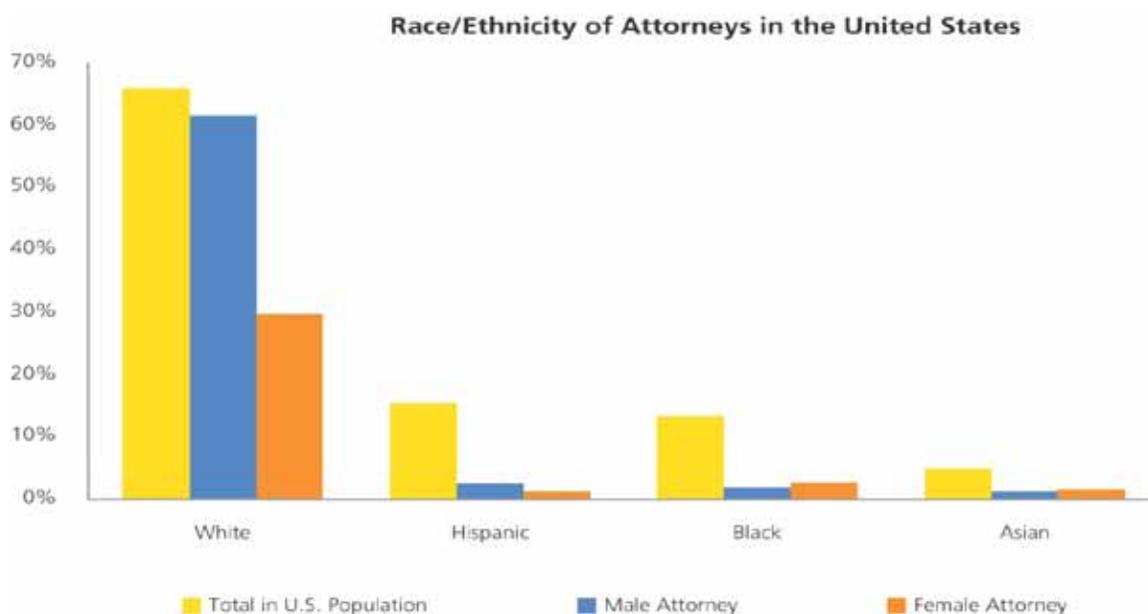
20. *Id.*

no children at home; the vast majority with children had two or fewer. Almost no one had parents living in the home. This finding was not surprising to the Group, especially Atencio, as it was consistent with the backgrounds of the *Primeras* researched in 1993. The majority of these first Latina lawyers consciously chose not to have children, specifically because of the impact it would have on their careers. While understandable, it was disappointing to learn that the factors leading to this decision from the early 1930s on, still were at play in 2008.

V. Most Underrepresented Across All Sectors in the Legal Profession

Hispanics are the fastest growing ethnic or racial group in the nation²¹ with 53 million (17%) now living in the United States.²² Latinas constitute 7% of the total U.S. population but only 1.3% of the nation's employed lawyers.²³ They have the lowest representation of any racial or ethnic group in the legal profession as compared to their overall presence in the nation.²⁴

Figure C.²⁵



The Focus Group Participants averaged slightly over ten years of experience practicing law, while the majority of Survey Participants had considerably fewer years in the profession and an average of two to three different employers in their relatively short careers.²⁶ Most of the Focus

21. 2009 Study, *supra* note 1, at 10 (endnote omitted).

22. See Mark Hugo Lopez et al., *Diverse Origins: The Nation's 14 Largest Hispanic-Origin Groups*, PEW HISPANIC CENTER (June 19, 2013), <http://www.pewhispanic.org/2013/06/19/diverse-origins-the-nations-14-largest-hispanic-origin-groups/#fn-18385-4> (footnote omitted).

23. 2009 Study, *supra* note 1, at 10 (endnotes omitted).

24. See generally *id.*

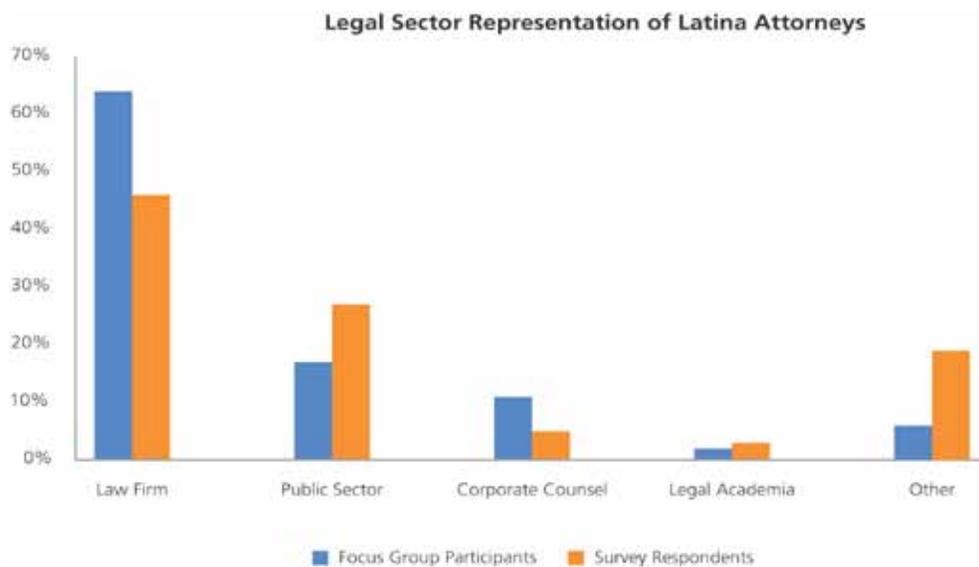
25. *Id.*

26. *Id.* at 18.

Group Participants graduated from top U.S. law schools (over 50%).²⁷ Almost half of the Survey Respondents were members of a law journal or law review (43%), but the majority (54%) described their class rank as “average.”²⁸

The majority of Study Participants work in law firms as associates (the majority of those in litigation), followed by the public sector (government and judiciary), corporate law departments, and legal academia.²⁹

Figure D.³⁰



Across all legal sectors, Latina lawyers are underrepresented and few are in leadership or managerial roles. For example, in law firms, Latinas comprise 1.9% of all associates and 0.4% of all partners, the lowest representation of any racial or ethnic group.³¹ Latinas constitute 3.5% of all law school professors³² with only two Latina Deans in the country.³³ In Fortune 500 and 501–1000 companies, Latinas hold only 0.4% of all general counsel positions.³⁴ Only 6.7% of the federal judiciary is Latina/Latino.³⁵

The median compensation for Survey Respondents in these areas was:

\$120,000 in law firms, although the range among Latina lawyers is considerable—from \$30,000 and \$1.6 million;³⁶

27. *Id.* at 23 (endnote omitted).

28. *Id.*

29. *Id.* at 25.

30. *Id.*

31. *Id.* at 10.

32. *Id.* (endnote omitted).

33. Jenifer L. Rosato became Dean of Northern Illinois University in July 2009; Rachel F. Moran became Dean of UCLA Law School in June 2010, the first Latina at a top-ranked U.S. law school.

34. 2009 *Study*, *supra* note 1, at 10 (endnote omitted).

35. *Id.*

36. *Id.* at 26 (endnote omitted).

\$170,000 for Latina corporate counsel;³⁷

\$115,000 for Latinas in academia with only 3% employed in Administrative roles and nearly two-thirds employed as adjunct or untenured law professors;³⁸ and

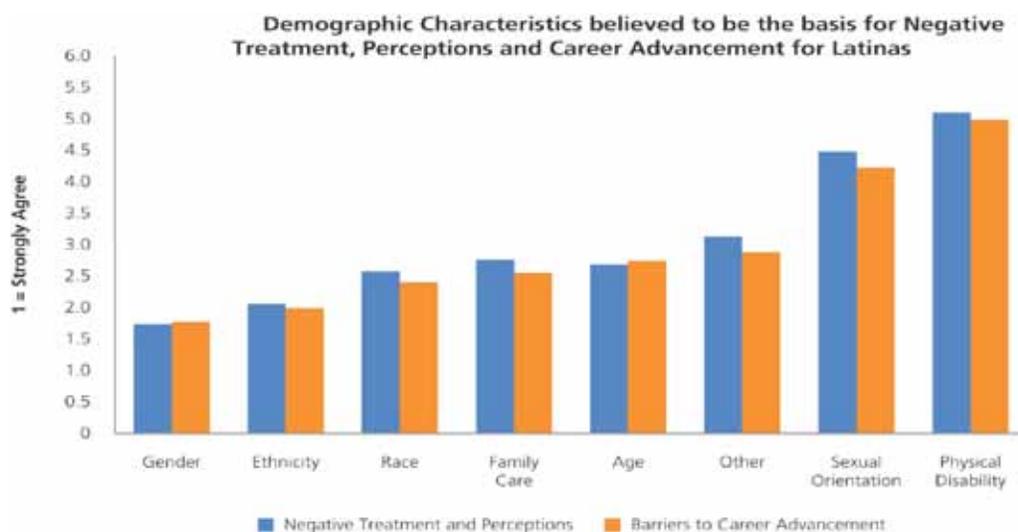
\$100,000 for Latinas in the public sector.³⁹

When contrasted to other majority and minority groups, regardless of gender, this median compensation is considerably lower: white men, \$314,416; men of color, \$210,569; white women, \$254,746; and women of color, \$157,290.⁴⁰

VI. Professional Experiences and their Impact on the Latinas' Careers

The 2009 Study found that the small number of Latina lawyers leads to isolation in the workplace, a sense of devaluation of qualifications and abilities, and the existence of, not a glass, but a multi-layered concrete ceiling⁴¹—gender, ethnicity, and race—that acts as a triple threat to success. Latinas identified barriers such as overt sexism, the dual role of career and motherhood (accentuated by Latino cultural expectations), tokenism, being viewed as a foreigner, and pressure to conform to the dominant culture. Gender, followed by ethnicity and race, were the greatest challenges to their career.

Figure E.⁴²



37. *Id.* at 28.

38. *Id.* at 29.

39. *Id.* at 28.

40. AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* 28 (2006).

41. The Latina Commission's 2009 and 2010 report covers an annual award consists of a blossoming flower forging through concrete. While the universally known metaphoric glass ceiling remains a reality for Latina lawyers, it is merely one of layers of barriers Latinas must shatter to achieve *Esquire*. The concrete represents both the barriers as well as, the force or determination (*ganas*) to flourish. The flower represents *Primeras*, pioneer Latina lawyers, who succeeded against the odds, as documented in the 2009 and 2010 Studies. The overall visual illustrates the reality that all roles Latina lawyers assume, be it lawyer, mother, aunt, daughter, *Madrina* or mentor, are shaped by the overarching forces all American women must surmount to crack the ceilings that shroud their collective potential. Each year the Commission presents this work of art to *Primeras* in honor of the paths—stone, glass and all in between—they forged.

42. 2009 Study, *supra* note 1, at 39.

Latina attorneys reported the struggle to strike a balance between the two dichotomous perceptions of Latinas as either “too passive” or a “fiery” or “hot headed Latina.”⁴³ Despite the reality that Hispanics are an ethnic group composed of more than one racial group, including white, black, and Native American, another chronic perception is the stereotypical Latina phenotype held by some non-Hispanics: that Latinas resemble the more indigenous or Afro-Latino phenotype of brown or dark skin, with dark eyes and hair. Many Latinas reported a belief that having lighter skin produced more favorable reactions leading to greater opportunity within the legal profession.⁴⁴ Despite these obstacles, Latinas, especially those not exposed to attorneys growing up, chose to become lawyers and persevere due to the presence of strong Latina role models consisting primarily of their mothers and other female family members who encouraged them to pursue an education.

“My mother is a very, very strong and independent person. And so I knew I could be whatever I wanted. I could be a lawyer. I could be a doctor.”⁴⁵

“My parents always said, ‘You have to have a better life than we do and the way you get there is, you get educated.’”⁴⁶

In 2010 the Commission completed a second study on Latina lawyers in the public sector, *La Voz de la Abogada Latina (The Voice of the Latina Lawyer): Challenges and Rewards in Serving the Public Interest* (2010 Study).⁴⁷ In the 2009 and 2010 Studies, Latina lawyers reported their desire to advocate for others as a factor influencing their career choice, motivated by the civil rights, farm worker, and Chicano movements.⁴⁸ Latinas who served as their family’s English interpreter also identified advocacy on behalf of others as a motivation to become a lawyer.⁴⁹

“I grew up interpreting for my parents. It seemed like a very natural progression to then become a lawyer who interprets the law for clients or litigants or whoever it might be.”⁵⁰

“Going to college in the ‘70s, and at that time the Chicano movement was very strong, and there was a heightened awareness of the injustices with respect to the Latino community. So my thinking is that those of us who decided to go into a legal career [did so] to maybe change that. That’s what shaped me most.”⁵¹

VII. Recommendations for Increasing Latina Representation and Success in the Legal Profession

To succeed in the legal profession, the 2009 Study Participants identified the following critical success factors: family support and encouragement, mentoring, straight talk and real feedback, perseverance and a strong work ethic, self-confidence, and positive valuation of Latina ethnicity.⁵² Given

43. *Id.* at 37–38.

44. On a humorous note, one light-skinned Latina lawyer reported a meeting with two Latina clients who, under the misimpression that she was white, were speaking negatively about her in Spanish. To their surprise, the Latina lawyer responded in Spanish! In another interesting example, two Latina lawyers—one light skinned, the other dark—spoke eloquently about color and the different treatment they received from family members based on their skin color. It was not until the end of the session that the lawyers revealed they were sisters.

45. 2009 Study, *supra* note 1, at 32.

46. *Id.*

47. The study was republished in the New York City Law Review. Jill Lynch Cruz, Melinda S. Molina, & Jenny Rivera, Hispanic National Bar Association, *La Voz De La Abogada Latina: Challenges and Rewards in Serving the Public Interest*, 14 N.Y. CITY L. REV. 147 (2010).

48. *Id.* at 183–87; *see also* 2009 Study, *supra* note 1, at 33.

49. 2009 Study, *supra* note 1, at 33.

50. *Id.*

51. *Id.*

52. *Id.* at 43–45.

the small number of Latina lawyers, positive role models and mentors are especially important to Latinas entering the legal profession. Mentoring programs and increasing the visibility of Latina role models to inspire and encourage others were, therefore, two of our most important recommendations:

- Support and sponsor mentoring programs and opportunities for Latinas at all phases of their educational and career development;⁵³
- Increase the visibility of Latina role models to inspire and encourage others;⁵⁴
- Reach out to Latina youth at an early age;⁵⁵
- Support and encourage the creation of Latina networks and support systems;⁵⁶
- Support gender neutral and family supportive workplaces;⁵⁷
- Support additional research on Latinas in the legal profession;⁵⁸
- Educate the legal profession about Latina underrepresentation;⁵⁹ and
- Monitor Latina progress.⁶⁰

VIII. 2013 NALP Study

Due to their small numbers, findings on Latina lawyers often are reported and included in the “minority women” category, as was the case with the 2013 NALP Study. This study confirms the ongoing underrepresentation of minority women, including Latina lawyers, reported in the 2009 Study:

Representation of minority women among associates in the two most recent years just barely exceeded the 11.02% for 2009

In 2013, the percentage of both women and minority partners in law firms across the nation increased a small amount over 2012. Representation of minority women specifically was up by a small amount, as was representation of minorities as a whole. During most of the 21 years that NALP has been compiling this information, law firms had made steady, if somewhat slow progress in increasing the presence of women and minorities in both the partner and associates ranks. In 2013 that slow upward trend continued for partners, with minorities accounting for 7.10% of partners in the nation’s major firms, and women accounting for 20.22% of the partners in these firms. In 2012, the figures were 6.71% and 19.91%, respectively. Nonetheless, the total change since 1993, the first year for which NALP has comparable aggregate information, has been only marginal. At that time minorities accounted for 2.55% of partners and women accounted for 12.27% of partners. At just 2.26% of partners in 2013, minority women continue to be the most dramatically underrepresented group at the partnership level, a pattern that holds across all firm sizes and most jurisdictions. This is despite small but consistent year-over-year increases.⁶¹

53. *Id.* at 51.

54. *Id.*

55. *Id.* at 52.

56. *Id.*

57. *Id.* at 53.

58. *Id.*

59. *Id.*

60. *Id.* at 54.

61. Press Release, Nat’l Ass’n for Law Placement, Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners Continue to Make Small Gains (Dec. 11, 2013) (citation omitted), available at <http://www.nalp.org/uploads/PressReleases/2013WomenMinoritiesPressRelease.pdf>.



It will take *la comunidad*, a village, to increase the number of Latina lawyers.

IX. Work of the Latina Commission

The reality of Latina lawyers in the United States has changed very little since the 2009 and 2010 Studies, but their status as an unknown and unreported group certainly has been elevated with the appointment of Associate Justice Sonia Sotomayor and the work of the Latina Commission. The Latina Commission bears the moral responsibility to ensure the recommendations of the 2009 and 2010 Studies are addressed. Recognizing that it will take *la comunidad*, a village, to increase the number of Latina lawyers, the legal profession also bears a moral responsibility to achieve diversity through both simple and fundamental change. Lest there be any doubt, the most recent NALP study underscores the work yet to be done by the majority members of our distinguished profession.

To achieve its goals, the Latina Commission has created and sponsored numerous projects to mentor and support Latina lawyers, including:

- A national leadership program directed at Latinas in the private sector with the Association of Corporate Counsel;

- The *Pearls of Wisdom*, panels of accomplished Latina lawyers convened at the HNBA annual convention to speak to Latina high school students and lawyers about the legal profession;

- Substantive CLE panels featuring Latina lawyers at HNBA mid-year meetings;

- Participation in the HNBA Legislative Day, emphasizing issues affecting Latinas;

- Girls & Boys Club and Girl Scouts of America programming, designed to expose Latina youth to the legal profession;

- The Dale Carnegie Training directed at Latina lawyers with six to ten years of practice; and

- Educating the legal profession about the status of Latina lawyers by publicizing the 2009 and 2010 Study results.

To address the dearth of information on Latina lawyers, the Latina Commission entered into a partnership with the Colorado Women's College at the University of Denver (CWC). The CWC's Community Based Research Program (CBR) is designed to unite the college with community organizations to complete a research project. As the CBR Scholar, Atencio is completing the *Primeras* research on (the "first") Latina lawyers. Based upon Atencio's research the Latina Commission published a timeline of *Primera* accomplishments from 1929–2013, *Las Primeras Abogadas—Una Historia, Celebrating 100 Years of Achievement*, released at the September 2013 HNBA annual convention in Denver. Upon completion of the research, Atencio intends to publish other works to document this history, for the first



The community of 13,000 Latina lawyers is unique within the legal profession, not only in number, but for the disproportionately high level of success achieved.

time; disseminate the material to students, with the goal of encouraging Latinas to enter the legal profession; and educate the public about these Latina role models and their impact on the law and legal profession.

X. On a Personal Note

In late February, I was asked to present the keynote speech to the Oregon Hispanic Bar Association about the *Primeras* research and the results of the 2009 and 2010 studies. One of my fellow Commissioners, Catherine Romero,⁶² was present at the dinner with her fourteen year old daughter, Carmen Maria Romero Wright. In mentioning that we learned there were only 13,000 Latina lawyers employed in the United States, Carmen turned to her mother and stated, “Mom, you’re a Super Minority!”

During my flight back home to Denver, I thought a lot about Carmen’s comment and had to chuckle at the ease and rapidity of Carmen’s insight which took me twenty years to absorb and comprehend: the community of 13,000 Latina lawyers is unique within the legal profession, not only in number, but for the disproportionately high level of success achieved, borne out by my *Primeras* research. I knew then I not only had the title for this paper but the theme for my research as well. In seeking Catherine’s permission to identify her daughter who coined the title, Catherine wrote the following, upon which I cannot improve:

“ . . . [the reality of so few and far between], reminded me of the main theme of a book that I am reading by Malcolm Gladwell—David and Goliath. This book is about the advantages of disadvantages. Gladwell points out that power comes in many forms other than strength and size, including breaking rules, endurance, intelligence, substituting speed and surprise for strength, knowledge, and courage. He points out that often the very thing that gives something its size and strength is the source of its greatest weakness, and that we generally have a very limited definition of what an advantage is. So while we do need to work on increasing our size and strength, in the meantime we can think about the advantages we do have—endurance, courage, intelligence, understanding, creativity, *ganas*,⁶³ and a strong sense of who we are.”

62. Catherine Romero is Senior Attorney for Microsoft Corporation in Redmond, Washington and assisted by editing this paper. The other Commissioners are Lillian Apodaca, Amb. Mari Carmen Aponte, Jacqueline Becerra, Natacha Carbajal, Crymarys de Jesus, Kristy Docabo, Hilda Galvan, Mary Hernandez, Liz Lopez, Solangel Maldona, Andrea Martinez, Martha Mora, Monica Neuman, Marianela Peralta, Gina Rodriguez, Jacqueline Romero, Ramona Romero, Margarita Sanchez, Helen Santana, Lt. Col. Luisa Santiago, Diana Sen, Catherine Torres-Stahl, Alicia Velasquez, and Christina Virgil.

63. The Spanish word “*ganas*” has no English equivalent, but translated it means desire, feeling, or inclination to win or succeed. In practical usage, it means having the “guts” or fortitude to win or undertake some act.



AT KATTEN, EVERYONE IS PART OF THE CONVERSATION

Katten fosters an environment that not only supports individuality, but encourages it. That's because we know diverse perspectives and experiences result in stronger solutions for our clients and a better workplace for everyone.

For more information, visit www.kattendiversity.com.

Diversity Committee | Committee on Racial and Ethnic Diversity | Minority Associates Committee | Women's Leadership Forum | LGBT Coalition

Katten

KattenMuchinRosenman LLP

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | HOUSTON | IRVING | LOS ANGELES
NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC
LONDON: KATTEN MUCHIN ROSENMAN UK LLP | ATTORNEY ADVERTISING WWW.KATTENLAW.COM

From Racial and Gender Bias to Diversity and Inclusion in the Legal Profession—A Collection of Asian Pacific American Stories

**Asian Pacific American Women Lawyers Alliance
("APAWLA")**

Members from the Asian Pacific American Women Lawyers Alliance share their stories about and experiences with incidents of racial and ethnic bias and the strategies they have utilized in response.

I. Introduction

It is time to stop being silent about racial and gender bias against Asian Pacific Americans (APAs) in the legal profession. Sharing stories about experiences or challenges involving negative stereotyping, discrimination, harassment, or retaliation in the workplace provides a useful and practical way to highlight the explicit or implicit bias that APA women and men face in the legal profession. This collection of stories demonstrates that we do have a voice, that we must know our rights, and that we may legally seek protection of those rights. Storytelling is a means to educate and mentor others and for others to learn from each personal story, which can be inspirational, liberating, and empowering.

The stories presented in this paper are from members of the Asian Pacific American Women Lawyers Alliance (APAWLA),¹ who were asked to submit a written description of a personal experience or observation of discrimination, harassment, retaliation, or other forms of explicit or implicit bias based upon race and/or gender; her or his response to that particular situation; and any advice on how to deal with that same or similar situation. Questions containing various examples of racial and gender bias that APA attorneys have experienced also were provided to encourage our members to think about drawing from their own personal experiences and then writing and submitting a story to share.

Founded in 1993, APAWLA is a bar organization that provides networking opportunities and functions as a resource and support group in the Los Angeles area. In December 2013, an APAWLA San Diego Chapter was created. APAWLA's mission is to promote the inclusion, empowerment, and advancement of APA women in the legal profession through advocacy, education, mentoring, networking, and development of leadership within the profession and the larger community. APAWLA primarily addresses the common and unique issues and concerns of APA women by strongly advocating for the protection and advancement of our civil rights and achievement of social justice. APAWLA's members include APA women judges, lawyers, and law students, and others in the legal profession, who share the common goal of gender and racial equality.

1. The Asian Pacific American Women Lawyers Alliance (APAWLA) is based in Los Angeles, California. For more information, please visit: www.APAWLA.org.

During a period of a few months since February 2014, APAWLA curated the following collection of stories submitted primarily by APA women, evidencing incidents of discrimination, harassment, retaliation, or other forms of explicit or implicit bias based upon race and/or gender. As you read these stories, think about how you would have felt and how you would have responded if you were in that person's situation. More importantly, think about what you can do to help eradicate these types of discrimination and/or bias in your workplace, in the larger legal community, or in our society.

II. The Stories

A. You Belong In the Legal Profession

When the first Asian American women judges were being appointed to the bench in Los Angeles County (i.e., Kathryn Doi Todd, Madge Watai, et al.) starting in 1978, I heard many white and non-Asian males predicting that these judges would never be able to perform at the level of the other judges because they are Asian American women without the traditional assets and traits of the white males who preceded them. They predicted that it would not take long before these Asian American women judges would falter and fail in the face of the difficult and demanding jobs that they had been given. It seems that these men were waiting for some sign of weakness, indecision, or unpreparedness. Their predictions were proven false and the performance and production of these judges have been second to none with each going on to distinguished and highly honored careers.

My response to those negative comments and predictions cannot be printed in a civilized publication.

I would tell APA lawyers, especially women lawyers, to be themselves, do your jobs as well as you can, and let your work speak for itself. Never be afraid to assert yourself in conflict. Don't forget the sacrifices made by others so that you could be here, but remember you are here to write your own history and to write the future of our community. You belong here. Your legacy will be your contribution to the profession and to society. Enjoy yourself. This is your time. – *APA Woman Criminal Defense Lawyer*

B. Don't Back Down or Give Up When Others Discriminate Against You

I am a corporate real estate partner at a national law firm and have worked on complex real estate transactions for over fifteen years. There are not many women who work in the area of financial real estate and the clients I work with are predominately men.

Early on in my career when I was a junior associate working on a major transaction, I felt that I was being discriminated against by the partner who was working on the other side of the deal. I was working on a multi-property transaction where our side was staffed with one junior associate (namely, me), one senior associate, and one partner, and the other side was similarly staffed with a junior associate, a senior associate, and a partner. I was the only woman, and I also happened to be an APA woman. It was my job to identify any potential issues and problems on the borrower/owner's side with respect to the properties at issue. This was particularly important to our client, the lender financing the acquisition of a portfolio of properties, because if the borrower defaulted, our client would likely foreclose and become the owner of the properties.

On several phone calls, when I voiced concerns regarding property-level diligence issues, the partner on the other side of the deal, representing the borrower, attempted to marginalize my abilities by speaking over me, trying to go above me to discuss the issues with the partner instead of discussing the issues directly with me, or brushing off any issues I raised by responding with "that's not

important” or “I don’t know what you’re talking about.” He would also talk about me in the third person as if I was not on the call, even in response to something I said directly to him. I did not exist to him.

My coworkers and supervising partner noticed that I was being sidelined by the other side and asked me how I wanted to deal with the situation—whether I wanted them to intercede on my behalf. I appreciated that they asked me how I wanted to handle the situation, and I decided to stick it out and see the deal through. I was not going to give up working on the deal because the other side was acting unreasonably to hide their own mistakes. I did my work and I did it well. I came prepared and had no qualms asserting myself without any name calling or making the situation more confrontational due to the other side’s unreasonable behavior.

At one point, the partner I worked with asserted on a call that I was the one the other side needed to talk to. When he did, I felt validated and this bred loyalty in me that made me want to stay at the firm on a long-term basis. I felt that I received the support that I needed, particularly as a junior associate who was still learning. This, however, also made me realize that the people you work with have a large impact on your professional happiness both at your work and how you interact with others. I felt empowered when they gave me the option to decide how I wanted to respond and supported my decision.

From this experience, I learned that I needed to be cognizant of how others treat me, to speak up on calls, to assert myself, and not to allow others to talk over me. Most importantly, this experience taught me that I needed to be prepared to react effectively to negative situations in a way that felt comfortable to me.

To do so, having good mentors is key. At the start of my career, I often thought that I needed to find a minority senior woman in my firm because she would probably know what I was going through and I could follow her path. Yet, over the years, I realized that having mentors with clout and power in your organization, who may look nothing like you, can ensure that you are brought to the table. I also found that mentors who do not directly have an influence on my career, but have encouraged me to be myself and to recognize my self-worth, have had a positive impact on my personal and professional happiness.

At my law firm, my practice area did not have women minorities for me to look up to as mentors. The group that I was in looked nothing like me, but the senior partners took an interest in me and my career path and mentored me through the politics of making partner. Keep an open mind, because your best mentors aren’t always going to be the people who you think they would be. – *APA Woman Corporate Real Estate Partner at a National Law Firm*

C. Replaced by a Male Associate Due to My Gender

At my prior law firm, one of the male partners was having marital troubles. I did a lot of work for one of his clients. I had a great attorney-client relationship with that client and was constantly praised for my work with them. After meeting the partner’s wife at a charity event, I was taken off the work for that client and replaced with a male associate. After I left the firm, I was told that, because of the male partner’s prior suspected infidelities toward his wife, his wife insisted that he not work with a female associate.

I thought that it was strange when the male associate was given the work despite my strong performance and well-known desire to continue to do work for the client. I never addressed it, but wish I had at the time. – *APA Woman Mid-Level Litigation Associate*



The same bias that led receptionists to ask if I was the court reporter is the same bias that led law firm partners to think that I might not be interested in an assignment, promotion, or leadership opportunity. This misconception is not harmless, nor is it being underestimated.

D. I Am Not Invisible or a Negative Stereotype

As a half-Asian female litigator, I have been repeatedly mistaken for the court reporter or court translator both in the courtroom and at law firms. At twenty-six years old, I reacted to this bias by buying more expensive suits and making a point to hold client files in my hands to establish more clearly that I was counsel of record, and not the court reporter or court translator. Fifteen years later, not much has changed. My heritage has blessed me with a youthful appearance, so people are still shocked to discover that I am a lawyer, or more specifically, Associate General Counsel of a multimillion dollar global corporation.

It was not easy getting to where I am now. I have been passed over for opportunities along the way. When I have asked why, the response has invariably been that I wasn't considered (viewed as invisible) or they just didn't realize that I was interested (again, invisible). It is too easy to ignore the meaningfulness of these setbacks when they can be hidden or overshadowed by other accomplishments. The reality is, the same bias that led receptionists to ask if I was the court reporter is the same bias that led law firm partners to think that I might not be interested in an assignment, promotion, or leadership opportunity. This misconception is not harmless, nor is it being underestimated.

I have had many conversations with female and/or Asian American attorneys who are struggling to make partner or to be taken seriously for leadership roles. My friends tell me that I don't really understand, because (being only HALF Asian) I am much more confident, or very "loud." This ignores the fact that I am no less female, or (due to my mom remarrying) that I grew up with first generation immigrant parents who could not call the cable company, fill out medical forms, or even write a note to my teachers. We can't let these things stop us, and we can't let others let these things stop us from being treated fairly and equally.

So, where do we go from here? It is important for society to realize that bias continues to shape everyday experiences. It makes this tough profession even tougher to survive and thrive in. Groups like the Asian Pacific American Women Lawyers Alliance can help provide support and inspiration when you are too invisible to get it from the very people you spend so much of your time serving (i.e., your boss, or your company). But even though we may be treated as being invisible, we cannot let opportunities go to waste. The most stereotypically Asian female experience that I have endured recently was my internal debate on whether or not to write this piece. I felt that I wasn't Asian enough

to contribute meaningfully. I thought: “Other people have a better story to tell,” or “My life is going pretty well, so I don’t really have anything to complain about.” We must not let our stories go unheard, just as I was about to let the opportunity to tell my story pass by. The dialogue on discrimination is not made less important by any personal accomplishments we achieve. For every opportunity we take, there are others that were missed. For each of us who succeed, others fail. We have much left to accomplish and there will be roadblocks along the way. Bias will be one of them. – *APA Woman In-House Counsel of a Global Corporation*

E. Be True to Yourself and Help Others in Need

When I went to law school, there were no professors of color, and only one female professor (whose class I didn’t take), and only two other Asian American law students. I remember clearly the numbing feeling of isolation, as well as the intense stress and feeling that I was not good enough. I handled law school like I did most things—I didn’t say anything, and just worked hard.

Before becoming a lawyer, people would tell me, “You’re too nice to be a lawyer.” And before I got on the bench, people would say, “You’re too nice to be a judge.” Thus, I intentionally tried to be what I thought a lawyer was supposed to be—competitive, focused mainly on winning, and working hard for those billable hours. As a bench officer, I sought to be strict, no-nonsense, and tough-on-crime. I did not want to be seen as the quiet stereotypical Asian woman. I felt that kindness and compassion were equal to being soft.

I suppose that I was “successful,” but if I was really honest with myself, I was also unhappy. I was exhausted from constantly having to be “on” and being someone who I really was not.

I am finally really beginning to understand myself more now—namely, my strengths and what is important to me—that I am about relationships, people’s mental well-being, coalition building, and getting along. I have had the good fortune of having such a supportive family, meeting many wonderful Asian Pacific American women, and many kind judges of all ethnicities who helped me realize that being myself is not only okay, it is important. And now I feel as if I have found “my voice,” and I’m the happiest I’ve ever been.

I try not to define myself by my last mistake, and to forgive myself for not being able to do everything perfectly. I really understand and have accepted that the nature of the legal profession is often about conflict, and that many lawyers are pessimistic. In centering my life not on my deficiencies, but on my strengths, I am now much happier and much more productive.

I really believe what Martin Luther King, Jr. said, that we have a duty to help the less fortunate, that we all have reached a measure of success only because someone helped us along the way. I do a lot of mentoring of law students and young lawyers and find a lot of satisfaction by being a mentor. I hope that I can ease their travels down the often-bumpy road of the legal profession, as others have helped me. – *APA Woman Judicial Officer*

F. A Positive Experience of Inclusion Can Help in Setting Career Goals

I started my legal career at a commercial litigation boutique law firm that specialized in an industry that was male-dominated. All of the attorneys in the office where I worked were male and none of them were minorities. On its face, these factors may have been cause for concern for a minority

female attorney entering the legal profession. However, at the time, perhaps because of my naiveté, I didn't give those factors much thought. Instead, I downplayed my doubts, and tried to focus on the positive interactions that I had with the attorneys I met during the interview process. I followed my "gut" and decided to join.

As it turns out, that decision was one of the best decisions of my legal career and my experience at the firm was one of the best that I have had. Not only were the attorneys at the firm very inclusive, whether by repeatedly inviting me to lunch with the group or getting me involved in their cases, I also got substantive hands-on experience from the outset, handling a mediation, attending hearings, taking depositions, and even running a case. The "icing on the cake" was that they eventually hired another minority female attorney (and we became instant life-long friends). These attorneys were and are still good people. I feel very lucky to have worked at this firm with these attorneys. They not only provided me with the skillset that has been the foundation to my career in litigation, but also gave me insight into what it means and how important it is to be exposed to a positive work environment.

It is extremely important to be conscious of your career goals, whatever they may be (e.g., obtaining a foundational litigation skillset, being a criminal trial attorney, handling high-end real estate transactions, having a work-life balance, having a work-community service-life balance, paying off your law school loans, etc.). Tailor your actions to attain those goals and accomplishments. If you ever end up in a situation where you are no longer on track to attain those goals or accomplishments, be active in evaluating your situation and start exploring options so that plan (b) or plan (c) or plan (d) will be available when you are ready for a change and, more importantly, to get your career and life back on track. – *APA Woman Litigation Partner at National Law Firm*

G. Even a Law Student Can Make a Difference

I have practiced law for nearly thirty years. I started practicing law in a medium-sized law firm. After five years, I became a partner. Then five years later, I started my own firm with one of my partners. Next year will be my firm's twentieth anniversary.

I attended law school at night in the early 1980s while working full time in the business operations branch for a large public agency. Last year, I had a "mini-reunion" with three female co-workers. Two are Asian American and one is white. As we reminisced, they brought up an incident that had not crossed my mind for over thirty years.

One day, the agency's lobbyist met with me to obtain data needed for her report to the agency board. The lobbyist was a powerful middle-aged white woman. I later discovered that in her presentation at the board meeting, she referred to me, the source of her data, as the "little girl from the business office."

As a young APA woman, I found this characterization offensive and demeaning. As a fast-rising management staff-person, I admit my ego also was insulted. So I fired off a memo saying as much. I have no recollection of my exact words. I believe I sent my memo to a long list of recipients, including the agency head and maybe even to the board members, but I do not remember exactly all the recipients of my memo. A few days later, the lobbyist came down to the business office and apologized to me. I don't recall what she said, but I accepted her apology.

When my former colleagues brought this up at our reunion, I was shocked. I had no idea anyone

in the office even knew about the incident! As soon as it was over, I had moved on and not thought about it since. We all had a good laugh because I learned that practically everyone in the workplace was whispering about it at the time. And now, some thirty years later, my old friends were patting me on the back, saying, “We were so proud of you!”

Unlike my former co-workers who spent their entire careers successfully climbing the ladder in government service, I knew I would be moving on as soon as I graduated, so I was able to speak out without fear of retaliation. Sadly, that was considered a luxury, not a right. If I was in their shoes, I hope my actions back then would have been the same. I have learned the impact our actions have on others who are similarly situated. They are watching. – *APA Woman Partner at a Boutique Law Firm*

H. Discriminatory Treatment Where One Would Least Expect It

When I started working as a staff attorney at a governmental civil rights agency, I felt like I had found my “dream job.” I was extremely happy and fortunate to have a job that primarily involved helping victims of discrimination, harassment, or retaliation by enforcing the civil rights laws. At that time, I also had an excellent immediate supervisor who was very knowledgeable, supportive, and respectful of our abilities and talents.

After working there for over four years, that “dream job” changed to an oppressive, hostile, and intolerable work environment. This drastic change started after my immediate supervisor transferred to another government agency. He was replaced by one of the male minority staff attorneys in the office. I had known that newly-appointed immediate supervisor for several years prior to his employment at this civil rights agency. I initially had thought that he was a community-minded civil rights advocate.

Following this change in immediate supervisors, and having competed for that supervisor position, I became a victim of discrimination and retaliation based upon my race and gender—an Asian American female. Some examples of the unlawful and unfair treatment that I experienced included being denied a promotion when I was on a six-month parental leave to care for my baby; having to continue working on my assigned cases during my leave because that new immediate supervisor would only reassign the few cases that had scheduled hearings and informed me that I had to deal with my other assigned cases; and overloading me with about ten new cases before and shortly after my return to work from my parental leave. Some of those cases even had hearings that were scheduled to start shortly after my return to work.

During my parental leave, I was denied a promotion. That promotion was given to a white male staff attorney in another regional office of the agency, without the knowledge of any of the staff attorneys in the office where I had worked. Our staff usually consisted of about six attorneys or fewer. This was a significant and rare promotional opportunity that all of the staff attorneys in our regional office had fought for since most of us had reached the maximum salary for our current positions. We also had more seniority and greater experience, skills, and successful results in handling discrimination matters than the person who was promoted.

The promoted person was selected from a promotional list with only two names remaining on it, i.e., his name and my name. We had the exact same score on the promotional examination. Besides being denied the promotion because I was on parental leave, my immediate supervisor claimed that he was not able to determine if I was ready for a promotion. He then added that I was not ready for a promotion. That did not make sense, because I had more seniority and a lot more experience

handling discrimination cases than both that immediate supervisor and that promoted individual; I had received favorable decisions in a number of significant civil rights cases; that supervisor had never evaluated my work performance; and I had previously received predominantly outstanding performance evaluations and was rated as an “outstanding” candidate for a promotion by my prior immediate supervisor.

I filed a grievance concerning the denial of that promotion.

Subsequently, I interviewed for another promotional examination within the agency and began to experience retaliation. The interviewers were cold and distant, and one of them was particularly hostile towards me. I received the lowest score among the four promotional candidates, two of whom had less seniority and experience handling discrimination cases than me. I was the only Asian American woman who took that promotional exam. In addition to these apparent barriers to a promotion, I was subjected by my immediate supervisor to disparate treatment in the assignment of cases; unfairly challenged regarding my handling of certain cases; and subjected to a vindictive effort to demote me, which was withdrawn after I appealed that demotion. He constantly tried to find fault in my work and claimed personality differences as an excuse for his abusive behavior and actions.

A “good-old-boys network” existed in the office. My immediate supervisor’s repeated display of arrogance and male chauvinism were like pieces of art—very revealing of his true views on women’s rights. It seemed like he expected me to conform to the negative stereotype of an Asian American woman of being quiet, obedient, and docile, and not to assert my rights when they were violated. It was shocking to see all of this happening in a civil rights enforcement agency, where our job as civil rights litigators was to protect an individual’s civil rights, and yet have my own civil rights denied.

My grievance progressed to arbitration and was resolved by a monetary settlement. The settlement also required the agency to remove all negative evaluations, proposed adverse actions, and all negative comments and statements about me from its files. This settlement was reached after I had transferred to another government agency, where there were more promotional opportunities.

Employment discrimination, harassment, or retaliation hurts and is humiliating, demoralizing, and inhumane. It results from an abuse of power, greed, and lack of concern for the civil rights of all employees. Although these incidents occurred many years ago, there were several lessons that I learned from this experience: the importance of knowing your rights; standing up for your rights; and not being afraid to do so. Get support from your family, friends, and co-workers. Document and take notes of unfair or disparate treatment. Consult with employment law experts and file a complaint, if necessary. Find a better job because your mental and physical health is worth more than working at a job where you are repeatedly treated unfairly and unjustly. In order to eliminate the “glass ceiling” barriers and other forms of racial and gender bias in the legal profession, individual and collective efforts are still needed. Every employee should be entitled to work in a discrimination-free work environment—even women of color staff attorneys in a civil rights agency. – *APA Woman Long-Time Civil Rights Advocate*

I. It’s Important Not to Let Others Dictate Who We Should Be

I am a first generation Filipino American. I was born and raised in the Philippines where I lived until my mother, a single parent, decided to bring my three brothers and me to the United States for a better life in 1987. As a single parent, my mother found herself responsible for raising four children alone. We arrived at Los Angeles International Airport in the summer of 1987, tired and anxious, our

entire lives contained in eight pieces of luggage. I was sixteen years old and on the day that we arrived in Los Angeles, I began a new chapter in my life of having to adjust to a culture that was strange and very different from the only life I had known.

It was a difficult transition for all of us, especially for my mother who had a college degree from the top university in the Philippines but could not get a job commensurate with her qualifications. Seeing her meager life savings rapidly depleted and not wanting to accept welfare, she took a job working as a caregiver for an elderly bedridden patient. During the few times that I visited my mother at her job, I witnessed her bathe and clean her patient with compassion and sensitivity. Today, as a social worker for the Department of Public Social Services, she is helping other women in need. She is assigned to the GAIN program, a program that helps people develop essential work skills.

My own transition was very difficult. I enrolled in John Marshall High School in Los Feliz, a public high school that was very different from the all-girls Catholic school that I attended in the Philippines. I was surprised to encounter in a city like Los Angeles stereotypes that people had regarding Filipinos, even among those whom I thought should be more enlightened. For example, in my junior year, I met with my high school counselor for mandatory college planning. Without first asking me what my plans were, she handed me brochures to local city and community colleges that had “excellent nursing programs.” I had to tell her firmly that I had no interest in nursing and that I had my heart set on attending either UC Berkeley or UCLA. I also had to bite my tongue when she patronizingly told me that she was proud of me for having such high goals but that I should have contingency plans, since both these schools required “really high SAT scores.”

In spite of all these difficulties, I did my best to achieve my dream. It was tempting to take the path of least resistance and assume the role of the victim, but I refused to. I just worked harder. When I graduated, I had numerous honors and awards, as well as acceptance letters from every university to which I applied, including UCLA and UC Berkeley.

It’s hard not to, but it’s important to not let other people dictate who we should be. Our motivation should be our selves, our beliefs, and our convictions. – *APA Woman Prosecutor*

J. You Are Not Alone

I graduated during the height of the recession, when law firm associates were being laid off in droves, and if you secured a permanent job during law school for after the bar exam, you pretty much won the lottery. That wasn’t me—I didn’t have a job. My mentors suggested that I network and try to meet with as many attorneys as possible. Specifically, it was my mission to learn what kind of work these lawyers did, and to figure out what I really wanted to do.

In the course of an informational interview, I met with an Asian American male litigation partner of a national law firm. After exchanging pleasantries and answering the standard “why did you go to law school” and “what do you want to do” questions, he candidly asked me “do you really want to do litigation?”

When I replied that I did, he stated the following: “You know, litigation is hard if you’re a woman and you want to have a family. You won’t be able to handle it. The hours are unpredictable and it is physically demanding.” I did my best to assure him that I had worked very hard before, was aware of the demands, and would continue to strive to do my best. He took my resume and said he would keep me in mind if he had any positions available. Soon thereafter, he hired a male litigation associate.



Don't dwell on the past—prior mistakes cannot be the debilitating distraction that keeps you from doing your best on the next assignment you have.

I didn't do anything specifically in response to that situation when I didn't get that job, but instead I tried to refocus my energy on figuring out what I wanted to practice, continuing to meet lawyers who practiced in that area, and learning what I needed to do in order to get there. I ended up getting a good job at a great law firm and was able to gain experience in the area that I was most interested in.

Through my involvement with the Asian Pacific American Women Lawyers Alliance (APAWLA), I have met incredible APA women attorneys who have taught me that I can be a great litigation attorney, have a family, and still be myself.

Here are some things that I learned from these APA women along the way:

Be kind to yourself. Don't be over critical and don't think too much about what others think of you. Don't beat yourself up for mistakes you made or did not catch. Make a mental note, but move on. Own up to the mistake, and sincerely ask your mentor or boss how you can do better next time. Remember, everyone makes mistakes, and increasingly more in the early years of your career when you are on that steep learning curve. Don't dwell on the past—prior mistakes cannot be the debilitating distraction that keeps you from doing your best on the next assignment you have.

Don't try to please others too much, even if the only reason you went to law school was to please your parents, significant other, or anyone else in your life. Do your best within reason, but don't kill yourself. Do your best to make sure you are taking care of your basic needs (e.g., eat, sleep, exercise, take a mental health day, etc.).

Learn to graciously accept compliments. It is so difficult for Asian American women to accept compliments because we are either taught to disagree with or undercut the compliments we receive. Something as easy as saying, "thank you so much for sharing that with me" or "that really means a lot to me," could be a perfectly adequate response. Don't respond by saying, "No, I'm not . . ." Own up to your good work. If you do something well, give credit to the person who taught you how to do it and thank the person who gave you the opportunity to excel. It is completely okay to take a moment to revel in a job well done.

Try to stay positive in light of the circumstances and always be true to yourself.

Being an APA woman lawyer is hard, but we don't want you to quit. We will listen to your struggles and give you advice, come run alongside you when you are having a difficult time, cheer you on and celebrate you when you achieve the unthinkable, and will always continue to encourage you to strive for your dreams. We want you to succeed and you are not alone. – *APA Woman Mid-Level Litigation Associate*



It also is inappropriate to negatively stereotype a person as being too nice to be a lawyer or judge or not being qualified to be a judge, or to treat a person as being invisible when the person obviously is not.

III. Conclusion

This collection of stories by APA women in the legal profession about racial and/or gender bias, that they personally experienced or observed, is a first-time project for APAWLA. This project has taught us many important lessons. We did not know exactly how many stories or types of stories of bias we would receive after a series of requests and reminders were made to the APAWLA members to write and submit their stories to be included in this paper for the Institute for Inclusion in the Legal Profession Review.

We learned from this process that writing about a negative personal experience involving discrimination, harassment, retaliation, or other forms of explicit or implicit bias in the legal profession is not an easy or pleasant task. It takes courage to talk or write about such incidents. However, this discussion is imperative to raise awareness of the need to eliminate those barriers in this profession and to examine how that can be accomplished. To encourage our members to share a story, we decided that each contributor would be unnamed, and only be identified by their ethnicity, gender, and occupation.

We also learned from these stories that a person's race and gender should not be determinative of that person's qualifications or ability to practice law or be a judge. It is fundamentally and inherently unfair, harmful, and wrong to use the color of one's skin, ethnicity, youthful appearance, or gender to deny that person a job, a promotion, client assignments, or other job opportunities and benefits, or not treat that person as a professional. It also is inappropriate to negatively stereotype a person as being too nice to be a lawyer or judge or not being qualified to be a judge, or to treat a person as being invisible when the person obviously is not. These are all examples of bias against APA women that were described in the stories in this paper. Obviously, none of these women chose a career in law to be subjected to the "double whammy" of racial and gender bias.

Despite the advances of APAs in the legal profession, these stories elucidate the need for more to be done individually and collectively to eliminate racial and gender bias to achieve diversity and inclusion in this profession. We should not have to wait several years or even decades before we see any positive changes in attitudes, perceptions, and behavior toward persons of color in our profession. The time for these changes is now.

Transgender Women of Color in Law

Mia F. Yamamoto*

Law Offices of Mia F. Yamamoto

Lawyers who are, or who aspire to become, transgender women face issues and challenges not commonly addressed. Mia Yamamoto shares her personal journey as a means of opening and furthering that discussion.

It is impossible to describe the challenge facing transgender women of color in the legal profession without referring to the context of my own transition. For me, there were no relevant points of reference; so I approached my transition through the prism of my own experience. The only transgender role models with whom I had any contact, previous to 2003 (when I made the decision to come out and to transition), were either drag queens or female impersonators—no judges, no lawyers, no law students, nor even court personnel. I had to face the realization that I was going to be the first and only transgender woman of any color anywhere in the trial courts of Los Angeles, probably the only one in the Los Angeles legal community and possibly the only transgender woman of color anywhere in the profession. I knew that transition would be a lonely struggle, but a struggle that has its place in the battle for Civil Rights.

Transgender women, especially transgender women of color, owe a great debt to the movement for Black Liberation which drove the movement for Civil Rights which, in turn, facilitated the movement for the rights of women, for ethnic, racial and religious minorities and for LGBT people. This historic movement has resulted in the advances which have marked the changes in society, as well as in the legal profession, that have allowed my inclusion and which now present me with the opportunity to represent and advocate for the benefit of the transgender community and ultimately for the good of society.

I was fortunate to have been born to a father who was a lawyer, a lawyer with a lifelong leg impairment incurred from an injury when he was a very young child. He walked with a cane or crutches for his entire life, while enduring the racial discrimination which came with being Japanese American and overcoming the barriers which faced anyone with any kind of physical impairment. His disability did not prevent him from pursuing a legal education nor from practicing during a time when the legal profession was closed to people of color and completely indifferent to the plight of the disabled.

My father managed to make a living within the segregated bar, even after his practice and property were taken away from him by the World War II internment of all Americans of Japanese ancestry. His example inspired me from a very young age. After the war, when my family was released from camp and returned to Southern California, he was employed by the ACLU law firm of A.L. Wirin and Fred Okrand, the only law firm anywhere that was willing to hire a Japanese American lawyer. The ACLU had been one of the few groups (along with the American Friends Service Committee—the Quakers) that took a stand against the wholesale imprisonment of the Japanese American community. This historical fact helped me to understand that a minority in this country, even a single individual, was

* Acknowledgements: Aviva Cuyler, *Diversity in the Practice of Law: How Far Have We Come?* GPSOLO, Sep./Oct. 2012, at 10; TRANSGENDER LAW CENTER'S AUTHENTIC LIVES, Fall 2013; Dean Spade, *Elimination of Bias: Transformation*, L.A. LAW., Oct., 2008, at 34.

(at least theoretically) entitled to the protections of the Constitution against the tyranny of the majority, and probably started my early interest in becoming a lawyer, as I admired the singular devotion of the ACLU to the Bill of Rights. I am a card-carrying member of the ACLU and I will be for life.

I witnessed the effect the camps had on the post-war community, seeing the disintegration of parental authority and, in the case of my father, the effect it had on his life and his practice. I was able to learn about racism's effect on the economic well-being of every family within the Japanese American community as well as the social and political marginalization which came along with it. And, as a transgender child, I was confronted with the rigid gender dichotomy that limited and confined everyone that I encountered for most of my adolescence and youth. Awareness of male hegemony started very early and continues to this day, along with stereotyped notions of dress and grooming which came with the gender role expectations that were playing themselves out all around me, in my family, in my school, and in my church.

I read about Christine Jorgensen, an army veteran who underwent a highly-publicized sex change in 1952. This was my very first clue that there were other people like me in the world. However, the ridicule and contempt that this revelation inspired in the people around me gave me another hint about society's attitude towards any person bold enough to actually go through gender transition. Even as I was learning more about myself and others like me, I was being driven more deeply into denial and self-hatred. It is no wonder that so many of us stay closeted for so much, or even all, of our lives. The very first time I ever heard the word "transvestite" was in the Alfred Hitchcock film "Psycho," which depicted a cross-dressing mentally-deranged murderer. For most of my youth, everything I knew about being transgender was horribly negative. Like most transgender people, reckless behavior and suicidal ideation are constantly present through every life stage and milestone. Going off to war was probably another manifestation of my attitude about myself. I felt it was my duty to my family and my country, but I also saw it as an honorable way out of my life, away from the demons that haunted me, as well as a way to prove my maleness to myself and to others.

Coming home from the war, I entered UCLA Law School in 1968, a time when the entering class of 1971 was composed of 10% women—at the time, the highest percentage of women ever in the history of American law schools. It made me wonder whether I would have been admitted had I been a woman. Also, there were very few Asian American law students at that time as well, and from what I could see, their admission in any numbers at all was a somewhat recent innovation. It made me wonder about what it was like for my father, who passed away at the age of fifty-four in 1957, after graduating from Loyola Law School in the 1920s, then going out to practice in the racially-segregated law profession in Los Angeles. He practiced for his entire career in the segregated bar, never witnessing the actual integration of the Los Angeles bar, which occurred years after his death. I realize now how fortunate I was just to be admitted to law school and how much race (and gender) mattered when it came to law school admissions and beyond.

Looking back on that experience, it is impossible not to notice the inroads that have been made by both women and racial minorities in the profession since those early days. It is a stark reminder that we are all children of this age of Civil Rights and we are the beneficiaries of those heroes of the movement who risked and sacrificed so much so that we could have these opportunities. I am vividly aware of how far we have come and abundantly grateful for all those who have fought for our rights to equality and inclusion.

It is also the case that lesbian, gay, bisexual, and transgender people have ridden this wave of reform and stand on the brink of recognition and social justice—on the brink but not yet included. I have lived long enough to witness the first halting steps towards fair and equal inclusion in both

education and employment in the legal profession. Still, looking around it is also very clear how far we have to go before we can even think about actual equality. Everywhere I look I see transgender women, especially transgender females of color, disproportionately represented in juvenile detention, jail, prison, probation, or parole, usually for offenses relating to theft, drugs, sex work, along with sleeping outside, loitering, and trespass, many of which are crimes relating to homelessness and poverty. I have witnessed aggressive police harassment and profiling along with hate speech and violence directed specifically at transgender women. Transgender women have not only been excluded from the military, but also gender-appropriate shelters, healthcare, and insurance coverage.

There are a number of intersecting factors that define the current state of being a transgender woman lawyer of color:

First, being a member of an identifiable ethnic minority brings with it the traditional discrimination which was, at one time, all pervasive in the legal profession. In its current Lawyer Demographics survey, the American Bar Association counted 1,268,011 licensed lawyers nationwide.¹ Measuring from 2000 to 2010, the ethnic and racial composition did not change very much—White (not Hispanic) 88.8% in 2000 and 88.1% in 2010; Black (not Hispanic) 4.2% in 2000 and 4.8% in 2010; Hispanic 3.4% in 2000 and 3.7% in 2010; Asian Pacific American (not Hispanic) 2.2% in 2000 and 3.4% in 2010; American Indian (not Hispanic) .02% in 2000; and Native Hawaiian or Pacific Islander (not Hispanic) .04% in 2000.² With respect to law students, minority JD enrollment in 2009–2010 was 22.4%, 2010–2011 was 23.8%, and 2011–2012 was 24.5%.³

Second, women, despite their recent rise in law school enrollment and academia, still have not achieved parity with males in the areas of employment, opportunity, advancement, and retention. With respect to gender, the profession was 92% male in 1980, 80% male in 1991, 73% male in 2000, and 70% male in 2005.⁴ Despite these rising numbers, a quick look around the nation's courthouses, law firms, and corporate boardrooms would reveal that women have not been provided equal access to advancement and leadership in the legal system.

Third, LGBT representation in the profession is still quite minuscule. Almost 90% of all law firms collect information regarding LGBT lawyers.⁵ The 2,085 openly LGBT lawyers reported in 2013 represent 2.19% of all lawyers nationwide.⁶

Fourth, transgender representation in the profession is scarce and even more minuscule when counting just transgender women of color. I have been unable to discover any authoritative data counting the number of transgender people in the profession, much less transgender women of color, but it is safe to say that, having researched this question, there are very few.

It is only when one is confronted by the rarity of this particular category within the legal profession that one can go on to comprehend the scope of the challenge confronting the transgender women lawyers of color. Clearly, the first step in addressing this challenge is coming out. Coming out openly, even notoriously, helps to dispel the myth that transgender people do not really exist, that this is some kind of aberrational or delusional behavior. And coming out transgender is uniquely different from coming out as lesbian, gay, or bisexual because the change of appearance, grooming, and dress

1. *Lawyer Demographics Table - Current*, AMERICAN BAR ASSOCIATION (May 6, 2014, 2:56 PM), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf.

2. *Id.*

3. *Id.*

4. *Id.*

5. *LGBT Representation Up Again in 2013*, NATIONAL ASSOCIATION FOR LAW PLACEMENT, INC. (NALP) (May 6, 2014, 2:59 PM), <http://www.nalp.org/jan14research>.

6. *Id.*

is so vividly evident. This first challenge could be the biggest and most significant of all because of the time which is spent in one's birth gender and the comfort that friends, family, and acquaintances have invested in the illusion that gender is immutable. This myth has traditionally kept courts from recognizing the existence of transgender people.

In the case of *Littleton v. Prang*, Christie Littleton had changed the gender on her birth certificate; however, the judge decided that she would not be considered female for purposes of marriage, and thus her marriage was not valid.⁷ In his introduction, the judge started with the question: "[I]s a person's gender immutably fixed by our Creator at birth?" providing a hint at the authority on which the judge intended to rely.⁸ Then he answered the question at the end of the opinion by stating: "Christie was created and born a male There are some things we cannot will into being. They just are."⁹

In *Kantaras v. Kantaras*, the Florida Court of Appeals reversed a circuit court ruling that the father, a transgender man, was the legal parent of his children simply because he was a transgender man whose birth-assigned gender was, as far as the court was concerned, controlling, despite the fact that Michael Kantaras' former wife knew he was transgender when they married, but, when they divorced, she attacked the validity of their ten-year marriage and Michael's history as the parent of their two children.¹⁰

Karen Frances Ulane was a pilot who was working for Eastern Airlines when she underwent gender reassignment surgery and was fired because she was transsexual. In a result similar to the *Littleton* and *Kantaras* cases, the decision in *Ulane v. E. Airlines, Inc.*¹¹ by the District Court judge—that Ulane had been discriminated against in violation of Title VII of the Civil Rights Act of 1964—was reversed by the United States Court of Appeals for the Seventh Circuit, with the reasoning that Eastern Airlines was free to discriminate against transgender women, even while acknowledging that they were not allowed to discriminate against women.¹² Again, the courts refused to accept the existence of the rights of transgender people. This theme has repeated itself through the courts and through the years and has served to deny parental rights, access to agencies, education, and employment.

These cases illustrate the traditional view of gender wherein the courts refused to recognize the existence of transgender people, thereby denying them a vast array of recognitions, rights, and protections.

Every transgender person has to begin by coming out and, in the profession, coming out in the law schools, law offices, board rooms, courtrooms, and jails, into every corner where the law extends (which is everywhere). Coming out is not without hardship, risk, or resistance; however, there is no progress without it, no liberation for oneself nor for anyone else.

Once a transgender person has found the courage to proclaim their truth, the process has to illuminate the circles of influence surrounding them, usually starting with family. In my case, I needed to notify my clients before anyone else. I came out to each of them individually, face-to-face, usually in the interview rooms of the county jails where they were incarcerated.

I definitely did not expect the wholesale acceptance I got from my clients. I was both surprised and

7. *Littleton v. Prang*, 9 S.W.3d 223 (Tex. App. 1999), *cert. denied*, 531 U.S. 872 (2000).

8. *Id.* at 224.

9. *Id.* at 231.

10. *Kantaras v. Kantaras*, 884 So. 2d 155 (F. Dist. Ct. App. 2005).

11. 581 F. Supp. 821 (N.D. Ill. 1983), *rev'd*, 742 F.2d 1081 (7th Cir. 1984).

12. *Ulane v. E. Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984).

touched by their encouragement and support. I told every one of my clients that I was going to change my gender and that I could understand that they might not want to continue with me as their lawyer. I told them I knew some excellent lawyers to whom I could recommend them. I expected some, if not all, of my clients to decline to continue with me; however, all of them, without hesitation, asked me to continue to represent them.

Next, I wrote letters coming out to the judges and prosecutors who were assigned to my cases in order to solicit whatever opposition they might harbor, and was again both surprised and touched by their amazingly positive responses. Having been around the profession as long as I have, particularly in the criminal courts, I had heard so many negative comments and jokes about transgender people over the years, even from my colleagues in the defense bar, that I was braced for the onslaught of what I expected to be a wave of ridicule and rejection, none of which ever materialized.

An article written about me in the daily legal newspaper helped to lessen the shock of my transition in a milieu within which I had spent over thirty years as a male. After the article, I was amazed at the incredibly warm, welcoming, and compassionate reception which I seemed to receive everywhere I went. This included my community and professional organizations as well as the law offices, courthouses, government buildings, jails, and police stations. I looked upon every new encounter as an act of liberation, both for whomever I met and for me. Wherever I went, I saw every occasion as an opportunity to advance the struggle, liberating bar associations, courtrooms, and government offices from the myth that transgender people do not exist and, if they do, that they do not belong in the profession.

The reaction to change in appearance and presentation, in workplaces like the various courthouses, police stations, jails, and law offices was somewhat unique in that people had to notice it, and while most reacted immediately, either positively or negatively, some people did not know how to react and simply pretended not to recognize me. I recently had a friend tell me that he saw me come to court dressed and did not know what to do or say, so he said nothing and went about his business as though he did not know me. He had been doing this for the past ten years before he took the initiative to approach me and to apologize.

When I reflected on it, I could see how that might be the way others might react. I probably had not taken the time to fully comprehend how challenging my transition was for everyone around me. While forging ahead with coming out, I simply ignored those people who ignored me, as well as those who appeared to be in shock, disbelief, or even dislike. I only bothered to engage those others who reacted openly to me. I am still learning and coming into a realization of how my society sees me and other transgender people. It has been impossible to ignore the rising profile of transgender people in the media and entertainment, and I am learning how much has to be done in order to change the prevailing image of gender change in the profession as well as in the larger society. I also realize that it has to be transgender people and their allies who will make that change. And I fully realize that this will take time and patience.

Coming out publicly provided me with a perspective which would never have been revealed to me without transition. For instance, I did not expect the negative reaction I received from some individual lesbian and gay people who openly disapproved of transgender people, especially transgender women, referring to them as “fake” or “phony” women, and going out of their way to announce their opposition to acceptance. A lesbian officer from the LAPD, who was acting as a liaison with the police and the LGBT community, told me to my face that all transgender women are prostitutes and liars.

Nor did I expect hostility from the women’s community. These individuals were definitely in the

minority; however, I was naively surprised that they were there at all. The vast majority of the women whom I encountered after my transition congratulated and welcomed me; however, I did meet a few others who apparently felt I had not paid the dues that growing up female had cost them. Even one of my old friends, an Asian American woman lawyer, publicly turned on me, probably because she resented my joining a community of Asian American women lawyers without having to pay those dues.

If my calling is to educate the community about being a transgender woman of color in the law, I myself am learning more than I ever knew about this subject every day. One major benefit of going through any major adversity is learning who one's friends are, as well as who are not. Finding out who was going to stand by me and stand up for me, through my transition and coming out, was a truly eye-opening revelation and gift for which I am exceedingly grateful.

The next aspect of the challenge was to continue to perform and produce at as high a level as possible in order to prove that a transgender woman of color can practice law as well and as effectively as anyone else. I had a long history of community and professional involvement which preceded my transition and which probably contributed to my acceptance in both places; however, jury trials are uniquely tied to personal presentation, and I had to question how I would be received by juries, by a collection of strangers who, if they knew me or about me, probably would not be allowed to serve.

In order to determine just how much difference my gender transition made in my first jury trials, I either presented jury questionnaires or had the judge inquire generally about anti-transgender bias. As it turned out, most jurors, similar to their responses to anti-woman or anti-minority bias, did not volunteer any negative feelings about transgender people. Those jurors who actually responded usually mentioned that they were more concerned about the witnesses, evidence, and facts in the case; and, after the trials were concluded, I felt that this was, at least as a practical matter, true. I came to the tentative conclusion that it was not going to be an issue in my cases and I eventually stopped asking questions specifically relating to transgender people and, instead, continued to inquire about bias against LGBT people without specifying my own status. I can report that I have not noticed any overt bias against transgender people before, during, or even after the trials from the jurors whom I have been able to debrief. I have always tried to pick jurors who I believe would be open to what I have to say about the case in closing, and whom I can trust to follow the law and come to a fair decision. So far, my experience has been generally positive.

It is clear that prejudice against transgender women of color continues even as the awareness of transgender discrimination continues to rise, especially in the media. Hate crimes against transgender women of color continue unabated. According to a recent report from the National Coalition of Anti-Violence Programs (NCAVP), titled "Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) and HIV-Affected Communities in the United States in 2012," transgender women encounter disproportionate amounts of violence relative to cisgender women: 53.8% of [25] anti-LGBTQ homicide victims in 2012 were transgender women and 73.1% were people of color.¹³

Every year since it was founded in 1998, Transgender Day of Remembrance takes place on November 20, and it is marked by candlelight vigils, marches, film screenings, and a reading of the names of those whose lives have been taken in the previous year because they were transgender. The list is always very lengthy, and over the years, seems to show no sign of diminishing.¹⁴

Discrimination continues to exist but I am optimistic for the future because such an attitude is

13. NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE VIOLENCE IN 2012 21, (2013), available at http://www.avp.org/storage/documents/ncavp_2012_hvreport_final.pdf.

14. See generally INTERNATIONAL TRANSGENDER DAY OF REMEMBRANCE, <http://www.transgenderdor.org> (last visited May 12, 2014).

becoming less and less prevalent. I do not expect to see discrimination against transgender people eliminated in my lifetime; however, I believe that progress can be made in minimizing its effect. Like all progressive change, this will not come about without initiative, effort, and allies. Still, progress for the rights of transgender people continues because of national groups, like the Transgender Law Center, Transgender Legal Defense and Education Fund, National Center for Lesbian Rights, Lambda Legal Defense and Education Fund, and the American Civil Liberties Union, as well as other more local groups, like Equality California, that have done a great deal to advance the cause of transgender Americans.

Passed by Congress on October 22, 2009, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, a law that specifically includes victims targeted because of gender identity, was signed into law by President Obama on October 28, 2009.¹⁵

In June 2012, the U.S. Senate held a hearing on the transgender-inclusive Employment Non-Discrimination Act, when, for the first time in Senate history, a transgender person, Kylar Broadus, testified.

In the area of identity documents, California passed the Vital Statistics Modernization Act which got rid of the former surgery requirement. Now, transgender people only need to submit a doctor's letter showing that they have undergone the appropriate kind of treatment for them. In June 2013, the Social Security Administration adopted the same modern standard.

Legislatures are paying increased attention to bullying of LGBT youth in schools. At least twelve states, California, Colorado, Connecticut, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Vermont, and Washington, along with the District of Columbia, have enacted laws to explicitly protect transgender and gender non-conforming students from harassment and discrimination in school. Title IX has been increasingly interpreted to similarly protect transgender and gender non-conforming students. In July 2013, California Governor Brown signed the School Success and Opportunity Law (AB 1266), which ensures that all students can fully participate in all school activities and have access to facilities consistent with their gender identity.

In 2012, HUD issued historic regulations that prohibit discrimination based on sexual orientation or gender identity in federally funded housing. In 2012, the new Massachusetts nondiscrimination law went into effect, making that the sixteenth state to explicitly protect transgender employees from discrimination, followed by Delaware in 2013, which became the seventeenth state to pass an inclusive nondiscrimination law. On April 20, 2012, the federal EEOC ruled that transgender people are protected under the federal sex discrimination law, Title VII.¹⁶

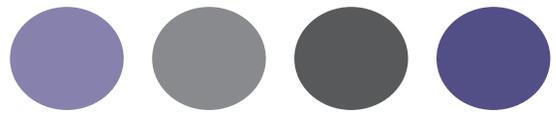
In July 2012, the US Department of Justice passed comprehensive regulations to implement the federal Prison Rape Elimination Act which provides specific protections for transgender prisoners, with respect to housing and medical care. In September 2012, a federal court in Massachusetts ruled that the state prison system had violated the constitutional rights of a prisoner by refusing to provide her with medically necessary care.¹⁷

While Civil Rights for transgender Americans continue to advance, the struggle continues, the discrimination persists, and the hate crimes continue to claim transgender victims, especially transgender women of color. Much is being done by individuals, groups, lawyers, and legislatures, and even more must be done before the transgender community of color attains any measure of equality and inclusion, and before there are no more Transgender Days of Remembrance because there are no more transgender victims of hate violence.

15. See 18 U.S.C. § 249 (2012).

16. See *Macy v. Holder*, EEOC DOC 0120120821 (2012).

17. See *Kosilek v. Spencer*, 889 F. Supp. 2d 190 (D. Mass. 2012).



About the Authors



*Asian Pacific American
Women Lawyers Alliance*

APAWLA

The Asian Pacific American Women Lawyers Alliance (APAWLA) was formed in September 1993, by a small group of Asian Pacific American (APA) women attorneys from various areas of practice in Los Angeles, in order to provide a forum for discussing and addressing important issues and concerns of APA women in the legal profession and as a networking, resource and support group. Initially, APAWLA primarily consisted of members from all four of the APA bar organizations in Los Angeles at that time—Japanese American Bar Association (JABA), Korean American Bar Association (KABA), Philippine American Bar Association (PABA), and Southern California Chinese Lawyers Association (SCCLA). For several years, APAWLA functioned as a committee in each of those bar groups as well as the Asian Pacific American Bar Association (APABA), which was established in 1998. In 2012, APAWLA became incorporated as its own bar association.

APAWLA's mission is to promote the inclusion, empowerment and advancement of APA women in the legal profession through advocacy, education, mentoring, networking and development of leadership within the professional and the larger community. Our group also strongly advocates the protection and advancement of our civil rights and achievement of social justice.

APAWLA has provided many workshops, seminars and other programs or activities that have focused on elimination of bias in the legal profession, balancing family and career, personal and professional development, and on other significant women's issues from an APA women's or women of color perspective. APAWLA also helped to start the Annual APA Community Holiday Toy Drive and Reception in 2000. APAWLA is a member of the Multicultural Bar Alliance (MCBA), and an affiliate of the National Asian Pacific American Bar Association (NAPABA). In December 2013, APAWLA broadened its membership to include a San Diego Chapter.



Merilee J. Arevalo

Merilee is a staff attorney with Katten Muchin Rosenman LLP, where she works in the Washington, DC office. Merilee focuses her practice on intellectual property law with a primary emphasis on trademark and domain name matters. She has significant experience counseling clients on domestic and international trademark portfolio management, including the selection, clearance, prosecution, and enforcement of trademarks. She also advises clients on issues related to global brand protection, anti-counterfeiting, e-commerce, copyright protection, and domain name recovery.

Merilee has valuable experience directing brand owners through the opportunities and challenges presented by the new generic Top-Level Domain (gTLD) expansion. She routinely provides strategic

recommendations for submissions to the Trademark Clearinghouse. In addition, she develops customized second-level domain registration plans and ongoing enforcement strategies in the rapidly expanding Internet space.

Merilee has worked with clients who are industry leaders in apparel and fashion, pharmaceuticals, manufacturing, building products, chemical products, transportation technology, banking, food and beverage, and consumer products. She previously worked in the trademark and copyright group of a multinational global science company.



Dolores S. Atencio

Dolores received her B.A. in Political Science from Colorado College and J.D. from the University of Denver College of Law. She is admitted to practice in the State of Colorado, Federal District Court for the District of Colorado, and the Tenth Circuit. Dolores began her legal career as a “Reggie Fellow” (Reginald Heber Smith Community Lawyer Fellowship). She then worked as an Assistant Attorney General in the Criminal Appellate Unit and as Vice President and General Counsel of the Denver Grand Prix Auto Race, Inc. Her adjudicatory experience includes serving as a Hearings Officer for the City of Denver and as a Colorado Administrative Law Judge. Her management experience includes serving as Director of Legal and Public Services for the Colorado Bar Association, as the first Development Director for KUVU Public Radio, and Director of the Colorado Division of Administrative Hearings. While at KUVU, Dolores received a prestigious three-year Kellogg Leadership Fellowship at which time she studied Latino broadcast management and ownership.

Early in her legal career, while working as a law clerk for the Denver MALDEF (Mexican American Legal Defense and Education Fund) office, Dolores developed an interest in redistricting and reapportionment. Then-MALDEF Director Joaquin Avila taught her how to create districts through laborious hand calculations, as software had yet to be developed. As a new *Reggie* lawyer, she traveled the state with Representative Richard Castro to state redistricting commission hearings. In 1993, Dolores was co-counsel for the Pueblo Chicano Democratic Caucus, successfully challenging Pueblo City Council to adopt two new majority-Hispanic city council seats. On behalf of the Colorado Hispanic Bar Association (CHBA), in 2001, Dolores was co-counsel to the Latino community in the congressional redistricting litigation. Ten years later, in 2011, Supreme Court Chief Justice Michael Bender appointed her to the Colorado Redistricting Commission. The Commission was responsible for redrawing sixty-five state house and thirty-five senate boundaries. The final maps, upheld by the Colorado Supreme Court in December 2012, created twenty-four Hispanic influence seats (30% or more): fifteen House and nine Senate seats.

Dolores has a long history with the Hispanic National Bar Association (HNBA), which began when she served as chair of the HNBA's 1990 Denver Convention. She was the HNBA's second female President (1991–1992); in 1991 she also served as CHBA President; researched and produced, *Las Primeras*, a sixty-minute video documentary on twenty-one of the country's earliest Latina lawyers; and was a member of the HNBA's Supreme Court Committees (in 1992 and in 2009, on the committee that vetted Associate Justice Sonia Sotomayor). She authored *The Making of An American Justice: The HNBA's Quest for the First Hispanic Supreme Court Justice*. From 2008–2010, Dolores was appointed co-chair of the HNBA's newly formed Commission on Latinas. Without funding, she spearheaded and supervised the completion of the first national studies on Latina lawyers, *Few and Far Between: The Reality of Latina Lawyers in the Legal Profession* (2009) and *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest* (2010). During her tenure, she also revived the *Primeras* research project.

After practicing law for thirty years, Dolores took a sabbatical. In 2013, she fulfilled a long-standing commitment to the HNBA to find the *first* Latina lawyer licensed in the United States. She became the Scholar in Residence for the Community Based Research Program at the University of Denver-Colorado Women's College—a one-year appointment ending June 2014. *100 Years of Achievement: Un Historia Abogada*, the first historic piece resulting from Dolores's research, was presented at the 2013 HNBA Annual Convention in Denver. She is working on a second historical piece to be presented at the HNBA's Annual Convention in Washington, D.C. in September 2014.

For her work, Dolores has received recognition, notably: the HNBA *Special Recognition for Leadership* (2010); CHBA Award for *Outstanding Corporate Commitment* (2001); Mayoral Appointment to Denver Judicial Nominating Commission (1994–2001); featured in *History of Colorado's Women for Young People* by Vivian Sheldon Epstein (1998); Presidential appointment to the American Bar Association Commission on Women (1993–1996); featured as one of twelve in a national calendar, *Hispanic American Women Making History Day by Day* (1993); Hispanic Business Magazine "100 Influentials List," (1991, 1993); CHBA Award "Outstanding Attorney of the Year" (1992); and American Express Award *Most Interesting Lives* (1986).

Locally, Dolores is in her second term on the Denver Women's Commission. As chair (2012–2013), she initiated the assessment of issues facing Denver women and girls resulting in the publication, *Windows into Denver Women and Girls*, released in March 2014. She is a board member of Girl Scouts of Colorado (second term) and member of the Alumni Council of the University of Denver Sturm College of Law.



Denise Avant

Denise was raised on the west side of Chicago, Illinois. She attended the University of Missouri-Columbia, where she received a B.A. in political science in 1980 and a J.D. in 1983. Denise received her M.A. in journalism from Roosevelt University in 2003.

Denise has been an Assistant Public Defender in Cook County since 1987, representing indigent clients on direct appeal. For the last eight years, she has worked on post-conviction cases in addition to her appellate work.

Denise is an active member of the National Federation of the Blind, serving as the 1st Vice President of both the Illinois affiliate and the Chicago chapter. She serves on several affiliate committees in Illinois, including Freedom Link, the youth mentoring committee. Additionally, Denise chairs the committee on the Illinois School for the Visually Impaired, and in 2012, she served on the governor's task force for the Illinois School for the Visually Impaired and the Illinois School for the Deaf.

Denise is in her second year of service with the Commission on Disability Rights, which is one of the Goal III entities within the American Bar Association. She is an active member of Christian Tabernacle Church. Her hobbies include reading, cross-country skiing, tandem biking, and running.



Lawrence R. Baca

Lawrence, a Pawnee Indian, is President of the Federal Bar Association. He was formerly a Deputy Director of the Office of Tribal Justice, United States Department of Justice. During his thirty-two years with the Department, he also served as a Senior Trial Attorney in the Civil Rights Division. On the occasion of his retirement, February 1, 2009, he was presented the Attorney General's Medallion, the highest award the Attorney General can present to a retiring employee. The award has only been presented seven times in the past decade. Lawrence was the leading proponent on behalf of the civil rights of American Indians in the Civil Rights Division for thirty-two years. His civil rights work on behalf of American Indians in the areas of Credit, Voting Rights, and Education was groundbreaking. The Assistant Attorney General for Civil Rights has said that Lawrence filed more civil rights cases on behalf of American Indian victims than any other attorney in the history of the Civil Rights Division.

A 1976 graduate of Harvard Law School, Lawrence was one of the first American Indians to graduate from Harvard. He was the first American Indian ever hired through the Department of Justice's Honors Law Program. In 1973, he received his B.A. in American Indian history and culture from the University of California, Santa Barbara, where he also

taught two courses on Indian issues during his senior year. In 1974, while attending law school, Lawrence was a Harvard Teaching Fellow at Harvard University and, in 1976, he taught a course entitled Perspectives on the Historical Development of American Indian Policy and Law at the Harvard University Extension School. He was an Adjunct Professorial Lecturer teaching Federal Indian Law at American University Washington College of Law in 2004 and 2005. He initiated the course in Federal Indian Law at Howard University School of Law in 2007.



Leonard M. Baynes

Leonard is Dean and Professor of Law at the University of Houston Law Center. A nationally recognized communications law scholar with specializations in race, business, and media issues, he has served as the inaugural director of the Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law, as chair of three committees for the Association of American Law Schools, and as scholar-in-residence at the Federal Communications Commission (FCC).

Leonard has written more than twenty-five law review articles on race/racism and the law, corporate law, and communications law, and is completing a case book, with two co-authors, entitled *Telecommunications Law: Convergence and Competition* for Wolters Kluwer. He is admitted to practice in both New York State and Massachusetts.

Leonard has also been an expert witness at the FCC Federal Advisory Committee for Diversity in broadcast ownership. He was inducted into the Minority Media & Telecommunications Council Hall of Fame, where former FCC Commissioner and MMTC Chair Henry Rivera described him as "a champion for diversity."

In 2010, Leonard received the Diversity Trailblazer Award from the New York State Bar Association, and in 2011, he accepted the American Bar Association Alexander Award on behalf of the Ronald H. Brown Law School Prep Program for College Students. In 2012, *On Being a Black Lawyer*, named him one of the 100 most influential black attorneys in the United States, particularly for his work as a college-to-law-school "Pipeline Builder."

Leonard received his B.S. from New York University, and J.D. and M.B.A. from Columbia University. He was awarded the Earl Warren Scholarship and the COGME Fellowship at Columbia, where he also served as associate editor of the Columbia Human Rights Law Review. After law school, Leonard served as a Law Clerk to Federal District Court Judge Clifford Scott Green in the Eastern District of Pennsylvania.



K. Steven Blake

Steven is an accomplished senior legal and business executive with deep experience in the global financial services, manufacturing, and professional services industries. His senior-level law department and business leadership has included extensive corporate, international, regulatory, and legislative responsibility in both public and privately held companies.

A graduate of Indiana University's Maurer School of Law (where he serves on the law school's Board of Visitors) and IU's Kelley School of Business, Steve practiced law with the Indianapolis firm of Johnson Smith, LLP and served as Deputy Attorney General for the State of Indiana before moving in-house with GE Capital. He went on to become GE Capital's first global litigation counsel for the Company's auto financial services unit, and later the first general counsel for diversified consumer products manufacturer Aquion Partners and Xpert Financial, Inc., a Silicon Valley-based financial services start-up. Steve also led the global legal and compliance functions for Heidrick & Struggles International, Inc. as Executive Vice President and general counsel (NASDAQ: HSII).

Steve and his husband of twenty years (six legally!) recently moved to Southern California from Chicago, where they are living out their dreams together.



Collette Brown

Collette is a member of Neal Gerber & Eisenberg's General and Commercial Litigation practice group. She represents clients in complex civil litigation matters. Collette also dedicates her time to various pro bono legal matters affecting low-income clients, victims of domestic violence, and persons with disabilities.

Collette received her B.A. from Florida State University (2006), M.A. from Georgia State University (2007), and J.D. from the University of Chicago Law School (2013). Before beginning her legal career, she worked as an English teacher for three years.

While in law school, Collette was a legal intern for the Equal Employment Opportunity Commission, and an active member of the Juvenile and Criminal Justice Clinic and the Black Law Students Association.



Kevin D. Brown

Kevin is the Richard S. Melvin Professor of Law at Indiana University Maurer School of Law and the Emeritus Director of the Hudson & Holland Scholars Program at Indiana University-Bloomington. He has been a member of the faculty of the Law School since 1987. Kevin was also the Director of the Hudson & Holland Scholars Program from August 2004 to August 2008. This program recruits high-achieving underrepresented minority students to the undergraduate student body on the Bloomington campus and produces half of the black and Latino grads from campus.

Kevin is a 1978 graduate of the Kelley School of Business at Indiana University-Bloomington and a 1982 graduate of Yale Law School. He has been a visiting professor at the University of Texas School of Law, the University of Alabama School of Law, and the University of San Diego School of Law. Kevin has been affiliated with universities on four different continents, including in India, South Africa, Kazakhstan, and Nicaragua.

Kevin's research interest for the past twenty-six years is primarily in the area of race, law, and education. He has published over fifty articles or comments on issues such as school desegregation, affirmative action, African-American Immersion Schools, and increasing school choice. In 2005, Carolina Academic Press published his book, *Race, Law and Education in the Post Desegregation Era*. His book *Because of Our Success: The Changing Racial and Ethnic Ancestry of Blacks on Affirmative Action* should be published by Carolina Academic Press this Fall. Kevin was one of the original participants of both Critical Race Theory Workshops and the People of Color Conference.

Kevin is also the founder of Indiana University Summer in Ghana Program. This program has sent over 150 students on a four-week journey through the Republic of Ghana. He is also the Co-President of the Founding Committee of the Dubois Academy, an effort to create an elite international boarding school in Ghana chartered by the State of Indiana for Indiana youth.



Elizabeth Chambliss

Elizabeth serves on the Board of Directors for the Institute for Inclusion in the Legal Profession (IILP) and is Editor-in-Chief of the IILP Review. She is a Professor of Law at the University of South Carolina School of Law and Director of the Nelson Mullins Riley & Scarborough Center on Professionalism. Elizabeth specializes in the empirical study of the legal profession, focusing on the organization and regulation of legal services and the challenges facing U.S. legal education. She was the principal organizer of the 2010–2011 Future Ed conference, a year-long contest of ideas for innovation in legal education, and she continues to be active in debates about legal education reform. Her most recent research focuses on the assessment of new models for delivering civil legal services, and the effects of broader market changes on lawyers in state civil service.

Elizabeth received her B.S. from the College of Charleston and her J.D. and Ph.D. in sociology from the University of Wisconsin, where she also served as Assistant Director for the Institute for Legal Studies. Prior to joining the faculty at the University of South Carolina, she taught at the University of Texas, the University of Denver, Harvard University, and New York Law School.



Chelsea J. Clark

Chelsea is a third-year law student at the University of South Carolina School of Law. Her passion for public interest law has led to positions with the South Carolina Center for Fathers & Families, the Federal Public Defender's Office, and the Institute for Inclusion in the Legal Profession. Chelsea presently serves as an Articles Editor for the Journal of Law and Education, after winning the Best Spader Award. Additionally, she is a Pro Bono Program Board Member and won a Pro Bono Program Outstanding Service Award in 2014. Chelsea received her B.A. from the University of South Carolina in 2012.



Nicholas Fluck

Nicholas was inaugurated as president of the Law Society of England and Wales in 2013. He was first elected to the Law Society Council in 2005, then to the Commercial Property constituency and, since July 2012, he represented the geographic constituency of Lincolnshire.

He is one of two partners in Stapleton & Son, a traditional general practice and high street firm, in Stamford, Lincolnshire.

Nick lives in Boston, England, and is married with one daughter, Claire. He is married to Sue, who is a temporarily retired general practitioner.

Nick has a particular interest in communications and data technology and used to chair the Law Society's Technology and Law Reference Group—relinquishing this appointment upon being elected deputy vice president of the society in 2011.



Tiffany R. Harper

Tiffany helps clients navigate the intersection between real property and distressed real estate, state-court foreclosure proceedings, and bankruptcy—and her mortgage lender and note-buyer clients count on her to do just that.

Tiffany's experience as a law clerk for a federal bankruptcy judge during the height of national bankruptcy filings and as an in-house attorney who protected secured assets and enforced defaulted loans for a Fortune 500 company has prepared her to effectively and efficiently identify and resolve the complicated and intertwined legal issues that arise when loan agreements are breached.

She guides clients through the loan enforcement process, and clients rely on her experience in state and federal courts to receive the best and least expensive outcome.

Tiffany's memberships include Black Women Lawyers' Association, President, 2013, and Board Member-At-Large, 2008–present; Midwest Minority In-House Counsel Group; Just the Beginning Foundation, Associate Board of Directors, President, 2008–present.

Tiffany received her B.A. from Dartmouth College and her J.D. from Washington University-St. Louis School of Law.



Max Hill QC

Max has a high profile crime practice, both for the defense and prosecution. He built his reputation appearing in many of the most significant terrorism trials of the past decade. He has also worked on many notorious murder trials, and has appeared in significant fraud cases, too. He was Chairman of the Criminal Bar Association, 2011–2012, and became head of Red Lion Chambers, one of the leading crime and regulatory sets in England, in September 2012.

During the past ten years, he has been continuously instructed for the prosecution, first as junior counsel, then as leading junior, and now as QC, in a series of Al Qaeda terrorist trials. These include the so-called ‘Ricin Conspiracy’ trial (*R v. Bourgass and others*), concerning the discovery of poison recipes and ingredients in north London; terrorism trials involving Syria (*R v. Tabbakh*, Birmingham Crown Court 2008), Baluchistan (*R v. Baluch and Marri*, Woolwich Crown Court 2008-2009), Somalia (*R v. Mohamed and Yusuf*, Kingston Crown Court 2009); and the most significant terrorist publications case to date (*R v. Faraz*, Kingston Crown Court 2011), as well as all three trials resulting from the “21/7” plot by suicide bombers to detonate bombs on London transport two weeks after the carnage of “7/7.” These trials lasted a total of sixteen months during 2007 and 2008.

In addition to criminal trial work, Max has been instructed by the Treasury Solicitor on behalf of the Government in proceedings relating to the detention of British nationals in Guantánamo, including the case of *Mohamed v. Secretary of State for Foreign and Commonwealth Affairs*. He appeared on behalf of the Home Secretary in terrorism Control Order cases in the High Court, including *SSHD v BB and BC*. In 2012, he advised the Foreign and Commonwealth Office in relation to the diplomatic immunity of foreign visitors to the London 2012 Olympic Games. He was also instructed by the Directorate of Legal Services at New Scotland Yard, to act for the Metropolitan Police Service throughout the Coroner’s Inquests into the London Bombings of July 7, 2005, before Lady Justice Hallett, which concluded on May 6, 2011.



Steve John

Steve John is a Principal in the Legal and Technology Practices based in the Firm’s San Francisco office.

Steve brings to Korn/Ferry deep experience in the recruitment of senior in-house counsel across a broad range of industries and on behalf of both private and public companies as well as academic institutions.

Steve represents a diverse portfolio of public and private companies as well as academic institutions seeking talented legal counsel. His

practice includes recruitment of General Counsel, university counsel and senior corporate counsel working on a broad range of legal subject matter.

In addition to his General Counsel search practice, Steve has developed particular expertise in the recruitment of Intellectual Property counsel. He has placed senior IP counsel in a number of the worlds largest technology companies.

Prior to joining Korn/Ferry, Steve was a Managing Director in the in-house practice at Major, Lindsey & Africa. Prior to MLA, Steve was a Founding Partner and Senior Executive Search Consultant with Oliver John Partners in San Francisco.

Mr. John currently serves as a Trustee of the University of California, Hastings College of the Law Foundation.

Steve holds a B.A. in philosophy from the University of Utah and a J.D. from the University of California, Hastings College of the Law.



Chasity A. Lomax

Chasity is a litigation attorney at O'Hagan LLC who focuses her practice on premises and products liability, with a concentration in the retail market. She also has management-side employment litigation experience. She represents clients in Illinois state and federal courts, as well as before the United States Equal Employment Opportunity Commission and the State of Illinois Department of Human Rights.

Chasity defends liability claims against major retail organizations, in which she drafts and argues dispositive motions, deposes witnesses, handles mandatory arbitration hearings, pre-trial conferences, trials, and all another aspects of the litigation process. She also oversees her clients' interests throughout the probate process for minors' estates.

She is admitted to the State of Illinois, the Northern District of Illinois, the Southern District of Illinois, and admitted pro hac vice to the Eastern District of Michigan.

Chasity earned her B.A. from Duke University in 2002 where she was a Doris Stroup Slane Trinity Scholar. She received her J.D. from the Howard University School of Law in Washington, DC where she was a Performance Scholar and a recipient of the Earl H. Davis Scholarship for outstanding academic achievement and community involvement. While in law school, Chasity was a student attorney for the Criminal Justice Clinic and served as the Co-Captain for the Charles Hamilton Houston National Moot Court Team, winning the "Distinguished Brief" award at the Whittier National Juvenile Law Moot Court Competition in 2009.



Richard Meade

Richard is the Chief Legal Officer (CLO) for Prudential Financial's International Division, leading a team of business unit lawyers located in the U.S., Asia, Europe, and Latin America. The businesses in the International Division manufacture and distribute individual life insurance, retirement, and related products, including certain health products with fixed benefits, to clients in selected international markets. Rick has been the CLO for the Company's International Division since 2001.

Rick is also responsible for oversight of Prudential's Operations and Systems legal team, whose lawyers advise on issues related to corporate real estate, intellectual property and technology, and general vendor contracts.

Rick has been the Chair of the Law and Compliance Department's Diversity Steering Committee since 2006, as well as the Executive Sponsor of the Department's Internal and Outside Counsel Diversity Committees. He also played a key role in launching the multi-company Inclusion Initiative, which focused on increasing corporate expenditures on minority and women owned law firms.

Rick joined Prudential's Corporate Law Department in 1985. From 1991 to 2001, Rick was the Chief Legal Officer for Prudential's U.S. individual insurance businesses.



Sam Mercer

An award-winning campaigner, Sam has been Head of Equality and Diversity at the Bar Council since June 2013. Prior to this she worked on a portfolio of consultancy projects for blue-chip companies, NHS Trusts, Charities, and Government and was Workplace Director at Business in the Community (BITC), the UK's leading business-led charity promoting responsible business practice. While at BITC, she led BITC's workplace campaigns on gender and race equality, employee health and well-being, and learning and development.

Before joining BITC, Sam was Chief Executive of the Employers Forum on Age (EFA), developing key equality and diversity campaigns on behalf of employers, generating employer advice and support services, and representing the forum to government and in the media.

Sam took time out in 2010 to work on a campaign for gender equality in Tanzania and gained a Masters in Corporate Social Responsibility in 2012.



Melinda S. Molina

Melinda is an assistant professor at Capital University Law School. Her scholarship focuses on how the law impacts subordinate and marginalized groups in the United States. She co-authored two national studies on Latinas lawyers. The studies are the first of their kind to provide both qualitative and quantitative data on the experiences and status of Latinas in the legal profession, on a national level and across all major legal sectors, providing both a demographic and professional profile of more than 900 Latina attorneys. Melinda was a fellow of the Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law. Before joining academia, she was an associate in the New York office of Sullivan & Cromwell LLP. She teaches Torts I and II, White Collar Crime Seminar, and White Collar Crime Practicum Course, as well as teaching within the Academic Support Program.



Emily D. Murray

Emily is the non-attorney Manager of Internet Practice Services for Katten Muchin Rosenman LLP, where she is based in the Washington, DC office. Emily holds an M.B.A. and has been supporting legal practices, primarily in the intellectual property area, for fifteen years. She currently supports the Internet Practice's activities in connection with its full range of client services, including global trademark portfolio management, domain name portfolio management and enforcement, social media policies and strategies, ICANN's new generic top-level domain (gTLD) program, and other Internet policy matters. In addition, Emily provides guidance to clients on non-legal business and policy issues relating to their use of trademarks and Internet-based resources, such as marketing strategies for new gTLDs. She has worked with clients in a wide range of industries, including Internet and technology, financial services, insurance, apparel, food and beverage, retail, and consumer products.

Emily currently serves on the International Trademark Association's Internet Committee, where she is a member of the Domain Disputes, Ownership, and Whois Subcommittee and previously served on the Internet Governance and Contractual Relationships Subcommittee. She has spoken on social media and online enforcement issues pertaining to trademark administrators at various INTA events. Her prior experience includes supporting litigation, patent, and public finance practices, as well as teaching English as a second language and working in scientific publishing.



Emmanuel U. Obi

Emmanuel is a corporate/transactional attorney practicing in Dallas, TX. In his current role, Emmanuel serves as public finance counsel and is actively involved in a variety of matters, serving as bond counsel, underwriter's counsel, and disclosure counsel for a myriad of clients, including state agencies, municipalities, counties, school districts, hospitals, airports, and a variety of other special districts. Previously, Emmanuel practiced as a corporate associate in the Dallas office of Weil, Gotshal and Manges LLP where his practice concentrated on mergers, acquisitions, and a variety of other complex corporate matters.

Emmanuel received a B.B.A. in finance, *cum laude*, from the Edwin L. Cox School of Business at Southern Methodist University (SMU) in 2002 and went on to receive a J.D., *magna cum laude*, from SMU's Dedman School of Law in 2007, graduating in the top 2% of his law school class. While in law school, he served as an articles editor for the International Law Review Association, the President of the Black Law Students Association, and was inducted into the prestigious Order of the Coif. Emmanuel was also selected as a Securities Regulation Academic Scholarship recipient for his second highest grade in the course and winning a related legal writing competition administered and judged by members of the Securities Section of the Dallas Bar Association.

Despite his busy practice, Emmanuel routinely authors or co-authors articles on substantive legal developments relevant to his clients, practice, and other areas of personal interest, including diversity and education. In 2010, in recognition of his community service, especially with the Oak Cliff Boys & Girls Club where he helped develop a mentoring and character building program for participating youth, he was honored with one of five coveted Outstanding Young Dallasite Awards, conferred each year by the Dallas Junior Chamber of Commerce.



E. Macey Russell

Macey, a partner at Choate, Hall & Stewart, represents financial institutions, banks, businesses, and corporations in disputes involving contracts, securities, investments, and lending arrangements, as well as in class action matters in state court, federal court and in arbitrations. In 2007, the Governor of Massachusetts appointed Macey to the Judicial Nominating Commission, which recommends judicial appointments at all levels throughout the Commonwealth. After Macey served as Vice Chairman in 2010, the Governor appointed him Chairman of the Commission beginning in 2011.

In 2009, *Massachusetts Lawyers Weekly* named Macey a “Diversity Hero,” and the Litigation Counsel of America named him to its Trial Lawyer Honorary Society composed of less than one-half of one percent of American lawyers. In 2011, the American Bar Foundation named him a fellow, which is reserved for one-third of one percent of attorneys in his jurisdiction. Also in 2011, the Boston Bar Association appointed Macey as co-chair of its Diversity and Inclusion Committee. Additionally, the Burton Foundation and Library of Congress have honored him with a Burton Award for excellence in legal writing for his co-authored article *Developing Great Minority Lawyers for the Next Generation*. He is also listed in *The Best Lawyers in America*.

Since 1989, Macey has been a frequent advisor and contributor to Harvard University Law School’s Trial Advocacy Workshop. He co-chairs Choate’s Diversity Committee and is a member of the firm’s Hiring Committee. Mr. Russell received his J.D. from Suffolk University Law School in 1983 and his B.A. from Trinity College in 1980.



Rebecca L. Sandefur

Rebecca is Associate Professor of Sociology and Law at the University of Illinois in Urbana-Champaign and Faculty Fellow at the American Bar Foundation, where she founded and leads the foundation’s Access to Justice research initiative. Her research focuses on inequality, particularly as it relates to law. Rebecca’s scholarship includes investigations of work and inequality in the legal profession and other professional occupations, lawyers’ pro bono service and its contributions to legal aid, and studies of ordinary people’s experiences with common problems that could bring them into contact with the civil justice system. Her current research on the public includes the Community Needs and Services Study (CNSS), a community-sited, multi-method study of ordinary people’s experiences with civil justice problems and the resources available to assist them in handling those problems. The CNSS is funded by the National Science Foundation (SES-1123507) and the American Bar Foundation. In 2013, she was the the Hague Visiting Chair in the Rule of Law, affiliated with the Hague Institute for the Internationalization of Law. Her public service has included advising state Access to Justice commissions and service on the Right to Counsel Committee of

the California Access to Justice Commission, the Research Advisory Board of the Civil Right to Counsel Leadership and Support Initiative, and the Sargent Shriver Civil Right to Counsel Evaluation Committee. Before joining the American Bar Foundation and the University of Illinois, Sandefur received her Ph.D. in sociology from the University of Chicago in 2001 and served for nine years on the sociology faculty of Stanford University.



Jamie Sinclair

Jamie is an associate at Goldstein, Rikon, Rikon & Houghton, P.C. She graduated *magna cum laude* from New York Law School in 2012 where she was a features editor of the *New York Law School Law Review*. In this capacity, she helped spearhead the school's first annual *Diversity Report*, which analyzed the representation of women and minorities on law reviews nationwide. Jamie had the opportunity to present the report at the National Conference of Law Reviews in Rhode Island in 2012 and spoke at several of the Institute for Inclusion in the Legal Profession symposiums regarding the report in 2013.

Jamie is passionate about the forward progress of women in the profession. She currently serves as the co-chair for the Women's Rights Committee of the New York County Lawyers' Association and is an active member of the New York Women's Bar Association.



Elizabeth Espin Stern

Elizabeth has more than twenty-five years of experience advising on U.S. and global immigration, HR, and mobility services. She is the leader of Mayer Brown's global worksite management initiative, a "global people solution" that offers multinational clients a comprehensive compliance and risk management program in connection with their mobile workforce. Elizabeth's team represents one of the leading business immigration practices in the United States, as well as one of the most well-known and ranked global practices for immigration work permits, visas, and compliance, representing major commercial entities in a variety of industry sectors, including defense, financial services, information technology and telecommunications, multimedia, and manufacturing.

Elizabeth has consistently been selected as a leading business immigration lawyer by *Chambers Global* and *Chambers USA, Legal 500*, and *Legal Times*. She was ranked by the *Washingtonian* magazine in 2007 as one of Washington's thirty best lawyers. She is included in *The Best Lawyers in America*, and is listed in *Who's Who Legal*, *The International Who's Who of Business Lawyers*, and *The International Who's Who of Corporate Immigration Lawyers*. She regularly speaks and writes about global migration policies and contributes to major news agencies and publications, including *Legal Times* and *Global Employer*.

Elizabeth is a member of the American Immigration Lawyers Association, the U.S. Chamber of Commerce (Labor and Immigration section), and the Society for Human Resources Management. She received her J.D. from the University of Virginia School of Law in 1986 and her B.A. from the University of Virginia, *magna cum laude*, in 1983.



Mona Mehta Stone

Mona represents both public and private entities throughout the country, ranging from small businesses to multibillion-dollar companies. Serving as corporate in-house counsel early in her career exposed Mona to a vast array of business legal issues. Drawing on that experience, her broad litigation and ADR skills have resulted in the resolution of major disputes.

In the community, Mona is involved in multiple areas: Arbitrator, Cook County Arbitration Program; Board of Directors, ATHENA International; Member, American Bar Association; Member, Indian American Bar Association; Member, North American South Asian Bar Association; Member, State Bar of Arizona; Mentor and Member, National Association of Women Lawyers; Judicial Evaluation Committee, Chicago Bar Association (2006–2010); Certificate of Advanced Study and Training in Commercial Arbitration, Tulane Law Arbitration and Dispute Resolution Group; and Business Editor, *Tulane University Environmental Law Journal*. She received her B.A. in political science from Bradley University in 1994 and J.D. from Tulane University Law School in 1997.



Sharla C. Toller

Sharla is a Managing Director in Major, Lindsey & Africa's Washington, D.C. office. She is a member of MLA's in-house practice group where she specializes in placing attorneys in corporate legal departments in various industries.

Prior to joining MLA, Sharla was a practicing attorney. She began her legal career as a general civil litigator at a mid-sized law firm in Roanoke, Virginia. She went on to practice insurance defense work as an associate attorney at Ross, Dixon & Bell, which merged with Troutman Sanders in Washington, D.C. Her practice centered on general liability and directors and officers litigation and coverage issues.

Sharla serves on the board of the Oliver White Hill Foundation where she is the co-chair of the summer internship committee. In this role, she has recruited and placed several law school students in summer internships at different civil rights organizations in Washington, D.C.

In December 2013, Sharla received a Masters in Human Resources Management with a concentration in diversity and inclusion issues from Georgetown University. In 2004, she received her J.D. from Howard University School of Law, where she was a Senior Articles Editor of the *Howard Law Journal*. She received her B.A. in government from the University of Virginia.



Renee Turner

Renee is a judicial law clerk to the Honorable Wilma A. Lewis at the United States District Court of the Virgin Islands. She previously served as a judicial law clerk to the Honorable Thomas J. Motley at the Superior Court of Washington, D.C.

While in law school at Indiana University Maurer School of Law, Renee was a founding member and the co-editor in chief of the *Indiana Journal of Law and Social Equality*, an articles editor for the *Indiana Law Journal*, a research assistant to Professor Kevin D. Brown, and a judicial extern to the Honorable Tanya Walton Pratt at the United States District Court for the Southern District of Indiana. Renee also participated in the law school's Sherman Minton Moot Court Competition, where she earned brief-writing honors.

Renee, originally from Huntington Station, New York, earned a B.A., *cum laude*, from Spelman College in Atlanta, Georgia.



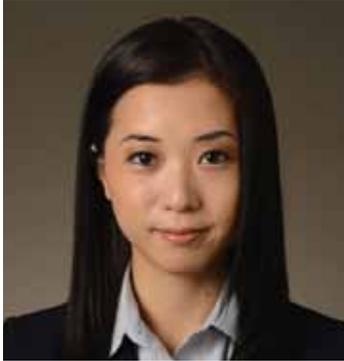
Brian J. Winterfeldt

Brian serves as Head of the Internet Practice at Katten Muchin Rosenman LLP and is based in the firm's New York and Washington, DC offices. He works with clients on the creation of global trademark and branding strategies, as well as the development of programs to enforce their intellectual property rights and protect against infringement of their trademarks, trade dress, and copyrights in the United States and internationally. This includes domestic and international trademark counseling, clearance, prosecution, enforcement, and litigation, as well as trade dress, Internet governance, and domain name issues. Brian's practice encompasses global leaders in the retail and apparel, media, financial services, consumer products, food and beverage, hospitality, and Internet and technology industries.

Brian's practice includes significant work in Internet governance, domain name law, and new media counseling and enforcement, including supporting clients with the management of their domain name portfolios and securing domain names that incorporate clients' trademarks through the Uniform Dispute Name Resolution Policy (UDRP) and other similar processes for country code top-level domains (ccTLDs). He has also counseled clients on cutting-edge issues such as the new generic top-level domain (gTLD) program, including drafting and prosecuting new gTLD applications and developing advocacy and enforcement strategies in this space. In addition, Brian regularly counsels clients and provides training in the social media space, including developing and administering social media policies and promoting and protecting clients' brands on social media platforms.

Brian has written numerous articles on trademark law and is a prominent and frequent speaker at industry events on topics including trademark issues, Internet governance, and social media. He has served as

co-chair to several major conferences for the International Trademark Association (INTA), including the recent Trademarks and the Changing Internet Landscape conference in 2013, and is currently a special advisor for INTA's Internet Committee and INTA's Trademark Administrators Committee Internet Team.



Jen C. Won

Jen currently serves a term-law clerk to the Hon. Larry Burns in the U.S. District Court for the Southern District of California. Prior to her clerkship, Jen worked as a litigation associate at Sidley Austin LLP's Chicago office between 2012 and 2014. Her litigation experiences include mutual fund and 401(k) plan fees litigations, ERISA class actions, and reinsurance disputes. She has previously written about topics in class action discovery, reinsurance dispute resolution, and unclaimed property litigation.

Jen holds a J.D. from Northwestern University School of Law, where she was Executive Articles Editor on the *Journal of Criminal Law and Criminology*. Prior to law school, she worked as a financial policy analyst in Washington, D.C. Jen earned her B.A., cum laude, from the University of Pennsylvania.



Mia F. Yamamoto

Mia was born in Poston Relocation Camp, Arizona in 1943. She graduated from Cal State University, Los Angeles, in 1966 with a B.S. in Government. Mia served in the U.S. Army, from 1966 to 1968, with the 4th Infantry Division, USARV. She received an Army Commendation Medal, Vietnam Campaign Medal, et.al., from 1967 to 1968. In 1971, Mia received her J.D. from UCLA School of Law, where cofounded Asian Pacific Islander Law Student Association. She was a poverty lawyer for Legal Aid Foundation of Los Angeles, from 1971 to 1974; a Deputy Los Angeles County Public Defender and California State Public Defender, from 1974 to 1984; and in private practice since 1984. She is the Past President of California Attorneys for Criminal Justice, a statewide organization of 2,500 private and public defenders; past president of the Multi-Cultural Bar Alliance (coalition of minority, women's, and gay and lesbian bar associations of Los Angeles); and past president, Japanese American Bar Association. Mia served on the California Judicial Council Statewide Task Forces on Jury Improvement and Fairness and Access.

Mia currently serves on the boards of the Asian Pacific American Bar Association, Criminal Courts Bar Association, and International Bridges to Justice (a Human Rights group providing Due Process education to the judicial systems of China, Thailand, Vietnam and Cambodia); having previously served on the boards of the L.A. County Bar Association, Korean American Bar Association and ACLU of Southern California. Her other organizations include the Women Lawyers Association

of Los Angeles, National Lawyers Guild, Philippine American Bar Association, and several others. She is the past president of the Asian Pacific American Woman Lawyers Alliance of Los Angeles and served on the Commission on Sexual Orientation and Gender Identity for the American Bar Association.

Mia's classroom lectures, panel discussions, and demonstrations, include the panel on "Race and Criminal Justice," George Washington University, Washington, D.C., for the 1999 President Clinton's Initiative on Race; "Cultural Defenses, Pro and Con" and "Community Law Practice" for the ABA 1999 Atlanta; "Miles to Go", ABA 2000 New York City; "Cultural Defenses" and "Lawyers in the Media" for the 1999 NAPABA Convention, Los Angeles; "Elimination of Bias" for Consumer Attorneys of California, San Francisco, 2008; and Los Angeles County Bar Association "Nuts and Bolts" (Elimination of Bias) 2008 and 2009.

She is a frequent media commentator on issues relating to criminal law and a variety of related issues primarily for: (print) LA Times, LA Daily Journal; (radio) KPFK, KPCC; (television) KCAL Channel 9, Fox Channel 11, NBC Channel 4, KCET Channel 28, (cable) MSNBC, CNN, Court TV, and other cable and foreign media.

Mia's past honors include awards from the Criminal Courts Bar Association of Los Angeles, Women Lawyers Association of Los Angeles, Southern California chapter of the National Lawyers Guild, and the Los Angeles County Bar Association Criminal Justice Section "Criminal Defense Attorney of the Year" for 2002. She was named one of the "100 Most Influential Lawyers in California" by California Daily Journal in 2002. Mia was named "Criminal Defense Attorney of the Year" by the Century City Bar Association in 2006. She was voted "Southern California Super Lawyer" by her peers, Los Angeles Magazine, in 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012. She received the American Bar Association "Spirit of Excellence" Award and the National Asian Pacific American Bar Association "Trailblazers Award" in 2008.

Mia is also a recipient of the Rainbow Key Award from the City of West Hollywood (2011), "Sisters Standing Up For Love" Award from API-Equality Los Angeles (2012), The Harvey Milk Legacy Award from Christopher Street West and Los Angeles Pride (2012), and Liberty Award from Lambda Legal (2012).



Steven K. Yoda

Steven is an attorney in the Los Angeles office of Orrick, Herrington & Sutcliffe LLP. He has represented clients in a wide array of complex civil and criminal matters involving business torts, contracts, intellectual property, and insurance. He is a graduate of Stanford University and the University of California, Berkeley (Boalt Hall) School of Law. From 2004 to 2005, he served as a law clerk to the Honorable James Ware, United States District Judge for the Northern District of California. He currently serves as President of the Japanese American Bar Association.

Jennifer H. Zimmerman

Jennifer is an Executive Director in the Legal and Compliance Division of Morgan Stanley. She heads the ERISA and Employee Benefits Legal Group and also provides expertise in connection with executive compensation, employment law, and related matters.

Her principal responsibilities include all legal issues related to Morgan Stanley's employee benefits in the Americas, including pension, defined contribution, employee stock ownership, and health and welfare plans. She covers benefits matters in transactions, reporting and disclosure, litigation, corporate, tax and securities laws, financings, compliance, and employee issues. Jennifer acts as counsel to Morgan Stanley's US Retirement Plan Investment Committee and Canadian Retirement Plan Operations Committee.

Jennifer joined Morgan Stanley in 1998. She received a J.D. with a concentration in Business Law and Regulation from Cornell Law School in 1988 and an LL.M. in Taxation from New York University in 1991. Prior to joining Morgan Stanley, she was an attorney with the law firms of Paul, Weiss, Rifkind, Wharton & Garrison (1989–98) and Botein, Hays & Sklar (1988–89). Jennifer is admitted to practice law in New York and Connecticut. She is a member of the American Bar Association, the ERISA Committee of the American Bankers' Association and the National Association of Women Lawyers, is a member of the advisory board of the Women In Law Empowerment Forum (WILEF) East, Treasurer and a member of the Board of Directors of Grameen PrimaCare, Inc., and a member of the BNA Tax Management Advisory Board—Compensation Planning. She co-chairs the Women's Committee of Morgan Stanley's Legal and Compliance Division, and is a member of the Division's Diversity and Inclusion, Leadership Development and Philanthropy Committees, as well as Morgan Stanley's Women's Business Alliance.



2014 DIVERSITY AND INCLUSION IN PRACTICE ROUND-UP

Many of the most interesting, promising, and meaningful diversity and inclusion initiatives come from small or local efforts; the vision and commitment of a single individual or organization; and the willingness to experiment and try something new. The Diversity and Inclusion Practice Round-Up section of the *ILLP Review* is a means of collecting, compiling, reporting upon and analyzing the impact of new and updated diversity and inclusion initiatives and efforts; sharing information about how promising efforts are working; and stimulating new ideas and strategies that will result in a more diverse and inclusive legal profession.

Individuals and organizations are invited to submit information about programs and efforts that they feel merit attention by the broader legal profession in general and those active in the diversity and inclusion arena specifically. For more information about how to submit an item for the next Practice Round-Up, please visit www.TheILLP.com.

Pipeline Efforts

Emory Law “Ensuring the Affordability, Accessibility and Diversity of the Emory Law Experience”

Emory Law’s strategic goal focused on diversity has been forefront in establishing scholarships and programmatic initiatives that support diversity. Emory has historically committed to diversity and has helped thousands of minority students find success in law schools. Diversity focuses has expanded beyond early efforts of racial diversity to include capabilities and disabilities, age, gender, ethnicity, religion, socio-economic backgrounds, and sexual orientation. Today, Emory Law consistently ranks among the nation’s most diverse law schools to better reflect the world outside of the campus. “Ensuring the Affordability, Accessibility and Diversity of the Emory Law Experience” operates by raising scholarship funds specifically to increase diversity, focusing recruitment efforts for a diverse student body, and holding events and lectures that raise awareness on diversity related issues in the legal profession.

Through these efforts, Emory has been able to provide 30 scholarships through the C. Robert Henrickson Endowed Scholarship Fund, 29 scholarships through the Black Law Students Association Endowed Scholarship Fund and raise over a quarter of a million dollars in awards. Due to its success, sponsorship has been strong and Emory Law has a full-time diversity liaison. It has improved Emory Law’s ability to recruit talented minorities and work closely with law firms that are committed to diversity.

For more information or questions about this project, please contact Associate Dean of Development and Alumni Relations, Joella Hrickik at 404-727-9172 or at joella.hrickik@emory.edu.

Programs for Law Students

Indianapolis Bar Association (IndyBar) 2014 Diversity Job Fair

The Indianapolis Bar Association Diversity Job Fair was created to increase the number of diverse attorneys practicing in central Indiana. In addition to reaching out to racially diverse law students, LGBT and students with disabilities are also included. In the development of the Fair, more than 125 law schools across the United States received and publicized information. To prepare, IndyBar staff received training on Symplicity software, a program utilized for online registrations and create final lists for interviews.

Positive growth has been seen after each year, with the job fair resulting with dozens of employment offers extended with 20 percent of the job offers accepted by students. The employer base now includes large firms, mid-sized firms, boutique specialty firms, public interest organizations, in-house positions with corporations and the United States District Court. Now, workshops are available on interactive discussions for interviewing and a networking reception allows students and professionals to interact.

IndyBar Diversity Job Fair proves to be different by offering extra benefits and networking opportunities, scholarships, resume review, workshops, and information about the IndyBar's Bar Review course. In total, the Fair's expenses range from \$30,000-40,000 depending on participation. Students are only asked to pay their travel expenses if needed.

For more information about the Indy Diversity Job Fair, please contact Sara Belvins, 2014 Diversity Job Fair Chair, at 317-639-1210 or at sblevins@lewis-kappes.com.

Orrick-Founded Bay Area Diversity Career Fair

Orrick, and co-sponsor Bar Association of San Francisco, saw a much needed event for employers in the Bay Area as well as law students across the country. The Bay Area Diversity Career Fair sought to create the nation's leading job fair for incoming second-year law students of diverse backgrounds. Two years, hours of researching, and committees later, Orrick developed a hands-on interview system with prominent firms and government entities. In order to give students educational and networking opportunities, Orrick hosted this two-day event with a reception at the firm's San Francisco office that includes prospective employers. Finally, a breakfast panel is now included, featuring distinguished community and business members from the Bay Area to candidly discuss their paths, mentors, and successes.

The Career Fair has grown significantly in numbers with positive feedback from students and employers alike. This is an excellent opportunity for junior associates from Orrick to develop leadership skills, get involved in the legal community, and demonstrate a commitment to Orrick and the legal profession.

For more information on the Orrick-Founded Bay Area Diversity Career Fair, please contact the firm's Diversity Chair, Lorraine McGowen at 212-506-5114 or Senior Manager of Diversity and Inclusion, Kristin Greene at 415-773-5428.

Passport to Success Diversity & Inclusion Initiative: Getting the Job

Sponsored by Shook, Hardy, Bacon LLP, and implemented by the University of Houston Law Center (UHLC) Career Development Office and Office of Student Services, *Passport to Success* was designed as a student program for support, retention, and preparation of UHLC students from diverse backgrounds. *Passport to Success* is still available and inclusive of all UHLC students. This program aids students from their first year to their journey into the legal profession. Mentoring, academic enrichment, professional development, career enhancement, and financial literacy workshops are all available.

Passport to Success Diversity & Inclusion Initiative: Getting the Job was the flagship program of *Passport to Success*, focusing on professional development, career enhancement, and networking. *Getting the Job* supplied a series of attorney panels focused on legal employers' insider tips on the three major areas of the job search process: resume and cover letter, interviewing, and networking. Attorneys from various practice areas provided invaluable insight into the "do's and don'ts" of career opportunities and the legal job of their dreams. After the panel, students were invited to a Networking in Practice luncheon to practice their skills with other attorneys. In return, attorneys provided feedback to students in real time and were able to give them specific tips. Students attended these events at no costs and, more importantly, were able to refine their skills in a safe environment.

For questions or more information, feel free to contact UHLC Career Specialist, Tiffany J. Tucker at 713-743-2574 or at tjtucke2@central.uh.edu.

Programs for Young Lawyers

Baker & McKenzie London Office BME (Black and Minority Ethnic) Recruitment

Historically, the legal profession in London has attracted lawyers from traditional, educational background – students from middle/upper class from Russell Group Universities. Since 2006, the London office of Baker & McKenzie has sought to increase the number of Black and Minority Ethnic (BME) trainee solicitors to buck the trend. Through the engagement of the whole workforce and a formulation of the firm's business case, the percentage of BME trainee solicitors increased by 28% since 2006. Analysis of diversity statistics showed that BME statistics at the Trainee Graduate Recruitment level reflected a low percentage of the trainee population coming from a BME background. Trainee population is a critical source of talent, typically shaping the demographic of the office. Therefore, poor BME representation at trainee level has long term implications, impacting BME senior lawyers and partners in years to come.

BakerEthnicity was created as response to the lack of representation. In partnership with the Graduate Recruitment team, BakerEthnicity undertook a detailed review of ethnicity statistics at each stage of the hiring process. Lower proportions of the BME students were making it to interview than their White counterparts. As a firm, Baker & McKenzie believes a diverse workforce is a better workforce, and a better place to serve the needs of clients. Ensuring better BME representation at all levels can satisfy client diversity expectations and provide innovative solutions to the complex legal problems clients bring.

Three key aims were identified: to revamp the Recruitment Process to ensure it was ethnicity neutral, develop relationships with organizations for a broader range of recruits, and develop mentoring and development initiatives for school pupils. Pursuing these goals gave expected outcomes to steadily increase the number of BME trainees, associates and partners. Multiple improvements occurred by adapting a broad approach.

Due to the nature of career progression for a lawyer, this program was created to be sustainable, e.g. an average of 10 years for a trainee to become a partner. By producing diversity statistics on an annual basis and paying very close attention to BME candidates, Baker & McKenzie is very pleased with sustained improvement. It has prompted lasting, visible changes and enabled the London office to provide a service more in tune with the broad and diverse needs of the clients.

For more information on BME, please contact Justine Thompson at +4402079191238 or at [Justine.thompson@bakermckenzie.com](mailto:justine.thompson@bakermckenzie.com).

Coffee Inclusion Program

Segal McCambridge Singer & Mahoney, a litigation firm, has fostered inclusion through a formal program stemming from its diversity initiative. In 2013, each associate was randomly paired with a Shareholder for a lunch meeting. The program's purpose was for associates to gain exposure to different Shareholders and practice groups. In addition, the program raised awareness of the Associates. With much success, a Coffee Inclusion Program continues to pair partners with associates to generate conversation, understanding, and inclusion. Sometimes, a simple trip to Starbucks matters.

The firm also has an Inclusion Lunch Program that creates better bonds of communication and understanding between people of diverse backgrounds. By spending time with one another, understanding and appreciation can be given to another in a greater degree. The costs are funded through the Firm's operating expenses and include the cost of lunch for each Associate and Shareholder.

For any questions on Segal McCambridge Singer & Mahoney's efforts, please contact Kathleen McDonough at 312-645-7905 or at mmcdonough@smsm.com.

Esquire Coaching Inc. Diverse Rainmakers Program

Diverse Rainmakers Program is to equip law firm associates who are of color, women, and/or LGBT with the critical skills necessary to build business, compete for leadership positions in their firms, and advance in their careers. At the same time, the program directly addresses the "inner glass ceiling" many people face. This unseen, internal, impenetrable barrier often keeps people of color and women from rising to the upper ranks of law firms, regardless of their qualifications or achievements. By smashing and getting rid of this inner glass ceiling, diverse attorneys can attain a new level of confidence and success.

Developed by lawyers and business development experts, the program is an intense 12-month program that consists of monthly learning modules and one-on-one coaching. Participants learn strategies to become their own powerful rainmaker by unleashing their authentic leadership potential. Diversity is an asset and will allow program graduates to hit the ground running without compromising their core values or identity.

If interested in learning more about Esquire Coaching Inc. Diverse Rainmakers Program, please contact Ann Jenrette-Thomas at 718-290-4129 or at ann@esquirecoaching.com.

Haynes and Boone, LLP Innovation in Mentoring

Haynes and Boone proudly highlight programs specifically designed to promote the development and career advancement of the company's diverse attorneys. The appreciation, recognition and respect of all persons are integral components of the firm's culture. Programs are set by a 63-person Attorney Diversity Committee (ADC) dedicated to developing and maintaining policies and programs that lead to the firm's success in the recruitment, retention, promotion, and professional development of diverse attorneys through various mentoring programs.

Mentoring is the primary focus for the firm to develop a robust pipeline to leadership for women and minority attorneys. Programs like *Women's Leadership Academy* is designed to mentor, guide, and coach women who are nearing partnership consideration. Over half of female associates participate in the program to learn from firm leaders, develop skills, and use community involvement. Likewise, the *Women Partners' Summit* in 2013 pushed the development and implantation of pathways for female attorneys into firm leadership positions. The *Minority Associate Connections* mentoring program provides in-house programs and training for diverse associates and pairs minority associates with firm leaders, including key partners.

The biennial *Minority Attorney Retreat* brings together attorneys and clients to focus on how diversity impacts business and develop a strategic plan for future goals and initiatives. The purpose is to celebrate inclusion and advancement, encourage collaboration from all levels of the firm, and open dialogue about the impact of diversity. These initiatives have seen increased participation by diverse associates and partners, and enhanced the number of women and minority attorneys in leadership positions within the firm. Expenditures for all mentoring events range from \$10,000 to \$15,000 annually with a full-time Diversity Coordinator managing the programs.

Any questions or additional information on mentoring initiatives should be directed to the Diversity Coordinator Pamela Pujo at 214-651-5076 or at pamela.pujo@haynesboone.com.

Programs for All Lawyers

Bar Association of San Francisco (BASF) 2015 Goals & Timetables Report

For over 20 years, the Bar Association of San Francisco has studied diversity in the legal profession in an effort to advance racial and ethnic minorities in the work force. The BASF Diversity Task Force has adopted the *2015 Goals & Timetables Report* to conduct surveys that measure the success of this effort, assess the progress of hiring, retention and advancement of minority attorneys. Through interview summaries and data, information is then published as a statistical “report card” on the current status of minority lawyers in the San Francisco/Bay Area. As California’s minority population stands at roughly 61%, this report remains critical in ensuring that reflection in legal services.

In 2015, the report will focus on the status and experiences of minority lawyers based on ethnic sub-groups (particularly Latino and Asian Ethnic groups), intersectionality of minority groups, and the retention and turnover of minority attorneys. BASF began collecting information and data in 2012, and continues to conduct confidential interviews by a full-time staff and volunteers.

For more information on the 2015 Goals & Timetables Report, please contact the Diversity Programs Manager, Nicole Britton-Snyder at 415-782-8914 or at nbritton Snyder@sfbar.org.

From Visible Invisibility to Visibly Successful: The Women of Color Research Initiative Online Program Toolkit

Women of color face many challenges and barriers in the legal profession and continue to be underrepresented as General Counsel, partners and associates, and judges. The Women of Color Research Initiative Online Program Toolkit (Toolkit) provides all the materials for bar associations, law firms, corporate legal departments, law schools, and other groups to present a successful program on the results of the American Bar Association (ABA) Commission on Women in the Profession’s research on women of color. Strategies are provided to advance and promote women of color in the legal profession. Toolkit was designed to present information, increase awareness, and foster dialogue, focusing on the experiences of women attorneys of color in: recruitment, hiring, retention, and advancement. The program provides a practical approach to identifying these barriers and offers strategies and resources to increase diversity and inclusion within the legal profession.

While the Toolkit includes suggested program agendas and PowerPoints to assist the presentation, a panel discussion featuring prominent women should follow, highlighting strategies women, especially women of color, can use to overcome barriers they face. Toolkit offers an abundance of scenarios, discussion questions, and discussion guides to be used and encourage interactive participation. All of the materials are free and available as of June 2014. These efforts were funded by the ABA Commission on Women in the Profession.

For more information, please contact Program Specialist, Natale Fuller at 312-988-5497 or at natale.fuller@americanbar.org.

Iftar

Sheppard Mullin is hosting their first Iftar dinner, which is the breaking of fast during Ramadan, on Wednesday, July 9, 2014 at 8pm. Iftar at Sheppard Mullin will celebrate diversity and inclusion in the firm and the community. During the month of Ramadan, the end of June to the end of July, Muslims worldwide fast from sunrise to sunset. At sunset, communities typically gather together, often inviting Muslims and non-Muslims to the festivities, to give thanks and eat together. In Washington DC, many organiza-

tions host such intercultural Iftars, including the White House and the U.S. Congress. However, Sheppard Mullin may be the first large law firm to host such an event. Representatives of the UAE and other interested countries have been invited. As part of the firm's effort to promote cultural education and raise awareness within the community, guests will assemble at Zaytinya, a great restaurant in the middle of DC, with friends and colleagues, for food and conversation. Space is limited, so a RSVP is necessary.

For more information or to RSVP to Sheppard Mullin's Iftar, please contact Chelsea Ross at 202-772-5334 or at cbross@sheppardmullin.com.

Morgan Stanley LCD Madness

The Women's Committee of Morgan Stanley's Legal and Compliance Division's (LCD) Diversity & Inclusion Committee created an annual fundraising event in connection to the NCAA Basketball Tournament, March Madness, to break down barriers within LCD. The fundraiser teaches participants about basketball and provides them with an opportunity to interact in a new way. The tournament gives men and women the opportunity to pick the tournament's winners in exchange for a small donation to LCD's charity partner.

LCD provides guidance to a participant who may not know the rules, teams involved, or how to create a personal online bracket sheet in an online internal website. "Tip-Off Happy Hours" before the tournament allow camaraderie among participants, supplied with conversation starters, basketball lingo, and updates on stats. Most importantly, participants build relationships and rapport with others in the workplace. Participants earn points for each correct pick and the three players with the most points after the championship have the opportunity to have a private lunch with Morgan Stanley's Chief Legal Officer.

In its third year, over 160 LCD members participated and raised more than \$3,800 for charity.

For more information, please contact Bari Koss at 212-296-2180 or at bari.koss@morganstanley.com or Nate Saint-Victor at 212-296-2180 or at nate.saintvictor@morganstanley.com.

National Native American Bar Association's Native American Attorney Research Initiative

The National Native American Bar Association (NNABA) has embarked on a new project, the Native American Attorney Research Initiative. The NNABA represents over 2,500 American Indian, Alaska Native, and Hawaiian Native attorneys throughout the United States. This research initiative will examine perspectives, experiences, and career trajectories of Native American attorneys in order to improve recruitment, hiring, retention, and advancement of Native Americans in the legal profession. The NNABA has teamed up with Nextions to help explore this first-of-its-kind study to better understand the type of strategies needed to accomplish these goals.

The community of Native American attorneys is small and spread across the United States. The results will provide a picture of issues confronting Native American attorneys in: private practice, government practice, federal and tribal areas, judiciary, corporate legal documents, and academia. In order to successfully accomplish this study, 500 survey responses and 50 individual telephone interviews are needed. The cost of this project overall is \$100,000 for a full research and reporting expenses funded by tribes, corporate sponsors, law firms, and individuals.

To participate in this study or for more information please contact the President of the National Native American Bar Association, Mary Smith at 202-236-0339 or at marysmith828@hotmail.com.

Neal, Gerber & Eisenberg LLP *MAKERS: Women Who Make America*

Neal, Gerber & Eisenberg's Women's Network hosts annual events for clients and friends for the firm, known as "Professional Connections." The goal is to provide an opportunity for female attorneys and business contacts to grow professional networks. Particularly, Professional Connections hosted the 2013 Chicago premiere of *MAKERS: Women Who Make America* in association with WIIW-TV/Channel 11 (Chicago's public television station).

The goal was to provide an exclusive opportunity through this movie screening, discussion and reception demonstrating a commitment to diversity and inclusion that extends beyond a written policy. The program encouraged women in business to "be bold," a theme of the Women's Network in 2014. The event was held in-house with a private, catered dinner and network session for the firm's friends, clients, and colleagues, followed by the movie premiere. After, the audience was given a Q&A with "Maker" Marlo Thomas and Executive Producer Betsy West. Roughly 200 people attended the event with the budget of \$17,500 funded by Neal, Gerber & Eisenberg, LLP.

For more information about MAKERS, please contact Holly E. Johnson at 312-269-5230 or at hjohnson@ngelaw.com.

Orrick's Annual Diversity & Inclusion "Dive/In" Program

Orrick has valued diversity and inclusion in their core values by moving beyond surface discussions to full, embodied understandings of what it means to create and nurture a truly diverse and inclusive corporate culture. Orrick is a leader among law firms on issues of diversity and inclusion. Through leadership and innovative policies, Orrick does not sit back but continues to improve the diversity and inclusion as an organization.

"Dive/In" is a day devoted to talking about diversity and inclusion that encompasses 25 global offices, 37 events, and a staff and clientele of 250+. Dive/In is ultimately a dialog to listen and celebrate diverse backgrounds, experiences, and perspectives. This year, Orrick will celebrate its sixth Annual Diversity and Inclusion "Dive/In" Celebration with an array of panel discussions, short films, guest speakers, and social events with clients. From Washington DC to Munich or Shanghai, Orrick's past celebrations have included discussions with Chaz Bono, David Mixner, and a reading of the award-winning play *The Exonerated*.

For more information on Orrick's Annual Diversity & Inclusion "Dive/In" Program, please contact the firm's Diversity Chair, Lorraine McGowen at 212-506-5114 or Senior Manager of Diversity and Inclusion, Kristin Greene at 415-773-5428.

Project Hola!

Since its inception in 2010 Project HOLA! has worked with 33 outside attorneys and 28 law firms, including three women- and minority-owned firms. Project HOLA! strives to meaningfully impact promotion and retention of diverse attorneys by leveraging GE's relationships to provide networking opportunities, business and exposure to HOLA!'s outside council members. Project HOLA! outside council members also serve as advisors to GE in developing and inclusion efforts in the legal profession, including within GE. Overall, this initiative has had an overwhelmingly positive impact for GE attorneys on the HOLA! team and the GE Capital Americas' legal department.

In 2013, Project HOLA! focused on expanding its message of using GE's influence to promote and foster diversity and inclusion among its outside council providers. Members assisted in rolling out GE Legal's Project MOSAIC (Maximizing OutSide Attorneys' Inclusiveness Culture) throughout the GE Le-

gal organization. Not only did the HOLA! team seek to increase the number of contacts and interactions with diverse outside counsel members, but also enhanced the quality of those interactions. Through this, the HOLA! team was able to include women and minority-owned firms as GE Preferred Providers, invite an outside council member to GE National Hispanic Forum, and increase new engagements and overall interactions.

2014 – 2015 will bring new collaborations with attorneys from GE’s preferred providers and existing HOLA! firms to identify the external lawyers who should participate in Project HOLA! for the year. Themes will include: leveraging external senior-level partners in advisory capacity to drive the larger agenda of increased diversity and promotion of inclusion in the legal profession, identify more junior level associates for mentoring and opportunity, and translating successes of external diversity to promote internal goals of diversity and inclusion among legal departments.

As leaders on diversity and inclusion efforts, the HOLA! members have actively advocated, informed, and presented on the program through various channels such as Twitter and InsideCounsel magazine.

For more information on Project HOLA!, please contact Andrew Packer at andrew.packer@ge.com or at 312-441-7244, or Gloria Fazzolari at gloria.fazzolari@ge.com or at 770-541-5793.

The Apollo Project

The InterLaw Diversity Forum launched Phase One of The Apollo Project in May of 2014 with the goal of giving organizations the practical tools to help make effective cultural changes by leveraging the examples of best practice throughout the legal sector and beyond. After a series of diversity studies conducted by the Law Society of England and Wales concluded that all diverse groups (women, minorities, LGBT, etc.) faced similar obstacles in career development, the InterLaw Diversity Forum wanted to pinpoint the exact problems facing diverse groups and provide recommendations that address and solve these issues. The key finding of the “Career Progression Report” conducted by the InterLaw Diversity Forum was that “Diversity 101” is not working. While there was a strong case for organizational change, organizations and their leaders need more guidance on what to do to make those changes, leading to the creation of the Apollo Project.

For Phase One, case studies were submitted to the InterLaw Diversity Forum by organizations in the UK and US to search for original organizational change initiatives. Through examining these various diversity efforts, the InterLaw Diversity Forum was able to ascertain what each organization did to bring about change and how it has been a success. Submissions that showed strong, positive change in their organization were published on the Apollo Project website (www.theapolloproject.net) to begin the formation of a toolkit for organizational best practices. The submissions that form the toolkit serve as a valuable resource for other organizations, allowing organizations to pick and choose components that will work for them to enact change within their own organization. Submissions are requested formally every six months to continually build on to the existing toolkit.

The Apollo Project is supported by foundation sponsor CMS and its diversity team, along with Lloyds Banking Group, National Grid and Data_Morphosis. The Apollo Project is looking to launch Phase Two in Autumn/Winter 2014.

For more information on The Apollo Project, please contact Daniel Winterfeldt at +442073672700 or at Daniel.winterfeldt@cms-cmck.com.

True Grit and a Growth Mindset: The Secrets of Success for Women Lawyers

A Program Toolkit

The Grit Project Toolkit, and American Bar Association (ABA) Commission on Women in the Profession, educates participants about the science behind grit and mindset. Both traits have been shown to be predictive of success for female lawyers to enhance the quality and effectiveness of women law students and lawyers. This ensures better performance, more effective communication between attorneys and clients, and increased chances of success for women in the law. In 2012, a study of women lawyers in AmLaw 200 law firms identified grit and growth mindset among highly successful women lawyers. “Grit” is defined as a perseverance and passion for long-term goals, while “growth mindset” is the view that one’s abilities can be developed. This is what inspired the ABA Commission on Women in the Profession to undertake the Grit Project.

To educate women lawyers about these traits and other traits within their control, Toolkit includes suggested program agendas. The agenda begins with an overview of the research and a PowerPoint assists with the presentation. A panel or small group discussion follows to highlight how to apply these assets to situations women attorneys commonly find themselves: arguing a deposition, making a pitch, or handling a heavy workload. The Toolkit provides all materials for a successful program and is available for free as of 2014.

For more information on The Grit Project Toolkit, please contact Program Specialist Natale Fuller at 312-988-5497 or at natale.fuller@americanbar.org.

Using Data to Motivate

Sidley Austin LLP has held annual Diversity & Inclusion Town Halls that have become an important part of the firm’s culture. Chairs from the Diversity Committee and Committee on Retention and Promotion of Women are joined by diversity staff to present to each U.S. office. The meetings provide a snapshot of the demographic composition, data about attrition, promotion to partnership, and firm leadership from the year before. Strategic plans are reviewed and progress towards goals is measured for individual offices and the firm’s U.S. demographics. Town Halls motivate lawyers to engage with the firm’s diversity and inclusion programs, as audiences have increased and creative ideas have been reported. By regularly providing honest factual information highlighting achievements and places for improvement, Sidley Austin has been able to motivate broader support for diversity and inclusion initiatives.

For more information, please contact Sally Olson at 312-456-4250 or at sarah.olson@sidley.com.

“Women & the Law Celebration of Women in the Profession”

The Illinois State Bar Association (ISBA) began “Women & the Law Celebration of Women in the Profession” to highlight the progress and accomplishments of women in the legal profession as well as focus attention on disparity, specifically in equity partnerships and compensation differences between male counterparts in firms. In 1893, there were 208 female lawyers in the United States, but that has increased to more than 300,000 today. Despite this, women lawyers make up only 15 percent of equity partners in large law firms, a number that has not changed in seven years.

The ISBA presented or co-presented events honoring women in the profession and ways to help women succeed. The first event included two informative panel discussions followed by a networking reception. This panel celebrated the accomplishments of women lawyers from 1893 – 2013, and included an esteemed panel of women in the law who openly shared their success stories. The second panel focused

on current women lawyers, their work-life issues, and the many initiatives women are taking to help others succeed as well as help legally-disadvantaged women throughout the world.

Women make up one out of three lawyers and 50 percent of U.S. law schools. Still, women do not have the same opportunity to become equity partners at law firms, judges, or corporate counsels. Many events were held in celebration of this effort: a reception at the ISBA's Midyear Meeting, and events in conjunction with Women's History Month.

Winston & Strawn, ISBA, sponsorships, and registration fees helped absorb the costs of these projects. The project benefited lawyers and students in Illinois in educating the early history and struggles of women in the legal profession, the expansion of women in the profession, and the challenges still faced today.

For more information on ISBA's "Women & Law Celebration of Women in the Profession," please contact Rachel McDermott at 312-726-8775 or at rcmcdermott@isba.org.

General Diversity and Inclusion Programs

The Greenlining Institute 2014 Energy Telecom Water Cable Supplier Diversity Report Card – *Unexpected Achievements and Continuing Gaps*

California companies have long recognized that diversity is integral to good business. This culture is seen in the groundbreaking supplier diversity efforts taken by energy and telecommunication companies under the California Public Utilities Commission (CPUC) General Order 156 (GO 156). Greenlining Institute plays a key role in facilitating and encouraging diversity efforts by publishing an annual Supplier Diversity Report Card. This report grades the state's energy, telecommunications and cable companies based on voluntarily reported data. Examples of involved companies are: Pacific Gas & Electric, Southern California Gas, AT&T California, Comcast, Time Warner Cable, Verizon Wireless, Sprint, and California American Water.

Rankings of the report are based on performance and improvement, broken down by ethnic categories, minority women and disabled veterans, and industrial categories. The report exams topics related to supplier diversity, such as electric procurement, within the water industry, and legal and professional services. The report concludes with comprehensive recommendations for GO 156 and individual companies based on progress and performance.

Many small, diverse businesses face difficulty when trying to break through "old boy networks" to receive contracting opportunities with major corporations. Greenlining holds these major companies accountable for their performance on procuring goods and services. Through CPUC's GO 156, an order requires the state's largest energy utility, water, and telecommunications companies to annually report the percentage of contracts given to women-, disabled veterans-, and minority-owned business enterprises. This drives utility companies to improve their supplier diversity efforts, and in fact, the number of minority-owned law firms that obtained work from the utilities Greenlining observes has increased. By serving as an economic catalyst, diverse businesses or small companies can bring business to underserved communities and succeed. These businesses ultimately strengthen California's economy. Greenlining advocates that this model should be adopted in a wide variety of industries, helping small businesses, and diverse populations to improve America's economy.

For more information on the Greenlining Institute, please contact Stephanie Chen at stephaniec@greenlining.org. For more information specifically on the 2014 Supplier Diversity Report Card, please contact Noemi Gallardo at 805-832-8411 or at neomig@greenlining.org.

Language Access Laws and Legal Issues: *A Local Official's Guide*

A Local Official's Guide is a student-drafted guide for locally elected officials to better understand language access and engage constituents who have limited English proficiency. In a diverse state like California, understanding language and providing access helps local officials ensure civic participation and increase service access for all constituents and communities. Under supervision of Hastings College of Law, Professor David Jung, and the Director of the Center for State and Local Government Law, this research and legal analysis describes federal and California laws governing spoken language, language ordinances implemented by municipalities throughout the country, and general policies related to language access.

In 2013, another report was published by the Administrative Office of the Courts called *enhancing Language Access Services for LEP Court Users: A Review of Effective Language Access Practices in California's Superior Courts*. The project highlights the most effective language access practices throughout California's superior courts. It has been used throughout California and is constantly provided with recommendations and guidance. Language access to law is critical in a state that encompasses over 200 languages other than English. The end result of this project will be a statewide Language Access Plan (LAP). The LAP will provide all persons with equal access to courts, ensure court procedures are fair, and respond to needs of court users from diverse cultural backgrounds.

For more information, please contact Noemí Gallardo at 805-832-8411 or at gallardo.noemi@gmail.com.

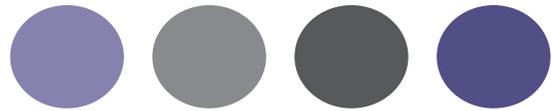
The Paperless Initiative

Baker & McKenzie's Amsterdam office enhanced inclusiveness and sustainability through the Paperless Initiative, introduced in January 2013. All 300 employees, regardless of position, were equipped with iPads and personal print dashboards that track how their work affects the environment to promote digitization, and reduce ink and paper consumption. The Amsterdam office examined how the organization functioned and what tools and devices were available, taking steps to maximize work process.

Acquisition of iPads began in March 2012, after securing approval of the managing board and a budget of about EUR1.9 million. It would allow every employee to conveniently access work emails and documents, allow employees to be on top of office matters – giving a feeling of control to: address issues, retrieve documents, respond to inquiries at home, on the way to work, or out-of-office meetings and conferences. Mobile devices were complimented with the personal print dashboard, which show individual ink and paper consumption, and carbon footprint. Within the first six months, the office saved EUR35,000 in printing and paper costs, and posted annual savings of EUR60,000 to EUR 75,000 in paper costs.

Simultaneously distributing iPads to 300 employees took considerable preparation from the IT department. Taxation and import duties were major concerns, but were addressed before the rollout. Employees were not taxed and the price was not deducted from payroll. An office FAQ page on the internal website addressed issues, answered queries, and shared a timeline of the project. The Paperless Initiative also managed efficiency through digital archiving of client files, providing WiFi access to all employees, and replacing old desktops with laptops.

For more information on The Paperless Initiative, please contact HR Director for Amsterdam, Jeroen Venrooij at +31205517140 or at jeroen.venrooij@bakermckenzie.com.



Institute for Inclusion in the Legal Profession

Board of Directors

2014

Marc S. Firestone

Senior Vice President and General Counsel
Philip Morris International, Inc.

Stuart A. Alderoty

Senior Executive Vice President and General
Counsel
HSBC North America Holdings Inc.

Lawrence R. Baca

Former President
Federal Bar Association and National Native
American Bar Association

Elizabeth Chambliss

Professor of Law and Director, NMRS Center on
Professionalism
University of South Carolina School of Law

Brian W. Duwe

Partner
Skadden Arps Slate Meagher & Flom LLP

Elisa D. Garcia C.

Executive Vice President, General Counsel &
Corporate Secretary
Office Depot Inc.

Kim D. Hogrefe

Senior Vice President & Senior Specialty Claim
Officer
Chubb & Son

Floyd Holloway, Jr.

Counsel
State Farm Insurance Companies

Sharon E. Jones

CEO
Jones Diversity, Inc.

John H. Mathias, Jr.

Partner
Jenner & Block LLP

Willie J. Miller, Jr.

Senior Vice President & Deputy General Counsel, Corporate
Mondelēz Global LLC

Terrence Murphy

Executive Director
Chicago Bar Association

Nam Paik

Partner
Baker & McKenzie

Michael J. Wagner

Partner
Baker & McKenzie

Thomas P. White

Partner
Schiff Hardin LLP

James H. Wooten, Jr.

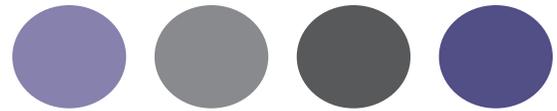
Retired General Counsel
Illinois Tool Works

Hon. E. Kenneth Wright, Jr.

Presiding Judge, 1st Municipal District
Circuit Court of Cook County, IL

Sandra S. Yamate

CEO
Institute for Inclusion in the Legal Profession



Institute for Inclusion in the Legal Profession

Advisory Board (In formation)

2014

Willie J. Miller, Jr. (Chair)
Senior Vice President &
Deputy General Counsel,
Corporate
Mondeléz Global LLC

Ilah Adkins
Vice-President, Legal Counsel
RBS Citizens N.A.

Nicole Auerbach
Founding Member
Valorem Law Group

Adisa P. Bakari
Partner
Kelly Drye & Warren LLP

Gretchen C. Bellamy
Assistant General Counsel
Legal Administration/External
Relations
Walmart

Bonita K. Black
Partner
Steptoe & Johnson LLP

Robert T. Cichocki
Partner
Arnstein & Lehr

Michelle Landis Dauber
Professor of Law and Bernard
D. Bergreen Faculty Scholar
Stanford Law School

Brackett B. Denniston III
Senior Vice President and
General Counsel
General Electric

Alan P. Dorantes
General Attorney
AT&T

David L. Douglass
Partner
Sheppard Mullin Richter &
Hampton LLP

Barack Echols
Partner
Kirkland & Ellis LLP

Peter M. Ellis
Partner
Reed Smith LLP

Martin P. Greene
Co-Managing Partner
Greene and Letts

Joan Haratani
Partner
Morgan Lewis & Bockius LLP

Carrie J. Hightman
Executive Vice President &
Chief Legal Officer
NiSource

Annette Hudson-Clay
Diversity Director
Columbus Bar Association

Sylvia James
Diversity Counsel
Baker Botts LLP

Tara Goff Kamradt
Partner
McDonald Hopkins LLC

Sandra E. Langs
Human Resources and
Professional Development
Director
Phillips Lytle LLP

Jeffrey E. Lewis
Associate General Counsel
AT&T

Andrew Lipton
Executive Director
Morgan Stanley - Legal and
Compliance

Barrington Lopez
Vice President & General
Counsel - Midwest Area
Verizon Wireless

Madeleine McDonough
Partner
Shook Hardy & Bacon

Lorraine McGowen
Partner
Orrick Herrington & Sutcliffe
LLP

Sarah "Sally" L. Olson
Chief Diversity Officer
Sidley Austin LLP

Leslie Richards-Yellen
Partner/Chief Diversity and
Inclusion Officer
Hinshaw Culbertson LLP

Gary Ropski
Partner
Brinks Gilson & Lione

Marci Rubin
Executive Director
California Minority Counsel
Program

E. Macey Russell
Partner
Choate Hall & Stewart LLP

Raj N. Shah
Partner
DLA Piper LLP

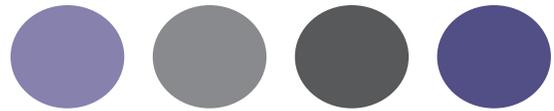
Amanda C. Sommerfeld
Partner
Winston & Strawn LLP

Mona Mehta Stone
Of Counsel
Greenberg Traurig, LLP

**Alexander S.
Vesselinovitch**
Partner
Katten Muchin Rosenman LLP

Tarek Sultani
Lead Counsel: Mechanics,
Financing,
E-Commerce & Foundation
Motorola Mobility

Latham Williams
Senior Vice President, Legal
Affairs and Administration
Hudson Highland Group



The Institute for Inclusion in the Legal Profession thanks its Partners, Allies and Friends for their support which makes projects like this possible.

Partners



CRAVATH, SWAINE & MOORE LLP

Davis Polk



GT GreenbergTraurig

HINSHAW
& CULBERTSON LLP

JENNER & BLOCK

KIRKLAND & ELLIS
A LAW FIRM SERVING GLOBAL CLIENTS

NiSource

**Office
DEPOT**



ORRICK



SCHIFF HARDIN LLP

SheppardMullin



SIDLEY AUSTIN LLP
SIDLEY

Skadden
Skadden, Arps, Slate, Meagher & Flom LLP
& Affiliates

State Farm Insurance Companies

**WINSTON
& STRAWN**
LLP

Allies

ARNSTEIN & LEHR LLP
Mid-market value. Large firm expertise.

**BRINKS
GILSON
& LIONE**

CHOATE
CHOATE HALL & STEWART LLP

**Davis Wright
Tremaine LLP**
DEFINING SUCCESS TOGETHER

**KELLEY
DRYE**

**KILPATRICK
TOWNSEND**

**LATHAM &
WATKINS LLP**

MassMutual
FINANCIAL GROUP[®]

Morgan Stanley

MOTOROLA MOBILITY

**Ogletree
Deakins**

**Pacific Gas and
Electric Company**



**PHILIP MORRIS
INTERNATIONAL**

Suffolk University

Tressler | LLP

VIACOM

Friends

Marc S. Firestone

Terry and Karen Murphy

Willie J. Miller, Jr.

Hon. E. Kenneth Wright

Supporters



BAKER BOTTS LLP

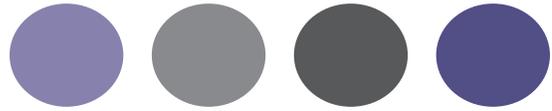
Bank of America

**THE CHICAGO
BAR
ASSOCIATION**

Edelman

HSBC

**Mondelēz
International**



Acknowledgements

Thanks to the following for helping to make the *IILP Review 2014: The State of Diversity and Inclusion in the Legal Profession* possible:

Amy L. Allbright, Director, American Bar Association Commission on Disability Rights

Gretchen C. Bellamy, Assistant General Counsel, Legal Administration/External Relations, Walmart

Angela Campbell, Administrator/Manager, 2 Bedford Row

Carolina Academic Press and Beth Hall, Acquisitions

Chicago Bar Association

Christie Constantine, Director, Corporate Social Responsibility, Baker & McKenzie

Aisha Dass, Diversity Manager, The Law Society of England & Wales

Sylvia James, Diversity Counsel, Baker Botts LLP

Spencer Headworth, Research Assistant, American Bar Foundation

Rebecca Kiernan, Jnr Press Officer – Media & PR, The Law Society of England and Wales

Andrew Lipton, Executive Director, Morgan Stanley - Legal and Compliance

Willie J. Miller, Jr., SVP & Deputy General Counsel, Mondelēz Global LLC

Floyd Mills, North American Diversity Director, Baker & McKenzie

Robert I. Nelson, Director, American Bar Foundation

Nelson Mullins Riley & Scarborough Center on Professionalism, University of South Carolina School of Law

Sarah “Sally” Olson, Chief Diversity Officer, Sidley Austin LLP

Carla D. Pratt, Professor of Law, Penn State Dickinson School of Law

Nate Saint-Victor, Executive Director, Morgan Stanley Wealth Management – Legal and Compliance

Lucinda Underwood, Director of Communications, American Bar Foundation

Daniel Winterfeldt, Partner, CMS Cameron McKenna

The many individuals who took the time to submit information for the Practice Round-Up.

Graphic design by iDrewStudio

At HSBC – diversity and inclusion mean strength.

Whether it's creating a diverse workforce that is engaged to deliver our strategy to be the world's leading international bank or meeting the needs of our diverse customer base, diversity provides HSBC with a competitive advantage and the promise of a more sustainable future.

HSBC's diversity and inclusion strategy also support HSBC's values – Dependable and do the right thing; Open to different ideas and cultures; and Connected to customers, communities, regulators and each other.

In that spirit we are pleased to support the Institute for Inclusion and Diversity in the Legal Profession.





Mondelēz International is a new company reimagined with a single focus in mind: Create Delicious Moments of Joy.

- **A global snacks powerhouse with leading positions in Biscuits, Chocolate, Gum, and Candy**
- **World's favorite brands**
- **Operations** in more than **80** countries
- Approximately **100,000** employees around the world

As a whole new company, we're proud to support The Institute for Inclusion in the Legal Profession promoting diversity in the legal community.



mondelezinternational.com