IILP Review 2017:
The State of Diversity and Inclusion in the Legal Profession

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Institute for Inclusion in the Legal Profession

IILP Review 2017: The State of Diversity and Inclusion in the Legal Profession

Editorial Board

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January, 2017

Dear Colleagues,

The Institute for Inclusion in the Legal Profession (IILP) is proud to present the IILP Review 2017: The State of Diversity and Inclusion in the Legal Profession.

Our fourth Review once again presents important data and analytics on the state of diversity and inclusion in the legal profession. Its original articles contribute to our continuing search for innovative approaches in this area.

The IILP Reviews are an important platform for the advancement of real, meaningful change. I am pleased to hear that many of you consider them an informative and valuable tool. This would not be possible without the contributions of their many authors and editors, whose hard work and dedication to IILP's mission deserve our gratitude and the highest compliments.

I also thank our Visionaries, Partners and Allies for their indispensable support and encouragement throughout our eight years of existence.

With best wishes,

Marc S. Firestone
Chair
Institute for Inclusion in the Legal Profession

January, 2017

Dear Readers,

The Institute for Inclusion in the Legal Profession (IILP) is proud to present the 2017 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 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.

This year's IILP Review includes contributions from over 40 people at the forefront of thinking and practice in the field, as well as reports and roundups from an impressive array of professional and practice organizations. We are delighted to present such a comprehensive sampling of this important work and welcome the continued development of both 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 2017 IILP Review useful and informative, and that you will consider contributing to a future issue of the IILP Review.

Elizabeth Chambliss
Editor-in-Chief

THE CLARO GROUP
CLARITY • VALUE • INTEGRITY®

Dear Participant:

The Claro Group is pleased and heartened to announce that we will be continuing our relationship with IILP for yet another year. In ever-expanding global economies, it seems inevitable that inclusion of new or varied perspectives is not only necessary, but critical to the successful growth of any industry. In order to flourish, companies MUST embrace diversity and inclusion as key business imperatives.

Research shows diversity and inclusion increase the richness of ideas and problem solving abilities. A diverse mix of voices leads to dynamic discussions and better decisions. We need to commit to questioning our own beliefs and assumptions to help cultivate flexible and reflective thinking. Being a member of a professional services firm working closely with the legal industry, we at Claro recognize the importance of acting as a champion of inclusion and will continue to seek to work with firms with whom these values are aligned.

While stalwarts of some perceived tradition may remain unchanged, even in the face of the evidentiary benefits of diversity and inclusion, we can all do our part to encourage the promulgation of these tenets, and work to ensure the most-timely end to antiquated traditions.

We, again, look forward to working with this outstanding and collaborative body that has its eye on the future, and through which progress is being driven.

Sincerely,

Michelle Uddin

Managing Director

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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. The Review features compelling essays that explore the nuances and important subtleties at play in regard to diversity and inclusion for lawyers, along with current research from academic experts. As such, the Review brings together insights on programs and strategies to address diversity generally and in regard to the different challenges that different people face in reaching the law.

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: The State of Diversity and Inclusion in the Legal Profession* 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: The State of Diversity and Inclusion in the Legal Profession," please visit **www.TheIILP.com** for more information and to download the Call for Papers

IILP Review 2017: 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 Law School

An executive summary of the most current demographic data on the legal 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 September, 2016. 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 minority[1] 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 2016 demographic summary are as follows:

GENDER

- Female representation among lawyers stood at 34.5% in 2015, according to the Bureau of Labor Statistics (see Table 1); and at 36% in 2016, according to the American Bar Association National Lawyer Population Survey (see Table 2). In 2010, female representation among lawyers was about 31% (see Tables 1 and 2).

- Women's representation among lawyers is higher than their representation in some other professions, including software developers (17.9%), architects (25.7%), civil engineers (12.6%), and clergy (20.6%) (see Table 3). Women's representation among lawyers is lower than their representation among financial managers (49.6%), accountants and auditors (59.7%), physical scientists (41.4%), and post-secondary teachers (46.5%); and significantly lower than their representation within the professional workforce as a whole (57.2%) (see Table 3).

- Women continue to be underrepresented in top-level jobs within the legal profession, such as law firm partner. In 2015, women made up only 21.5% of law firm partners (see Table 13)—and only 17.4% of equity partners (see Table 16). Minority women, especially, are underrepresented among law firm partners. In 2015, minority women made up only 2.6% of law partners

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.

nationally (see Table 13), and even this figure is skewed upward by a few standout cities, such as Miami (8.2%), Los Angeles (4.9%), San Jose (4.6%), and San Francisco (4.3%) (see Table 19). In many other cities, minority women's representation among partners is less than 2% (see Table 19). Women's representation among judges also has dropped from a peak of 56.7% in 2004 to 39% in 2015 (see Table 22).

- Women's entry into the profession has slowed. After peaking in the early 2000s at about 49%, female representation among law students has dropped to 47%, according to the most recent aggregate data (see Table 4). Women's entry into private practice, in particular, has dropped. In 2003, 58.8% of white female and 53.9% of minority female law graduates began their careers in private practice, compared to less than 50% in 2014 (see Table 7). In 2015, women's representation among law firm associates was 44.7%, the lowest point since the recession (see Table 13). Although all groups' entry into private practice has dropped since the recession, women's declining representation among associates represents a reversal of previous gains.

- Some bright spots: women's representation among in-house lawyers has increased. The Association of Corporate Counsel's 2015 global census found that women make up 49.5% of all in-house lawyers, including both entry-level and senior positions (see Table 20). Women also make up a growing percentage of law school deans and tenured law faculty. In 2013, 28.7% of law deans and 32.7% of tenured law faculty were women (see Table 25).

RACE/ETHNICITY

- Aggregate minority representation among U.S. lawyers stood at 14.5% in 2015, according to the Bureau of Labor Statistics (see Table 1). This represents a drop from a high of 15.7% in 2014; however, these data appear somewhat noisy, with significant year-to-year fluctuations. Based on three-year (unweighted) averages, aggregate minority representation among lawyers has increased from 10.5% in 2003-05 to 14.8% in 2013-15 (see Table 1).

- Progress for different groups varies. African American representation among lawyers has increased very little over the past ten years, from an average of 4.3% in 2003-05 to an average of 4.8% in 2013-2015 (see Table 1). During the same period, Hispanic representation among lawyers increased from an average of 3.6% to an average of 5.3%, and Asian American representation among lawyers increased from an average of 2.6% to an average of 4.8% (see Table 1). Thus, while African Americans historically have been the best-represented minority group among lawyers, this pattern has changed. In 2015, African American representation among lawyers was 4.6%, compared to 5.1% for Hispanics and 4.8% for Asian Americans (see Table 1).

- Aggregate minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs. In 2015, minority representation among lawyers was 14.5%, compared to 24.5% among financial managers, 28.2% among accountants and auditors, 44.2% among software developers, 31.2% among physicians and surgeons, and 27.3% within the professional labor force as a whole (see Table 3). Moreover, "legal occupations" collectively have the lowest level of minority representation of any subcategory of "management, professional, and related occupations," including those not reported here. Although these figures, too, can be noisy, this unhappy comparison is consistent with patterns from prior years.

Minority representation among law firm partners remains stubbornly low.

- 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 Section of Legal Education and Admissions to the Bar (see Table 6). Moreover, as overall law school enrollment has dropped, African American representation among law students has increased, from 7% in 2009-10 to 8% in 2013-14—an all-time high. 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 increased from 22.3% in 2009-10 to 26.9% in 2013-14 (see Table 4).

- Meanwhile, Asian American enrollment in law school has dropped in both absolute and relative terms, from a high of 11,000-plus students (8%) in the mid-2000s to 8,696 students (6.8%) in 2013-14. Native American enrollment also has dropped, from a high of 1,273 in 2009-10 to 1,065 in 2013-14 (see Table 6).

- Initial employment patterns continue to differ between racial and ethnic groups, according to data from the National Association of Law Placement (NALP). 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 2014, only 37.4% of African American law graduates were initially employed in private practice, compared to 53.5% of Hispanic graduates, 55.6% of Asian American graduates, 46.6% of Native American graduates, and 51.4% of white graduates (see Table 8). In 2015, African Americans made up only 4% of associates in U.S. law firms, down from 4.7% in 2009 (see Table 14). Much of the drop appears to reflect the departure of African American women from law firms. In 2015, African American women made up only 2.3% of law firm associates, compared to 2.9% in 2009 (see Table 14).

- Asian Americans are the most likely group to enter private practice (see Table 8). In 2014, Asian Americans made up 10.9% of associates in law firms (see Table 14). Notably, a majority of Asian American associates are women (see Table 14). Asian Americans also make up 2.9% of law partners, up from 2.2% in 2009 (see Table 15). Hispanics, too, have made gains within law firms, comprising 4.3% of associates (see Table 14) and 2.2% of partners (see Table 15) in 2015.

- Despite this progress, minority representation among law firm partners remains stubbornly low. In 2015, minorities made up only 7.5% of all partners (see Table 13) and only 5.6% of equity partners (see Table 16).

- Since the recession, law graduates' entry into business and public interest jobs has increased. In 2014, 24.2% of white graduates and 28.8% of minority graduates started off in business or public interest jobs, a significant increase from prior years (see Table 7). Among minorities, African Americans are the most likely to start off in business (23.2%) and Hispanics are the least likely (15.7%) (see Table 8). Hispanics (11.6%) and Native Americans (11.5%) are the most likely to start off in public interest jobs (see Table 8); and minority women are more likely to do so than minority men. In 2014, 11.2% of minority women began their careers in public interest positions, compared to 8.5% of white women, 6.8% of minority men, and 4.9% of white men (see Table 7).

- Among all groups, the percentage of law graduates who start off in government has dropped in recent years, as has the percentage of graduates with judicial clerkships (see Tables 7 and 8). The percentage of minority graduates with judicial clerkships, in particular, has dropped, from 10.2% in 1998 to 6.5% in 2014 (see Table 7). Minority men (see Table 7) and Hispanics (see Table 8) are the least likely to begin their careers with a judicial clerkship.

- Based on the limited data available for different employment settings, African American representation is highest among federal government attorneys (8.7% in 2010, see Table 21) and in law schools (see Table 26); Hispanic representation is highest among in-house lawyers (5% in 2015, see Table 20) and tenure-track faculty (6.4% in 2013, see Table 26); and Asian American representation is highest among law firm associates (10.9% in 2015, see Table 14) and tenure-track faculty (8.5% in 2013, see Table 26).

- Minority representation among judges is difficult to assess because of yearly fluctuations in the Bureau of Labor Statistics data. In 2015, the Bureau reported that 23.5% of U.S. judges were minorities—and 6.2% were Asian American, the highest percentage ever reported (see Table 22). Meanwhile, federal judges have become more racially and ethnically diverse under President Obama: 36.8% of his judicial appointments were minorities (121 of 329) compared to 17.7% (58 of 327) under President George Bush (see Table 24).

DISABILITY

- The initial employment of lawyers with disabilities varies from year to year, due in part to the small number of lawyers in the sample (491 in 2014) and, perhaps, the diversity of law graduates in this category. In general, however, the percentage of graduates with disabilities who start off in private practice has declined in recent years, whereas the percentage who start off in business or public interest has increased, consistent with other groups. In 2014, 42.2% of law graduates with disabilities started off in private practice, down from to 48.1% in 2010; whereas 32% started off in business or public interest, compared to 25% in 2010 (see Table 9). Judicial clerkship rates for graduates with disabilities also have dropped from 10.8% in 2010 to 9.4% in 2014—although the 2014 figure represents a rebound from 2013 (see Table 9).

- The representation of lawyers with disabilities in law firms has eked up slightly among associates, from 0.2% in 2009 to 0.3% in 2014, but remained flat at 0.3% among partners (see Table 18). More data are needed to place these figures in perspective, including data from other employment settings and occupations.

- Unlike his predecessors, President Obama appointed no federal judges with disabilities (see Table 24).

LGBT

- Law graduates identifying as LGB are less likely than most other groups to start off in private practice and more likely to start off in public interest jobs. In 2014, 15.9% of the 529 law graduates identifying as LGB took public interest jobs—the highest percentage of any demographic group (see Table 10).

- Despite this, the representation of LGBT lawyers in law firms has been steadily inching upward since NALP began compiling these data. In 2015, 3.1% of associates and 1.8% of partners identified as LGBT, up from 2.3% and 1.4%, respectively, in 2009 (see Table 17).

- President Obama has appointed 11 LGBT judges—3.3% of his total appointments (see Table 24).

LACK OF DATA

- Tracking the profession's progress toward diversity and inclusion is made difficult by the continuing lack of data. For instance, there are no recent data on the distribution of lawyers by type of employment, beyond initial employment. The most recent figures, covering only gender, are from 2005 (see Tables 11 and 12). Outside of law firms, the profession lacks even basic gender and racial/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. Moreover, some previous sources of demographic data on the profession have changed or dried up, such as the ABA Section of Legal Education and Admissions to the Bar, which has stopped publishing aggregate data on the demographics of law students and faculty (see Tables 4-6 and 25-26), and the Office of Personnel Management, whose most recent demographic profile of the federal workforce was in 2010 (see Table 21). More robust statistics on the demographics of the legal profession are sorely needed.

- Gathering systematic data on diversity and inclusion in the profession requires a sustained commitment by the entire profession, including bar associations, employers, law schools, and research institutions. Contributing to this effort is a chief goal of the *IILP Review*.

The representation of LGBT lawyers in law firms has been steadily inching upward.

Table 1 - U.S. Lawyers by Gender and Race/Ethnicity (BLS)[1]

	Lawyers	Female	Af Am.	Hisp.	As Am.	Minority
1995	894,000	26.4%	3.6	2.2		
1996	880,000	29.5	3.5	2.8		
1997	885,000	26.6	2.7	3.8		
1998	912,000	28.5	4.0	3.0		
1999	923,000	28.8	5.1	4.0		
2002	929,000	29.2	4.6	3.1		
2003	952,000	27.6	3.6	4.0	2.8	10.4
2004	954,000	29.4	4.7	3.4	2.9	10.9
2005	961,000	30.2	4.7	3.5	2.0	10.2
2006	965,000	32.6	5.0	3.0	2.9	10.9
2007	1,001,000	32.6	4.9	4.3	2.6	11.8
2008	1,014,000	31.4	4.6	3.8	2.9	11.3
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
2014	1,132,000	32.9	5.7	5.6	4.4	15.7
2015	1,160,000	34.5	4.6	5.1	4.8	14.5

1. 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/tables.htm (follow links for individual years and scroll down to "Characteristics of the Employed," Table 11). Figures for 2000 and 2001 are not available. *See* Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, 1995–1999 Annual Averages - Household Data - Tables from Employment and Earnings*, U.S. Dep't of Labor, http://www.bls.gov/cps/cps_aa1995_1999.htm. Figures for minorities are derived from aggregating the minority categories listed.

Table 2 - U.S. Lawyers by Gender (ABA)[2]

	Lawyers	Female (%)
2000	1,022,462	28.0%
2005	1,104,766	29.0
2010	1,203,097	31.0
2016	1,315,561	36.0

2. ABA National Lawyer Population Survey, *Historical Trend in Total National Lawyer Population 1878-2016*, Am. Bar Ass'n, http://www.americanbar.org/content/dam/aba/administrative/market_research/total-national-lawyer-population-1878-2016.authcheckdam.pdf (for total number of lawyers); ABA Lawyer Demographics, *Year 2016* (Gender), Am. Bar Ass'n, http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf (for percent female).

Table 3 - Selected U.S. Occupations by Gender and Race/Ethnicity (2015)[3]

	Total Employed	Female	Af Am.	Hisp.	As Am.	Minority
Civilian Labor Force	148,834,000	46.8%	11.7	16.4	5.8	33.9
Management Occupations	16,994,000	39.2	7.3	9.7	5.6	22.6
Chief Executives	1,517,000	27.9	3.6	5.5	4.7	13.8
Financial Managers	1,197,000	49.6	7.2	9.4	7.9	24.5
Business and Finance	7,114,000	54.3	10.3	8.8	7.9	27.0
Accountants/Auditors	1,732,000	59.7	9.5	7.4	11.3	28.2
Human Resources Workers	662,000	74.0	15.4	10.7	4.9	31.0
All Computer/Mathematical	4,369,000	24.7	8.6	6.8	19.9	35.3
Computer Systems Analysts	552,000	34.2	9.6	6.9	19.6	36.1
Software Developers	1,353,000	17.9	5.0	5.4	33.8	44.2
All Architecture/Engineering	2,954,000	15.1	6.0	8.2	11.4	25.6
Architects	203,000	25.7	5.8	5.7	7.6	19.1
Civil Engineers	360,000	12.6	3.6	9.0	10.2	22.8
Life/Physical/Social Sciences	1,404,000	46.6	6.1	7.0	14.5	27.6
Physical Scientists	232,000	41.4	4.4	6.2	23.9	34.5
Psychologists	193,000	70.3	4.1	5.8	2.5	12.4
All Community/Social Services	2,596,000	65.3	17.4	10.7	3.6	31.7
Counselors	802,000	71.4	18.4	9.5	2.5	30.4
Clergy	469,000	20.6	10.2	7.3	6.6	24.1
Lawyers	1,160,000	34.5	4.6	5.1	4.8	14.5
Judges/Magistrates	58,000	39.0	11.8	6.4	6.2	24.4
Paralegals/Legal Assistants	400,000	85.4	10.3	13.4	3.9	27.6
Education	8,908,000	73.4	10.4	9.9	4.5	24.8
Postsecondary Teachers	1,341,000	46.5	5.1	7.6	12.6	25.3
Secondary School Teachers	1,144,000	59.2	8.7	7.8	2.5	19.0
Healthcare Practitioners	8,766,000	75.1	11.5	8.1	9.2	28.8
Physicians/Surgeons	1,007,000	37.9	6.4	6.4	18.4	31.2
Registered Nurses	2,973,000	89.4	12.2	6.6	8.7	27.5
All Professional/Related Occupations	33,852,000	57.2	9.8	8.8	8.7	27.3

3. Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, U.S. Dep't of Labor (2015), http://www.bls.gov/cps/cpsaat11.pdf. 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)	27,175 (20.5)
2003-04	137,676	67,027 (48.7)	28,325 (20.6)
2004-05	140,376	67,438 (48.0)	29,489 (21.0)
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)	30,657 (21.6)
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) (aggregate figures for 2013-14 and later years 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) (aggregate figures for 2014-15 and later years are not available). Some figures differ slightly from those previously reported by the ABA.

Table 5 - JDs Awarded by Gender and Minority Status[5]

	Total	Female (%)	Minority (%)
1983-84	36,687	13,586 (37.0)	3,169 (8.6)
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) (aggregate figures for 2011-12 and later years 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) (aggregate figures for 2013-14 and later years are not available). Some figures differ slightly from those previously reported by the ABA.

Table 6 - Law School Enrollment by Race/Ethnicity[6]

	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 1988-1010*, 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 Employmet by Minority Status and Gender[7]

1998	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	59.4%	53.9	57.1	52.8	46.5	49.5
Business	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	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

2010	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	55.8	53.1	54.6	53.4	48.8	50.8
Business	14.2	11.7	13.1	15.8	13.7	14.6
Government	13.2	13.1	13.2	14.6	15.0	14.9
Judicial Clerkships	10.6	12.3	11.4	7.4	8.6	8.1
Public Interest	3.9	7.1	5.3	5.4	9.5	7.7
Academic	1.6	2.0	1.6	2.4	3.1	2.8
Unknown	0.6	0.7	0.6	1.0	1.3	1.1

2014	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	52.8	49.6	51.4	51.0	47.5	49.0
Business	19.0	16.1	17.7	22.1	17.4	19.4
Government	12.0	12.1	12.0	12.1	13.3	12.7
Judicial Clerkships	9.5	11.1	10.2	5.6	7.1	6.5
Public Interest	4.9	8.5	6.5	6.8	11.2	9.4
Unknown	1.8	2.6	2.2	2.4	3.5	3.0

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 2010 52 (2011) [hereinafter Class of 2010] (for 2010 figures); Nat'l Ass'n for L. Placement, Jobs & JDs: Employment and Salaries of New Law Graduates, Class of 2014 64 (2015) [hereinafter Class of 2014] (for 2014 figures). Figures for 2010 include only full-time jobs.

Table 8 - Initial Employment by Race/Ethnicity[8]

1998	White	Af Am.	Hisp.	As Am.	Na Am.	
Private Practice	57.1%	40.1	55.2	55.8	46.6	
Business	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	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

2010	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	54.6	41.3	55.7	55.6	47.1	46.9
Business	13.1	15.5	12.2	16.3	11.8	13.0
Government	13.2	19.7	14.0	10.6	19.4	18.4
Judicial Clerkships	11.4	8.8	6.6	8.1	5.9	11.1
Public Interest	5.3	8.8	8.6	6.2	8.2	7.9
Academic	1.8	3.8	2.4	2.4	4.1	1.7
Unknown	0.6	2.1	0.6	0.7	2.9	1.0

2014	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	51.4	37.4	53.5	55.6	46.6	48.6
Business	17.7	23.2	15.7	18.9	18.9	19.9
Government	12.0	17.4	11.4	9.4	16.2	13.5
Judicial Clerkships	10.2	7.0	5.8	6.7	4.1	6.4
Public Interest	6.5	10.7	11.6	6.9	11.5	8.4
Unknown	2.2	4.3	2.0	2.5	2.7	3.2

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 2010, *supra* note 7, at 53 (for 2010 figures); Class of 2014, *supra* note 7, at 65 (for 2014 figures). 2003 figures for Hispanics do not include Latinos. NALP defines "Latino" as Mexican, Puerto Rican, or Cuban. Figures for 2010 include only full-time jobs.

Table 9 - Initial Employment of Graduates with Disabilities[9]

	2010	2011	2012	2013	2014
Private Practice	48.1%	48.9	50.7	46.2	42.2
Business	16.1	16.9	16.4	20.7	19.8
Government	12.3	13.4	10.0	14.6	13.2
Judicial Clerkships	10.8	6.5	7.0	5.3	9.4
Public Interest	8.9	9.3	11.4	8.3	12.2
Academic	2.4	6.5	4.0	4.3	3.3

9. Class of 2010, *supra* note 7, at 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); Nat'l Ass'n for L. Placement, Jobs & JDs: Employment and Salaries of New Law Graduates, Class of 2013 66 (2014) (for 2013 figures); Class of 2014, *supra* note 7, at 66 (for 2014 figures). Figures for 2010 include only full-time jobs.

Table 10 - Initial Employment of Graduates Identifying as LGB[10]

					2014
Private Practice					41.6
Business					16.1
Government					11.2
Judicial Clerkships					11.2
Public Interest					15.9
Academic					4.2

10. Class of 2014, *supra* note 7, at 66.

Table 11 - Distribution of U.S. Lawyers by Type of Employment[11]

	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

11. Clara N. Carson & Jeeyoon Park, A.B. Found., The Lawyer Statistical Report: the U.S. Legal Profession in 2005 5 (2012).

Table 12 - Distribution of U.S. Lawyers by Type of Employment and Gender[12]

	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

12. 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 11, at 6 (for 2005 data) (some categories were combined for consistency with prior years).

Table 13 - Representation of Female and Minority Lawyers in Law Firms[13]

	Partners			Associates		
	Female	Minority	Minority F	Female	Minority	Minority F
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
2014	21.1	7.3	2.5	44.9	21.6	11.5
2015	21.5	7.5	2.6	44.7	22.0	11.8

13. Press Release, Nat'l Ass'n for L. Placement, *Women, Black/African-American Associates Lose Ground at Major U.S. Law Firms* (Nov. 19, 2015), http://www.nalp.org/lawfirmdiversity_nov2015 [hereinafter *November 2015 Release*]. Figures are based on statistics provided by firms in the NALP Directory of Legal Employers.

Table 14 - Associates by Gender and Race/Ethnicity[14]

	Af Am.		Hisp.		As Am.	
	Total	Female	Total	Female	Total	Female
2009	4.7%	2.9	3.9	2.0	9.3	5.1
2010	4.4	2.8	3.8	1.9	9.4	5.2
2011	4.3	2.6	3.8	1.9	9.7	5.3
2012	4.2	2.6	3.9	2.0	10	5.4
2013	4.1	2.4	3.8	1.9	10.5	5.6
2014	4.0	2.3	4.0	1.9	10.8	5.8
2015	4.0	2.3	4.3	2.0	10.9	6.0

14. *November 2015 Release*, *supra* note 13.

Tracking the profession's progress toward diversity and inclusion is made difficult by the continuing lack of data. Some previous sources of demographic data on the profession have changed or dried up.

Table 15 - Partners by Gender and Race/Ethnicity[15]

	Af Am.		Hisp.		As Am.	
	Total	Female	Total	Female	Total	Female
2009	1.7%	0.6	1.7	0.4	2.2	0.8
2010	1.7	0.6	1.7	0.4	2.3	0.8
2011	1.7	0.6	1.9	0.5	2.4	0.8
2012	1.7	0.6	1.9	0.5	2.5	0.9
2013	1.8	0.6	2.0	0.5	2.7	0.9
2014	1.7	0.6	2.2	0.6	2.7	1.0
2015	1.8	0.6	2.2	0.6	2.9	1.1

15. *Id*.

Table 16 - Equity Partners by Gender and Minority Status[16]

	Equity		Non-equity	
	Female	Minority	Female	Minority
2011	15.6%	4.7	27.7	8.3
2012	15.3	4.8	27.3	8.4
2013	16.5	5.4	27.6	9.1
2014	17.1	5.6	28.2	8.9
2015	17.4	5.6	28.8	9.4

16. Nat'l Ass'n for L. Placement, *Women and Minorities Maintain Representation Among Equity Partners, Broad Disparities Remain*, Nat'l Ass'n for L. Placement (Mar. 2016), http://www.nalp.org/0316research.

Table 17 - Representation of LGBT Lawyers in Law Firms[17]

	Partners	Associates
2009	1.4%	2.3
2010	1.5	2.4
2011	1.4	2.4
2012	1.6	2.7
2013	1.7	2.8
2014	1.8	2.9
2015	1.8	3.1

17. 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 (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 (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 (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 (for 2013 figures); Nat'l Ass'n for L. Placement, *LGBT Representation Among Lawyers in 2014*, Nat'l Ass'n for L. Placement (Mar. 2015), http://www.nalp.org/0315research (for 2014 figures); Nat'l Ass'n for L. Placement, *LGBT Representation Among Lawyers in 2015*, Nat'l Ass'n for L. Placement (Dec. 2015), http://www.nalp.org/1215research (for 2015 figures).

Table 18 - Representation of Lawyers with Disabilities in Law Firms[18]

	Partners	Associates
2009	0.3%	0.2
2010	0.2	0.2
2011	0.2	0.2
2012	0.3	0.2
2013	0.3	0.3
2014	0.3	0.3

18. 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,* Nat'l Ass'n for L. Placement (Nov. 4, 2010), http://www.nalp.org/2010law firmdiversity?s=disabilities (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,* Nat'l Ass'n for L. Placement (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 Gains,* Nat'l Ass'n for L. Placement (Dec. 13, 2012), http://www.nalp.org/2012lawfirmdiversity?s=disabilities (for 2012 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,* Nat'l Ass'n for L. Placement (Dec. 11, 2013), http://www.nalp.org/lawfirmdiversity_2013 (for 2013 figures); Press Release, Nat'l Ass'n for L. Placement, *Diversity Numbers at Law Firms Eke Out Small Gains – Numbers for Women Associates Edge Up After Four Years of Decline,* Nat'l Ass'n for L. Placement (Feb. 17, 2015), http://www.nalp.org/lawfirmdiversity_feb2015 (for 2014 figures).

Table 19 - Partner Diversity by Firm Size and City (2015)[19]

	Partners		
	Total	Minority	Minority Female
Nationwide	51,419	7.5%	2.6
<100 lawyer firms	3,884	5.9	2.0
101-250 lawyer firms	10,467	5.6	1.8
251-500 lawyer firms	11,027	6.9	2.4
501-700 lawyer firms	6,637	7.7	2.6
701+ lawyer firms	19,404	9.2	3.1
Atlanta	1,236	8.3	2.1
Austin	356	12.6	3.9
Boston area	1,607	4.3	1.6
Charlotte	463	4.8	1.5
Chicago	3,269	6.6	2.3
Cleveland	349	2.9	0.9
Columbus	342	5.0	1.5
Dallas	933	6.7	2.1
Denver	525	5.0	1.7
Detroit area	723	4.4	1.8
Houston	1,023	9.8	3.0
Indianapolis	362	3.3	1.7
Kansas City	419	4.1	1.0
Los Angeles area	1,983	13.9	4.9
Miami	559	29.9	8.2
Milwaukee	550	3.5	1.3
Minneapolis	1,063	2.9	1.3
New York City	6,332	8.2	2.9
Newark area	529	4.5	1.7
Orange County	583	13.2	3.8
Philadelphia	751	4.0	1.3
Phoenix	581	5.9	1.4
Pittsburgh	556	2.9	0.9
Portland area	369	4.9	2.2
San Diego	267	13.1	2.3
San Francisco	1,245	13.2	4.3
San Jose area	790	16.1	4.6
Seattle area	920	8.9	3.4
St. Louis	744	3.9	1.3
Washington D.C.	4,780	8.5	3.2

19. Nat'l Ass'n for L. Placement, *Women and Minorities at Law Firms by Race and Ethnicity – New Findings for 2015,* Nat'l Ass'n for L. Placement (Jan. 2016), http://www.nalp.org/0116research?.

Table 20 - Female and Minority Representation Among Corporate Counsel[20]

	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
2015	49.5	4.0	5.0	7.0			

20. Ass'n of Corporate Counsel, ACC 2001 Census of U.S. In-House Counsel (2001), http://www.acc.com/legalresources/resource.cfm?show=16320 (for 2001 figures); Ass'n of Corporate Counsel, 2011 Census Report 72 (2012), http://www.acc.com/legalresources/loader.cfm?csModule=security/getfile&pageid=1307039 (for 2004, 2006, and 2011 figures); Ass'n of Corporate Counsel, 2015 ACC Global Census: A Profile of In-House Counsel: Executive Summary 26 (2015), http://www.acc.com/vl/public/Surveys/loader.cfm?csModule=security/getfile&pageid=1411922&page=/legalresources/surveys/index.cfm&qstring=&title=2015%20ACC%20Global%20Census%20Executive%20Summary&recorded=1 (for 2015 figures). Figures for 2015 are based on survey of 5,012 in-house counsel from 73 countries. *Id*. at 1. Figures include lawyers at all levels of in-house work, from entry level to chief legal officer. Race and ethnic data are based on U.S. respondents only. *Id.* at 26.

The percentage of graduates with disabilities who start off in private practice has declined in recent years, whereas the percentage who start off in business or public interest has increased, consistent with other groups.

Table 21 - Federal Government Lawyers by Race/Ethnicity and Gender[21]

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)

21. 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 22 - U.S. Judges by Gender and Race/Ethnicity (BLS)[22]

	Judges	Female	Af Am.	Hisp.	As Am.	Minority
2003	59,000	54.1%	15.5	4.4	0.5	20.4
2004	64,000	56.7	12.8	7.4	2.2	22.4
2005	70,000	41.2	7.0	5.9	4.6	17.5
2006	66,000	35.5	11.3	2.0	1.9	15.2
2007	68,000	43.3	9.1	8.1	0.1	17.3
2008	54,000	43.6	6.8	3.2	0.3	10.3
2009	73,000	44.2	4.8	7.0	3.2	15.0
2010	71,000	36.4	12.5	7.8	3.9	24.2
2011	67,000	44.4	11.5	8.3	1.1	20.9
2012	67,000	39.0	12.8	4.5	0.7	18.0
2013	55,000	35.6	7.8	6.3	0.1	14.2
2014	53,000	51.7	10.9	4.8	3.2	18.9
2015	58,000	39.0	11.8	6.4	6.2	23.5

22. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, Annual Average Data, *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/tables.htm (follow links for individual years and scroll down to "Characteristics of the Employed," Table 11). Figures represent those reported for "judges, magistrates, and other judicial workers," available beginning in 2003). Figures for minorities are derived from aggregating the minority categories listed.

Minority representation among judges is difficult to assess because of yearly fluctuations in the Bureau of Labor Statistics data. In 2015, the Bureau reported that 23.5% of U.S. judges were minorities—and 6.2% were Asian American, the highest percentage ever reported.

Table 23 - Article III (Lifetime) Judges by Gender and Race/Ethnicity[23]

	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 (2009-16)	329	138 (42.0)	62 (18.8)	36 (10.9)	22 (6.7)	1 (0.3)
Obama (Pending)	54	27 (50.0)	9 (16.7)	4 (7.4)	6 (11.1)	0 (0.0)

23. 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 (2016), http://www.afj.org/wp-content/uploads/2015/01/Judicial_Selection_Snapshot.pdf [hereinafter *Snapshot*] (for 1977–2016 data). Figures for female judicial appointments are not available prior to 1977. Figures for Obama (2009–16) include all judges confirmed. Figures for Asian Americans include "Asian Pacific Americans" and "Native Hawaiian or other Pacific Islanders." *Id.*

Table 24 - Article III (Lifetime) Judges by GLBT and Disability Status[24]

	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 (2009-16)	329	11 (3.3)	0 (0.0)

24. *Snapshot*, *supra* note 23. Figures for GLBT judges and judges with disabilities are not available prior to 1977 or for pending nominees.

Table 25 - Law Faculty by Gender and Minority Status[25]

	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)
	Deans (%)	Full Prof. (%)	Assoc Prof. (%)	Asst Prof. (%)
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)
	Deans (%)	Full Prof. (%)	Assoc Prof. (%)	Asst Prof. (%)
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)
	Deans (%)	Full Prof. (%)	Assoc Prof. (%)	Asst Prof. (%)
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)
	Deans (%)	Full Prof. (%)	Assoc Prof. (%)	Asst Prof. (%)
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		Tenured (%)		Tenure Track (%)
Minority	42 (20.8)	907 (16.8)		460 (30.5)
Female	58 (28.7)	1,766 (32.7)		731 (48.4)

25. IILP Review 2014: The State of Diversity and Inclusion in the Legal Profession 35 (2014) (for 1990–91, 1995–96, 2000–01, 2005–06, and 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 26 - Law Faculty by Gender and Race/Ethnicity (2013)[26]

	Total (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Am Ind. (%)
Deans	202 (100.0)	26 (12.9)	12 (5.9)	3 (1.5)	1 (0.5)
Male	144 (71.3)	15 (7.4)	7 (3.5)	3 (1.5)	0 (0.0)
Female	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)
Male	3,632 (67.3)	226 (4.2)	140 (2.6)	115 (2.1)	18 (0.3)
Female	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)
Male	778 (51.6)	76 (5.0)	52 (3.4)	68 (4.5)	4 (0.3)
Female	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)
Male	5,667 (67.8)	173 (2.0)	190 (2.3)	119 (1.4)	12 (0.1)
Female	2694 (47.5)	164 (2.0)	103 (1.2)	95 (1.1)	10 (0.1)

26. *Law School Faculty Chart*, *supra* note 25.

IILP Review 2017: Diversity and Inclusion in the Legal Profession: Current Challenges

The Association of Legal Administrators Diversity Toolkit

In many small and mid-size law firms, the legal administrators wear many hats, including that of diversity director. To help their members as well as anyone else who finds themselves put into the position of being responsible for diversity efforts within the organization with limited or no training for it, the Association of Legal Administrators is kindly sharing their diversity toolkit.

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December 31, 2015

The Association of Legal Administrators Diversity Toolkit

I. Introduction

"…It's been a long time coming, but I know a change is gonna come, oh yes it will."

--Sam Cooke (1931-1964)

As leaders in the legal industry, guiding workplaces striving to be successful, we cannot ignore that change is here. For some the change has been present for years. For others, it is imminent.

The Association of Legal Administrators (ALA) has a goal to increase awareness of, and sensitivity to, diversity within ALA and the legal management community. The ALA Diversity and Inclusion Committee is working to educate legal industry leaders about why diversity is important and how we can work to bring diversity and inclusion to the legal workplace. To be successful in an increasingly diverse world, leaders must be able to manage and leverage the differences that exist in their workforce, suppliers, and clients.

An infinite number of approaches exist for developing and implementing a diversity plan, each reflecting the unique characteristics of each organization. This Diversity Toolkit is intended to be a general overview of how to approach the subject, a starting point for digging deeper when needed and a source of inspiration for trying a new approach. As with almost any new effort, change can come swiftly or slowly. Either way, it will require openness, a willingness to listen, hard work and patience.

II. What is Diversity? What is Inclusion?

"Diversity is the mix. Inclusion is making the mix work."

–Andrés T. Tapia, a leader in diversity education

A. What is Diversity?

Diversity is about recognizing, respecting and valuing differences based on ethnicity, gender, color, age, race, religion, disability, national origin and sexual orientation. It also includes an infinite range of individual unique characteristics and experiences, such as communication style, career path, life experience, educational background, geographic location, income level, marital status, military experience, parental status and other variables that influence personal perspectives.

These life experiences and points of view make us react and think differently, approach challenges and solve problems differently, make suggestions and decisions differently and see different opportunities. Diversity, then, is also about diversity of thought.

B. What is Inclusion?

"Diversity is being invited to the party. Inclusion is being asked to dance."

–Pauline Higgins, a leader in diversity education

As the work on diversity efforts evolved, the realization came that just having diversity in the room was not enough; we need to make sure that diversity is recognized, respected and valued.

Inclusion is the act of establishing philosophies, policies, practices and procedures to ensure

equal access to opportunities and resources to support individuals in contributing to the organization's success. Inclusion creates infrastructure for allowing the diversity within the organization to exist and thrive in a manner that can enhance innovation and problem solving. Inclusive organizations are by definition diverse at all levels.

ASAE, The Center For Association Leadership, Diversity + Inclusion Strategic Plan (2015- 2017), page 4, available at http://www.asaecenter.org/diversity.

It is not enough, or a guarantee of success, to have the numbers to represent the diversity of our communities in our workplaces. Inclusion is the key to long term success and is where much of the work needs to be done.

C. Achieving Diversity and Inclusion.

Different cultures are often thrust together and must learn to work together effectively to be successful. Employees arrive at work each day bringing with them their stereotypes and preconceived biases about other people. No different than a law firm merger or acquisition, law firm leaders must devote time to the cultural aspect of the "merger," i.e., achieving diversity and inclusion, by preparing employees on what to expect in terms of culture, working conditions, benefits, policies, practices, among many other things. This multicultural integration requires time and tenacity. Each organization has to make an assessment of where it stands, state what it seeks to achieve, provide the reason and motivation to do so, and start the hard work of achieving those goals. One of the first steps is laying the foundation by making sure everyone understands the "why."

III. Why We Need Diversity and Inclusion.

Our clients expect and demand it. Corporate cultures require it. We are now a global society. Recruiting and retention improve in a diverse environment. Decision-making is stronger, more effective with diverse collaboration. A business case can be made for diversity and inclusion in the workplace.

Superior business performance requires tapping into these unique perspectives.

Business Case for Diversity, Chubb Insurance Group, http://www.chubb.com/diversity/chubb4450.html (last visited Dec. 26, 2015).

Analysis of the data from the group of 366 companies revealed a statistically significant connection between diversity and financial performance. The companies in the top quartile for gender diversity were 15 percent more likely to have financial returns that were above their national industry median, and the companies in the top quartile for racial/ethnic diversity were 35 percent more likely to have financial returns above their national industry median.

Vivian Hunt, Dennis Layton, Sara Prince, *Diversity Matters*, McKinsey & Company, page 3, February 2, 2015, available at http://www.mckinsey.com/insights/organization/why_diversity_matters.

A. The U.S. Population is Growing More Diverse

The U.S. population is growing more diverse. The U.S. Census Bureau projections released in 2014 indicate:

[T]he U.S. population will become "majority minority" in 2044. At that time, whites will make up 49.7 percent of the population compared with 25 percent for Hispanics, 12.7 percent for blacks, 7.9 percent for Asians and 3.7 percent for multiracial persons. This tipping point will result from two countervailing trends that are projected to continue between now and 2060:

A long term decline for the nation's white population. The white population is projected to increase modestly until 2025 when it reaches 199,867,000; after that, it will sustain a continued decrease until 2060 when whites will make up only 44 percent of the population. Natural decrease,

the excess of deaths over births, for this aging population will be the primary component of this decline.

A growth of new minorities—Asians, Hispanics and multiracial persons. Between 2014 and 2060 both the Asian and Hispanic populations will more than double at growth rates of 129 percent and 115 percent respectively. Multiracial persons will more than triple, growing at nearly 220 percent. These new projections assume a greater gain for Asians than in previous projections but reduced gains for Hispanics. The former reflects rising Asian immigration and the latter a drop-off in Hispanic fertility.

William H. Frey, *New Projections Point to a Majority Minority Nation in 2044,* Brookings Institution (December 12, 2014. 9:46 am), http://www.brookings.edu/blogs/the-avenue/posts/2014/12/12-majority-minority-nation-2044-frey.

The changing demographics of the United States are reflected in a changing workforce as well as a changing client base. This redefines who has the buying power and what markets that will provide future business opportunities and growth.

B. Globalization

Corporations already in the global marketplace have begun to adapt to customers and vendors with different perspectives and needs. These corporations have determined that employees who mirror the clients they serve, who can literally and figuratively speak their language, identify their needs and suggest potential new markets, will ultimately benefit the organization's bottom line.

Legal organizations have lagged behind these corporations, but have begun to enter the same global market: competition requires acquiring the best workers to successfully capture significant shares of those global markets. As individuals who are responsible for selecting law firms and legal organizations become more diverse, those individuals are more likely to consider legal teams that reflect this, and ask about a law firm's diversity record before making a commitment to do business.

C. Diversity Creates a Stronger Workforce

Research has begun to substantiate the value of a diverse workforce. Perhaps we should not be asking about the business case for diversity, but instead, the case against homogeneity. Evan Apfelbaum, the W. Maurice Young Career Development Professor of Management and an Assistant Professor of Organization Studies at the MIT Sloan School of Management states:

> Emerging research suggests that homogeneity can lead individuals to underestimate the actual complexity of group tasks because they assume that others' behavior is more predictable than it actually is.

Evan Apfelbaum, *What's the Business Case for Diversity in the Workplace?* MIT Sloan Management (February 27, 2013, 12:16 pm), http://mitsloanexperts.mit.edu/diversity-in-the-workplace/.

> A diverse workforce and climate enable employers to tap into a diverse talent pool/knowledge base, and make full use of contributions from all employees. A successful organization leverages the differences in employees and allows employees to attain their full potential.

Mary Farrell Robinson, *Inclusion is Not Just Black & White*, Legal Management, page 40, page 44, November/December 2010, http://www.duanemorris.com/articles/static/robinson_legalmgmt_1110.pdf.

D. Recruitment and Retention

Diversity in the organization's leadership and in its workforce improves recruiting and retention. Few legal organizations can expect to gain access to the kaleidoscope of clients without recruiting a staff that

reflects the diversity of the marketplace. Retaining diverse personnel is often the bigger challenge. Retention hinges on whether the legal organization's culture visibly supports diversity. If the culture suggests a lack of understanding of diversity concerns, or a lack of commitment to diversity issues by the organization and its leaders,"diverse" staff will leave. Unless organizations begin to create a business climate that openly welcomes those who are in some way different from the existing group, they will continue to experience costly turnover as new talent leaves to find a more hospitable environment.

E. Corporations Demand Diversity and Inclusion of Their Outside Counsel

The emphasis the corporate sector has put on diversity and inclusion initiatives have started to reach law firms. These corporations demand their legal partners actively promote diversity within their firms, give significant weight to a legal organization's commitment to and progress in diversity when selecting outside counsel, and have formed coalitions to do so. Two are noted here:

> The Leadership Council on Legal Diversity (LCLD) is an organization of more than 240 corporate chief legal officers and law firm managing partners—the leadership of the profession—who have dedicated themselves to creating a truly diverse U.S. legal profession. Our action programs are designed to attract, inspire, and nurture the talent in society and within our organizations, thereby helping a new and more diverse generation of attorneys ascend to positions of leadership. By producing tangible results in the lives of talented individuals, we work to promote inclusiveness in our institutions, our circles of influence, and our society, with the ultimate goal of building a more open and diverse legal profession.

A Call to Action: Our Mission, The Leadership Counsel On Legal Diversity, www.lcldnet.o*rg/about/o*ur-mission (last visited Dec. 26, 2015).

> The mission of the Minority Corporate Counsel Association (MCCA) is to advocate for the expanded hiring, promotion, and retention of minority attorneys in corporate legal departments and the law firms that they retain. Since its founding in 1997, MCCA has emerged as a knowledge leader on diversity issues, and its programs and initiatives cover a wide range of diversity management issues, with an emphasis on the professional challenges faced by race/ethnic minorities; women; lesbian, gay, bisexual, and transgender lawyers; people with disabilities; and multi-generational workforces.

About MCCA, The Minority Corporate Counsel Association, http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=471 (last visited Dec. 26, 2105).

MCCA has partnered with the Vault to create a law firm diversity database. The organization sponsors research into the best methods to implement diversity. The MCCA has detailed information on recommended practices for law firms including: (1) the business case for diversity, (2) barriers to success, (3) critical success factors, (4) where laws stand on diversity (5) the retention challenge, and more.[7]

IV. How to Implement a Diversity Plan

Each organization has to determine its own path for improving diversity and inclusion. The steps laid out here will assist an organization in developing a plan, or for those organizations with a plan, refresh and renew organizational commitment. There are several resources available to assist in this effort. They are identified at the end of this article.

A. Building Management Awareness

Any initiative involving organizational change requires support and commitment from leadership. Achieving the goals of a diversity initiative is no different. It is essential, regardless of approach, to build awareness among senior management regarding diversity and its impact on the

legal organization's workforce. Once management understands the benefits of recognizing, valuing and promoting diversity, committing the organization to a proactive diversity plan will be a sound business decision. There are a number of ways to educate senior management. Share this Diversity Toolkit and the pamphlet "*Why Diversity Matters*" available at www.alanet.org/diversity. Cite statistics and provide a selection of relevant articles, presentations and seminars accessed through the internet. Inquire as to the diversity requirements of significant clients or vendors. Engage a diversity consultant to help make the case for diversity to senior management.

B. Diversity Committee/Partner

Many legal organizations have a standing committee to plan, implement and oversee the diversity initiative. The committee itself should be diverse and should include one or more senior partners as well as other attorneys and staff. Alternatively, consider naming a senior partner to direct the program. Some legal organizations even hire or appoint a full-time Director of Diversity or Chief Diversity Officer.

Once committed, leadership must be held accountable for the success of the diversity initiative through continuous monitoring of its implementation. Whether a committee, task force or single partner, the legal organization must also demonstrate its commitment by entrusting the diversity plan leadership with both authority and allocation of resources to build an effective firm wide program. Strong senior leadership also conveys the expectation of cooperation and involvement from all employees and sends a clear message: this organization is serious about diversity and inclusion.

C. Assessing the Firm or Legal Organization's Diversity

Next, assess the current diversity of the legal organization. Measure the percentage of minorities, women, LGBT and people with varying physical abilities among your organization's attorneys and support staff. Examine the demographics (age, language, geography, etc.) How does this compare to national averages? (Keep these statistics to analyze results after the plan has been in place for a period.) Study retention and promotion trends. Review the recruiting programs for attorneys and staff. Review the diversity policies on the websites of the organization's most significant clients or vendors, or inquire of clients as to whether they require the organizations they work with to have a diversity plan. Many request proof of a diversity plan including staffing statistics to prove the commitment to diversity. Finally, review how current management operates, communicates, and assesses the firm's culture. Is it inclusive? Does everyone have the chance to be heard?

D. Strategic Plan Development

This phase of the diversity initiative is critical. Planning establishes a blueprint reflective of the current culture of the organization and outlines the actions necessary to achieve the diverse culture of the future.

A comprehensive diversity program can involve thousands of hours in additional recruiting efforts, training, mentoring, sponsoring, seminars and time with community and other diversity-related projects. Leaders must recognize this, build that consideration into goal planning and be prepared to support the program.

For maximum effectiveness, make diversity and inclusion a key element of your legal organization's existing business plan: it is more powerful, practical and productive to align the two and build greater understanding and support for change.

E. Issuing a Firm or Legal Department Diversity Policy or Mission Statement

Once management is committed and the diversity of the organization has been assessed, it is important to adopt a formal diversity policy statement and communicate it to the entire organization, both lawyers and staff. The policy statement can include specifics of the diversity plan, as can the initial memorandum communicating the policy and should be distributed by firm management. The diversity policy should be prominently published on the firm's Intranet and Internet sites. All employees should be able to articulate the diversity policy as a core value.

SAMPLE DIVERSITY POLICY

We value and respect the strengths and differences among our employees, clients and communities because they reflect our future success. Our clients, suppliers and strategic partners are increasingly diverse and multicultural. We must be positioned to understand, interface, relate to and meet their needs. Our challenge is to seek out and use our diversity in ways that bring new and richer perspectives to our firm and the clients we support. Our commitment is consistent with our recognition that it is the outstanding people within the firm who have always been the source of our strength. Our colleagues are the firm's greatest assets. We have long embraced the principles of equal employment opportunity. We further recognize that promoting diversity is an integral component of our continuing quest for excellence as individual attorneys and as a firm.

As part of the effort to advance our commitment to diversity throughout the firm, the following initiatives, among others, are being pursued:

- Improve the level of diversity within the firm's leadership positions, committees and practice development efforts.
- Develop an attorney and senior administrative manager evaluation process to set clear expectations and accountability around diversity and inclusion.
- Annually review and recognize the contributions made by attorneys and managers to advance the firm's commitment to diversity and inclusion.
- Emphasize the firm's long-standing policy that encourages reporting of any discrimination or harassment based on sex, race, national origin or other protected status.
- Participate in opportunities outside the firm to explore diversity and inclusion initiatives underway with clients, bar associations and minority organizations that share this common objective.
- Strengthen our diversity through recruiting and retaining minority and women attorneys and staff personnel from all backgrounds.
- Develop mentoring and sponsorship programs for our employees.
- Recognize diversity as a business imperative in increasing our business opportunities and partnerships with key external markets, communities and suppliers.
- Create a work environment that engages, enables and empowers people to do their best work.
- Focus specifically on recruitment, retention and development of diverse talent at all levels in the organization.
- Lead in our community by valuing diversity.
- Provide regular and repeated diversity and inclusion training to all of our workforce.

A Committee on Diversity will work closely with the Executive Committee to carry out these and other initiatives to help strengthen diversity throughout the firm. Of course, each and every one of us must accept responsibility for and do our part to fulfill our organization's commitment to diversity.

(Firm or Company name) accepts responsibility to be a leader in assuring that a diverse workforce

is recognized as an important cornerstone for success in our industry. For (Firm or Company name) to be an excellent utility and regional leader, we believe this commitment must be honored.

F. Training and Education

Workplace conflicts often stem from a lack of understanding about the differences among us. It is imperative to train individuals to recognize, acknowledge and overcome these differences. Training will vary by the needs of the organization and whether it is at the beginning stages of a diversity initiative or there are ongoing efforts. Initially, training should begin with senior management, often as part of the buy-in process for developing diversity and inclusion initiatives. Separate training programs for managers will help them develop the leadership and team building skills needed to facilitate constructive conflict and effective communication. Training should then be extended to everyone within the organization. It may be useful to have sessions that include attorneys and staff to demonstrate that these issues exist at all levels. It is equally important to seek input and feedback on diversity issues from everyone involved in the training.

For organizations without prior diversity training the preliminary training may address any of these issues:

- Define diversity and inclusion,
- Explain why the organization cares about having a diverse workforce,
- Explain what diversity brings to the organization,
- Increase awareness of the diversity of the organization's current workforce,
- Discuss how to promote diversity,
- Discuss the impact of exclusion and insensitivity and recognition of conscious and unconscious biases.

Once the groundwork is set, training needs to be done on a periodic basis to continue to build awareness and address the needs of the organization. Topics may include:

- Sensitivity training,
- Training on avoiding stereotypes and respecting differences,
- Cultural awareness and unexpected commonalities,
- Working with and responding to differences,
- Teamwork,
- Active listening and asking questions to improve understanding, and
- Effective tools in conflict resolution.

To accomplish this training, seek recommendations for various training companies. If one does not appear to suit your requirements, continue searching for another that is more suited to your firm's/law department's needs, culture and style.

A special note on unconscious bias: We all have them. You can't be human without them. They are developed by years of influence and demonstrate how treatment of others can be inadvertent and how behavior and perceptions based on stereotypes can be altered. They may be called "micro-inequities" and are subtle, often subconscious signals, which may reveal a bias or demonstrate the difference between inclusion and exclusion. Accept you have them and be alert to experiences which make them surface. To uncover your own bias consider these resources:

Harvard Implicit Association Tests: www.implicit.harvard.edu/implicit

Malcom Gladwell, Blink, 2005 available at www.gladwell.com/blink/

Verna Myers, Moving Diversity Forward, 2011, and What if I Say the Wrong Thing, 2011 available at www.vernamyersconsulting.com

G. Recruiting and Retention

The more senior diverse attorneys, the greater the legal organization's chances of recruiting and retaining new attorneys of color, gender and other diversity. Additionally, the organization will be more desirable to entry-level diverse attorneys and better positioned to minimize attrition. This practice is much more likely to succeed as an integral part of a firm-wide diversity strategy. But where to start?

Any legal organization seeking to become more diverse should review its recruiting programs to include which law schools it has visited, and the number of women, minorities, LGBT and people of varying physical abilities in summer programs and in new-attorney hires. Then, adopt specific and meaningful voluntary percentage goals based on the demographics of the community for hiring, retaining and promoting diverse attorneys and staff. Track the success of any initiatives and report on them annually.

The legal profession has a pipeline problem, meaning that there are not enough diverse attorneys. As a profession, we need to reach out to high school and college students by way of job fairs, speaking at career days and recruiting at schools with significant numbers of minority and diverse students. This could include adopting a historically minority college or university and developing a close relationship with students by presenting seminars, speaking at campus events, etc.

At the law school level, this includes hosting receptions at the law schools or at the legal organization for minority, women, and lesbian, gay, bisexual, and transgendered law students, for example. This provides diverse students and applicants with an opportunity to meet diverse lawyers within the legal organization. Standout students should be identified with the goal of obtaining these students' interest for possible hires during the academic year. Law firms could also partner with local bar associations by becoming a signatory firm to a Diversity Clerkship Program. Clerkship programs, along with summer employment, internships, and scholarship programs, are means to implement diversity-hiring initiatives.

Recruiters themselves should have diversity training to help them interact more effectively with diverse students. Provide training to all interviewers via videos, manuals, diversity consultants and frequent in-department discussions of the importance of diversity and issues important to diverse employees.

Take advantage of professional and personal networks by offering a bonus for referrals of talented diverse candidates who can be recruited to the firm. To ensure diversity needs, use executive search firms who specialize in diverse candidates and insist that all search firms include diverse candidates in the slate to be considered. Make sure your recruiting resources know your successes. Periodically review the diversity performance of the search firm and, if necessary, change firms if the firm does not meet the diversity needs of the law department.

Post opportunities widely, including distribution to the National Asian Pacific American Bar Association (NAPABA); National Bar Association (NBA, African American Attorneys); Hispanic National Bar Association (HNBA); American Bar Association Commission on Disability Rights; Latina Lawyers Bar Association (LLBA); National Native American Bar Association; National LGBT Bar Association; National South Asian Bar Association; National Association of Women Lawyers (NAWL); and any local affinity bar associations.

Law firms should review the firm's hiring criteria so as not to screen out diverse candidates. Redefine competence to filter out racial or culture-based abilities or other factors that do not predict individual success with the firm. However, never hire a candidate for diversity's sake. Do not hire a candidate who does not fit your culture, values and performance expectations. Utilize Vern Myers, *Top Ten Hiring Tips to Move Diversity Forward*, State of Arizona Bar Association, http://www.azbar.org/media/886437/10_tips_for_hiring_and_interviewing_to_move_diversity_forward_copy.pdf (last visited Dec. 31, 2015).

Create a Diversity and Inclusion brochure for your firm or legal departments, stressing the programs for diverse lawyers and staff. Publicize the organization's commitment to diversity through marketing and recruitment materials, updating and improving the firm's Web site to attract diverse candidates. Consider Braille business cards or documents for the visually challenged.

For additional recruitment and retention ideas see the following:

- *Diversity - Best Practices Guide*, The National Association For Law Placement, http://www.nalp.org/uploads/2014DiversityBestPracticesGuide.pdf (Last visited Dec. 28, 2015).
- *Creating Pathways to Diversity: Metrics for Success*, Minority Corporate Counsel Association, http://www.mcca.com/index.cfm?fuseaction=Page.viewPage&pageId=471 (last visited December 18, 2015).
- Verna Myers, *Minority Recruitment and Retention - How Does a Firm Succeed: A Case Study*, The American Bar Association, http://www.americanbar.org/content/dam/aba/migrated/minorities/ftp/g9sum02.authcheckdam.pdf (last visited Dec. 18, 2015).
- *Law Firm Diversity Retention Manual*, DRI, http://www.dri.org/Committee?code=0440 (last visited Dec. 26, 2105).

H. Mentoring and Sponsorship

Mentors: People who provide information, insights, and opportunities to help you advance your career.

Sponsors: People who use their influence to help you advance your career.

Mentoring and sponsorship programs have been valuable in improving employee retention and promoting individual success. In legal organizations, these programs are often focused on attorneys, but certainly can be adapted for all employees. Providing a mentor to new attorneys in the office ensures that they learn the unwritten rules of the office and have a better chance of succeeding in the law firm or legal organization. A mentor provides guidance and advice, but also makes introductions to others in the firm. For more information about implementing a mentoring program, consider these resources:

- *Creating a Mentor Program*, Society for Human Resource Management, http://www.shrm.org/communities/studentprograms/pages/mentorprogram.aspx (last visited Dec. 26, 2015).
- *Mentoring Guide*, Association of Legal Administrators, www.alanet.org/diversity/mentoringguide.aspx (last visited Dec. 31, 2015).

Similarly, the organization should consider a sponsorship program. Corporations are leading the way in developing sponsorship programs and the concept has been propelled forward in this book: Sylvia Ann Hewlett, (Forget a Mentor) Find a Sponsor, The New Way to Fast-Track Your Career, Harvard Business Review Press, (2013). Sponsors differ from mentors in that sponsors deliver. They create visibility to leaders within the company and in the larger business community. They connect their protégés to career opportunities and provide cover when trouble is encountered. When it comes to opening the door, they don't stop with one promotion; they'll see you to the threshold of power. In this respect, a sponsorship program is targeted at attorneys within a few years from partner or shareholder consideration.

I. Policies and Procedures

Ensure your handbook, intranet pages and employment policies are up to date, including any new laws in your state. These can change frequently, so have resources to stay informed. Examples include: flexible scheduling including part-time and flex-time programs; event inclusiveness; holidays; telecommuting; domestic partner benefits and grossing up benefit; self-identification LGBT; employee assistance policies;

quiet rooms for prayer, lactating, quiet and rest; transgender issues; and accessibility - noting not all disabilities are visible.

J. Firm Management

A legal organization seeking greater diversity or inclusion should increase the number of women and minorities on firm committees, in leadership roles and holding management positions. Naming co-heads of an office or department is an effective way to expand management positions, as is naming an administrative partner for an office in addition to the partner in charge.

K. Affinity Groups

Create Employee Resource Groups (ERG), also referred to as Affinity or Ally Groups, which create opportunity for diverse parties and allies to gather to share experiences reflective of their commonalities. They are exclusive to some degree but the value of the support system is immeasurable.

L. Community Involvement

A legal organization committed to strengthening diversity should explore opportunities both inside and outside the firm. Many organizations and diverse community, business, bar, and professional associations solicit help in sponsoring events, creating networking opportunities, placing ads in publications, and supporting community involvement. Legal organizations should establish procedures for seeking and approving such activities and should consider partnership opportunities and/or supporting employee involvement in community diversity projects.

M. Partnering with Minority-Owned Businesses

Some organizations demonstrate their commitment to diversity by purchasing goods and services directly from minority and women owned businesses. Minority contractor associations can assist in identifying such businesses. There are also searchable databases of businesses including the following:

- **Ethnic Majority:** This is a listing of government sponsored listing of minority owned businesses: *Government-Sponsored listing of Minority Owned Businesses*, Ethnic Majority, www.ethnicmajority.com/MBEdata.htm (last visited Dec. 28, 2015).
- **Diversitybusiness.com:** This website has directories for national searches for connecting small businesses and large organizational buyers (e.g., Fortune 1000 Companies, government agencies and college/universities): *Directories*, DiversityBusiness.com, www.diversitybusiness.com/Directories (last visited Dec. 28, 2015).

N. Evaluating Programs and People

Any organization should continually assess and review its diversity initiative and should develop statistics on hiring, retention, promotion, and leadership positions to measure progress. To compare the strides law firms have made in terms of diversity, Vault.com and the MCCA created the Law Firm Diversity Database: *The Vault/MCCA Law Firm Diversity Database,* The Vault, http://www.vault.com/law/law-firm-diversity-programs (last visited Dec. 28, 2015). This online tool allows side-by-side comparisons of diversity statistics and initiatives at different law firms, gauges firms' progress over the years and measures their performance against industry-wide averages.

Benchmarking Surveys also provide an opportunity not only to measure the organization's success but also to take advantage of other success by learning what they have done via surveys. See for example: Price Waterhouse Coopers (PWC); National Association for Law Placement (NALP); Association of Legal Media (ALM); HR Certification Institutes (HRCI); Vault/MCCA Vault Career Intelligence/Minority Corporate Counsel; Society of HR Managers (SHRM).

There are also many organizations that award and recognize law firms with strong diversity plans as outlined in the following websites:

- Diversity Leadership Award: This award is presented annually by American Bar Association Section of Litigation to recognize individuals or entities who have demonstrated a commitment to promotion full and equal participation in the legal profession. *Diversity Leadership Award,* The American Bar Association Section on Litigation, http://www.americanbar.org/groups/litigation/diversity_initiatives/award.html (last visited February 24, 2016).
- Vault: The 20 Best Law Firms for Diversity: Each year Vault.com ranks law firms across a variety of categories including a specific ranking for diversity. Best Law Firms for Diversity, the Vault, http://www.vault.com/company-rankings/law/best-law-firms-for-diversity/?sRankID=36 (last visited December 28, 2015).
- Working Mother Top 100 List — Law Firms: Working Mother recognizes law firms who implement policies that help working mothers balance the needs of their professional life and family responsibilities. *50 Best Law Firms for Women,* Working Mother, http://www.workingmother.com/50-best-law-firms-for-women-have-been-named (last visited Dec. 28, 2015).
- DRI: The Voice of the Defense Bar: Each year DRI awards a Law Firm Diversity Award, SLDO Diversity Award, and the Sheryl J. Willert Pioneer Diversity Award. *About Us*, DRI: The Voice of the Defense Bar, http://www.dri.org/About (last visited Dec. 28, 2015).
- MCCA awards individuals and or legal organizations that have made achievements in diversity. *Awards,* Minority Corporate Counsel Association, www.mcca.com (last visited Dec. 28, 2015).

Other resources for law firms or legal organizations considering submitting diversity plans for recognition include:

- Catalyst is a nonprofit research and advisory organization working to advance women in business. www.catalyst.org.
- The Great Place to Work® Institute provides information to transform your organization into a great place to work. www.greatplacetowork.com/.
- Human Rights Campaign: The HRC Corporate Equality Index is released each fall and provides an in-depth analysis and rating of large U.S. employers and their policies and practices pertinent to lesbian, gay, bisexual and transgender employees. www.hrc.org/issues/workplace/cei.

It is also important to evaluate the individuals to create accountability and reward diversity-related efforts and achievements. The annual performance review, which should be linked to compensation, bonus, stock options awards and advancement, can include the following:

- Does this employee treat others with respect and foster inclusion?
- Create an inclusion list – ways for individuals to engage in inclusive behavior. For example: Attend an event sponsored by a diverse community, where the individual is the minority. Attend a CLE on diversity in the legal profession. Attend a diversity and inclusion conference. Serve on a bar association's diversity committee. Attend a function sponsored by a minority bar association.
- Credit timekeepers with hours spent on diversity and inclusion, pro bono and mentoring.
- Credit work on recruiting activities focused on diversity.

V. Summary

Diversity and inclusion efforts are a work in progress. These efforts are never-ending, evolve slowly and

reflect the ever-changing culture or the organization. Key factors needed to achieve successful outcomes include:

- Encourage frequent, candid communication to correct misperceptions about diversity and diversity programs.
- Create an atmosphere of sensitivity and inclusion.
- Cultivate an attitude of respect and dignity in the workplace.
- Continue to evaluate the performance and results achieved; require accountability.
- Obtain commitment not only by senior management, as evidenced in both words and actions, but at all levels of the organization.
- Provide effective mentoring and sponsorship.
- Reward and recognize diversity successes and achievements.
- Make the financial commitment inside and outside the legal organization.

Whatever reasons lead your legal organization to develop and implement a diversity program, one thing remains consistent: be prepared. To stand the test of time, leaders must be proactive, plan ahead and establish the foundation for a diversity initiative that is flexible and reflective of their organization's unique culture.

VI. Additional Resources

A full library of free, dynamic resources can be found at www.alanet.org/diversity. The ***Diversity & Inclusion Scorecard for Law Office Administrators*** provides best practices, examples and offers a tool to measure your current efforts. Utilize the Scorecard to earn the "We Participate" seal for your website, along with recognition validating your firm's achievement. Contact the Committee on Diversity and Inclusion at diversity@alanet.org**.**

Revised and edited by:

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Changing the Landscape of the Legal Professional Globally: The Development of a Culturally-Sensitive Diversity and Inclusion Pipeline

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Diversity and inclusion are not just U.S. issues. And they may differ from the U.S. experience in a multitude of ways. Here, Bellamy provides an in-depth examination of a first-of-its-kind program to build a pipeline of diverse lawyers into the legal profession in Chile. She shows the impact that a single corporation can have over the future diversity within the legal profession in an entire country.

I. Introduction

Walmart Stores, Inc. (Walmart) believes that a diverse and multicultural workforce, as well as an inclusive work environment, is the foundation for business excellence and sustainability. The Legal Department has advanced diversity and inclusion initiatives internally and externally with the same focus: striving for excellence in the legal profession.

II. Business Case

At Walmart, the business case for diversity and inclusion is a given. Millions of diverse customers and members shop in our stores and clubs daily. In 2011, the company set an unprecedented goal of sourcing $20 billion from women-owned businesses through 2016. Similarly, Walmart has a well-established supplier diversity program focused on ensuring that minority and women-owned businesses are an integral part of its vast network of suppliers. Through that program, the company currently does business with more than 3,500 minority and women-owned suppliers, spending over $13 billion with them in 2014.[1]

Like the company, the Legal Department's commitment to diversity and inclusion is firm. It is committed to creating opportunities for women and minorities within the legal profession, which will better position the legal department to provide superior advice and solutions to the business. One of the ways the company demonstrates this commitment is through the department's Outside Counsel Guidelines, which holds law firms accountable for meeting diversity, inclusion, and flex-time goals.

In 2005, the Legal Department began its diversity and inclusion journey in earnest. One of its first major steps was to increase and promote the use of diverse attorneys in the legal profession by installing forty minority and women relationship partners at its top 100 law firms. This one act resulted in the shifting of approximately $60 million dollars of existing business to those new women and minority relationship partners.[2]

1. *Supplier Diversity*, Walmart Stores, Inc., http://corporate.walmart.com/suppliers/supplier-diversity.
2. *Wal-Mart Requires Diversity in its Law Firms*, Walmart Stores, Inc., http://corporate.walmart.com/_news_/news-archive/2005/12/09/wal-mart-requires-diversity-in-its-law-firms.

In 2005, the Legal Department began its diversity and inclusion journey in earnest. One of its first major steps was to increase and promote the use of diverse attorneys in the legal profession by installing forty minority and women relationship partners at its top 100 law firms. This one act resulted in the shifting of approximately $60 million dollars of existing business to those new women and minority relationship partners.

The Legal Department continues to reinforce its commitment to diversity and inclusion through its law firm hiring decisions. Specifically, the Legal Department is committed to several initiatives aimed at increasing legal work given to women and diverse attorneys, either as the owners of their own firms or as associates and partners of majority-owned firms. The Legal Department also has implemented a law firm scorecard, which gives Walmart's in-house attorneys better visibility into an outside firm's diversity, legal spend, and performance. Additionally, the Legal Department expects all approved outside counsel to share its commitment to having an inclusive work environment that welcomes, respects, and embraces the differences of all people.

III. Overview of the Program

In 2013, the Walmart Legal Department began to study its legal departments and outside counsel firms in its international markets with a focus on diversity and inclusion. The goal was to create a truly global legal department by having all offices working toward similar goals regarding outside counsel management and diversity and inclusion. The project initially concentrated on Walmart's legal departments in Latin America, where efforts focused on a diversity pipeline program to reach underrepresented law students. Specifically, Walmart designed the program to provide equal opportunity to law students and lawyers who are underrepresented in the legal profession because of race, ethnicity, gender, sexual orientation, or socioeconomic status.

The project consisted of research about each country's stage of development in terms of diversity and inclusion—country-wide, locally, and within the legal profession—as well as how diversity efforts impact outside counsel management and the practice of law. This research included an internal survey as well as extensive interviews, conversations, and collaboration with university deans and other academic partners; law firms; headhunters specializing in the legal profession; and NGOs, among others. The objective was to gain a better understanding of societal and cultural sensitivities, and implications for any Walmart-implemented changes to policies and procedures affecting its outside counsel.

The objective was to gain a better understanding of societal and cultural sensitivities, and implications for any Walmart-implemented changes to policies and procedures affecting its outside counsel.

After conducting market visits to Chile, Argentina, Mexico, and Costa Rica, the Legal Department decided that the environment in Chile was the most favorable place to pilot the project. The conferences with external stakeholders indicated that English proficiency and professional networking skills would have the greatest impact on ethnic minority and socioeconomically-challenged law students seeking law firm positions post-graduation.

In October 2014, the Legal Department announced a first-of-its-kind program aimed at building a diverse pipeline of lawyers in Chile. The pilot kicked off with the Legal Department pledging to provide English lessons to twelve law students from the most prominent Chilean universities for three years and to partner with highly reputable Chilean law firms to establish clerkships, mentoring relationships, and post-graduate employment opportunities for these students. In so doing, Walmart hopes to see a day when Chile's law firms become more diverse and provide equal access and opportunity to underrepresented groups within the legal profession and provide not only Walmart but also other corporations with diverse outside counsel representation.

For the roll-out of this program in Chile, it was imperative to design the program so that Walmart's Chilean legal team could carry out the mission with local law schools and outside counsel and ultimately sustain the program. That is the framework of this international diversity and inclusion effort moving forward and is a program that is replicable in other countries—and by other corporations, as well.

IV. Innovation

The Legal Department had to complete its initiative in a culturally-sensitive manner and in an appropriate time frame. Moreover, the Legal Department recognized that the landscape of the legal profession is quite different in each country. As is often the case, the opportunity for the Legal Department to lead initiatives to make positive changes in the legal field is immense. By spearheading this initiative, the Legal Department promoted genuinely needed changes within the legal profession, generally, as well as provided a template for other corporations to use.

To fully understand the context in which the Latin American legal departments operate, it was necessary to meet with external stakeholders. By participating in such meetings and through surveys, insight was gained into how developed each country was in terms of diversity and inclusion and how those concepts impact outside counsel management. In an effort to break down the social inclusion barriers and working in conjunction with the country's top two law schools, the leaders of the Walmart-Chile legal department (Walmart-Chile) identified twelve top performing socioeconomically-challenged students starting their fourth year of law school. The Legal Department is currently supporting those twelve fourth-year law students by providing stipends for English language training for three years. The Legal Department concluded that by the end of the third year, it can determine an assessment and understanding of the students' ability to be successful in law school.

The program was launched in October 2014 at the Walmart-Chile Legal SuperConference, which had over 250 attendees from the national and international legal and business communities. The process for identifying the students began in November 2014, with Walmart-Chile leaders working collaboratively with the local universities. The program officially commenced in March 2015 when the new school year began. The program chose six students from Pontificia Universidad Católica de Chile in March 2015, and it chose an additional six students from the Universidad de Chile started in November 2015. The demographic breakdown of the students includes both men and women and one student with disabilities. The positive impact on the students has been evidenced by the feedback received from the coaches and leaders of the program. The students are all actively engaged in their language lessons, a program that is strictly monitored. Additionally, each law firm mentor of the students has reported that the students are integrating effectively, and the network for each student has expanded beyond what the company anticipated. The students are poised for success at just over six months of participation.

Walmart has tailored its U.S.-based Outside Counsel Guidelines for each Latin American country in which Walmart operates. The legal department in each market is responsible for ensuring the implementation of the guidelines, which include commitments regarding diversity and inclusion. Within four years, as these students graduate and begin to practice, Walmart-Chile will be in a position to modify the guidelines to fully implement diversity and inclusion practices and utilize them to require that outside counsel firms include at least one minority associate on Walmart matters. Within fifteen years or sooner, Walmart-Chile will be able to utilize the guidelines to ensure that a minority partner is either working on company matters or serves as the relationship partner. Currently, there are no minorities who are in such a position, and while there is not an immediate return on investment, Walmart hopes to see a great impact on society by increasing the number of underrepresented individuals qualifying for jobs that they traditionally have been prevented from holding.

Finally, Walmart-Chile will start the process of collecting data similarly to what is collected in the U.S. to measure the impact of this project. Walmart can use this data to benchmark within the various Walmart global legal departments and with other corporate law departments.

V. Output

The response to the initiative has been positive. A number of corporate legal departments have approached Walmart about replicating the program, and the program has been presented as a goal to aspire to by multinational corporations domestically and internationally. Walmart welcomes any such replication and views the program as an opportunity to increase diversity and inclusion within the legal profession worldwide.

Nicole Nemhe, a partner at the Chile-based law firm FerradaNehme, has said:

> [t]his program for the furtherance of diversity is a pioneering and visionary initiative for a country like Chile. It puts fundamental values at the center of a business activity in connection to its relationships with the community. Furthermore, beyond its business contribution to society, Walmart is conducting itself as a true corporate citizen that supports human development and equal access and substantively contributes to cultural change, thereby creating a model of behavior that can have a multiplying effect if followed by others. We celebrate this initiative and feel honored to be partners to it.[3]

3. Personal interview, March 2014, FerradaNehme Law Firm.

The Undocumented JD: The Changing Landscape of Admissibility to the Bar for Undocumented Immigrants

Colette A. Brown

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Thousands of undocumented immigrants are pursuing post-graduate degrees in American universities, including law schools. Their immigration status imperils their ability to take the bar or practice law. Now some states are weighing in on the matter and courts and state legislatures are beginning to address the question of whether undocumented immigrants may practice law in the U.S.

I. Introduction

Estimates show that there are over 65,000 undocumented youths who graduate from high schools in the United States each year.[1] Of that number, approximately half will attend post-secondary institutions.[2] Currently, 7,000 to 13,000 are pursuing post-graduate degrees, including law degrees.[3] As the vast majority of undocumented law students and law graduates originate from Mexico, South and Central America, Asia, and the Caribbean, the admittance of these individuals to the legal profession would significantly increase the diversity within the profession. However, the intersection of immigration regulations, employment restrictions, and each state's bar admission requirements creates a legal quandary—not only for the newly minted law school graduate but also for each state's legislature, judiciary, and bar admission committee. Recently, three of the nation's most diverse states weighed in on the question of bar admission for undocumented immigrants. This article provides an overview of the recent decisions addressing whether undocumented immigrants may practice law in the United States.

II. The Path to Law School: Kindergarten to Law School

Questions about educational access for undocumented students date back many years. In 1982, in *Plyer v. Doe*, the Supreme Court held that Texas could not legally deny elementary school enrollment to Mexican children who had entered the United States illegally.[4] The Court explained that undocumented children present in this country through no fault of their own should not be denied access to basic education. The Court reasoned that depriving undocumented children the free education that other children have would create a "subclass of illiterates within our boundaries."[5] The Court also opined that these undocumented children would remain in the country indefinitely and that some will become lawful residents and citizens of this country.[6] As a result, the ruling requires states to provide K-12 public education to all children, regardless of the child's immigration status.

1. *See* Paulo E. Ochoa, *Education Without Documentation: As Plyler Students Reach New Heights, Will Their Status Make Them Morally Unfit to Practice Law?*, 34 T. Jefferson L. Rev. 411, 418-19 (2012).
2. *Id*.
3. *Id*.
4. *See* Plyler v. Doe, 457 U.S. 202, 202 (1982).
5. *Id*. at 230.
6. *Id*.

As the result of DACA and various states' laws, there are a growing number of undocumented immigrants attending law and other graduate programs at in-state tuition rates. Many of these students will eventually graduate from law school and pass the bar exam.

Plyer does not apply to education beyond high school, however. While undocumented students are ineligible for federal financial aid, eighteen states have passed legislation extending post-secondary in-state tuition rates to undocumented students who meet certain requirements: California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington.[7] Arizona, Georgia, and Indiana prohibit undocumented students from receiving in-state tuition.[8] Alabama and South Carolina prohibit undocumented students from enrolling in public post-secondary institutions.[9]

Additionally, under the proposed Development, Relief and Education for Aliens Minors Act (DREAM Act), the federal government would provide lawful permanent residence or citizenship to certain undocumented immigrants.[10] However, the DREAM Act would not automatically confer legal immigration status to undocumented immigrants. Instead, applicants have to meet stringent eligibility criteria including: applicants must have entered the United States before age fifteen or sixteen; lived in the United States for at least five years; not committed any major crimes; graduated from high school; and completed at least two years of college or military service.[11] Once the applicant satisfies all of these requirements, the applicant becomes eligible for a green card. However, legislators have considered the DREAM Act, originally introduced in 2001, several times since its introduction, but it is still pending in Congress. In June of 2012, President Obama created the Consideration of Deferred Action for Childhood Arrivals (DACA), which includes some of the provisions of the DREAM Act.[12] Under DACA, "people 31 and younger who arrived in the United States before the age of 16, pose no criminal or security threat, and were successful students or served in the military, can get a two-year deferral from deportation and apply for work permits."[13] As of September 2015, 1,267,761 young adults have applied to the program, and the program has approved

7. *Undocumented Student Tuition: Overview*, National Conference of State Legislatures (Oct. 29, 2015), http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx.

8. *Id*.

9. *Id*.

10. *S.1291 – DREAM Act*, Congress.gov, https://www.congress.gov/bill/107th-congress/senate-bill/1291.

11. *See The DREAM Act: Myths and Facts*, NAFSA Association of International Educator (Jan., 2012), http://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Public_Policy/The%20DREAM%20Act%20T%20and%20M%20-%20Jan%202012(1).pdf.

12. *See generally* National Immigration Law Center, DREAM Provisions in S. 744 Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (2013), https://www.nilc.org/wp-content/uploads/2015/11/DREAM-in-S744-facts-2013-09-13.pdf.

13. *Undocumented Immigrants Line Up for Relief from Deportation*, CNN (Aug. 17, 2012), http://www.cnn.com/2012/08/15/us/immigration-deferred-deportation/index.html.

1,142,935 young adults and granted them federal deportation deferrals.[14] The top countries of origin for DACA applications are Mexico (980,324), El Salvador (47,923), Guatemala (32,538), Honduras (31,187), and South Korea (15,394).[15]

As the result of DACA and various states' laws, there are a growing number of undocumented immigrants attending law and other graduate programs at in-state tuition rates.[16] Many of these students will eventually graduate from law school and pass the bar exam.[17]

III. The Bar Admission Process

Many states' bar committees require proof of immigration status before they grant a law license to an applicant.[18] Based on this requirement, among others, undocumented law school graduates will find themselves unable to obtain their law licenses due to their undocumented immigration status. Recently, New York, California, and Florida have addressed whether undocumented law graduates are eligible for bar admission.[19]

Cesar Vargas, an undocumented immigrant, filed a bar application in New York in 2012. Vargas' parents brought him to New York from Mexico at the age of five. Since then, he graduated from law school and passed the bar.[20] However, he delayed applying for his license. Instead, he lobbied in support of the DREAM Act and obtained a deportation deferral under DACA. In 2011, Vargas filed his state bar application. Although the New York Committee on Character and Fitness found that Vargas "appears to have stellar character," the Committee did not grant Vargas his law license due solely to his immigration status.[21] In an amicus brief to the court, the Department of Justice argued that undocumented immigrants are "ineligible to receive public benefits" such as a law license.[22] Nearly four years later, in 2015, the New York court held that undocumented law graduates with federal deportation deferrals and authorized to work under DACA, such as Vargas, had a legal right to admittance to the state bar and obtain their law license.[23] Vargas became the first undocumented immigrant admitted to the New York Bar.[24]

Similarly, in 2009, Sergio Garcia, an undocumented immigrant, sought to obtain his law license in California. The thirty-five-year-old applicant met the requirements of the character review and passed the bar, but the bar committee did not grant a law license due to his lack of legal status.[25] Garcia arrived to the country at seventeen months old. Garcia's father, a naturalized citizen, filed immigration documents for

14. *Data Set: Form I-821D Deferred Action for Childhood Arrivals*, U.S. Citizenship and Immigration Services (Sept. 30, 2015), http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/I821_daca_performancedata_fy2015_qtr4.pdf.

15. *Id.*

16. *See* Ochoa, *supra* note 1; *see also supra* note 7.

17. *See* Ochoa, *supra* note 1.

18. *See* National Conference of Bar Examiners & American Bar Association Section of Legal Education, Comprehensive Guide to Bar Admissions Requirements 2016 2-3 (2016), *http://www.ncbex.org/publications/bar-admissions-guide/.*

19. *See* In re Garcia, 315 P.3d 117 (Cal. 2014); see also Fla. Bd. of Bar Exam'rs Re Question as to Whether Undocumented Immigrants Are Eligible for Admission to the Fla. Bar, 134 So. 3d 432, 437 (Fla. 2014) (per curiam); see also In the Matter of the Application of Cesar Adrian Vargas for Admission to the Bar of the State of New York, 131 A.D.3d 4,5 (N.Y. App. Div. 2d Dep't, 2015).

20. Roque Planas, *Cesar Vargas, Undocumented Immigrant, Applies to Practice Law in New York*, Huffington Post Oct. 23, 2012, http://www.huffingtonpost.com/2012/10/23/cesar-vargas-undocumented-lawyer-new-york_n_2003454.html.

21. *Vargas,* 131 A.D.3d at 5.

22. *Id*.

23. *Id.* at 28.

24. Aaron Morrison, *Immigration Reform 2015: Cesar Vargas, First Undocumented Immigrant Lawyer Admitted to New York Bar, Plans Career of Advocacy*, Int'l Bus. Times, June 5, 2015, http://www.ibtimes.com/immigration-reform-2015-cesar-vargas-first-undocumented-immigrant-lawyer-admitted-new-1952914.

25. *See* Miranda Leitsinger, *California Bar: Illegal Immigrant Should Get Law License,* NBC News, June 9, 2012, http://usnews.nbcnews.com/_news/2012/06/19/12298380-california-bar-illegal-immigrant-should-get-law-license?lite.

Nearly four years later, in 2015, the New York court held that undocumented law graduates with federal deportation deferrals and authorized to work under DACA, such as Vargas, had a legal right to admittance to the state bar and obtain their law license. Vargas became the first undocumented immigrant admitted to the New York Bar.

his son. Although U.S. Citizenship and Immigration Services (USCIS) granted Garcia's in 1995, at the time of his application to the state bar Garcia had been waiting over seventeen years for a visa that would grant him legal, permanent residence.[26] Garcia attended both college and law school in California and applied for admission to the state's bar, but the bar committee denied him due to his immigration status. By this time, Garcia was too old to qualify for deportation under DACA because he was over the age of thirty-one. The California Committee of Bar Examiners petitioned the California Supreme Court for guidance, arguing that Garcia should receive a law license. The California Attorney General also sided with Sergio Garcia. In his brief to the California Supreme Court, California Attorney General Kamala Harris wrote that "[a]dmitting Garcia to the bar would be consistent with state and federal policy that encourages immigrants, both documented and undocumented, to contribute to society."[27] On the other hand, critics questioned how Garcia could uphold the law of the United States when his mere presence in the United States violated federal law.[28] In a unanimous ruling, the court held that although Garcia's presence in the country violated federal law, that violation was not enough to deny undocumented immigrants admission to the bar.[29] Importantly, the court's 2014 ruling came a few months after California passed a bill allowing the California State Bar to admit "an applicant who is not lawfully present in the United States [who] has fulfilled the requirements for admission to practice law."[30]

In Florida, the path to admission also came from the legislature. Jose Godinez-Samperio's parents brought him to the Florida from Mexico when he was nine years old. USCIS granted his parents visitors' visas, but they never returned to Mexico.[31] Instead, they remained in Florida. Godinez-Samperio graduated from college, attended law school at Florida State University, and passed the Florida bar exam. In 2011, he applied for admission to the Florida Bar. Although DACA provided Godinez-Samperio with a

26. *Id.*

27. Cindy Y. Rodriguez, *Undocumented Immigrant's bid for California Law License Heads to Court*, CNN, Sept. 4, 2013, http://www.cnn.com/2013/09/04/us/undocumented-lawyer-law-license/.

28. *See* Catherine E. Shoichet, *No green card? NO problem—undocumented immigrant can practice law, court says*, CNN, Jan. 3, 2014, http://www.cnn.com/2014/01/02/justice/california-immigrant-lawyer/.

29. *Id.*; *see also In re Garcia*, 315 P.3d at 117.

30. *Id.*

31. *See Illegal Immigrant in Florida Fights for Law License*, USA Today, Oct. 2, 2012, http://www.usatoday.com/story/news/nation/2012/10/02/illegal-immigrant-lawyer/1609437/.

Whether these decisions will help to diversify the legal profession is another question, however, because even if a bar committee grants an applicant a law license, under current federal law, the newly-minted lawyers in many instances cannot legally practice law. Under federal law, a law firm, business, or public agency cannot knowingly hire an undocumented immigrant.

work permit, and although he met all the bar's requirements, the Florida Board of Bar Examiners asked the Florida Supreme Court for guidance regarding whether it could grant a law license to an undocumented immigrant. Sandy D'Alemberte, a former American Bar Association president, represented Godinez-Samperio.[32] In March 2014, the Florida Supreme Court ruled that federal law, specifically 8 U.S.C.S. § 1621(a), which bars undocumented immigrants from receiving state public benefits, such as a law license, prohibited the bar committee from admitting Godinez-Samperio to the bar. However, the court noted that the state legislature could carve out an exception.[33] The Florida Legislature swiftly passed the necessary bill that included language allowing Godinez-Samperio and others like him who met the necessary requirements to practice law.[34] In November 2014, Godinez-Samperio was sworn in and admitted to practice law in Florida.[35]

IV. Employability after Admission to the Bar

The New York, California, and Florida rulings could affect hundreds of undocumented law students and law graduates who have or will seek law licenses. Additionally, deportation deferrals and work permits under DACA will likely lead to more appeals to state bar associations for law licenses. Whether these decisions will help to diversify the legal profession is another question, however, because even if a bar committee grants an applicant a law license, under current federal law, the newly-minted lawyers in many instances cannot legally practice law. Under federal law, a law firm, business, or public agency cannot knowingly hire an undocumented immigrant.[36] However, some advocates argue that the law does not

32. *See Undocumented immigrant denied law license in Florida,* AL Jazeera America, Mar. 7, 2014, http://america.aljazeera.com/articles/2014/3/7/illegal-immigrantdeniedlawlicenseinflorida.html.

33. *Fla. Bd. of Bar Exam'rs,* 134 So. 3d at 437.

34. *See* Jerome R. Stockfisch, *Undocumented immigrant beats legislative maze to practice law in Florida,* The Tampa Tribune, Nov. 29, 2014, http://www.tbo.com/news/crime/undocumented-immigrant-beats-legal-maze-to-practice-law-in-florida-20141129/.

35. *Id.*

36. *See e.g.* 8 U.S.C. § 1324(a).

apply to independent contractors.[37] Thus, undocumented immigrants may practice as solo practitioners, do volunteer work, or work on specific cases or projects.[38]

The California Supreme Court briefly touched on this issue while addressing Garcia's claim and stated only that "[w]e assume that a licensed undocumented immigrant will make all necessary inquiries and take appropriate steps to comply with applicable legal restrictions and will advise potential clients of any possible adverse or limiting effect the attorney's immigration status may pose."[39]

The Florida Supreme Court also addressed the employment hurdles of a licensed, undocumented immigrant. Although the Florida court found that the legislature could override the barrier of 8 U.S.C § 1621, which bars an undocumented immigrant from receiving state benefits such as a law license, the court explained that the statute contained an explicit exception providing that a state could enact legislation, which would entitle the undocumented immigrant to receive public benefits. However, the court found no such exception to federal employment laws. Specifically, the court explained, pursuant to 8 U.S.C. §§ 1324, employers cannot hire an "unauthorized alien…. Therefore a license issued by a state cannot permit an unauthorized alien to perform work if such conduct is prohibited by federal law."[40] In his concurrence, Justice Labarga, opined that federal employment restrictions would not be applicable to Godinez-Samperio because DACA provided work authorization to him.[41] He also opined that rendering pro bono services would not violate federal law.[42] Godinez-Samperio is currently employed as a staff attorney at Gulfcoast Legal Services, a non-profit legal corporation, in Clearwater, Florida.[43]

While the ruling in New York and the legislation passed in California and Florida likely will lead to more states addressing this issue, the precedential effect of these actions primarily depends upon each candidate's employability. Currently, DACA is the only legislation granting undocumented immigrants legal status to work for two-year periods. Accordingly, whether the new lawyer is eligible to practice after receiving his or her law license largely depends upon whether the candidate is eligible for and actually renews his or her DACA status. Accordingly, whether the influx of immigrant lawyers will increase the diversity of the profession, specifically large law firms, depends upon federal employment restrictions as well as states' approaches to licensing undocumented immigrants.

37. Lorelei Laird, *The Dream Bar: Some Children Illegally Living in the United States Grow Up to Want to be Attorneys,* The A.B.A. J., Jan. 01, 2013, http://www.abajournal.com/magazine/article/the_dream_bar_some_children_living_in_the_united_states_illegally/.

38. Rodriguez, *supra* note 27.

39. *In re Garcia*, 315 P.3d at 133; *see* Jennifer Medina, *Allowed to Join the Bar, but Not to Take a Job,* The N.Y. Times, Jan. 2, 2014, http://www.nytimes.com/2014/01/03/us/immigrant-in-us-illegally-may-practice-law-california-court-rules.html?_r=1.

40. *Fla. Bd. of Bar Exam'rs,* 134 So. 3d at 434.

41. *Id.* at 443.

42. *Id.*

43. Rodriguez, *supra* note 27.

An Innovative Approach to Hiring Lawyers: One Firm's New Program Reflects Its Firm Values and Eliminates Implicit Bias

Lisa A. Brown

Professional Development Partner, Schiff Hardin LLP

Law firm diversity starts with recruiting. Retention is often treated like a separate matter. Brown, however, has been working with her law firm to create a recruitment program that simultaneously addresses many of the issues that arise after a diverse lawyer has been hired and go to the heart of diversity retention problems for law firms. Here, she shares just how the program works.

I. Introduction: The "Traditional" Hiring Process and the Reasons for Abandoning It

In 2011, we at Schiff Hardin LLP, an AmLaw 200 firm headquartered in Chicago, determined that the traditional interviewing process was not bringing in the talented, diverse lawyers whom we sought. Large firms like Schiff Hardin had for years used virtually the same cookie-cutter interview process for entry-level associate hiring: an on-campus screening interview, followed by a callback interview consisting of thirty-minute one-on-one interviews and a lunch.

We knew our hiring goals were different from other firms' goals. Shouldn't our recruiting process also be different? This question made us take a step back and ask ourselves what we were looking for. We found several answers.

Most fundamentally, we wanted new lawyers who valued what we value: collaborating with colleagues, focusing on our clients' needs, communicating clearly in writing and orally, taking ownership of developing their careers, and learning and seeking out new and interesting work challenges from day one.

In addition, Schiff Hardin had long had a unique associate development model, and we sought a recruiting process that would complement it. We do not hire new associates into practice groups but rather let them spend up to a year exploring different areas. We focus on associate training and have a full-time, in-house legal writing coach who hosts workshops and works one-on-one with our newest associates (as well as with more experienced lawyers). Further, associates get early experience because most Schiff Hardin teams include only one partner and one associate who work closely together. Finally, associates develop and advance at their own pace. Our competency structure is flexible and does not limit associates to lockstep advancement.

We determined that—no surprises here—law students are much more than their grades and academic qualifications. Moreover, we found that grades and academic successes alone were not strong predictors of success at Schiff Hardin. We were further concerned that the traditional interviewing process could be implicitly biased against diverse candidates. Finally, we needed information that would show us whether candidates had the attributes to succeed and be happy practicing law at Schiff Hardin. We wanted a more complete understanding of our candidates and a process that was objective and effective.

Our research showed that one of the most frequent reasons younger associates did not succeed at Schiff Hardin was because of their written communication skills. For that reason, we looked for an early way to analyze candidates' writing, both for screening purposes and to determine how we might help someone with writing challenges

II. How the New Hiring Program Works

The new hiring program has several different parts. In addition, we retained some of our old system, including one-on-one interviews, a review of law school writing samples, and a lunch with associates.

First, we expanded the pool of candidates we consider. We felt comfortable interviewing at more law schools and more job fairs because of our new callback process. Between 2009 and 2014, we more than doubled the number of law schools we visit and committed to interviewing at several job fairs that focused on diverse candidates, including the Cook County Minority Job Fair, the Southeastern Minority Job Fair, and the National LGBT Bar Association Lavender Law Career Fair. We also committed to interviewing candidates with a greater range of grades.

Second, we created a new callback interview format. During callbacks, candidates interview with a group of three to four partners (the "panel interview"). The partners take turns asking behavioral interview questions designed to gather more information about the candidates, including their work, academic, extracurricular, community, and other individual life experiences. The questions explore candidates' experiences solving real-world problems, working with and leading teams, learning new skills, resolving conflicts, and building successful relationships. Those are all traits associated with long-term success at Schiff Hardin. The format is substantive and interactive; the tone is rigorous and dynamic.

We made the panel interviews more objective and the interviewers more accountable in an effort to eliminate any implicit bias in the interview process. Interviewers do not access candidates' law school transcripts. We include at least one diverse or female partner on each interview panel and put all interviewers through the same rigorous training program. Further, the "structured" aspect of the panel means that interview scores do not depend on personal connections or the idiosyncratic leanings of particular interviewers. We cover the same topics with every candidate and ask virtually the same questions, digging deeper with customized follow-up questions.

The evaluation process also ensures that the four interviewers "own" their evaluation more than they do in a one-on-one interview. After conducting a panel interview, the panel members discuss the candidate's responses and work together to reach a consensus evaluation of the candidate. With this process, panel members cannot rely on "gut feel" but must instead articulate and defend their evaluations on the basis of whether the candidate has demonstrated specific traits and characteristics. Panel members then broker consensus as a group. Further, because they have spent sixty minutes with the candidate—rather than the typical thirty minutes—and more time discussing what they heard, they are more invested in the process and in each individual candidate they interview. Finally, the process eliminates another possible source of implicit bias: the ill-prepared or poor interviewer. This type of interviewer fails to gather relevant information from the candidate and instead falls back on "gut feel" or conventional measures of achievement such as grades.

Finally, we added a writing exercise to our callback interview, which the candidate completes while at the firm. We provide a personalized letter to the candidate describing a brief client problem. The problem is discrete and the candidate can address it in the time allotted without any specific knowledge of the subject matter. We ask the candidate to draft a response. This exercise does not resemble any law school assignment that we know about and therefore does not favor candidates who have performed well in legal writing class. Rather, it measures analytical and communication abilities that all lawyers must have:

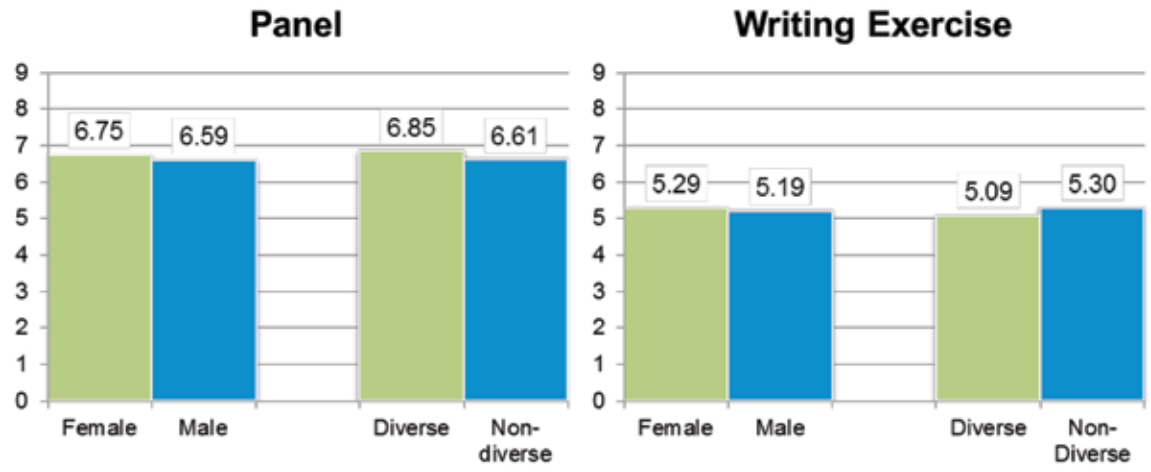
how to read and digest a legal issue and how to explain it to a layperson who is experiencing a problem. Our evaluation of these exercises is completely blind; the evaluator does not know the race, gender, law school, or any other characteristics of the candidate. Our evaluation focuses both on the tone of the work—especially the candidate's ability to convey empathy and relate to the writer—as well as the substantive content and the writing style.

Not one part of our callback process is dispositive. The hiring committee considers all aspects of the interview, such as the panel interview, the writing exercise, the one-on-one interviews, and the lunch interview, as well as the candidate's paper record.

III. The Results

Our data suggest that the panel interviews and writing exercise significantly mitigate implicit biases. Women and diverse candidates both perform well. Further, the new system does not favor students from elite law schools or with any particular pre-law schoolwork experience.

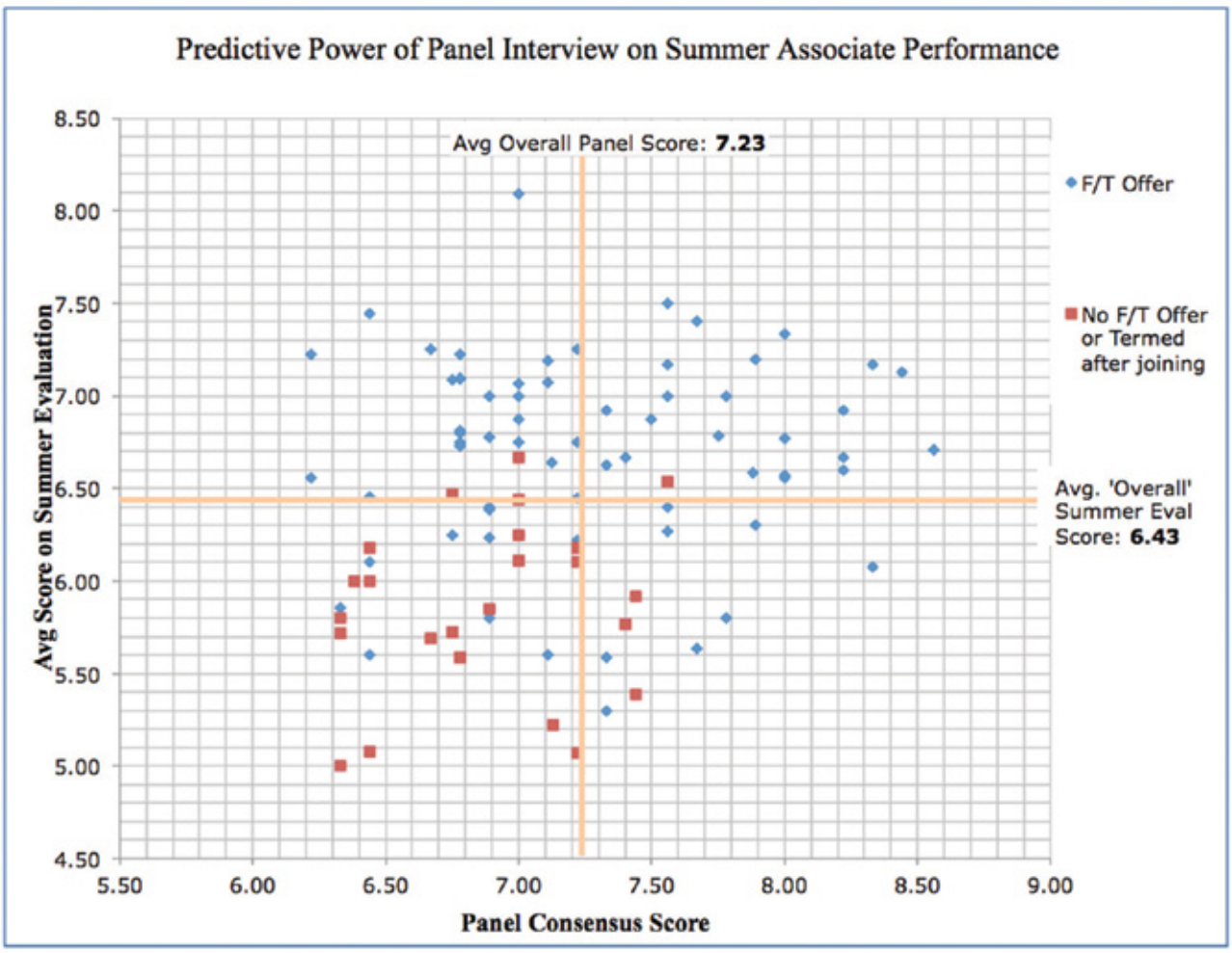
Difference in Means Analysis of Panel Interview and Writing Exercise



AVERAGE PANEL INTERVIEW and WRITING EXERCISE SCORES:
n = 515 law students interviewed 2011-2015. Mean comparisons show no statistically significant difference in scores between men, women, diverse, or non-diverse candidates on the writing exercise. Mean comparisons show that women and diverse candidates perform slightly better than their counterparts in the panel interview.

Also, the data shows that high scores on the panel interview and the writing exercise are powerful selection tools. Associates who receive permanent offers and stay at Schiff Hardin for more than one year tend to have performed better in the panel and on the writing exercise:

In addition to quantitative results, we are also collecting qualitative data. Each year, we engage an outside consultant to gather candidate feedback to ensure that different groups do not feel the experience of the panel interview differently. They do not. Diverse and non-diverse candidates report that they like having the opportunity to share more of their stories and life experiences, and prefer the panel system to traditional law firm interviews. They also report that the panel interview feels "fairer" than other law firm interviews. They know we are covering the same topics and asking every candidate the same questions, so their success is not tied to first-impression bias or "hitting it off" personally with the interviewer.



Further, during the panel interview, candidates get a glimpse into the firm's culture—including the relationship among partners and the firm's investment in associates. Many also like having the ability to show through their writing exercise that they are ready to communicate with clients when they start practicing law.

Finally, our national diversity rankings have improved since we implemented our new recruiting process. Before 2011, Schiff Hardin never made the Vault rankings. In 2016 we ranked second, seventh, and ninth, respectively, for best law firms for women, minorities, and overall diversity.

IV. Conclusion

When we made these changes to Schiff Hardin's hiring process, we did not know what effect they would have on our recruiting efforts. We have been pleasantly surprised. Since we started interviewing at a larger number of law schools and job fairs and using the panel interview and writing exercise, more students are signing up for interviews and a higher percentage are accepting offers of summer employment. We have also seen a higher number of diverse candidates and been more successful in hiring them. While we continue to review this process and analyze the results, early signs are promising. And there has been one unexpected benefit: the new process helps to differentiate Schiff Hardin in the marketplace and to show candidates, recruiters, and law schools part of what makes the firm unique.

The Scientific Basis for the Ethical Obligation to Require Action to Eliminate Bias and Promote Diversity in the Legal Profession

David L. Douglass

Partner, Sheppard, Mullin, Richter & Hampton LLP

Despite the American Bar Association's August, 2016 adoption of a resolution to add an anti-discrimination and anti-harassment provision to the Model Rules of Professional Conduct, not all lawyers are in agreement as to the need for or legitimacy of such a provision. Here, Douglass approaches the issue and makes the case from a completely different angle: the science behind ethical obligations requiring action to eliminate bias and promote diversity.

I. Introduction

In 2012, the Institute for Inclusion in the Legal Profession (IILP) wrote to the American Bar Association (ABA), requesting that it amend the Model Rules of Professional Responsibility to require lawyers to promote diversity in the profession.[1] The letter observed:

> The legal profession continues to lag behind other professions in terms of diversity. Given the importance of our justice system, and the roles and responsibilities that lawyers and judges bear, it is critical for our profession to affirmatively address diversity in the Model Rules of Professional Conduct.2

IILP proposed the addition of a new section:

> [The new section] would specifically make efforts to increase diversity and inclusion in the legal profession a matter of ethics and professional conduct. Doing so would align well with both the ABA's existing Goal III, which seeks to "eliminate bias and enhance diversity" in the legal profession, and with existing standards in several states. The worthy objectives of Goal III promote "full and equal participation in the association, our profession, and the justice system by all persons" and the elimination of "bias in the legal profession and the justice system." Goal III and its objectives are indisputably admirable.[3]

The ABA declined this request: "Model Rule 8.4 Comment 3 already clarifies 'that any conduct that manifest by words or conduct bias or prejudice is prejudicial to the administration of justice and therefore is prohibited.'" The Committee did note that it might be an appropriate issue for consideration by the Diversity Center.[4]

1. Letter from Marc Firestone, Chairman, Institute for Inclusion in the Legal Profession, to A.B.A. (Sept. 14, 2012), http://www.theiilp.com/modelrules (last viewed Aug. 9, 2016).

2. *Id*.

3. *Id*.

4. *See* Letter from Jack Rives, Executive Director and Chief Operating Officer, A.B.A., to Institute for Inclusion In the Legal Profession (Dec. 12, 2012), http://www.theiilp.com/modelrules (last viewed Aug. 9, 2016). The letter actually misquotes Comment [3], which does not explicitly prohibit prejudicial conduct or words, but rather links prejudicial conduct back to Rule 8.4(d), which classifies conduct that is prejudicial to the administration of justice as "professional misconduct." The effect of the ABA's response is to overstate the force of the Comment's prohibition. In so doing, it creates the appearance that the ABA treated dismissively a constructive suggestion to address a serious issue by an organization and individuals committed to promoting diversity in the profession.

This response, disappointing as it is, reflects an outdated understanding of the causes, nature, and impact of bias. This ignorance causes the Rules to perpetuate the very discriminatory behaviors the ABA claims it prohibits.

This response, disappointing as it is, reflects an outdated understanding of the causes, nature, and impact of bias. This ignorance causes the Rules to perpetuate the very discriminatory behaviors the ABA claims it prohibits. This article will argue that the scientific understanding of implicit bias reveals that all lawyers–indeed, all people–engage in bias on the basis of race, sex, lifestyle, disability, age, and religion every day. Implementing reasonable measures to overcome this implicit bias is necessary to comply with the letter and the spirit of the Rules.

II. Implicit Bias

What is implicit bias? Interestingly, the ABA's Litigation Section offers an explanation:

> We naturally assign people into various social categories divided by salient and chronically accessible traits, such as age, gender, race, and role. And just as we might have implicit cognitions that help us walk and drive, we have implicit social cognitions that guide our thinking about social categories. Where do these schemas come from? They come from our experiences with other people, some of them direct (i.e., real-world encounters) but most of them vicarious (i.e., relayed to us through stories, books, movies, media, and culture).
>
> If we unpack these schemas further, we see that some of the underlying cognitions include stereotypes, which are simply traits that we associate with a category. For instance, if we think that a particular category of human beings is frail–such as the elderly–we will not raise our guard. If we think that another category is foreign–such as Asians–we will be surprised by their fluent English. These cognitions also include attitudes, which are overall, evaluative feelings that are positive or negative. For instance, if we identify someone as having graduated from our beloved alma mater, we will feel more at ease. The term "implicit bias" includes both implicit stereotypes and implicit attitudes.
>
> Though our shorthand schemas of people may be helpful in some situations, they also can lead to discriminatory behaviors if we are not careful. Given the critical importance of exercising fairness and equality in the court system, lawyers, judges, jurors, and staff should be particularly concerned about identifying such possibilities.[5]

To oversimplify, the science of neuro-cognition reveals that our subconscious brain processes information faster than our conscious brain influencing our attitudes and actions. Because, by definition, we are unaware of our subconscious processing, we are unaware of these thoughts and how they can influence our attitudes and actions. Scientists, however, can now observe and measure this implicit bias through the Implicit Association Test (IAT), which has been used worldwide for more than twenty years.

5. Jerry Kang, *Implicit Bias: A Primer for Courts Prepared for the National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts* (Aug. 2009), http://www.ncsc.org/ibprimer.

The IAT measures our implicit biases by measuring how long it takes a subject to sort words when presented juxtaposed against images of people. The IAT reveals that when positive words–happy, nice, smart–are juxtaposed against a Caucasian face, we can sort them faster than when they are juxtaposed against an African American face. We sort negative words–violent, dumb, mean–faster when juxtaposed to an African American face than when juxtaposed against a Caucasian face. What does that mean? It means that we are so conditioned to associate negative images with African Americans that when a favorable word or concept is associated with an African American face, it takes a heartbeat longer to sort that word properly (and when I say "we," I mean all of us. The results are universal across racial, gender, and age groups. All of us associate negative traits with African Americans more so than we do with Caucasian Americans).

One's initial reaction may be, "so what? It's just a heartbeat, less than a second." After that heartbeat, the conscious mind kicks in, catches up, takes over, and overcomes that initial split-second reaction. Right? No. Not so much. According to Professor Kang:

> There is increasing evidence that implicit biases, as measured by the IAT, do predict behavior in the real world—in ways that can have real effects on real lives. Professor John Jost (NYU, psychology) and colleagues have provided a recent literature review (in press) of ten studies that managers should not ignore. Among the findings from various laboratories are:
>
> - implicit bias predicts the rate of callback interviews;
> - implicit bias predicts awkward body language, which could influence whether folks feel that they are being treated fairly or courteously;

To oversimplify, the science of neuro-cognition reveals that our subconscious brain processes information faster than our conscious brain influencing our attitudes and actions. Because, by definition, we are unaware of our subconscious processing, we are unaware of these thoughts and how they can influence our attitudes and actions. Scientists, however, can now observe and measure this implicit bias through the Implicit Association Test (IAT), which has been used worldwide for more than twenty years.

If the science of implicit bias reveals that each of us, regardless of our social category, manifests bias or prejudice against socially disfavored groups, then it necessarily follows that all attorneys are violating the Rule's prohibition on bias or prejudice.

- implicit bias predicts how we read the friendliness of facial expressions;
- implicit bias predicts more negative evaluations of ambiguous actions by an African American, which could influence decision-making in hard cases;
- implicit bias predicts more negative evaluations of agentic (i.e. confident, aggressive, ambitious) women in certain hiring conditions;
- implicit bias predicts the amount of shooter bias—how much easier it is to shoot African Americans compared to Whites in a videogame simulation;
- implicit bias predicts voting behavior in Italy;
- implicit bias predicts binge-drinking, suicide ideation, and sexual attraction to children.[6]

To summarize, the science of implicit bias reveals that all of us have subconscious biases against those who society portrays negatively, which impacts our attitudes toward and interactions with members of those groups. In other words, we all discriminate. We can't help ourselves. And our subconscious discrimination perpetuates the social inequalities our conscious minds are committed to eliminating.

III. Implicit Bias and the Model Rules

Comment 3 to Rule 8.4 (Misconduct) provides:

> A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.[7]

If the science of implicit bias reveals that each of us, regardless of our social category, manifests bias or prejudice against socially disfavored groups, then it necessarily follows that all attorneys are violating the Rule's prohibition on bias or prejudice. The question the ABA must address is whether the fact that we all do it makes it okay. Can it be—should it be—that it is misconduct to consciously discriminate but okay to do so subconsciously when we know that both forms of discrimination invidiously inflict measurable harm on those against whom we have a bias? The answer must be no.

6. *Id*. at 4 (citations omitted).
7. Model Rules of Prof'l Conduct R. 8.4 cmt. 3, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/comment_on_rule_8_4.html.

The harm goes beyond our complicity in perpetuating systems of inequality we have committed to eradicate. It harms our clients in ways that also fail to meet our professional obligations. Rule 1.1 provides "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The Comments to the Rule emphasize the importance of thoroughly analyzing and understanding all dimensions of the client's legal needs.[8]

The business case for diversity, which has become popular in the profession, rests on the premise that in a diverse society, it is essential for companies to understand their diverse customers. Consequently, many companies actively, and some aggressively, promote diversity in their organizations and demand their outside counsel to do the same. I would argue that while there is a business (i.e., financial) case for diversity, there is also an ethical case for diversity. Implicit bias distorts our perception, impairs our understanding with respect to those with whom we interact on behalf of our clients, and blinds us to opportunities. As Sylvia Stevens has observed:

> A lawyer who doesn't recognize cultural differences may be insensitive to a client's cultural taboos, expectations, family norms or communication and conflict-resolution styles. The lawyer will be less effective in establishing a relationship of trust and confidence with clients from other cultures, and the failure to understand the significance of cultural differences and misinterpretation of client behavior may lead the lawyer to implement ineffective case strategies.[9]

The lack of diversity in the profession deprives lawyers of access to diverse cultural experiences upon which to draw in an effort to meet a client's needs, whether by failing to understand the client or failing to understand the opposing party. Lawyers that do not associate with diverse lawyers are less able to provide the culturally competent legal counsel to which their clients are entitled. In the face of demonstrable, universal, and persistent forces that frustrate the letter and spirit of the Rules, what should the ABA do? It should acknowledge the science of implicit bias and its demonstrable harm to the impartial administration of justice. The ABA Section of Litigation has already done just that. It has established a "landmark website offering critical information and resources for ABA members and other stakeholders" to "help combat implicit bias in the justice system."[10]

Next, the ABA should acknowledge that it is no longer sufficient to prohibit conscious bias or prejudice; lawyers have a professional obligation to remedy implicit bias. These remedial measures can be as simple moving the offices of diverse lawyers closer to influential lawyers in the firm. Perhaps one remedial measure that is less simple but not burdensome is changing the point in the interview process at which grades are considered to provide space for the interviewer to get to know the candidate. Ensuring that recruitment and evaluation committees are diverse and promoting diverse lawyers to senior positions in the organization have also been shown to improve the success of diverse lawyers. There are many others. The specific measure or measures that a lawyer or firm should adopt should of course be left to the lawyer or firm; however, requiring lawyers to take steps to represent clients more effectively is certainly well-within the spirit if not the letter of the Rules. As Rule 1.3 states:

> A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate

8. *See generally*, Model Rules of Prof'l Conduct R. 1.1 cmt. 5 ("Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation"), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1.html.

9. *See* Sylvia Stevens, *Cultural Competency: Is There an Ethical Duty,* Oregon State Bar Bulletin (Jan. 2009), https://www.osbar.org/publications/bulletin/09jan/barcounsel.html.

10. *See Implicit Bias Initiative*, A.B.A. Section of Litigation, http://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias.html (last visited Aug. 9, 2016).

a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.[11]

By amending the Rules to require lawyers to undertake efforts to promote diversity in the profession, the ABA will foster solutions to the enduring lack of diversity in the profession. Delaying action to address implicit bias is itself inconsistent with the Rules:

> Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions…. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.[12]

How true. The lack of diversity in the profession has been a persistent and pernicious problem. Delay in responding despite scientific evidence of the nature of the problem and the inefficacy of our solutions thus far is frustrating our clients' demands for a more diverse legal workforce.

For these reasons, the ABA should reconsider its rejection of IILP's request. Acknowledging a professional obligation to remedy implicit bias, which science tells us is necessary to achieve the goals of the Rules, will be a transformative step forward in the ABA's long commitment to promoting equality in the profession.

Ensuring that recruitment and evaluation committees are diverse and promoting diverse lawyers to senior positions in the organization have also been shown to improve the success of diverse lawyers.

11. Model Rules of Prof'l Conduct R. 1.3 cmt. 1, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/comment_on_rule_1_3.html.
12. *Id.* at cmt. 3.

Focus on the "How" (not the "Why") of the Commitment to Diversity in the Legal Profession

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After decades of focusing its diversity efforts on why diversity is important, Hawkins explains the need to emphasize how to make diversity a reality. This is more than mere "best practices" but rather a thoughtful analysis of how to best pursue the commitment to diversity in a way that is meaningful and effective.

I. Introduction

Despite a commitment to diversity in the legal profession dating back at least to 1986, we continue to debate the justifications underlying this commitment.[1] This debate often pits the "moral case" for diversity against the "business case" for diversity.[2] Notwithstanding this debate, an analysis of a growing body of case law adjudicating workplace diversity efforts under prevailing anti-discrimination law reveals that it matters less, in terms of their legal defensibility, how these efforts are justified in principle than how they operate in practice.[3] In light of this finding, we ought to refocus our attention away from the ongoing debate about why we should be committed to diversity in the legal profession and towards consideration of how we ought to operationalize that commitment. The suggestion here is not to identify "best practices" but instead to explore how we might pursue diversity in ways that do not unnecessarily increase the risk of legal liability associated with these efforts. The risk of legal liability ultimately may threaten the long-term viability of diversity efforts much more than the erosion of support for either the business case or the moral case for diversity.[4]

The commitment to diversity within the legal profession in large part entreats legal employers to adopt policies and practices that foster the hiring, retention, and promotion of women and minority attorneys,

1. This was the year the American Bar Association (ABA) adopted Goal IX and created the Commission on Opportunities for Minorities in the Profession to "promote the full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities." *See Goal III*, A.B.A (2016), *http://www.americanbar.org/groups/diversity/DiversityCommission/goal3.html* (last visited Dec. 29, 2015). Goal IX later became Goal III and was modified to "eliminate[ing] bias and enhance[ing] diversity" in the legal profession. *Id.*

2. *See, e.g.*, 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); David B. Wilkins, *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 (2004); Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. Legal Prof. 1, 9–10 (2009).

3. *See* discussion *infra* Part II.

4. Evidence of this is demonstrated by the continued challenges to the race-conscious admissions programs adopted by colleges and universities as a means to achieve student body diversity and the Supreme Court's decisions in response to these challenges, which focus not on the justifications for these programs but on their operation. *See* Richard D. Kahlenberg, *Race-Neutral Policies & Programs for Achieving Racial Diversity*, Univ. Bus. (2013), https://www.universitybusiness.com/article/race-neutral-policies-and-programs-achieving-racial-diversity (predicting the need for universities to redesign their policies in the wake of new Supreme Court precedent and quoting one policy analyst who said, "[i]f I were a university administrator . . . I would already be investigating race-neutral policies . . . ").

among others.[5] In addition to their own avowed commitment to diversity, legal employers also increasingly face demands from external stakeholders to produce demonstrable evidence of their success in achieving diversity.[6] These demands have placed considerable pressure on legal employers—law firms in particular—to aggressively pursue diversity.[7] Some of the practices adopted have generated concern for, and in some cases outright threats of, litigation challenging their legality under Title VII, the law prohibiting discrimination in employment.[8] This has resulted in uncertainty surrounding the legality of particular workplace diversity practices. If left unresolved, this uncertainty eventually may threaten the commitment to diversity in the profession as legal employers become wary of risking liability to pursue the goal of diversifying the profession.[9]

The jurisprudence of diversity was first developed by the U.S. Supreme Court in equal protection cases, but subsequent decisions have not confined it to that context.[10] Lower federal courts have been adjudicating these cases in the employment context, giving rise to a growing body of Title VII diversity law.[11] Because the Supreme Court has yet to address the issue of workplace diversity, legal scholars have largely ignored these lower court cases.[12] Yet these cases offer useful insights about how best to structure workplace

5. *See supra* note 1. Since the ABA adopted Goal IX, various state and local bar associations, as well as other professional associations of lawyers, have adopted similar commitments to enhance the full and equal participation by women and racial and ethnic minority attorneys, among others, in the legal profession, including, for instance, the Pennsylvania Bar Association, the Association of the Bar of the City of New York, the Bar Association of San Francisco, the Boston Bar Association, and the Colorado Bar Association, just to name a few. *See, e.g.*, Ass'n of the Bar of the City of N.Y., Statement of Diversity Principles (2003), http://www.nycbar.org/images/stories/pdfs/diversity/statement-of-diversity-principles.pdf.

6. These pressures emanate from a number of sources, including the organized bar (for example, the Austin Minority Bar Association Law Firm Diversity Report Card), law students (for example, Law Students for a Better Profession), the legal media (for example, The American Lawyer Diversity Scorecard), and in-house counsel (for example, A Call to Action). *See Charles R. Morgan: Leading General Counsel—And Their Law Firms—Up the Path to Diversity*, Metro. Corp. Couns., Mar. 2006, at 47; *see also* Rick Palmore, A Call to Action: Diversity in the Legal Profession (2004), http://www.acc.com/vl/public/Article/loader.cfm?csModule=security/getfile&pageid=16074. The proliferation of diversity surveys on behalf of bar associations and the legal media have also contributed to these external pressures, which are not necessarily limited to law firms. *See, e.g.*, Pa. Bar Ass'n, Commission on Women in the Profession: 19th Annual Report Card (2013), http://www.pabar.org/pdf/PBAWIPReportCard19Apr2013.pdf (reporting the gender diversity of various sectors of the legal profession, including the state and federal judiciary, the bar association, and private practice).

7. The pressure is particularly intense as the demand increasingly comes from clients. For example, Wal-Mart, which is well known for its commitment to the diversity of outside counsel, has been both lauded and criticized for its requirement that each of its outside law firms identify both a woman and a minority for consideration as the relationship partner for its business. *See* Angela Brouse, Comment, *The Latest Call for Diversity in Law Firms: Is It Legal?*, 75 UMKC L. Rev. 847, 848 (2007); Clare Tower Putnam, Comment, *When Can a Law Firm Discriminate Among Its Own Employees to Meet a Client's Request? Reflections on the ACC's Call to Action*, 9 U. Pa. J. Lab. & Emp. L. 657 (2007).

8. Curt Levey, President of the conservative Committee for Justice, has sent letters to some law firms demanding that they refrain from certain diversity practices or risk the threat of litigation. *See* Curt A. Levey, *The Legal Implications of Complying with Race- and Gender-Based Client Preferences*, 8 Engage 14, 16 (2007), http://www.fed-soc.org/library/doclib/20080314_CivRightsCurtLevey.pdf.

9. Again, trends in the higher education context are instructive. *See* Kahlenberg, *supra* note 4. Legal observers have widely predicted that the continuing challenges to race-conscious admissions plans adopted in pursuit of student body diversity will ultimately undermine these efforts by narrowing the legal grounds on which colleges and universities may lawfully pursue student body diversity. *Id*.

10. This jurisprudence first emerged in the context of higher education admissions in the case of *Regents of the Univ. of Calif. v. Bakke*, 438 U.S. 265 (1978). In *Bakke,* Justice Powell, writing for a plurality, noted that the pursuit of student body diversity could be a constitutionally compelling interest permitting colleges and universities to engage in race-conscious admissions under the prevailing strict scrutiny standard applicable to such equal protection challenges. A majority of the Court did not adopt Justice Powell's reasoning until the case of *Grutter v. Bollinger,* 539 U.S. 306 (2003). For a fuller discussion of the development of the constitutional jurisprudence of diversity, *see* Stacy L. Hawkins, *A Deliberative Defense of Diversity*: *Moving Beyond the Affirmative Action Debate to Embrace a 21st Century View of Equality,* 2 Colum. J. Race & L. 75 (2012).

11. *See discussion infra* Part II.

12. There were some student notes that analyzed the employment cases decided in the immediate aftermath of *Grutter*. *See, e.g.*, Daniela M. de la Piedra, Note, *Diversity Initiatives in the Workplace: The Importance of Furthering the Efforts of Title VII*, 4 Mod. Am. 43 (2008) (discussing post-*Grutter* cases in defense of employer diversity efforts); Jared M. Mellott, Note, *The Diversity Rationale for Affirmative Action in Employment After* Grutter*: The Case for Containment*, 48 Wm. & Mary L. Rev. 1091 (2006) (discussing post-*Grutter* cases addressing consideration of diversity interest under Title VII and suggesting limitation of Title VII to remedial rationale). However, legal scholars have not yet turned their attention to this developing body of law as a whole.

diversity efforts to minimize the risk of Title VII liability.[13] This Article surveys these recently-decided cases and synthesizes the law in this area. Its aim is to help legal employers distinguish those workplace diversity efforts that are legally defensible from those that might unnecessarily increase the risk of liability under prevailing anti-discrimination law.

II. The Prevailing Title VII Standards

Title VII is the federal law that makes it an "unlawful employment practice" for any employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his [or her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."[14] A plaintiff alleging a violation of Title VII will most often elect the indirect method of proof[15] by which the fact-finder must infer that unlawful discrimination more likely than not motivated the challenged employment action.[16] If the plaintiff elects this indirect method of proof, the *McDonnell Douglas* burden-shifting framework applies.

The *McDonnell Douglas* burden-shifting framework, which practitioners derived from the case of *McDonnell Douglas Corp. v. Green*,[17] proceeds in three stages. First, the plaintiff/employee is required to establish a prima facie case of discrimination.[18] This burden is minimal; the plaintiff/employee need only offer evidence that: (1) he/she is in a protected class;[19] (2) he/she was qualified for the position sought (in the case of failure to hire/promote) or met the employer's legitimate expectations (in the case of termination or discipline); and (3) similarly situated employees were treated differently or the adverse action was taken under circumstances giving rise to an inference of discrimination.[20] Assuming the plaintiff/employee establishes a prima facie case of discrimination, the burden then shifts to the defendant/employer, who at this second stage of proof must offer some legitimate, nondiscriminatory reason for the challenged employment action.[21] This is a burden of production, not one of proof.[22] Thus, at this stage, the defendant/employer need only articulate a reason for the challenged employment action and need not convince the trier of fact that this was the real reason for the challenged action.[23] If the defendant/employer satisfies this burden of production, the burden shifts back to the plaintiff/employee, who at the third and final stage must prove by a preponderance of the evidence that the defendant/employer's reason is a pretext for unlawful discrimination.[24] The plaintiff/employee maintains the ultimate burden of persuading the trier of fact that unlawful

13. *See* discussion *infra* Part III.

14. 42 U.S.C. § 2000e-2(a)(1) (2012).

15. A plaintiff may also proceed with the direct method of proof. *See Sinio v. McDonald's Corp.*, No. 04 C 4161, 2007 WL 869553, at *7 (N.D. Ill. Mar. 19, 2007) ("The direct method of proving unlawful discrimination requires that the plaintiff offer evidence [that] . . . if believed, proves that the employer's actions were motivated by discriminatory intent without reliance on inference or presumption."). The direct method of proof, however, is difficult to sustain, and therefore plaintiffs rarely elect this method. *See infra* Table 1 (demonstrating that only three of forty-four cases surveyed involved direct evidence of discrimination).

16. DeBiasi v. Charter Cnty. of Wayne, 537 F. Supp. 2d 903, 921 (E.D. Mich. 2008).

17. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

18. *Id.*

19. In the case of some reverse discrimination claims, the plaintiff must instead prove that background circumstances demonstrate that the defendant is the unusual employer who discriminates against the majority. Only some jurisdictions require that reverse discrimination plaintiffs demonstrate "background circumstances" in order to establish a prima facie case. *See* Charles A. Sullivan, *Circling Back to the Obvious: The Convergence of Traditional and Reverse Discrimination in Title VII Proof*, 46 Wm. & Mary L. Rev. 1031, 1065–71 (2004) (discussing the origins of the "background circumstances" requirement and its adoption and rejection by various courts).

20. *McDonnell*, 411 U.S. at 802.

21. *Id.*

22. *Id.* at 803.

23. *Id.* at 804.

24. *Id.*

discrimination more likely than not motivated the challenged employment action.[25] Evidence that the employer's proffered legitimate, nondiscriminatory business reason for the challenged action is unworthy of belief, otherwise known as proof of "pretext," may be sufficient indirect evidence to infer discrimination.[26] If, either at the outset of the case or at the second stage of the *McDonnell Douglas* burden-shifting framework, the employer does not dispute that the employment decision was race, ethnicity, or gender-based but instead asserts that the action was taken pursuant to an affirmative action plan ("AAP"), rather than proceeding to the third stage of proof (or immediately in the case of an employer who admits this at the outset), the court will require the defendant/employer to prove the validity of the AAP by meeting the standards set out in *United Steelworkers of America v. Weber*[27] and *Johnson v. Transportation Agency*.[28]

In *Weber*, an employer passed over a white steelworker was for a union training program that reserved half of the available training slots for black steelworkers.[29] In upholding the voluntary, race-based affirmative action plan against a Title VII challenge, the Supreme Court declared that, notwithstanding the general prohibition on the consideration of race in making employment decisions, Title VII does permit employers to voluntarily adopt affirmative action plans that seek to eliminate traditional patterns of racial segregation in the workplace.[30] To do so, however, the employer must first satisfy the predicate burden of proving that there is a "manifest racial imbalance" in the composition of the workforce.[31] After satisfying this burden, the employer must then demonstrate that it undertook such affirmative action in a manner that does not "unnecessarily trammel the interests of the [nonminority] employees."[32] The Johnson Court affirmed this standard and broadened the permissible scope of voluntary AAPs to include gender in addition to race.[33]

Within the context of this existing legal landscape, federal courts have begun to adjudicate Title VII claims, challenging employers' efforts to improve workplace diversity. These challenges largely have been in the form of reverse discrimination cases brought by white and/or male employees, asserting that their employers' interest in workplace diversity caused the employer to unlawfully consider

25. *Id.* at 807.

26. *Id.* at 806; *see also* Plumb v. Potter, 212 F. App'x 472, 479 (6th Cir. 2007) ("[Plaintiff] can show pretext . . . by showing that the proffered reason had no basis in fact; . . . did not actually motivate the [employer's] conduct; or . . . was insufficient to warrant the challenged conduct.").

27. *See* United Steelworkers of America v. Weber, 443 U.S. 193, 208 (1979) (addressing the use of voluntary affirmative action to cure a racial imbalance in the employer's workforce).

28. Johnson v. Transportation Agency, 480 U.S. 616, 627 (1987) (extending to gender the principles announced in *Weber*). *See also* United States v. Brennan, 650 F.3d 65, 94 (2d Cir. 2011) (recognizing that "[t]he Supreme Court has explicitly stated that the 'affirmative action' defense . . . is properly raised at the second step of the *McDonnell Douglas* framework").

29. *Weber*, 443 U.S. at 198–99.

30. *Id.* at 208.

31. *Id.* In *Weber* the manifest imbalance was established by proving that despite a local labor force that was 39% black, the composition of the skilled workforce at Kaiser was only 1.8% black. *Id.* at 198–99.

32. *Id.* The Court found that the plan did not unnecessarily trammel the interests of nonminorities because it did not "create an absolute bar to the advancement of white employees." *Id.* at 208. The Court further noted that the plan was permissible because it was only a temporary measure "not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance." *Id.* The *Weber* standard is analogous to the equal protection strict scrutiny standard applicable to race-conscious action pursuant to a voluntary AAP, and courts have often treated such claims arising under both Title VII and equal protection the same. *See, e.g.*, Murray v. Vill. of Hazel Crest, No. 06 C 1372, 2011 WL 382694, at *2 (N.D. Ill. Jan. 31, 2011) (observing that "the standards for proving discrimination that apply to Title VII are essentially the same as those applicable to [equal protection] employment discrimination claims"). Thus the *Weber/Johnson* and equal protection standards can fairly be considered together when evaluating the legitimacy of an employer's voluntarily-adopted AAP.

33. *Johnson*, 480 U.S. at 641–42. Johnson was denied a promotion by his employer, who defended the selection of a woman on the ground that the employer was operating pursuant to a voluntary AAP designed to cure the gender imbalance of its workforce. *Id.* at 619–24. The imbalance was proven with evidence that none of the positions in the job category sought by Johnson were held by a woman. *Id.* at 636. The voluntary AAP adopted to cure this imbalance satisfied the requirement that it not "unnecessarily trammel the rights of [other] employees" by not setting aside any particular number of positions for women, but fixing both long- and short-term goals for improving the gender representation of the workforce and only permitting the consideration of gender, among other qualifications, in selecting for the position. *Id.* at 637–38.

Within the context of this existing legal landscape, federal courts have begun to adjudicate Title VII claims, challenging employers' efforts to improve workplace diversity. These challenges largely have been in the form of reverse discrimination cases brought by white and/or male employees, asserting that their employers' interest in workplace diversity caused the employer to unlawfully consider race, ethnicity, and/or gender in hiring, termination, and/or promotion decisions.

race, ethnicity, and/or gender in hiring, termination, and/or promotion decisions.[34] These cases have been considered under the prevailing Title VII standards, including both the *McDonnell Douglas* and the *Weber/Johnson* standards.[35]

III. Analysis of the Decided Diversity Cases

A search of federal cases challenging workplace diversity efforts identified forty-four cases that have been decided by federal district and circuit courts since the Supreme Court's seminal decision approving of the interest in student body diversity in higher education in *Grutter v. Bollinger*.[36] Of these cases, twenty-two were decided favorably to defendant employers, and nineteen were decided favorably to plaintiff employees, with three having mixed results.[37] While these statistics appear to offer barely better than even odds of an employer successfully defending its workplace diversity efforts against a Tile VII challenge, a closer analysis reveals that workplace diversity efforts are, in fact, substantially likely to withstand challenge under Title VII when employers properly structure

34. Only four of the forty-four diversity cases identified did not involve a reverse discrimination challenge.

35. Some have also been considered under equal protection, but for the reasons previously discussed, these cases can be analogized to those considered under the Title VII *Weber/Johnson* standard. *See supra* note 32.

36. Grutter v. Bollinger, 539 U.S. 306 (2003); *see infra* Table 1. A note on methodology: these cases were identified by conducting a Westlaw search of employment discrimination cases involving challenges to or defenses of ostensibly race/ethnicity- or gender-conscious action on the basis of the employer's interest in workplace diversity. Because of the overlap between the legal standards applicable to cases involving AAPs under both Title VII and equal protection, as discussed *supra* note 32, equal protection cases were included in this analysis if they involved race/ethnicity- or gender-conscious actions challenged or defended on the basis of the employer's interest in workplace diversity. Cases challenging employment actions that were not alleged to arise from or defended at least in part on the basis the employer's interest in workplace diversity were not included. Multiple cases involving the same parties were counted only once. This analysis considers only those cases decided after the Supreme Court's decision in *Grutter v. Bollinger*, because that case marks an important point in the Court's diversity jurisprudence. *See supra* note 10. This research was conducted in and only covers the time period from June 2003 through March 2014. Several cases have been decided since this time, but they do not alter the general findings and conclusions offered here. *See infra* notes 52 and 54.

37. *See infra* Table 1. This simple quantitative analysis does not account for any selection bias arising from cases settled before decision.

these efforts. Of the twenty-two cases decided favorably to defendants, eighteen involved challenges to diversity plans that were adjudicated under the *McDonnell Douglas* standard. Of the nineteen cases favorable to plaintiffs, fifteen involved challenges to voluntary AAPs, which are often adjudicated under the *Weber/Johnson* standard.[38]

Table 1: Outcomes of Federal Cases Challenging Workplace Diversity

	Plaintiff	Defendant	Mixed
Favorable Decision	19	22	3
AAP	15	3	2
Diversity Plan	4	19	1
Direct Evidence	2 (both AAP)	0	1
McDonnell Douglas	8 (5 AAP)	18	1
Weber/Johnson	3	0	1
Other	6	4	3

Several general observations may be drawn from these cases. First, employers must sustain a high burden of proof when defending workplace diversity efforts that involve the explicit consideration of race, ethnicity, and/or gender—which are often adopted pursuant to an AAP designed to remedy a manifest imbalance in the employer's workforce—whereas employers face a relatively low burden of proof when defending workplace diversity efforts that do not explicitly consider race/ethnicity or gender in decision-making. Employers must often defend the former under the rigorous *Weber/Johnson* standard, which requires proof of a manifest imbalance in the workforce and proof that the plan does not unnecessarily trammel the interests of non-minorities.[39] Under the *McDonnell Douglas* burden-shifting framework, the employer is required only to demonstrate some legitimate, nondiscriminatory business reason for the challenged action; the burden of proving unlawful discrimination rests on the plaintiff.[40] This difference produces a disparity in an employer's likelihood of success when defending workplace diversity efforts against a Title VII challenge.

The cases of *Finch v. City of Indianapolis*[41] and *Mlynczak v. Bodman*[42] are instructive. *Finch* involved several white police officers who challenged the City of Indianapolis's promotion of three African American police officers out of rank order as unlawful under Title VII.[43] Rather than denying that the decisions were race-based, the city attempted to defend the decisions by pointing to a prior consent decree requiring that black candidates comprise at least twenty-five percent of appointments to officer training until parity was reached in the workforce.[44] The problem, however, was that the consent decree required

38. *See id*. Not all of the cases involving AAPs were decided under the *Weber/Johnson* standard. Some were decided under the *McDonnell Douglas* test (often under the assumption that the AAP constituted direct evidence of discrimination), and still others were decided under equal protection. Nevertheless, all invoked a more substantial burden of proof on the defendant employer to justify the use of race, ethnicity, and/or gender in the challenged employment decision than would otherwise be required under the *McDonnell Douglas* standard where the defendant does not concede to race, ethnicity or gender-based decision-making.

39. *See supra* notes 32-33 and accompanying text.

40. *See supra* note 21.

41. Finch v. City of Indianapolis, 886. F. Supp.2d 945 (S.D. Ind. 2012).

42. Mlynczak v. Bodman, 442 F.3d 1050 (7th Cir. 2006).

43. *Finch,* 886. F. Supp. 2d at 952–53. The officers also challenged this employment action under the Equal Protection Clause, but the court's analysis of these two claims relies on the same evidence and similar legal burdens insofar as the requirement to offer both predicate proof of a remedial justification for the implementation of a voluntary AAP and to demonstrate that the plan does not inflict undue harm to the interests of whites. *Id.* at 974–77.

44. *Id.* at 956.

the city to take affirmative steps to increase only the recruitment and hiring of minority officers; not their promotion.[45] Applying the *Weber/Johnson* standard, the Court declined to accept the prior consent decree as a valid AAP supporting the challenged promotion decisions. Instead, the court required the city to establish a separate predicate under the *Weber/Johnson* standard for the race-based promotion decisions.[46] Finding that the city could not satisfy the high burden of proof required to validate the AAP as it related to the promotion decisions, the court granted summary judgment to the plaintiffs.[47]

The outcome was very different in *Mlynczak*.[48] In *Mlynczak*, white plaintiffs challenged hiring and promotion decisions favoring women and minorities made pursuant to an AAP designed to promote workplace diversity. In *Mlynczak*, however, the employer did not concede that its promotion decisions were based on the race, ethnicity, and/or gender of the candidates.[49] Rather, the employer asserted that the AAP, although designed to promote diversity, focused only on expanding the pool of candidates for hiring and/or promotion and explicitly prohibited decision-makers from basing hiring and/or promotion decisions on the forbidden characteristics of race, ethnicity, and/or gender.[50] The court, therefore, did not subject the employer to the high burden under *Weber/Johnson* of establishing the validity of the AAP. Instead, the court only required the employer to proffer some legitimate, nondiscriminatory business reason for the challenged promotion decisions under the *McDonnell Douglas* standard.[51] The employer was readily able to meet this standard by demonstrating the superior qualifications of the chosen candidates, notwithstanding the fact that they were all women and/or minorities.[52]

As these two cases demonstrate, an employer is less likely to prevail in a Title VII challenge to a workplace diversity plan when the court imposes the higher burden of proof under *Weber/Johnson*.[53] Conversely, an employer is more likely to prevail when the employer is subject only to the *McDonnell Douglas* standard and is able to demonstrate that, notwithstanding an interest in improving workplace diversity and even race, ethnicity, and gender-conscious actions such as expanded and targeted recruitment,[54] the employer can defend the challenged employment action on the basis of some legitimate, nondiscriminatory business reason unconnected to the candidate's race, ethnicity, and/or gender.

Another general observation that can be drawn from this analysis of the decided diversity cases is that even cases subject to the *McDonnell Douglas* standard are not immune from Title VII liability if they involve explicitly race/ethnicity or gender-based employment decisions. In other words, it is the fact that an employment action is impermissibly race/ethnicity or gender-based—and not necessarily that it is taken pursuant to an AAP rather than styled as a workplace diversity plan—that makes

45. *Id.* at 955–56.

46. *Id.* at 960 (requiring separate proof of a manifest imbalance regarding promotions to sustain the plan).

47. *Id.* at 976 (noting only a "carefully designed" AAP can be sustained as valid and finding that the defendant employed an AAP "with no tie to any perceived past discrimination, no analysis of the present effects of any past discrimination, no evaluation of its necessity as a remedial measure, and no careful consideration of its impact on white candidates passed over for promotion").

48. *See* Mlynczak v. Bodman, 442 F.3d 1050 (7th Cir. 2006).

49. *Id.* at 1058.

50. *Id.* at 1058–59.

51. *Id.* at 1058.

52. *Id.* at 1059; *see also* a later case not included in survey of cases but related to an included case, Garofalo v. Village of Hazel Crest, 754 F.3d 428 (7th Cir. 2014) (affirming summary judgment for the employer where the plaintiff's claim turned on the relative qualifications" of the candidates).

53. This is true even when those efforts are styled as, or defended on the basis of, an interest in diversity. *See, e.g.*, Decorte v. Jordan, 497 F.3d 433, 441 (5th Cir. 2007) (affirming a jury verdict in favor of white plaintiffs challenging a diversity plan and finding it was not error for the trial court to treat the diversity plan as an invalid AAP because it was focused on achieving a desired racial balance within the workforce and took race-based action to achieve that goal).

54. *See* discussion *infra* Part III; *see also* a later case not contained in the survey of cases, Brown v. Delaware River Port Auth., 10 F. Supp.3d 556, 566 (D. N.J. 2014) (granting summary judgment to the employer on the plaintiff's claim challenging the employer's efforts to expand the diversity of candidates in the hiring pooling finding such efforts did "not support [an] inference of discriminatory intent").

An employer is less likely to prevail in a Title VII challenge to a workplace diversity plan when the court imposes the higher burden of proof under Weber/Johnson.

the action vulnerable to liability under Title VII. Although those cases involving general policies or practices of promoting workplace diversity that were subject to review under the *McDonnell Douglas* standard were much more likely to withstand challenge than those involving AAPs and adjudicated under the *Weber/Johnson* standard (eighty-two percent decided favorably to defendant/employer under *McDonnell Douglas* versus the seventy-five percent of decisions involving race/ethnicity- or gender-conscious AAPs that were decided unfavorably to the defendant/employer under *Weber/Johnson*),[55] there were cases in which courts held employers liable for discrimination even under *McDonnell Douglas* if their diversity efforts involved race/ethnicity- or gender-based decision-making.[56] Most of these cases turn on whether the plaintiff can demonstrate that the employer's legitimate, nondiscriminatory business reason for the challenged employment action is a pretext for unlawful discrimination.[57] Consequently, ensuring that the reasons for employment decisions are well-supported in fact, even when they are not race/ethnicity- or gender-based, can substantially improve the likelihood of success in defending those decisions against a Title VII challenge.

IV. Developing Legally Defensible Workplace Diversity Efforts

In addition to these general observations, there are several discrete observations that are also worthy of note and that offer some practical guidance to legal employers, particularly law firms, on how to structure legally-defensible workplace diversity efforts. The sections below address several practices that law firms (among other employers) commonly adopt as a part of their workplace diversity efforts. These sections assess the likelihood of success in defending these practices against Title VII challenges based on the decided diversity cases. These sections also offer suggestions about how best to structure these practices to maximize their defense under Title VII and minimize the risk of employer liability associated with these workplace diversity efforts.

55. *See supra* Table 1.

56. *See, e.g.*, Clements v. Fitzgerald's Miss., Inc., 128 F. App'x 351, 352–53 (5th Cir. 2005) (finding employer liable under Title VII *McDonnell Douglas* standard where no evidence black woman was more qualified than the white male the employer was contractually obligated to hire); Sinio v. McDonald's Corp., No. 04 C 4161, 2007 WL 869553, at *13–16 (N.D. Ill. Mar. 19, 2007) (denying summary judgment in part to the defendant/employer and finding that the plaintiff could proffer direct evidence of discrimination based on: (1) the suspicious timing of the employer's actions in terminating the plaintiff and replacing her with a black employee, (2) the systematically better treatment of black employees, and (3) the implausibility of the employer's asserted reason for termination); Groesch v. City of Springfield, No. 04-3162, 2006 WL 3842085, at *6–16 (C.D. Ill. Dec. 29, 2006) (finding triable issues of fact, notwithstanding diversity interests, as to whether the reasons for disparate treatment of black and white officers in granting retroactive seniority upon rehiring was pretext for discrimination where circumstantial evidence included statements made in support of disparate treatment of an officer because of his race, additional evidence that the decision was made because of the officer's race, and evidence demonstrating that favorable treatment could have been given to white officers without impairing the interest in diversity), *rev'd on other grounds*, 635 F.3d. 1020 (7th Cir. 2011).

57. *See supra* note 56.

A. AAPs

Standards may obligate employers, including law firms, to maintain AAPs or employers may voluntarily adopt AAPs because of a commitment to diversity.[58] Courts can order AAPs along a continuum ranging from set aside programs, as in *Weber*, to expanded outreach and recruitment programs, as in *Mlynczak*, with varying degrees of legal proof and defensibility associated with each, as outlined above. Regardless of whether employers formally designate them as AAPs, employment policies or practices that involve the explicit consideration of race, ethnicity, and/or gender in making employment decisions in an effort to achieve an increased numerical representation of women and/or minorities in the workforce must satisfy the very high *Weber/Johnson* burden of proof and are the least likely to be sustained against challenge.[59] AAPs, however, that merely involve expanding outreach to and recruitment of women and/or minorities, regardless of whether the impetus is to cure a manifest imbalance in the workforce or simply to promote diversity, are likely to be subject to the relatively low burden of proof under the *McDonnell Douglas* standard and, as a result, courts are more likely to sustain them.[60]

B. Tying Compensation to Diversity Goals

The practice of tying executive or partner compensation to institutional diversity goals, while some within the legal profession promote it, carries some danger of liability under Title VII.[61] In particular, employers can incur liability if courts view these compensation practices as impermissibly injecting the unlawful consideration of race, ethnicity, and/or gender into an employer's decision-making processes. In *Frank v. Xerox Corp.*,[62] Xerox adopted a balanced workforce initiative (BWF) to "insur[e] that all racial and gender groups were proportionately represented at all levels of the company."[63] Black employees sued Xerox alleging that the BWF resulted in unlawful discrimination against black employees, who were determined to be overrepresented in certain job categories.[64] In reversing summary judgment for the employer, the Fifth Circuit held that the BWF was an AAP, and the court also held that, unless the Xerox could prove the BWF was a valid AAP, evidence that Xerox operated pursuant to the BWF in making the challenged employment decisions would constitute direct evidence of unlawful discrimination.[65] The court further held that courts can consider evidence that employers evaluated and compensated

58. A law firm, or another legal employer, may be obligated to maintain an AAP if it is a "government contractor," as defined in Executive Order 11,246, subject to oversight and reporting by the Office of Federal Contract Compliance Programs (OFCCP). 41 C.F.R. § 60-2 (2014).

59. Notably, three of the four cases decided under the *Weber/Johnson* standard among those surveyed were decided in favor of the plaintiffs, and three-quarters of the cases challenging AAPs were decided favorably to plaintiffs. *See supra* Table 1. The burden under *Weber/Johnson* arguably has been increased under *Ricci v. DeStefano*, making voluntary AAPs even less defensible. *See* United States v. Brennan, 650 F.3d 65, 134–40 (2d Cir. 2011) (reversing and remanding the decision of the district court finding the AAP valid under the *Weber/Johnson* standard in order to apply the additional requirements of *Ricci* in determining whether the AAP is valid).

60. AAPs that do not involve the explicit consideration of race, ethnicity, and/or gender in decision-making, and do not seek to achieve a particular numerical representation within the workforce, are more likely to be sustained under the *McDonnell Douglas* burden. *See, e.g.*, Mlynczak v. Bodman, 442 F.3d 1050, 1058–59 (7th Cir. 2006) (affirming summary judgment for the employer where the AAP was only designed to expand the pool of candidates, not permit race/gender preference in hiring or selection).

61. The ABA and others have called for law firms to tie diversity management to partner compensation in an effort to ensure adequate accountability for improving workplace diversity. *See, e.g.*, Presidential Diversity Initiative & A.B.A., Diversity in the Legal Profession: The Next Steps 16 (2011), http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf (acknowledging with approval that "some law firms have begun to tie employees' compensation to their demonstrated commitment to diversity in recruiting, mentoring, and work assignments); Roy Strom, *Strengthening the Business Case for Diversity*, Chi. Law. (2012), http://www.chicagolawyermagazine.com/Archives/2012/07/Business-Case-For-Diversity.aspx (indicating that a client request for production inquired whether outside counsel was willing to "tie a portion of your compensation to achieving diversity staffing commitments").

62. Frank v. Xerox Corp., 347 F.3d 130 (5th Cir. 2003).

63. *Id.* at 133.

64. *Id. Xerox* was one of the four cases surveyed that did not involve a reverse discrimination challenge. *See supra* note 34.

65. *Id.* at 137. *See supra* note 15.

The practice of tying executive or partner compensation to institutional diversity goals, while some within the legal profession promote it, carries some danger of liability under Title VII.

managers on how well they complied with the goals and objectives of the BWF in determining whether Xerox managers likely operated pursuant to the BWF in making the challenged employment decisions.[66] Thus, the practice of tying management performance evaluations and/or compensation to numerical hiring goals increased Xerox's exposure to liability under Title VII by providing evidence supporting the plaintiff's claim that Xerox unlawfully considered race, ethnicity, and/or gender when making the challenged employment decisions.

Holding managers accountable for supporting the employer's diversity commitment and evaluating them on that basis is not per se unlawful, however. For example, in *Coppinger v. Wal-Mart Stores, Inc.*,[67] the white, male plaintiff alleged that Wal-Mart engaged in unlawful discrimination when it promoted a Hispanic female over him.[68] In support of his claim of pretext under the third stage of the *McDonnell Douglas* burden-shifting framework, he asserted that, despite Wal-Mart's assertions that the woman chosen had superior qualifications, Wal-Mart's diversity policy and practices were the real reason for his non-selection.[69] He pointed in particular to two aspects of Wal-Mart's diversity policy as motivating the unlawful promotion decision: (1) diversity placement goals, and (2) the evaluation of managers on their good faith efforts to support diversity.[70] As to the latter, the plaintiff asserted that managers' evaluations were based, in part, on their achievement of the diversity placement goals.[71] However, in rejecting this evidence as proof of pretext, the court reasoned that, "[a]lthough ten percent of a manager's job evaluation was based on attending one annual diversity event," the plaintiff presented no evidence that managers were "influenced by [the diversity] policies" in making the challenged employment decisions.[72]

As these cases demonstrate, while tying executive performance and compensation to workplace diversity efforts is not per se unlawful under Title VII, doing so may carry an increased risk of liability for the employer if an employee can demonstrate that the incentives under the compensation policy caused a decision maker to impermissibly consider race, ethnicity, and/or gender when making a hiring, promotion, or termination decision. Therefore, employers should take care to evaluate and compensate managers only with respect to those aspects of the employer's workplace diversity efforts that do not involve tangible employment actions, such as participating in diversity events,

66. *Id.* Recall that the burden of proof under *McDonnell Douglas* requires only that the plaintiff prove unlawful discrimination more likely than not motivated the challenged employment practice. *See supra* note 25.

67. Coppinger v. Wal-Mart Stores, Inc., 2009 WL 3163211 (N.D.Fla.,2009); *see also* Bajor v. Wal-Mart Corp., No. 08-12401, 2010 WL 779240, at *6–8 (E.D. Mich. Mar. 8, 2010) (granting summary judgment to the employer on a reverse discrimination claim, finding no evidence that managers had their bonuses reduced for failing to meet diversity goals).

68. *Coppinger*, 2009 WL 3163211, at *1–2.

69. *Id.* at *6.

70. *Id.*

71. *Id.* at *6–7.

72. *Id.*

diversity mentoring, or other diversity activities, rather than tying compensation directly to the achievement of numerical diversity hiring or promotion goals.

C. Affinity Groups/ERGs

Affinity Groups, or Employee Resource Groups (ERGs), are an increasingly common feature of workplace diversity efforts.[73] These programs often serve as a valuable resource for both employer and employees and generally will not subject employers to Title VII liability in the absence of some other proof of discriminatory conduct by the employer.[74] However, if ERGs operate as a pathway to leadership, they should be open to all employees, lest they increase an employer's risk of liability under Title VII for failing to provide equal access to resources bearing directly on employees' opportunities for advancement and promotion.[75]

D. Diversity Statements

The most common practice among employers committed to workplace diversity is publication of a diversity statement. Employers often print and publish these statements in various forms that are made available to both internal and external audiences.[76] Although Title VII cases often cite these diversity statements in challenging workplace diversity efforts, they are very unlikely to constitute proof of unlawful discrimination in the absence of a direct connection between the diversity statement and the challenged employment action.[77] In fact, courts will most likely subject diversity statements that are neither the relevant decision-maker's creation nor connected to the challenged employment action to the "stray remarks" doctrine under Title VII and cannot serve as the basis for legal liability.[78] Moreover, courts have viewed general statements in support of diversity favorably as a demonstration of the employer's commitment to equal opportunity, rather than as evidence of an employer's discriminatory intent.[79] Consequently, diversity statements standing alone present very little, if any, risk of legal liability under Title VII.

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73. *See* Deborah L. Rhode, *From Platitude to Priorities: Diversity and Gender Equality in Law Firms*, 24 Geo. J. Legal Ethics 1041, 1069 (2011).

74. *Compare* Moranski v. Gen. Motors Corp., 433 F.3d 537, 541–42 (7th Cir. 2005) (holding that a failure to permit a Christian affinity group was not unlawful where no religious groups permitted); Filozof v. Monroe Comm. Coll., 583 F. Supp. 2d 393, 403–04 (W.D.N.Y. 2008) (finding that providing minorities and women with faculty development opportunities was "de minimis" and did not constitute disparate treatment), *with* Sinio v. McDonald's Corp., No. 04 C 4161, 2007 WL 869553 (N.D. Ill. Mar. 19, 2007) (finding existence of African American employee resource group, when combined with other evidence of more favorable treatment of African Americans, sufficient to raise triable issue of fact on Asian American employee's disparate treatment claim).

75. *See Sinio*, 2007 WL 869553 (finding that the existence of an African American employee resource group, which was designed to help them achieve promotions, could support Asian American employee's claim for disparate treatment).

76. Examples include diversity statements on the employer's webpage, diversity brochures that might be distributed to prospective employees and others, and some employers even produce diversity reports containing detailed information about the employer's efforts to promote workplace diversity. All of these would qualify as "diversity statements."

77. *See, e.g.*, Johnson v. Metro. Gov't of Nashville, 502 F. App'x 523, 535 (6th Cir. 2012) ("[S]tatements reflecting a desire to improve diversity do not equate to direct evidence of unlawful discrimination."); Bissett v. Beau Rivage Resorts, 442 F. App'x 148, 152–153 (5th Cir. 2011) (finding that a diversity policy did not support an inference of discrimination where the policy stated that the employer "'values diversity and considers it an important and necessary tool that will enable [the employer] to maintain a competitive edge,' and that the employer 'is committed to maintaining a workforce that reflects the diversity of the community'").

78. *See, e.g.*, Mlynczak v. Bodman, 442 F.3d 1050, 1057–58 (7th Cir. 2006) (finding that comments not connected to hiring nor made by a decision maker were insufficient to establish discrimination); *but see* Murray v. Vill. of Hazel Crest, No. 06 C 1372, 2011 WL 382694, at *4–6 (N.D. Ill. Jan. 31, 2011) (holding that statements by the mayor that he wanted an African American promoted and more diversity in his administration generally, when combined with evidence of an AAP and testimony that race was considered in the decision making, were sufficient to constitute direct evidence of unlawful discrimination.)

79. *See Groesch*, 2006 WL 3842085 at *11 ("Having a racially diverse [workforce] is a worthy goal."); Bullen v. Chaffinch, 336 F. Supp. 2d 342, 348 (D. Del. 2004) ("[A] generalized effort to achieve more minority representation in the [workforce] . . . may be admirable.").

E. Tiebreakers

Given the permissive use of race as a "plus factor" in the college and university admissions context, including an effort to increase student body diversity as recognized by the Supreme Court in *Grutter*, the question is often posed whether Title VII permits such plus factor or "tiebreaker" considerations in the employment context.[80] An analysis of the decided Title VII diversity cases suggests that explicit consideration of race, ethnicity, and/or gender in making employment decisions, unless done pursuant to a valid AAP, carries a substantial risk of liability under Title VII and may only be permissible outside the context of an AAP, if at all, as a tiebreaker when two candidates are virtually indistinguishable.[81]

In structuring hiring and selection processes, therefore, it is important to ensure that, unless employment decisions are being made pursuant to a valid AAP, decision makers refrain from considering race, ethnicity, and/or gender in selecting candidates for hire or promotion. Instead, such decisions should be made on the basis of objective and/or subjective considerations about the candidates' relative credentials and qualifications.[82] When selection decisions are made on these bases, they are most likely to withstand challenge under Title VII.[83] This is because, even when selection decisions are based on nominal differences in credentials or qualifications or even entirely subjective considerations, courts are loathe to second guess the decisions of employers when they involve no apparent consideration of such impermissible factors as race, ethnicity, or gender.[84] This limitation on the explicit consideration of race, ethnicity, and/or gender in the hiring/selection process can be contrasted with the explicit consideration of race, ethnicity, and/or gender in the recruitment process.

F. Targeted Recruitment & The "Rooney Rule"

Although formal AAPs often require targeted recruitment of and outreach to women and minority applicants, these efforts are also common features of less formal workplace diversity programs.[85] To the

80. *See* Cynthia Estlund, *Taking Grutter to Work*, 7 Green Bag 2d 215, 219 (2004) (suggesting that employers could defend race-conscious hiring based on business justifications); *but see* Rhode, *supra*note 73, at 1068–69 (questioning "how far [the *Grutter*] rationale would extend to employment contexts").

81. *See Mlynczak*, 442 F.3d at 1054 ("Race or sex may be considered only in the unlikely event that two candidates are so equally qualified that there is no other meaningful distinction between them."); *but see* Dietz v. Baker, 523 F. Supp. 2d 407 (D. Del. 2007) (denying summary judgment to the defendant where a triable issue existed as to whether it may use race as a "plus factor" to support operational need and whether its use was narrowly tailored); White, 2006 WL 769753, at *2–3 (finding the employer not entitled to summary judgment where the human resources manager advised an HR employee that she should hire a qualified female if the opportunity arose and told another manager to hire a female applicant over a more highly qualified male).

82. Overly subjective considerations may operate to the disadvantage of women and minorities in the selection process, thus giving rise to disparate impact and/or disparate treatment claims, and so ought to be limited in their use. *See* Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1180 (9th Cir. 2007) (finding that subjective criteria for promotion and compensation decisions could support liability for disparate impact), *rev'd on other grounds*, 131 S. Ct. 2541 (2011).

83. *See* Plumb v. Potter, 212 Fed. Appx. 472 (6th Cir. 2007) (affirming summary judgment for employer finding that plaintiff's "subjective belief that he was more qualified .[…] is insufficient to demonstrate pretext."); Maples v. City of Columbia, No. 3:07-3568-CMC-JRM, 2009 WL 483818 at *8 (D. S.C. Feb. 23, 2009) (finding that where plaintiff asserts job qualifications that are "similar or only slightly superior to those of the person [ ] selected, the promotion decision remains vested in the sound business judgment of the employer").

84. *See* Opsatnik v. Norfolk S. Corp., No. 06-81, 2008 WL 763745, at *10 (W.D. Pa. 2008) ("[W]e do not sit as a super-personnel department that reexamines an entity's business decisions." (quoting Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326, 332 (3d Cir. 1995) (alteration in original) (internal quotation marks omitted))).

85. *See* 41 C.F.R. § 60-2 (2014) (requiring affirmative recruitment plans); *see also supra* note 27 and accompanying text (discussing voluntary recruitment efforts).

The Rooney Rule works to increase diversity because it allows teams to expand the pool of candidates from which they select coaches, but it is lawful because ultimately the teams select coaches on the basis of their credentials and not their color.

extent that these recruitment and outreach efforts are aimed at ensuring that women and minority candidates are well represented among those considered for hiring and promotion opportunities, they are among the most legally defensible practices when plaintiffs challenge them under Title VII.[86]

In fact, law firms encourage most often the targeted recruitment and outreach practice as a part of the legal profession's commitment to diversity.[87] It is also a practice that, while it carries minimal legal risk, can generate demonstrable results when implemented effectively. One of the most frequently cited examples of the efficacy of targeted recruitment and outreach from diversity hiring programs is the National Football League's (NFL) "Rooney Rule."[88] The Rooney Rule was adopted by the NFL in 2003 in response to public criticism about the dearth of minority head coaches in the league.[89] The Rooney Rule requires that NFL teams target minority coaches for recruitment and in particular mandates that all teams interview at least one minority candidate for each head coaching position.[90] Observers have credited this effort with increasing the number of minority head coaches from one in 2002 (just before the rule was adopted) to an all-time high of eight in 2011.[91] This recruitment and hiring effort has not come at the expense of talent.[92] The Rooney Rule works to increase diversity because it allows teams to expand the pool of candidates from which they select coaches, but it is lawful because ultimately the teams select coaches on the basis of their credentials and not their color.[93]

Some observers have even expressly encouraged legal employers to adopt the Rooney Rule as a part of their own workplace diversity efforts.[94] Expanding the pool of candidates to include more women and

86. *See Mlynczak*, 442 F.3d at 1053–54, 1061 (finding that an AAP that expanded the employer's applicant pool but did not permit preference in hiring was not sufficient to establish discrimination); *see also* Rogers v. Haley, 421 F. Supp. 2d 1361, 1366 (M.D. Ala. 2006) ("[W]hile ADOC may have operated an 'expanded' recruitment program […] there is no evidence that it has operated a program that excluded […] white applicants").

87. *See supra* note 5.

88. *See, e.g.*, N. Jeremi Duru, *Call in the Feds: Title VI As a Diversifying Force in the Collegiate Head Football Coaching Ranks*, 2 Wake Forest J.L. & Pol'y 143, 148–49 (2012) (touting the success of the NFL's Rooney Rule in increasing the diversity of head coaches); *see also* Brian W. Collins, *Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule*, 82 N.Y.U. L. Rev. 870, 870 (2007) (explaining the basis for the Rooney Rule's "uncharted success"). The Rooney Rule is so named for Pittsburgh Steelers' owner Dan Rooney, who was its driving force. *See* Duru, *supra*, at 147–48.

89. *See* Duru, *supra* note 88 at 143. This was seen as a particularly troubling phenomenon given the significant concentration of minority players (seventy percent) in the league. *Id.* at 147.

90. *Id.* at 143.

91. *Id.* at 148–49 ("[T]he rule has been more effective in expanding NFL head coaching opportunities than any other equal opportunity initiative in league history.").

92. Five of the eight minority head coaches in the league as of 2011 had made Super Bowl appearances in the previous five years. *Id.* at 148.

93. *Id.* at 149.

94. Allegheny Cnty Bar Ass'n, *Could a Variation of the NFL's Rooney Rule Work for Law Firms?*, Law. J. 1 (2012).

racial/ethnic minorities would allow legal employers to identify both more diverse candidates and possibly those with a broader range of talents, skills, and abilities than might otherwise be identified when relying on narrow recruitment strategies. Selecting candidates from among this expanded pool on the basis of their unique skills, abilities, experiences, and perceived contributions, rather than on the basis of prohibited characteristics, such as race, ethnicity, or gender, is what helps shield the decision from legal liability.[95] This results in a win-win for legal employers, who are able to expand their diversity while also minimizing the risk of legal liability for their diversity efforts.

V. Conclusion

The legal profession has long been committed to ensuring the diversity of the profession. Recent developments in the law of diversity demonstrate that we ought to spend less time debating the "why" of this commitment and focus more attention on "how" we pursue diversity within the profession. Challenges to workplace diversity efforts, particularly in the form of reverse discrimination suits, have been rising. Drawing on recent lower court cases, we can better understand the risks posed by some practices and the defensibility of other practices. Applying these insights, we can ensure that legal employers' workplace diversity efforts will not only aid in advancing the diversity of the profession but also, if necessary, withstand legal challenge.

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95. *See* DeBiasi v. Charter Cnty. of Wayne, 537 F. Supp. 2d 903, 922 (E.D. Mich. 2008) (crediting defendant's assertion that the woman selected was more qualified than plaintiff, and reasoning that, "in the case in which there is little or no other probative evidence of discrimination, to survive summary judgment the rejected applicant's qualifications must be so significantly better than the successful applicant's qualifications that no reasonable employer would have chosen the latter applicant over the former") (quoting Bender v. Hecht's Dep't Stores, 455 F.3d 612, 627 (6th Cir. 2006)); Jones v. Bernanke, 493 F. Supp. 2d 18, 31 (D.D.C. 2007) (finding that the plaintiff had not even offered a prima facie case of discrimination where, notwithstanding the allegations by the plaintiff that he was more qualified than the woman chosen, "this [was] a situation in which the defendant chose between two equally qualified candidates," and therefore the plaintiff did not raise any inference of discrimination).

Diversity and Inclusion: Transformative Steps Toward a More Inclusive Profession

Sharon E. Jones

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As a profession, we've seen some successes in our diversity and inclusion efforts but we are far from reaching our goals. Sometimes it feels like we've reached a plateau or hit stalemate. Where do we go from here? One of the foremost experts on diversity in the legal profession reviews the most current diversity trends in the profession and points out the vital next steps if we are to see continued success.

I. Introduction

As we approach 2020, it is a good time to examine the progress that has been made with respect to diversity and inclusion in the legal profession and to examine where we go from here. The short answer is that we have accomplished a great deal over the last twenty years; but we have many miles to go before we can say we have reached our goal of creating a diverse legal profession with inclusive law firm, government, and corporate legal cultures. In this article, I review the current trends on diversity in the legal profession and identify several next steps for continued progress.

First, let's define the terms. As I use the term in this article, "diversity" refers to a variety of dimensions of difference including, race, ethnicity, age, gender, religion, gender identity, gender expression, sexual orientation, and so forth. We often view diversity as numbers-focused (i.e., how many diverse people work here?). Inclusion, on the other hand, refers to the culture of the organization and whether it is a workplace environment that values diversity and provides equal opportunity for success for all employees. Having diverse people in your workplace does not mean your workplace is inclusive. To determine whether your workplace is inclusive, you need to examine whether there are disparities in advancement, leadership roles, hiring, attrition, compensation, employee satisfaction, sponsorship, and other aspects of your organization's culture.

II. Current Trends: Race & Ethnicity

All things being equal, we would expect the legal profession to mirror our broader society. Moreover, as lawyers and officers of the court, we should expect our profession to mirror the people we serve—namely, a diverse population that is becoming more diverse with each year that passes. It is important that the profession reflect the diversity of the population in order to maintain the appearance of fairness, propriety, and the higher ethical values to which our profession aspires.

Law firm hiring of minority associates has closely followed law school enrollment rates over the last few years.

Minority law school enrollment continues to increase,[1] but blacks and Latinos are underrepresented relative to their representation in the general population.[2] Asians, on the other hand, are overrepresented relative to their representation in the population.[3]

Law firm hiring of minority associates has closely followed law school enrollment rates over the last few years. According to the *2015-2016 NALP Directory of Legal Employers*, the percentage of associates of color in law firms was 22.0% and the percentage of partners of color was 7.5%.[4] Women of color made up 2.6% of all partners.[5] These percentages have trended up in the last few years, but the rate of increase has been extremely slow.[6]

Before I leave this topic, I want to address the population demographics of our country to provide some context for the progress I described above. The United States is projected to be more than 50% people of color by 2043.[7] In light of the rapidly increasing diversity of society as a whole, the legal profession's slow progress is even more surprising and somewhat perplexing.

III. Current Trends: Gender

The gender trends share some similarities and some significant differences with the race and ethnicity demographic data. For example, women represent approximately 36.0% of the legal profession—significantly less than their percentage of the population as a whole (50.8%) and less than their law school graduation rate (47.3%).[8] In 2015, law firm hiring generally correlated with law school graduation rates, as 44.7% of associates were women.[9] Clearly, women have achieved a critical mass at the lower rungs within law firms. Their situation changes drastically when you consider that only 21.5% of partners are women (including both equity and non-equity partners).[10]

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1. *Diversity in Law School: JD Minority Enrollment at ABA-Approved Law Schools*, Law School Admissions Council, http://www.lsac.org/jd/diversity-in-law-school/racial-ethnic-minority-applicants/minorities-in-legal-education-statistics (showing that minority enrollment increased from 25,753 total minority students in 2000-2001 to 34,584 total minority students in 2013-2014).
2. *See NALP Diversity Infographic: Minority Graduates*, NALP Directory of Legal Employers, http://www.nalp.org/uploads/Membership/DiversityInfographic-Minorities.pdf.
3. *Id.*
4. *See* Press Release, Nat'l Ass'n for Law Placement (NALP), *Women, Black/African-American Associates Lose Ground at Major U.S. Law Firms (Nov. 19, 2015)*, http://www.nalp.org/lawfirmdiversity_nov2015.
5. *Id.*
6. *Id.*
7. *See* Press Release, U.S. Census Bureau, *U.S. Census Bureau Projections Show a Slower Growing, Older, More Diverse Nation a Half Century from Now* (Dec. 12, 2012), https://www.census.gov/newsroom/releases/archives/population/cb12-243.html.
8. *See* American Bar Association, Commission on Women in the Profession, A Current Glance at Women in the Law (May, 2016), http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_may2016.authcheckdam.pdf.
9. *See* Press Release, *supra* note 4, at 3.
10. *Id.* at 2.

These stereotypes affect whether a white male partner or manager may decide to invest in a female or minority lawyer.

Women of color represent 2.6% of all law firm partners.[11] Women of color have faced significant challenges in large law firms and in the legal profession. The challenges of both race and gender have more than an additive negative effect—it is more similar to an exponential negative effect. This effect is called intersectionality. Special attention must be given to women of color within any diversity and inclusion initiative given the intersectionality of gender and race/ethnicity.

IV. Remaining General Challenges

With this statistical backdrop, it is no surprise that women and racial and ethnic minorities still face challenges to full inclusion in the legal profession. Feelings of psychological and physical isolation are common for women at the highest levels of the profession where there is no critical mass, just as these feelings are prevalent for racial minorities at all levels in the profession. Feelings of isolation are a likely explanation for some of the attrition we find in law firm environments. Persisting misconceptions may explain attrition rates: such as stereotypes regarding lack of competence (for racial and ethnic minorities) and lack of commitment (for women and racial and ethnic minorities). These stereotypes affect whether a white male partner or manager may decide to invest in a female or minority lawyer. Some may view these stereotypes as rebuttable, but only a great deal of hard work and unconscious bias awareness education can eliminate these stereotypes.

V. Next Steps

Below I outline the nine transformative steps that we can undertake to make our workplaces—and our profession—more diverse and inclusive:

No. 1: Messaging

Change the messaging about diversity and inclusion from focusing solely on the business case to focusing more on social and racial equality and better solutions.

At the beginning of 2000, diversity proponents argued persuasively that diversity would create more business for law firms as it had for corporations—particularly consumer-oriented Fortune 500 corporations.[12] The argument was that these large and well-paying clients were insisting on diverse legal teams for a variety of reasons, including: to mirror their corporate legal departments; to be consistent with their company philosophies; and, to create better results in their legal matters. If law firms met these increased diversity-related client demands, they could expect to receive more legal work from those clients. The focus on the business case was an argument based on interest convergence: if all lawyers in the firm would benefit from this new and highly profitable business, it should be easy to develop consensus to support diversity as a business development strategy.

11. *Id.* at 4.

12. Molly McDonough, *Demanding Diversity*, ABA Journal, Mar. 28, 2005, http://www.abajournal.com/magazine/article/demanding_diversity.

Change the messaging about diversity and inclusion from focusing solely on the business case to focusing more on social and racial equality and better solutions.

Fifteen years later, we know there have been many successes for the "business case" for diversity, but there has also been tension as some corporations have moved slowly. Further, the "business case" is not relevant to some areas of practice (e.g., small and middle market, privately-held corporations; private equity firms, etc.). This reality has left some law firms in a quandary.

In my view, while the business case for diversity remains a good argument, it should no longer be the only argument for why diversity and inclusion is good for your organization and the profession. I have become convinced that we should continue to argue that it is important to have a profession and a workplace that mirrors society at large and, as the United States becomes more diverse, our workplaces need to shift as well. Similarly, I think the research that argues that diverse people create better solutions when you have complex problems to solve is overwhelming. This research should be used to persuade others regarding the value of diversity and inclusion initiatives.[13]

You will note that I continue to use the term inclusion when speaking about diversity. As we learned at the beginning of the last decade, when there is a focus on diversity without a corresponding focus on inclusion, it results in "churning." Churning refers to organizations that hire and fire at the entry to fourth year levels but never move people through the pipeline to leadership roles. Focusing on inclusion is designed to reduce the "churning" of diverse lawyers and to advance diverse lawyers over time.

No. 2: Internal Disparities

With knowledge of the statistics and trends I described above, look for racial/ethnic and gender disparities in all facets of legal operations and strive to eliminate them.

One of the easiest ways to discern how inclusive your organization is for women and racial and ethnic minorities is to review your organization's data against your internal white male data. For example, look to see if there is a disparity in your attrition rate. What most organizations find is that the attrition rate for minorities and women is higher than the rate for white males. If you find that type of disparity, you want to consider what structures, both informal and formal, within your organization promote the higher attrition rates. Do you rely only on informal mentoring as a means to integrate new employees into your organization? Do women and minorities develop these mentoring relationships informally? If not, you may need to employ a more formal mentoring strategy. Attrition may be an issue for your organization overall, but there should be no racial or gender disparity. Such a disparity will significantly impede your progress to become more diverse and inclusive.

13. *See, e.g.*, Scott E. Page, The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies, (3rd ed. 2007).

Are there racial and ethnic or gender disparities in promotion or advancement? If so, you may need to focus on the components of the culture which impact promotion. The work assignment system (more fully discussed below) and the mentoring/sponsorship system are two components which often impact promotion and advancement. Your goal will be to eliminate any such disparities.

Often, as you begin to focus on disparities in your organization's internal structure, decisions will be made to improve the system overall. While I applaud general improvements that make your organization more efficient and an employer of choice, it is still important to track disparity and to eliminate it wherever it exists.

No. 3: Mentoring

Teach diverse lawyers the unwritten rules of the profession so they will be equipped to compete effectively in the law firm/corporate legal environment of the twenty-first century.

All organizations have unwritten rules. Unwritten rules are not found in the employee handbook or in the procedures manual or the orientation handbook. They are best learned through conversation with knowledgeable individuals within the workplace. These unwritten rules explain the actual expectations of the organization and how one does certain things. They also identify the key players within the organization and how to get things done. Most people learn the unwritten rules from their mentors, siblings or parents. Many times diverse lawyers are first-generation lawyers whose family and friends may not be sources of the unwritten rules. If the mentoring system is not working or the diverse lawyers do not understand that they need to initiate mentoring relationships, they may fail to learn the unwritten rules and then make mistakes from which they may find it difficult to recover.[14]

No. 4: Work Assignment

Focus on the disparities in the quality and quantity of work that diverse lawyers receive as compared to white male lawyers.

Within the law firm environment, the assignment system is one of the primary structural components that requires close analysis in order to address racial, ethnic and gender disparities. Many firms would describe their assignment system proudly as a "free market" and one where the best lawyers survive and thrive (i.e., "survival of the fittest"). As such, the firm is often unwilling to make any adjustments to this assignment system. One way to demonstrate the problems with the current purported "free market" system is to compare the quantity and quality of work that women and minority associates receive to the quantity and quality of work that white male associates receive. When you do this, you often find that when work is plentiful, diverse lawyers may be busy, but the complexity of their work assignments does not increase over time. For example, you may see diverse lawyers move from document production to document production as opposed to seeing their assignments get progressively more difficult. This lack of work quality creates a junior lawyer who cannot compete with another junior associate who has been receiving work assignments of progressively greater difficulty.

The situation is the same when work is scarce. When work is scarce, diverse lawyers generally suffer with not receiving the quantity of billable work they need to meet firm requirements and to meet their development needs. Billable hours are a proxy for professional skill development over time. When an associate's billable hours fall behind those of his or her peers, he or she is likely to be unable to compete from a performance standpoint.

14. *See generally* Laura Sabattini & Sarah Dinolfo, Catalyst, Unwritten Rules: Why Doing a Good Job Might Not Be Enough (Matthew Kuhrt, 2010), http://www.catalyst.org/system/files/unwritten_rules_why_doing_a_good_job_might_not_be_enough.pdf.

Diverse associates often complain of not receiving the quality or quantity of work needed to develop and to meet the firm's billable hours requirement.[15] Therefore, they choose to leave or they are asked to leave. White males generally do not suffer from these weaknesses in the assignment system. A firm's inclusion initiative will not be successful until the firm also deals with disparities in the work assignment system.

No. 5: Transparency

Argue on behalf of transparency in the disclosure of equity partner numbers and all metrics which allow firms to track disparity.

Data and access to data are tools for tracking disparities in the profession. Access to data allows an organization to benchmark against its competitors as well as against pipeline metrics such as law school graduation rates. At one point, NALP sought to get data from law firms regarding the percentage of women and racial and ethnic minorities who were equity partners; but it faced significant pushback from law firms that did not want to release this data. There are a number of important reasons why this data should be released from a diversity and inclusion perspective. One indicia of inclusion of the profession is the percentage of diverse individuals in leadership roles. Equity partners are the leaders and owners of their firms. Within that position often resides most of the firm's decision-making power. If you cannot get access to that data, you cannot fully examine the inclusiveness of the profession. Focusing on the combined partnership number misrepresents the percentage of diverse lawyers in these leadership roles. We all know that the percentages of diverse equity partners will be considerably lower than the total partner numbers. As a champion for diversity and inclusion, when in doubt, vote in favor of transparency. We will not solve the problems we cannot see. A principle in favor of transparency allows us to find problem areas and to work to eliminate them.

No. 6: Look Behind the Numbers

Refuse to acquiesce to "numbers-driven" decisions when the playing field is uneven.

We have discussed above the lurking gender and racial disparities within many law firm assignment systems. These work assignment systems create an uneven playing field for diverse lawyers who often have a difficult time getting the quality and quantity of work needed—even when he or she first joins a firm. With that structural inequity as a foundational matter, it is important not to go along with decisions that are purely numbers-driven. Consider this hypothetical: Paul, an African American male associate, is not profitable and has not been profitable the entire three years that he has been with the firm. The firm needs to reduce the number of associates that it has in Paul's department and these decisions are being made on a "numbers basis" only. As such, Paul must leave because he is the least profitable of all associates. It sounds fair and race neutral until you compare the quality of the work Paul has received with that of his peers. You also need to compare the quantity of the work received. If you find racial or gender disparities in the assignment system, it is unfair to use the results of that biased system for your decision-making process.

No. 7: Bias Training

Diversity and inclusion awareness education/unconscious bias training, for both lawyers and staff, is essential for progress.

For many years, corporate America has been annually providing diversity and inclusion training to its employees at all levels in an effort to create a more inclusive culture. For many in the legal profession,

15. *See, e.g.*, Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. Rev. 1755, 1801 (2006), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=947606.

diversity and inclusion awareness education/unconscious bias training is still a new concept. Although it may be new to many, it is essential. Through diversity and inclusion training, firms can provide messaging about the goals of diversity initiatives and create a common language for employees so that people can engage in productive discussions about diversity and inclusion and the challenges that arise. It is important to include both lawyers and staff in such training for a variety of reasons: (1) people do not operate in silos and lawyers and staff need to cooperate to create effective teams; (2) an entire firm's participation underscores the importance of the training and the diversity initiative; (3) firms can use the training to create a common language and understanding within the firm's culture with respect to diversity and inclusion; and (4) staff can significantly impact whether a culture feels inclusive for diverse lawyers.

No. 8: Suppliers and Vendors

Include supplier/vendor diversity programs within your diversity and inclusion initiative.

Firms should include suppliers and vendors in their diversity initiatives. Corporate America has had such programs for many years. The legal profession is behind in this effort. It is important to fully align the firm to be diverse and inclusive in all aspects and purchasing is just another aspect of the law firm's operations. The types of vendors and suppliers that should be covered include court reporters, document managers, outsourced staffing, paper suppliers, accounting services, and so forth. By including suppliers and vendors, firms can achieve two objectives—they can distinguish themselves as organizations that "walks the talk," and align themselves with many of their corporate clients.

No. 9: Individual Change Agents

Individual lawyers need to be willing to act as change agents for diversity within their firms, their volunteer legal organizations, and the broader profession.

To be a successful proponent of diversity and inclusion in the legal profession, one has to be willing to be a change agent. This is a cultural change initiative, and it requires people who see themselves and are seen by others as change agents. Change agents are willing to disrupt the status quo and to put forth novel ideas. They are able to craft persuasive arguments to support their positions. One might start out simply by asking how any decision looks through a diversity and inclusion lens, or ask to see the data by race or gender to be certain there are no disparities. This approach can be widely applied—within law firms, bar associations, and boardrooms—in order to address the disparities we observe within the profession as a whole.

VI. Conclusion

As we become more diverse as a nation and as our economies on the world stage become more interconnected, it is even more important to be multicultural in our approach and inclusive in our actions. In his Letter from a Birmingham Jail, Martin Luther King, Jr. wrote: "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."[16] As a profession and a nation, we must recognize that all individuals in our country and profession are tied together in this "single garment of destiny."[17] We cannot have any part of our national community not fully represented within our profession.

16. Letter from a Birmingham Jail, Martin Luther King, Jr. (Apr. 16, 1963), https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

17. *Id*.

Erase The Lines . . . We're All In This Together

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Great attorneys unite. They do not divide. Yet in our current culture, the role of lawyers within – and their value to – society has changed so that too often we are only adversaries rather than mediators or consensus builders. If we are able to build ties across lines of difference, this can benefit our clients, our profession, our society and ourselves. Here, Kanazawa explains just how that could happen and why we ought to try to do it.

I. Introduction

The changing perception of lawyers is challenging our place in society. From the lofty perch of "guardians of the law,"[1] lawyers have fallen to a point where only twenty-one percent of the public believes lawyers, as a profession, have high or very high honesty and ethics (by comparison, more than eighty-five percent of the public thinks nurses, as a profession, have high or very high honesty and ethics).[2]

It was not always this way, and it need not continue this way.

In 1952, the media accused Senator Richard Nixon of using campaign funds for personal purposes, and Nixon was struggling to retain his position as the Vice Presidential candidate on the Dwight D. Eisenhower Republican Presidential ticket. To regain his credibility with the American people, Senator Nixon went on television and delivered his famous "Checkers Speech" in which he justified his actions by relying, in part, on a legal review of his expenses by a law firm, Gibson Dunn & Crutcher.[3]

1. The change in the perception of lawyers and their role in society is not just external. It is internal as well. The change is reflected in the evolving Preamble to the American Bar Association's Model Rules of Professional Responsibility. The 1908 Preamble to the ABA Cannons of Professional Ethics (last modified in 1963) emphasizes the role of lawyers in providing stability to the courts and democratic self-government by dispensing justice in a manner that gives the public "absolute confidence in the integrity and impartiality of its administration." The 1908 Preamble also notes that the "maintenance of justice pure and unsullied . . . . cannot be so maintained unless the conduct and motives of the members of our profession are such as to merit the approval of all just men." Canons of Professional Ethics 1 (Am. Bar Ass'n 1908), http://www.americanbar.org/content/dam/aba/migrated/cpr/mrpc/Canons_Ethics.authcheckdam.pdf (last visited September 25, 2016). There is no mention of clients in the 1908 Preamble. Similarly, the 1969 Preamble to the ABA Model Code of Professional Responsibility emphasized the role of lawyers in protecting the rule of law. "Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system." Model Code of Prof'l Responsibility 6 (Am. Bar Ass'n 1980), http://www.americanbar.org/content/dam/aba/migrated/cpr/mrpc/mcpr.authcheckdam.pdf (last visited September 25, 2016). Again, there is no mention of clients. By contrast, the current Preamble to the Model Rules of Professional Conduct emphasizes a lawyer's representation of clients and diminishes a lawyer's role in maintaining justice to that of a public citizen. The current Preamble begins with the sentence, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." The concept of a lawyer playing "a vital role in the preservation of society" which "requires an understanding by lawyers of their relationship to our legal system" does not appear until the thirteenth paragraph of the 13 paragraph current Preamble. Model Rules of Professional Conduct 3 (Am. Bar Ass'n 1983), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html (last visited Aug. 9, 2016). Our own vision of our role has changed from primarily playing "a vital role in the preservation of society" to primarily "a representative of clients."

2. *See Honesty/Ethics in Professions,* Gallup (Dec. 6, 2015), http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx.

3. *See Richard M. Nixon "Checkers Speech,"* The History Place: Great Speeches Collection, http://www.historyplace.com/speeches/nixon-checkers.htm (last visited Aug. 9, 2016).

As a society, we have changed. We live among a divided citizenry at war with each other.

In 1954, Boston attorney Joseph Nye Welch, in televised hearings, stopped the rabid anti-communist crusade of Senator Joseph McCarthy with his impromptu defense of a young lawyer (Fred Fisher) who worked for Welch's firm and had once been a member of the National Law Guild. Welch's simple words caused the audience to applaud and turned public opinion against Senator McCarthy: "Until this moment, Senator, I think I never really gauged your cruelty or your recklessness […] Let us not assassinate this lad further, Senator. You have done enough. Have you no sense of decency, sir? At long last, have you left no sense of decency?"[4]

Today, can you imagine any politician calling on a lawyer to regain his credibility with his or her voters? Can you imagine any lawyer having the gravitas to stop a crusading Senator with an impromptu defense of another lawyer in the middle of Senate hearing?

Indeed, in 2015, when New Jersey Governor Chris Christie retained Gibson Dunn & Crutcher to investigate and clear Governor Christie of any wrongdoing in the George Washington Bridge lane-closing scandal, the $8 million spent on the law firm and its "unorthodox approach" of overwriting witness interview notes resulted in a judge slamming the investigation for its "opacity and gamesmanship."[5] The law firm's involvement gave Governor Christie no net gain in credibility before his constituents.

As a society, we have changed. We live among a divided citizenry at war with each other. We identify with our own silo communities and see other silo communities as dangerous to our nation. A recent Pew Research poll found our nation more divided than ever—ninety-two percent of Republicans are politically to the right of the median Democrat and ninety-four percent of Democrats are politically to the left of the median Republican; twenty-seven percent of Democrats and thirty-six percent of Republicans view the other party as a "threat to the Nation's well-being."[6] We do not just disagree. We completely distrust the other side and consider them our enemy and our country's enemy.

On college campuses, there is an increasing tendency to listen only to those with whom we agree and to not tolerate those with whom we disagree.[7] We live in different worlds yet demand that the world conform to our vision of the world.

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4. *McCarthy-Welch Exchange ("Have You No Sense of Decency")*, American Rhetoric: Top 100 Speeches, http://www.americanrhetoric.com/speeches/welch-mccarthy.html (last visited Aug. 9, 2016).

5. Kate Zernike, *Judge Faults Firm's Failure to Keep Notes in Christie Bridge Investigation*, N.Y. Times, Dec. 16, 2015, http://www.nytimes.com/2015/12/17/nyregion/judge-faults-firms-failure-to-keep-notes-in-christie-bridge-investigation.html?_r=0.

6. *Political Polarization in the American Public*, Pew Research Center (June 12, 2014), http://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/.

7. *See* Catherine Rampell, *Liberal Intolerance is on the Rise on America's College Campuses*, Wash. Post (Feb. 11, 2016), https://www.washingtonpost.com/opinions/liberal-but-not-tolerant-on-the-nations-college-campuses/2016/02/11/0f79e8e8-d101-11e5-88cd-753e80cd29ad_story.html; *see also* Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, The Atlantic (Sept., 2015), http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/.

II. Public Perception

The public's view of our profession also has rightfully changed.

In the early 1970s, the Watergate scandal shattered public faith in the role of lawyers as "guardians of the law" and vital to the preservation of society. In an effort to reelect a Republican President, twenty-one lawyers, including the President of the United States, planned and later tried to cover-up a criminal break-in of the Democratic National Headquarters. These lawyers willfully broke the law rather than uphold the rule of law and shook the entire nation into demanding higher ethics from lawyers.[8]

In 1977, the U.S. Supreme Court's decision to open the door to lawyer advertising bolstered the image of self-interested greed among lawyers.[9] Lawyers were now free to be merchants in the business of law and could advertise their partisan prowess for clients–rather than their role in upholding the rule of law. This simultaneously gave rise to the unique phenomenon of lawyer jokes in the United States and the empirically unsupported perception that lawyers are all greedy.[10]

The broadly-televised OJ Simpson case in the 1990's underscored a related perception that justice was for sale and the perception that those who could afford justice could purchase it, again undermining the view of lawyers as upholding the rule of law.[11]

Atticus Finch in the popular 1960 book and 1962 movie To Kill a Mockingbird epitomized the positive image of lawyers, and these events and others tarnished that image.

What we do as lawyers has not changed. We are agreement-makers. We cross "enemy" lines and draft agreements that create mental constructs, which help our clients and others work cooperatively together in the present and future. We work with legislators and regulators to agree on societal rules and apply those rules in a manner that smooths the path for future development and growth. In litigation, we find ways to mend seemingly intractable tears and somehow seal agreements in ninety-eight percent of the cases filed.[12] In the two percent of cases we take to trial, we present evidence and arguments to encourage the trier of fact to see the picture of justice in our heads and agree with our version of the story. Indeed, the entire litigation process is an agreement to a process by which we can all–winners and losers–finally put a dispute behind us. We are agreement-makers. This has not changed.[13]

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8. *See* Victor Li, *Watergate's Lasting Legacy is to Legal Ethics Reform, Says John Dean*, ABA Journal (Mar. 31, 2014), http://www.abajournal.com/news/article/John_Dean_tells_Techshow_audience_how_Watergate_led_to_legal_ethics_reform/; *see also On-Demand CLE Comes to Minnesota*, Hennepin Lawyer (Dec. 31, 2014) (noting that mandatory CLE began in Minnesota in response to the concern about lawyer ethics in the wake of Watergate).

9. Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

10. *See* Debra Cassens Weiss, *1980s-era Lawyer Jokes Were Unique to U.S., Sociologist Says*, ABA Journal (Mar. 28, 2014), http://www.abajournal.com/news/article/1980s-era_lawyer_jokes_were_unique_to_us_sociologist_says/; *see also* Alex Beam, *Greed on Trial,* The Atlantic (June, 2004), http://www.theatlantic.com/magazine/archive/2004/06/greed-on-trial/302957/; *see also* Paul F. Teich, *Are Lawyers Truly Greedy? An Analysis of Relevant Empirical Evidence,* 19 Tex. Weslyan L. Rev. 837 (2013).

11. *See* Michael Holtzman, *Is Justice for Sale?,* AvvoStories (Nov. 4, 2015), http://stories.avvo.com/money/is-justice-for-sale.html; *see also* Sara Sternberg Greene, *Why Don't the Poor Trust Justice? Blame O.J. Simpson,* Newsweek (Feb. 12, 2016), http://www.newsweek.com/why-dont-poor-trust-justice-blame-oj-simpson-426072.

12. *See* Patricia Lee Refo, *Opening Statement: The Vanishing Trial*, A.B.A. Litigation Online (2004), http://www.americanbar.org/content/dam/aba/publishing/litigation_journal/04winter_openingstatement.authcheckdam.pdf.

13. Proponents of "procedural justice" use empirical studies to argue that people do not follow the law because of any "carrots or sticks" incentives but rather because they believe it is legitimate. This is more than simply being properly enacted according to the applicable rules. It also means having a dispute resolution system that gives complainants an opportunity to voice their complaint; processes disputes through a transparent and objective process; treats litigants with respect; and is staffed by people who are sincere. When these elements are present, empirical studies worldwide indicate that parties are satisfied and can move forward from disputes of the past, even when the decision is against them. *See generally* Tom Tyler, Why People Obey the Law (2006). The lawyers' traditional role of upholding the rule of law consistently promoted this legitimacy. But, with the current emphasis on representing clients, the lawyer's role has been distorted into "winning" for their client without regard to the "procedural justice" that would assure litigants will trust and be satisfied with the outcome of our dispute resolution system.

What has changed is how we view ourselves. We have bought into the myth that justice is for sale and we are in the business of law. Telling ourselves and others that we are warriors and team champions fighting for our clients detracts from our central role as agreement-makers. Warriors are not agreement-makers. Sports team captains are not agreement-makers. They are by definition dedicated to defeating the opposition. They draw hard lines between themselves and their enemies. They strategize to undercut and exploit the weaknesses of their opponents. They train to intimidate and show no mercy for any who stand in their way. They are focused on their own goals and are hostile to the goals of the opposition. They selfishly want to win at the expense of the opposition.

It is difficult to trust someone who is selfishly dedicated to defeating you. You are constantly on guard and trying to figure out how they are outmaneuvering or cheating you. Consumers perceive used car salesmen, as merchants, as selfishly dedicated to defeating them. They just want to sell you a car to move their inventory and make money. They do not care if the car suits your needs or fits your budget. They just want your money. Warriors are noble for risking their own lives but are no different in their one-sided objectives.

By contrast, we trust, are open to, and are moved by those who appear to be acting selflessly.

Jerry Buss, the former owner of the Los Angeles Lakers NBA basketball franchise, put together ten NBA championship teams and fielded championship contender teams in almost every year that the Los Angeles Lakers were not the NBA champion. At his funeral, one of his business partners, Frank Mariani, revealed how he did it. Jerry would look at every deal from all sides. If the deal was not fair to all sides, he would not do it. In fact, in one deal, he agreed to the transaction and decided at the last minute that it wasn't quite fair, so he threw in an additional player in the trade to make it fair.[14] As you can imagine, people who did business with Jerry Buss were probably more open and less guarded in doing deals with him. Selflessly thinking of others is disarming.

The movie Invictus dramatizes how Nelson Mandela understood the persuasive and uniting power of selflessly being a little above the fray when he became President of South Africa. After twenty-seven years of hard labor and isolation in prison under the apartheid South African government, revenge would be an understandable reaction when the government released Mandela and when South Africa elected him President. Instead, Mandela embraced the white Afrikaans sport of rugby and rallied the nation to support South Africa's rugby team at the 1995 Rugby World Cup, even though the majority of the country (and his primary constituency) was black, considered rugby a symbol of the apartheid past, and would normally root for teams opposed to the all-white (except for one black) South African Springboks team. Crossing lines that previously divided his country and personally punished him, Mandela worked with the white Springboks captain, François Pienaar, to have the white Springboks team train and befriend black South African youth across the country. By doing so, the black youth and white Springboks team began to identify with each other and erase the lines that separated them. In the final game of the 1995 Rugby World Cup, Mandela personally showed his identification with the team and their primary supporters, by wearing the green Springboks cap and shirt when he walked onto the field, as the President of the host country, for the final match. Eighty percent of the spectators in attendance were white South African supporters of the Springboks team. Rather than simply reversing the power balance between whites and blacks, Mandela erased the dividing lines by reaching across and embracing the white community through a sports and national lens that saw all South Africans as one.

This is what great attorneys do; they unite rather than divide. They put together complicated deals that address and enhance all parties' wants and needs. They listen and embrace the ideas of others, much like

14. *See* Ross Pickering, *VIDEO: Dr. Buss Memorial in Full, Featuring Speeches from Kobe, Shaq, Magic, Kareem, Phil, Riley, West, and More,* Lakerholicz.com, http://lakerholicz.com/video-dr-buss-memorial-in-full-featuring-speeches-from-kobe-shaq-magic-kareem-phil-riley-west-and-more/2013/02/22 (last visited Aug. 9, 2016).

This is what great attorneys do; they unite rather than divide.

improv artists adept at taking over with a "yes and . . ." attitude that helps move everyone forward.[15] Even at trial, they try desperately to understand the trier of fact so that the pictures they paint and the colors they choose to illustrate their story will resonate with their deciding audience. Great attorneys seek common ground and an agreement, not division.

This is our essential contribution to society. We remind people of what we have in common. Whether it is the rules, laws, private agreements, or the social norms and conventions developed through common law, lawyers use what we have in common to fashion new agreements or put old disputes to rest. Our power lies not in our weapons or wealth but in our words and the degree to which our words help our fellow citizens see commonality and agree.

We are not scientists. We do not have the luxury of time to find some evolving "truth." Our fellow citizens cannot wait for years of research and experimentation to move forward. They need an agreement now. They need lawyers who can cross lines, listen to the opposition, build trust, and creatively shape agreements that will allow us to cooperate and put disputes behind us now.

Building trust is foundational.

Every new idea begins as a minority perspective: that the earth is not flat; that sanitation prevents disease; that women and people of color should have the right to vote; that a certain look or style is beautiful; and we should treat people as equals. All of these ideas began with just a handful of believers. The majority eventually accepted some of these ideas. Why? Professor William Crano has devoted his professional life to exploring this question—"how the weak influence the strong, how the minority changes the majority"—and has found:

> To be effective, the weaker group must establish a link with the group in power. This is critical because the majority must accept the outsiders as part of itself, as a part of the in-group, before it will give them a fair hearing. A minority that fails to be accepted as the in-group is unlikely to have much chance of moving the larger group. For the minority to influence the majority, it must persuade the majority that "we're all in this together, we are part of the larger group." This is the first and most critical rule of minority influence.[16]

We trust those who are like ourselves—people with whom we perceive share our values and principles.

Our greatest statesmen, leaders, and lawyers help us to see commonality where it might not be obvious, and they find ways to unite us with common values and common principles that build trust and empathy between people seemingly at odds with each other.

At the beginning of World War II, we experienced two diametrically opposite approaches to dealing with people in the United States that looked like our enemy, Japan. On the West Coast, West Coast Area Commander General John L. DeWitt declared, "A Jap is a Jap […] There is no way to determine their

15. *See* Kelly Leonard & Tom Yorton, Lessons from The Second City: Yes, And: How Improvisation Reverses 'No, But' Thinking and Improves Creativity and Collaboration (2015).

16. *See* William Crano, The Rules of Influence: Winning When You're in the Minority 55-56 (2012).

> We owe the public more. Our oath of office is not simply a license to earn money in the business of law. By pledging to uphold the constitution and the rule of law, we joined a profession dedicated to keeping our society together by reminding our fellow citizens of values and principles we hold in common.

loyalty." With this sentiment, General DeWitt lobbied for and used President Roosevelt's Executive Order 9066 to round up and intern 120,000 people of Japanese descent (two-thirds of whom were American-born U.S. citizens) in the Western States. All things Japanese and anything that could remotely be used for espionage or sabotage were confiscated and destroyed. With usually only a day's notice to pack a single suitcase for the internment, most of the Japanese lost everything they owned to scavengers and opportunists who paid, at best, pennies on the dollar for the property and businesses of the soon to be incarcerated Japanese. To General DeWitt, the battle line he drew was appropriate. The Japanese's losses of liberty and property were only fitting for these people who looked like the enemy.[17]

In Hawaii, Military Governor General Delos Emmons drew a different line. He declared, "We must distinguish between loyalty and disloyalty among our people," and risked his career by defying the President and refusing to intern the 140,000 Japanese in Hawaii (except for around 1,000 potential enemy sympathizers). He believed trust built trust and set in motion the creation of a nearly all-Japanese 100th Battalion and 442nd Combat Regimental Team, which would fiercely battle throughout Europe and became the most decorated military unit in U.S. history. To General Emmons, the line was loyalty to the United States regardless of how one looked.[18]

The lines that DeWitt and Emmons drew affected what they saw. Both Generals used the same intelligence to justify their actions. There were rumors but no documented instances of espionage and sabotage by the Japanese. General DeWitt (and Attorney General and later Governor and U.S. Supreme Court Justice Earl Warren) used this absence of espionage and sabotage as proof that it was coming and therefore the internment was necessary. General Emmons offered the same facts as proof that the Japanese were loyal and that the United States could trust them.[19] The difference was simply where they chose to see the lines that divide people.

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17. *See generally* Densho, http://www.densho.org/ (last visited Aug. 9, 2016); *see also The Untold Story: Internment of Japanese Americans in Hawaii*, http://hawaiiinternment.org/untold-story/untold-story (last visited Aug. 9, 2016); Richard Reeves, Infamy: The Shocking Story of the Japanese Interment in World War II (2015); *John DeWitt*, Densho, http://encyclopedia.densho.org/John_DeWitt/ (last visited Mar. 25, 2016).

18. *See generally* Tom Coffman, How Hawaii Changed America (2014); *see also Facts About the 442nd*, 442nd Regimental Combat Team, *http://www.the442.org/442ndfacts.html* (last visited Aug. 9, 2016); Education Center, 100th Infantry Battalion Veterans, http://www.100thbattalion.org/ (last visited Aug. 9, 2016); Densho Encyclopedia *Delos Emmons*, http://encyclopedia.densho.org/Delos_Emmons/ (last visited Aug. 9, 2016).

19. *See* Crano, *supra* note 16; see also Coffman, *supra* note 18.

On April 4, 1968, Robert Kennedy, then a U.S. Senator running for the Democratic Presidential nomination, landed in Indianapolis, Indiana, for a campaign stop and learned that a white man had shot and killed Dr. Martin Luther King, Jr. Although his campaign warned him not to make an appearance in a black neighborhood, Kennedy proceeded directly from the airport to that black neighborhood and stood on the back of a flat-bed truck to inform the unaware black audience of what he had just learned. He acknowledged that a white person had shot and killed Dr. King and said, "you could be filled with bitterness, and with hatred, and a desire for revenge. We can move in that direction as a country, in greater polarization […] filled with hatred toward one another. Or we can make an effort, as Martin Luther King did, to understand, to comprehend, and replace that violence, that stain of bloodshed that has spread across our land, with an effort to understand, compassion, and love. For those of you who are black and are tempted to […] be filled with hatred and mistrust of such an act, against all white people, I would only say that I can also feel in my own heart the same kind of feeling. I had a member of my family killed […] he was killed by a white man."[20]

In one of the most remarkable impromptu speeches of all time, Bobby Kennedy created a common bond with all in attendance that cut through the more obvious black and white lines presented. He identified with his audience and brought them to a higher plane that united all in the memory of the love and compassion exhibited by Dr. Martin Luther King, Jr. and his own brother John F. Kennedy. This act of statesmanship–of bringing people together rather than dividing them–resulted in calm and no rioting in Indianapolis.[21]

As lawyers, when we choose to see ourselves as warriors dedicated to winning for our clients rather than more detached agreement-makers dedicated to justice for all, there are consequences. As warriors, we draw hard lines between our friends and enemies. As warriors, we are partisans and are indistinguishable from the divided world we live in. As warriors, we promote the interests of our side at the expense of those who disagree. As warriors, we do not trust the other side and do not expect the other side to trust us. As warriors, we are skeptical of our opponent's honesty and ethics and expect our opponent to be similarly skeptical of our honesty and ethics. We both want to win. And by our partisanship, we both have diminished credibility with each other and with any third party.

We owe the public more. Our oath of office is not simply a license to earn money in the business of law. By pledging to uphold the constitution and the rule of law, we joined a profession dedicated to keeping our society together by reminding our fellow citizens of values and principles we hold in common.

To be more, we need to be more than warriors. We need to be more than cheerleaders or team captains hailing the righteousness of our own team and taunting the illegitimacy of our enemies. To create real social change, we need to persuade those with whom we disagree. But they will not let down their guard or hear what we are saying if they and ourselves perceive us as warriors from an opposing side dedicated to defeating them. When we draw lines that include some but not all of us–e.g., Japs, Muslims, Christians, blacks, whites, poor, rich–we divide into teams with no empathy or trust for any other team but our own. We can and must do better. When non-Japanese stand up for Japanese, when blacks stand up for whites, when whites stand up for blacks, and when the powerful stand up for the weak, they reframe how we see each other and set the foundation for real change. They erase the lines and remind us that we are all in this together.

20. *See* Robert F. Kennedy, *Remarks on the Assassination of Martin Luther King, Jr.*, American Rhetoric: Top 100 Speeches, http://www.americanrhetoric.com/speeches/rfkonmlkdeath.html (last visited Aug. 9, 2016).

21. Will Higgins, *April 4, 1968: How RFK Saved Indianapolis,* Indystar, Apr. 2, 2015, http://www.indystar.com/story/life/2015/04/02/april-rfk-saved-indianapolis/70817218/.

Mentoring Law Students: A Theoretical Frame and Praxis

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Mentoring sounds like such a simple thing and the legal profession is full of mentoring programs for law students and young lawyers. But recent research suggests that the mentoring programs tailored for law students and lawyers in general my not be particularly effective for those who are racial or ethnic minorities. Indeed, certain programmatic components may be essential if a mentoring program targeting racial or ethnic minorities is to have any long-term success.

I. The Need to Mentor Diverse Law Students

Law school is challenging. Students of all backgrounds have trouble acclimating to the rigorous competitive nature of the law school curriculum and environment.[1] Most law students feel socially isolated by coursework demands coupled with a new academic setting that allows little time for family and friends.[2] Diverse law students may experience feelings of social isolation more acutely than their non-diverse peers. For example, diverse law students are more likely to report feeling socially and culturally isolated. This isolation has academic consequences. This isolation may often exclude diverse students from informal networking systems that can help them obtain information about how to function in this new role and environment.[3] A lack of diversity in law schools and the legal profession as a whole may make it difficult to find mentors that can provide guidance and support.

This article has three objectives. The first is to address some of the challenges that diverse law students face in establishing mentoring relationships. The second is to provide a theoretical framework for understanding the value of an effective mentoring relationship. The third is to offer suggestions on how our academic, legal, and business institutions may develop and support mentoring programs for law students. The focus on law students—especially diverse ones—is critical to the future of the legal profession. By creating stronger ties between law students and experienced attorneys, we can create pathways for students to better adapt and successfully navigate law school.

The United States is becoming more racially and ethnically diverse.[4] By 2044, no single group will comprise a majority in the United States.[5] The nation's demographics will represent a prism of Latinos, African Americans, Asians, Native Americans, whites, and multiracial Americans. Yet people of color continually

1. *See e.g.*,Todd D. Peterson & Elizabeth W. Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 Yale J. Health Pol'y, L., & Ethics 358, 377 (2009).

2. *See e.g.*, Meera E. Deo & Kimberly A. Griffin, *The Social Capital Benefits of Peer-Mentoring Relationships in Law School*, 38 Ohio N.U. L. Rev. 305, 307 (2011); 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, 675–76 (1994); Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. Davis L. Rev. 1209 (2005); Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. Legal Educ. 524, 524-26 (1998).

3. *Id.*

4. Sandra L. Colby & Jennifer M. Ortman, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060*, U.S. Census Bureau 1, 8 (2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf (stating that "by 2044, more than half of all Americans are projected to belong to a minority group (any group other than non-Hispanic white alone); and by 2060, nearly one in five of the nation's total population is projected to be foreign born").

5. *Id.*

represent only a fraction of attorneys.[6] This under-representation spans all sectors of the legal profession. For example, only 7.5% of law firm partners were attorneys of color, and only 2.6% of partners were female attorneys of color.[7] In 2014, Judge Diane Humetewa became the first Native American woman ever to serve on the federal bench and only the third Native American ever to hold such a position.

The dearth of diverse attorneys is troubling, considering the impact it will have on the future diversity of the profession. Diverse attorneys often cite the lack of mentoring and networking opportunities as a source of career dissatisfaction that increases turnover and limits professional growth.[8] In one study, 62% of female attorneys of color felt excluded from formal and informal networking opportunities, whereas only 4% of white male attorneys reported comparable feelings.[9] Studies by the Hispanic National Bar Association (HNBA) found that Latina lawyers found it challenging to build professional relationships because they lacked role models, mentors, and access to informal networks.[10] The women attributed these challenges in part to the lack of Latinas in the legal profession.[11] Many of them reported that they were the only Latina in their workplace.[12] This often led to feelings of isolation and "otherness" because no one within their workplace mirrored their own cultural values or norms.[13]

Many Latina lawyers painfully remembered law school as a daunting and arduous experience.[14] Most felt isolated and marginalized as one of the few Latinas in their law schools. They also believed that they were at a competitive disadvantage because they did not have access to information that was critical to adapting to and navigating law school. As one study participant put it, "I performed much better in law school and in employment when I had a trusted mentor which understood my circumstances, my background and my perspective. I was able to trust and confide in that person and ask important questions, when I lacked that resource. I didn't ask and therefore was not informed."[15] Several women attributed their negative experiences to their law schools' failure to provide mentoring opportunities. As one Latina attorney stated, "We're not doing anything to support them. Or we're doing very little. It's hard enough to get students into law school, but then to lose them is a crime."[16]

These challenges require that our academic, legal, and business institutions implement and support mentoring programs. Law firms and businesses that embrace our nation's changing demographics reap the benefits of a diverse and inclusive workforce that is better prepared to deal with an increasingly global marketplace. A more diverse profession may also lead to better access to legal services in underrepresented communities, which often face cultural and linguistic barriers.

There is some evidence that in recent years law schools are admitting more diverse students.[17] Law

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6. *See Lawyer Demographics Year 2015,* A.B.A. (2015), http://www.americanbar. org/content/dam/aba/administrative/market_research/ lawyer-demographics-tables-2015.authcheckdam.pdf.

7. *Women and Minorities at Law Firms by Race and Ethnicity - New Findings for 2015*, Nat'l Assoc. for Law Placement (Jan. 2016), http://www.nalp.org/0116research. Moreover, almost one in five offices reported no minority partners and almost 47% reported no minority women partners. *Id*.

8. Liane Jackson, *Minority women are disappearing from BigLaw--and here's why*, ABA Journal (Mar. 1, 2016, 12:15 AM), http://www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why.

9. *Visible Invisibility: Women of Color in Law Firms,* A.B.A. 10 (2006), http://www.americanbar.org/content/dam/aba/migrated/women/woc/visible_invisibility.authcheckdam.pdf.

10. Jill L. Cruz & Melinda S. Molina, Few and Far Between: The Reality of Latina Lawyers 8 (2009), http://hnba.com/wp-content/uploads/2015/02/Latina-Commission-Publication.pdf [hereinafter *2009 HNBA Commission Study*]; *see also* Jill L. Cruz, Melinda S. Molina & Jenny Rivera, *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest* 10–11 (2010), http://hnba.com/wp-content/uploads/2015/02/La-Voz.pdf [hereinafter *2010 HNBA Commission Study*].

11. *2009 HNBA Commission Study*, *supra* note 10, at 8.

12. *Id.* at 9.

13. *Id.*

14. *Id.* at 35.

15. *Id*. at 43–44.

16. *Id*. at 35.

17. *See* A.B.A. Sec. of Legal Educ. & Admissions to the B., *Statistics: Ethnic/Gender Data: Longitudinal Charts, First Year*

A more diverse profession may also lead to better access to legal services in underrepresented communities, which often face cultural and linguistic barriers.

schools should strive to provide the resources that will help all students–especially diverse ones–successfully navigate the pathways to success. An opportunity to build and develop effective mentoring relationships is just one component of the types of resources that law students should be afforded.

II. A Theoretical Frame: Defining a Mentoring Relationship

Scholars have defined mentoring as a dyadic collaborative relationship between an experienced individual (mentor) and a less experienced individual (mentee).[18] This definition is important for several reasons. It reminds us that mentoring is about a relationship that must be cultivated, and it requires active participation by both parties.

III. Professional Development

Mentors facilitate the acculturation, academic performance, and career progress of law students. A mentor can act as a role model signifying the types of conduct and proactive measures a student can take to succeed. Mentors also transmit insider institutional and cultural values and norms. The legal profession often views mentors as critical to the recruitment, retention, and advancement of diverse law students because mentors create an entree into key networks within academic and work settings.

Mentoring also can be a personally and professionally rewarding experience. Helping law students develop into competent and capable attorneys who will soon join the legal profession is a benefit for mentors. Serving as mentors may also help lawyers refine their leadership skills, gain fresh perspectives, and learn new ways of thinking that law students from different backgrounds can provide. Mentors also can reap the benefits of cross-cultural exposure, interactions, and understanding. This exposure may help to prepare mentors to deal with an increasingly diverse workforce and clientele in the global marketplace. It is also personally fulfilling to know that a mentor has contributed to a law student's growth, development, and success.

& 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).

18. Scholars have struggled to provide a single definition of a mentoring relationship. It may be better defined as a type of relationship that shares certain common characteristic including (1) a partnership between an experienced attorney and a novice that (2) provides career guidance and emotional support (3) and one that will evolve over time. *See e.g.*, Kathy E. Kram, *Phases of the Mentor Relationship*, 26 Acad. Mgmt. J. 608 (1983); Kathy E. Kram, Mentoring at work: Developmental relationships in organizational life (1985); Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. Legal Educ. 1, 2, 5 (2007); Audrey J. Murrell, *Five Key Steps for Effective Mentoring Relationships*, 1 The Kaitz Quarterly (2007), https://www.fresnostate.edu/adminserv/learning/documents/FiveStepsInMentoring_Murrell.pdf; Barry Bozeman & Mark K. Feeney, *Toward a Useful Theory of Mentoring: A Conceptual Analysis and Critique*, 39: 6 Administrative & Society 719 (2007).

Mentoring goes beyond mere career development but also includes psychosocial support.

IV. Emotional Support

Mentoring goes beyond mere career development but also includes psychosocial support. Students of all backgrounds experience high levels of stress and social isolation during law school. This might be especially true for law students who do not have lawyers in their families or networks that can provide psychosocial support and guidance. A mentor can counter the sense of "otherness" that these students encounter by conveying a positive message of acceptance and belonging within the legal profession.[19]

V. Mentoring Praxis: Important Steps for Developing and Supporting Mentoring Relationships

A. Develop a Theory of Action

Last year, I served as the inaugural chair to the HNBA's Region X MetLife Mentoring Program (the Program).[20] HNBA designed and implemented the Program to provide law students with an opportunity to develop effective mentoring relationships with practitioners from various legal sectors in Ohio. The Program is based on best practices in mentoring as culled from my own scholarly research on Latina lawyers as well as a cross-disciplinary review of the literature. This year, there are approximately forty mentors and mentees. Law students from all backgrounds participate. Private and public sector attorneys—including partners and associates from different-sized law firms, in-house counsel, and government attorneys—serve as mentors. The Program pairs students with attorneys based largely on their students' work setting and practice area of interest. The goals are for mentors to provide advice and guidance on law school, legal practice areas, and professional development. The hope is that the mentoring relationship will also allow students to develop a professional network early in their legal careers.

To meet these goals, the Program asks mentors and mentees to commit to actively participating in a mentoring relationship.[21] The Program provides a list of suggested discussion topics and activities so that there is a framework and structure for building an effective mentoring relationship. The mentor and mentee can then personalize the mentoring plan with set expectations.

The Program also has an episodic mentoring component. Episodic mentoring involves short-term or one-time interactions between a law student and lawyer that may occur at different events, via email, or

19. Melinda S. Molina, *Role Models: Theory, Practice, and Effectiveness Among Latina Lawyers*, 25 J. Civil Rights & Eco. Dev. 131 (2010).

20. MetLife is a part of a strategic partnership with the HNBA, which supports and sponsors mentoring programs in several states.

21. I modeled the Program after Ohio's Lawyer to Lawyer Mentoring Program. *See Lawyer to Lawyer Mentoring Program*, The Supreme Court of Ohio & The Ohio Judicial System, https://www.supremecourt.ohio.gov/AttySvcs/mentoring/ (last visited Aug. 20, 1016).

Legal and business institutions should reward their attorneys, faculty, and students for participating in mentoring programs.

through other social media.[22] For example, the mentoring component begins with a speed-networking event. The event begins with a reception that provides the attorneys and law students the opportunity to meet and network. The second portion—modeled after "speed dating" events—allows small groups of students and attorneys, including assigned mentors from various legal sectors, to meet for ten- to fifteen-minute discussion periods. Student groups then move to another group of attorneys so that other potential mentoring relationships may form beyond the initial pairing.

The mentoring program also provides several episodic mentoring events throughout the year, including career panels and informal networking functions. One panel explored how careers are mapped and why self-assessment and goal-setting are important to career success. The panel featured several attorneys who shared their stories and advice with the students. The episodic component of the mentoring program allows mentors to provide useful advice to mentees while also expanding their professional networks. Students can seek guidance by asking questions in casual settings. These types of events may help students feel included and supported by attorneys within their legal communities. These episodic events allow me to reach a larger group of students and attorneys who are not participating directly in the Program. I find that these events help with later recruitment efforts.

B. Key Stakeholder Involvement, Recognition, and Reward

None of this would be possible without support from academic, legal, and business institutions. This support is critical to obtaining the resources for recruiting and training participants, securing facilities for hosting events, and getting the necessary administrative support. Involving key stakeholders is especially critical for mentoring programs with limited resources. Involvement with the mentoring program benefits stakeholders' institutions as well. Involvement with mentoring increases law firms' and legal departments' presence among law students and may help with recruitment efforts. Law schools benefit because student and alumni involvement helps build stronger connections to the school.

In order to reinforce the value of mentoring diverse law students, legal and business institutions should reward their attorneys, faculty, and students for participating in mentoring programs. These institutions should laud rewards, and these rewards should provide recipients with opportunities and resources to share and further develop strategies for effective mentoring. At law schools and law firms, one component of evaluation for retention and promotion should be to recognize activities related to effectively mentoring law students. Law firms could also consider time spent mentoring as "credit" or as billable–equivalent time. Many bar associations allow attorneys to receive CLE credit for participating in certain mentor programs. Law schools can also incorporate a mentoring component into their curriculum.

C. Monitoring Mentoring Programs

Academic, legal, and business institutions must critically examine their current mentoring programs to determine their effectiveness and modify them if needed. This process not only encourages accountability, it also can provide opportunities for developing more effective mentorship programs.

From Bystanders to Upstanders: Amplifying Diversity Efforts Through Action

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A great deal of attention is devoted to what organizations – law firms, corporate law departments, bar associations, etc. – can be doing to advance and promote diversity. But sometimes it all starts with just one person. Here, Moore and Gulley describe a new program designed to encourage individual action, to standing up for diversity when see efforts to undermine, cover, or otherwise stifle it.

Introduction

Some years back, Drew's parents advised him not to come out to his grandparents. His parents were concerned about the generational divide and cautious after hearing years of remarks about the degradation of what they argued were "traditional" and "Midwestern" values. Drew covered when around his grandparents, who lived near his undergraduate campus in Des Moines, Iowa, avoiding any mention of this sexual orientation. But, "the truth will out,"[1] and an interview with the Des Moines Register after a campus incident led to a very public outing.[2]

Soon after the article ran, a plate of homemade chocolate chip cookies arrived at Drew's college dorm, accompanied by a note that read, "We need to talk. Love, Grandma and Grandpa." The subsequent conversation led to a bit of soul-searching (for the whole family), a couple years of forced questions about "special friends," and eventual ease addressing LGBT issues.

Almost five years after that cookie delivery, the Iowa legislature began debating a constitutional amendment that would have reversed a state Supreme Court decision granting marriage equality for same-sex couples. Drew's grandma started a letter-writing campaign to convince the legislatures to abandon that effort. The opening line of her letters: "Stop hurting my grandson."

This story exemplifies the importance and challenge of finding, engaging, and empowering advocates for diverse individuals. As described in greater detail below, we have various names for individuals who stand up for those who are not like them: allies, advocates, and others. Regardless of the name, these individuals demonstrate facility with issues they may not face themselves and a willingness to extend their own power to intervene on behalf of others. When the other person is of a different dimension of diversity, those actions can be particularly powerful. At our organizations, we have tried to extend and capture this practice for diversity within education programs and diversity initiatives.

1. William Shakespeare, The Merchant of Venice act 2, sc. 2.
2. *See* Maggie O'Brien, *Drake Investigates Reports of Hate Crime*, Des Moines Reg., Nov. 19, 2002, at 12.

These efforts are premised on a simple point: diverse communities within our organizations will struggle, by volume of their numbers, to effect change.[3] Even with amplified voices and visibility through employee resource groups and existing diversity programs, there will be meetings in which diverse perspectives do not have a voice. There are also problems with situating diversity efforts as the responsibility or obligation of employees of historically underrepresented groups. Efforts to champion inclusion may professionally weigh down diverse employees,[4] and reinforce the idea that diverse employees are more responsible for others for "office housework."[5] We question whether it is appropriate to expect diverse colleagues to solely shoulder the burden of advocacy. We hope that the experiences we have had in our organizations—moving bystanders to "upstanders"—will encourage other individuals and organizations to do the same.

II. "Upstanders": What's in a Name?

While it might seem like semantics, the naming of these efforts conveys powerful messages about the scope and expected behaviors.[6] These efforts take on a range of different names across different academic institutions, industry associations, corporations, and other settings, including advocate, ambassador, ally, champion, sponsor, and supporter.

At Weil, we wanted a term that worked well globally, engaged individuals at all levels of our firm, conveyed a broad definition of diversity, and inspired action. The terms champion, sponsor, and advocate did not seem to translate across level and seniority and had the potential for paternalistic connotations.[7] The commonly used "ally" was seen by some as exclusively concerned with LGBT equality; and to our European colleagues, it was reminiscent of the Ally-Axis conflict in World War II. We first heard of the term "upstander" from the nonprofit organization Facing History and Ourselves:

An upstander embraces the challenge to speak out, do the right thing, and make decisions that help create positive change in our world. They make a conscious choice to step in instead of stand by. Some of their acts are big and some are little, but none are too small to deserve attention.[8]

While Weil's Upstander program employs a broad-based definition of diversity, most programs, including those at Bloomberg, have a singular focus on particular demographic groups. Bloomberg has deployed a global Ally Pledge through its LGBT & Ally Community, in which participants publicly acknowledge a set of principles and agree to add the Community designation to their internal company profile page. At a recent panel for International Women's Day, Bloomberg senior male executives participated in a panel on male allyship, responding to questions about how they had

3. *See, e.g.*, Vault/MCCA Law Firm Diversity Survey Report (2015), http://www.mcca.com/_data/global/downloads/research/reports/VaultMCCA_Survey-2015-v03.pdf (last visited Aug. 11, 2016) (noting that African American/black and Hispanic/Latino comprise 3.1% and 3.4% of all lawyers, respectively, while women comprise only 33.1% of all lawyers).

4. *See* Stefanie K. Johnsons & David R. Hekman, *Women and Minorities Penalized for Promoting Diversity*, Mar. 23, 2016, Harv. Bus. Rev., https://hbr.org/2016/03/women-and-minorities-are-penalized-for-promoting-diversity (last visited Aug 11, 2016).

5. Joan C. Williams & Rachel Dempsey, What Works for Women at Work 110 (2014) ("People often assume women are a perfect fit for office housework…. In law firms, it's serving on low-power committee like the diversity committee and associates committee.").

6. *See* Jennifer Brown Consulting, *Allies 'Come Out': LGBT Allies are Changing the Face of Workplace Diversity and Inclusion*, Aug. 28, 2012, http://jenniferbrownconsulting.com/jbc-lgbt-allies-workplace/ (last visited Aug 11, 2016).

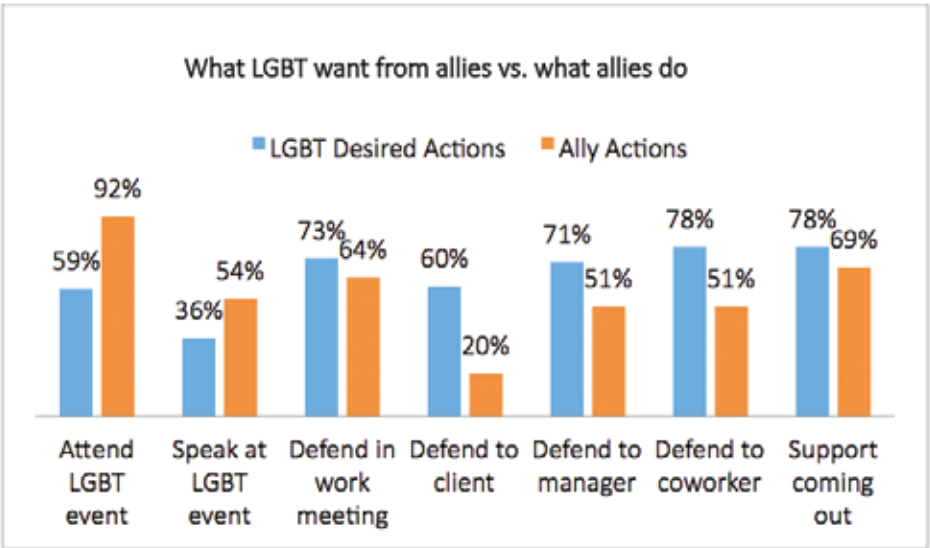
7. Chuck Shelton, *Eight Ways to Engage Men as Allies (and Two to Avoid)*, Diversity Best Practices Blog (Nov. 11, 2014), ("Too often, the acclamation of a male champion (in contrast to serving as an ally) is a powerful temptation for men to climb up on our white horse and solve women's problems (which they seldom want us to do).").

8. *See Upstander,* Facing History and Ourselves, http://outreach.facinghistory.org/pages/upstander (last visited Aug. 11, 2016).

sponsored female leaders within their businesses, modeled inclusive leadership themselves, and raised the profile of gender issues in the workplace. Other examples include He For She[9] campaigns, Lean In Together,[10] Straight for Equality,[11] Friendfactor,[12] and white anti-racism[13] efforts. Regardless of the focus, the overarching definition is: members of any "majority" group in the workplace, particularly those in leadership positions, who use their positions to further equality for historically underrepresented groups.

III. Active Allies: Upstanders Don't Stand By, They Stand Up for Inclusion

A key element for Bloomberg and Weil is to promote active rather than passive support. A study in financial services finds important differences between what LGBT professionals want from their allies and what behaviors allies say they do to show their support.[14] For example, the vast majority of allies say they attend LGBT events, but more LGBT professionals say they want allies to defend them in meetings with co-workers more than allies say they do.



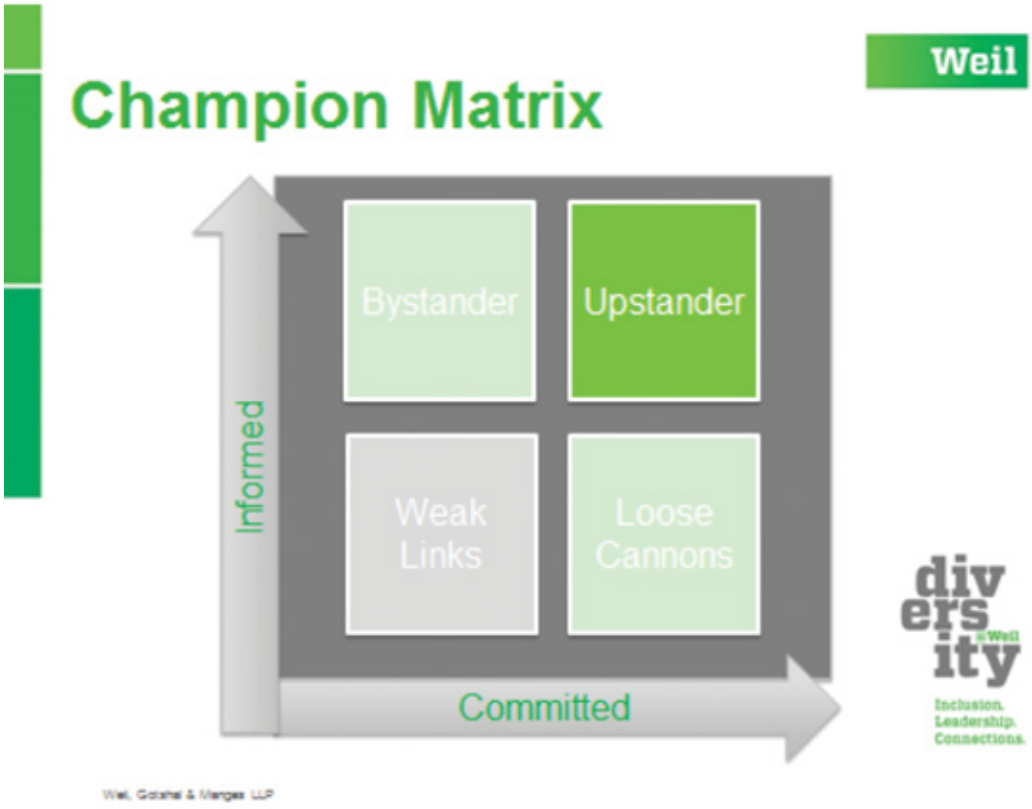
Self-identified allies that are "active allies" take specific and purposeful actions to support LGBT coworkers. In one study, eighty-three percent of women and seven percent of men described themselves as allies. Yet, when considering active ally behaviors, only nineteen percent of women and eight percent of men qualified (two or more of seven actions).[15] As the study noted:

> Today's out leaders want allies taking more invested actions when the stakes are higher. In-the-moment support of LGBT professionals is critical to approximately 75% of senior and emerging LGBT leaders. LGBT respondents value 'upstander' behavior—speaking up when discrimination or prejudice occurs—versus passive bystanding. It's through these riskier conversations that ask a colleague head-on to change his or her behavior, rather than rehearsed event speeches, where allies shine.
>
> Allyship is not a dichotomy of passive and active behavior. It operates on a commitment curve, an arc of personalized and progressive investment in the cause. That is, some companies have

9. *See* He For She, http://www.heforshe.org/en.
10. *See* Lean In Together, http://leanin.org/together.
11. *See* Straight For Equality In Together, http://www.straightforequality.org/.
12. *See* Friendfactor, http://www.friendfactor.org/.
13 *See, e.g.*, Maureen Scully & Mary Rowe, *Bystander Training Within Organizations*, Journal of Int'l Ombudsman Ass'n, (2009); *see also* Blake-Beard, Scully, Turnbull, et al., *The Ties That Bind and Separate: Black and White Women Working Together*, Gender, Ethnicity, & Race in the Workplace, (2006).
14. Out on the Street, *Regional Report: United States* 4 (2014) (on file with authors).
15. *Id*.

nascent ally activities, like ally mugs or sign tents, where others are spending more time and taking on more risk.[16]

In addition to seeing allyship as a commitment curve, one can consider it within the context of a champion matrix moving from a "weak link" to a "loose cannon" or "passive bystander" to a "champion."[17] To develop champions, the key is to motivate and educate.



A personal experience can be a catalyst for motivation, whether it is having a child with a disability, a family member that "comes out" as LGBT,[18] or mentoring a law student of color. A study of United States Court of Appeals Judges revealed that judges with daughters consistently vote in a more feminist fashion on gender issues than judges with only sons.[19] To activate this in the workplace, one of the key ingredients is providing a safe space to share stories to harness the power of empathy.[20] Discussing many diversity topics also requires the ability and desire to have "courageous conversations" typified by engagement, discomfort, honesty, and open dialogue.[21]

An important organizational tool to motivate active allyship is sharing information on the business case, including leveraging client desires for greater diversity. Providing visibility, feedback, and accountability also are critical carrots and sticks to promote action.

16. *Id*.

17. *See* Leslie de Chernatony et al., *The Buy-in Benchmark: How Staff Understanding and Commitment Impact Brand and Business Performance*, 15 Journal of Mktg. Mgmt. 819, (1999).

18. *See generally* Kenji Yoshino, *The Gay Tipping Point*, 57 UCLA L. Rev. 1537, (2010) (noting that visibility led to advances in LGBT equality).

19. *See generally* Adam Glynn & Maya Sen, *Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?*, 59 Am. Journal of Pol. Sci. 37 (Jan., 2015), http://scholar.harvard.edu/files/msen/files/daughters.pdf.

20. *See, e.g.*, Paul J. Zak, *Why Your Brain Loves Good Story Telling*, Harv. Bus. Rev., (Oct. 28, 2014), https://hbr.org/2014/10/why-your-brain-loves-good-storytelling/.

21. *See generally* Glenn Singleton & Curtis Linton, Courageous Conversations About Race: A Field Guide for Achieving Equity in Schools (Curtis W. Linton ed., 2005).

Sponsors are another form of upstanders. Many research organizations, such as the Center for Talent Innovation and Catalyst, assert that sponsors, more so than mentors, accelerate career progression through compensation, high-profile assignments, and promotions.[22] While the documented "sponsor effect" on women, LGBT, and professionals of color is profound,[23] white male leaders with multiple protégées are more satisfied with their own rate of advancement than those who have not invested in up-and-comers.

To educate the well-meaning but passive bystanders, it is essential to provide guidance on how best to take action. Over the years, many colleagues at our organizations expressed that they would like to get more involved but do not know how. Some fear saying or doing the wrong thing, believing that doing nothing is safer than doing the wrong thing. Others assume that certain members would not welcome them if they attended or tried to participate in certain activities. And there are those who do not realize how profound seemingly subtle or small actions can be in contributing to someone's feelings of exclusion.

A Center for Talent Innovation's study reports that one of the top inclusive behaviors worldwide is asking questions and listening carefully.[24] One important component of learning more about different groups is to learn about privilege, having unearned advantages, and the benefit of the doubt not because of who you are or what you have done but because of your group membership.[25] Explicitly defining the expected behaviors and language is a critical component of a successful allyship effort.

IV. Allies and Advocates at Bloomberg

Bloomberg recently rolled out an Active LGBT Ally training for its Financial Product Sales business unit. After attending an LGBT program at the behest of D&I, executives in the business wanted a deeper dive for all sales managers to facilitate conversations about appropriate (and preferred) language, the legal status of LGBT equality in different countries, and ways to engage clients on LGBT issues. The session empowered client-facing professionals with resources for terminology and self-education on LGBT equality issues.[26]

Bloomberg's efforts, in addition to the LGBT ally and male advocacy programs described above, have been designed to enhance the personal compassion and connection to diversity initiatives. In early 2015, all businesses were charged with crafting a global diversity and inclusion business plan, specific to their business and talent population. The businesses presented these plans to Bloomberg's Chairman, Peter Grauer. At the six-month status report-outs, Peter challenged each global business leader with a new component to add to their business plans: a personal diversity goal to adopt and complete in a year. Some executives made a commitment to sponsor or mentor someone different from them; others stepped up to be an executive sponsor of a Bloomberg Community (employee resource group); still others agreed to host, introduce, or sponsor a Community program. The execution of these individual goals has been noticed and remarked upon across the organization and helped to model many upstander techniques and actions in a short time.

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22. *See generally* Sylvia Ann Hewlett, Forget a Mentor, Find a Sponsor: The New Way to Fast-Track Your Career, (2012).

23. *See, e.g.*, Sylvia Ann Hewlett & Tai Green, Black Women: Ready to Lead (2015); *see also* Center For Talent Innovation, The Power of "Out" 2.0: LGBT in the Workplace (2013).

24. Sylvia Ann Hewlett & Ripa Rashid, Growing Global Executives: The New Competencies 8 (2015).

25. Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, Peace and Freedom Magazine, (Aug.,1989), at 10-12.

26. *See generally GLAAD Media Reference Guide - Terms To Avoid*, http://www.glaad.org/reference/offensive (last visited Aug.11, 2016) (for nomenclature); *see also* Kenneth Roth, *LGBT: Moving Towards Equality*, Human Rights Watch (Jan. 23, 2015), https://www.hrw.org/news/2015/01/23/lgbt-moving-towards-equality (last visited Aug. 11, 2016) (for a compendium of LGBT equality issues around the globe).

V. Weil, Gotshal & Manges: Upstanders@Weil

In late 2014, Weil's diversity committee established a goal to promote greater inclusion for all groups by establishing an explicit role for allies across all groups and levels. Over the next year, in conversations internally and externally, the Upstanders@Weil campaign was developed. We identified four behaviors—Listen Up, Show Up, Talk Up, and Speak Up—to demystify the actions of an Upstander:

- Listen Up: Learn, read, ask questions, and discuss to step into the shoes of someone from a different demographic group
- Show Up: Attend, actively participate, and contribute to diversity programs
- Talk Up: Lift up careers by sponsoring, opening doors, making connections, and finding opportunities for colleagues of different backgrounds
- Speak Up: Identify and interrupt bias and stereotyping, even if unconscious or subtle, whether in the moment or shortly after the fact

The effort was officially launched during global Diversity Month at Weil in November 2015. The kick-off event was video-conferenced globally, featuring a keynote address by Executive Partner Barry Wolf, a cross-office panel of internal "Upstanders," and the debut of an internally-produced video highlighting attorneys and staff of all levels.

To educate employees, we created an Upstander action guide,[27] detailing over fifty behaviors and an internet page with over forty-two resources. The centerpiece of our roll-out was to devote the 2016 annual two-hour mandatory diversity training requirement to interactive diversity theater, which utilizes professional actors and guided group discussions to bring the Upstander behaviors to life.

Various organizations and businesses have woven the Upstander concept into their programs since the initial launch to maintain focus and momentum. Examples include a Veteran's Day program featuring research by the Center for Talent Innovation, volunteer efforts in honor of Martin Luther King Day, a presentation by Professor Kenji Yoshino on "ethical bystanders" and "allies" to make society and the workplace more inclusive, and a global Women's History Month program.

Lastly, we tried to stir up some friendly competition—and reward Upstanders—with an award named in honor of Andrea Bernstein, the retired longtime chair of Weil's Diversity Committee. Over fifty attorneys and staff members across offices and levels have been nominated for the award for actions small and large standing up for diversity at the firm and within the broader community.

VI. From Bystander to Upstander: Practice Makes Progress

As people who have the wherewithal to pick up this publication (and, admittedly, as the writers of this piece), we think that we will do the right thing. We expect that, if given the opportunity to stand up for and promote the accomplishments of a colleague or to intervene when something untoward happens in the workplace, we will seamlessly transition to being an advocate. But in the real world, individuals frequently miss or avoid these opportunities.

Say, for example, that a call is put out in your organization for someone to manage an upcoming social outing. When no one volunteers, a female colleague reluctantly replies that, as long as the time commitment was not great, she would take on the management. It is clear that this is not a high-value task. Would you

27. Weil, Gotshal & Manges LLP, *Upstander Action Guide*, http://www.weil.com/~/media/diversity/upstander/upstander-action-guide.pdf?la=en.

have volunteered to take on the obligation or stepped in to cover? How could an institution respond to put a better practice in place for assignment and reward?

If you have ever been a passenger on a public transit system and watched someone accosted or stayed silent when a client made an off-color joke, you know how challenging it can be to take action. In the moment, the inertia of business-as-usual or avoidance of embarrassment can simply be too great a barrier to overcome. However, practice makes progress, so we wanted to leave the reader with a few scenarios to consider. When you review these scenarios, think about these simple questions:

- How would you respond to be an Upstander?
- How could your organization institutionalize a response or a practice to either avoid or to ameliorate the situation?

While there is no one right answer for every person on how to approach these scenarios, there is at least one wrong answer: to do or say nothing. Even for experienced diversity professionals like ourselves, these situations continue to provoke some anxiety. Similar to public speaking, we can manage our fear through preparation and practice, but it will be unlikely to ever go away.

Ultimately, if each of us stands up, then we can stand together. Often an ally's voice can carry tremendous weight in situation when a member of that group is not in the room and feels that they are the only who notices or cares or feels that the spotlight is unduly on them. We believe our collective voices and action will accelerate change in our organizations, the legal profession, and hopefully beyond.

Scenario A: Client Dinner

At a deal dinner celebration with the law firm and client team members, Clara, a senior deal lawyer of the client returns from the restroom and jokes, "I think there was a Caitlin Jenner in the bathroom. It just makes me so uncomfortable to be in there. North Carolina has the right idea keeping them out of women's room." While some clients and members of your firm at the table make half-hearted chuckles and smirks, you notice a couple of the people from your firm and from the client exchanging awkward glances. You are offended by what Clara said but nervous given the mixed reactions at the table.

Scenario B: Pitch Meeting

In response to an RFP from a Fortune 500 client, Chip, a senior corporate partner, puts together his pitch team with his go-to group of partners. You often go on pitches with many of these partners, and you appreciate being included in these business opportunities. Gina and Devon, two partners in your group, are not part of Chip's go-to group of partners and both have previously commented to you that as women and people of color, they are not generally invited to pitches even when clients explicitly ask about diverse teams.

Scenario C: Evaluation Meeting

After the departure of the ADA in charge of the Special Victims Unit, Carrie, the Chief of the Trial Division, asks the heads of the other units to recommend internal candidates for the post. Carrie mentions that while Ted was the number two in the unit, she is not sure about the optics of a man heading up that bureau. Reviewing the list of second-in-command in the various bureaus, the group also discounts Ming from the Appeals Bureau as not having enough confidence and presence even though she has a track record as a proven advocate. You wonder if Carrie and the group overlook Ted and Ming for reasons other than their competence for the position.

An Empirical Analysis of Diversity in the Legal Profession

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Paul E. Madsen

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We've known for years that compared to other professions, the legal profession significantly lags behind in its diversity. But in a comparison among professions of differing educational requirements, what do analyses of gender and racial representation really tell us? Moreover, are current diversity policies and practices having a different impact, one that may be muted when we aggregate data influenced by policies and practices used and discarded decades ago?

I. Introduction

Empirical studies examining the diversity of the legal profession have focused on both formal and substantive diversity, typically concentrating on gender and racial diversity. "Formal diversity" means equal representation of various groups that share similar attributes.[1] Many commentators have construed "equal representation" to imply that various groups should be represented in the legal profession in proportion to their representation in the general population.[2] "Substantive diversity" goes beyond formal diversity. It means not only having equal representation but having equal, meaningful participation.[3] Factors that signal equal meaningful participation might include whether certain groups have equal participation in elite segments of the legal profession, have equal compensation rates, have an equal voice in important discussions and decisions, and have equal opportunities for advancement.[4]

With respect to formal diversity, there are several empirical studies that examine the total number and percentages of lawyers that are female or belong to specified racial or ethnic groups.[5] When new data is

1. 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 1082, 1093 (2011). The term "groups" can be and has been broadly construed along the lines of race, ethnicity, national origin, sexual orientation, socioeconomic background, gender, religion, disability, ideology, and hardships, among other ways. *See* Sharon E. Rush, *Understanding Diversity*, 42 Fla. L. Rev. 1, 2 (1990) ("A group is facially diverse if it includes members who are not all one race and gender."); Wald, *supra* note 2, at 1093 ("This is the distribution within a population of individuals who are grouped (by themselves or by others) according to a more or less objective and measurable attribute (e.g., age, gender, race, religion, nationality, language, income) that they share with other members of the designated group." (quoting Peter H. Schuck, *Demography, Human Rights, and Diversity Management, American-Style*, 2 Law & Ethics Hum. Rts. 10–11 (2008)). Our empirical analysis, however, focuses on gender and racial diversity (African Americans, Hispanic Americans, Asian Americans, and Indian Americans). We limit our diversity analysis in this way primarily because of the limitations of the empirical data.

2. Wald, *supra* note 2, at 1093. This concept also has been termed "facial diversity" and "demographic diversity." *See* Rush, *supra* note 1, at 2 (describing "facial diversity" as including members who are not all of the same gender and race); Peter H. Schuck, *Deography, Human Rights, and Diversity Management, American-Style*, 2 Law & Ethics of Hum. Rts. 1, 10–11 (2008) (describing demographic diversity as examining the proportion of those with measurable attributes such as age, gender, race, religion, and income against the distribution of those holding these attributes in the population as a whole).

3. Wald, *supra* note 1, at 1105.

4. *Id.* at 1105–09.

5. *See, e.g.*, Elizabeth Chambliss, Miles to Go: Progress of Minorities in the Legal Profession 5–7 (2004) (citing demographic data on minority representation in the legal profession).

This distinction is important because the legal profession has more control over phenomena influencing diversity specific to the legal profession, such as racial prejudice in hiring; but, the legal profession has much less control over general social phenomena influencing diversity in professions, such as differences in the quality of primary and secondary education available to women and minorities.

released showing the percentages of women and minorities eligible to practice law, many often compare that to other data describing the (1) percentages of women and minorities eligible to practice law in prior years;[6] (2) percentages of women and minorities who enter other professions;[7] and (3) percentages of women and minorities in the population at large.[8] These comparisons are made to gauge whether the legal profession is becoming more formally diverse over time, to compare how well the legal profession is formally diversified relative to other professions, and to understand whether the level of formal diversity, at least with respect to the raw numbers, is at the level we would expect it to be based on the overall population demographics of the United States.

This Article examines formal diversity in the legal profession in a unique way.[9] First, using large-sample evidence, we compare the gender and racial representation in the legal profession against other prestigious professions with significant barriers to entry. These professions include health practitioners (dentists, optometrists, physicians, psychiatrists, podiatrists, surgeons, and veterinarians) and college professors. Analyses that compare the legal profession against the entire U.S. population or against occupations with

6. *Id.* (comparing current demographic data on the legal profession to prior demographic data).

7. *See, e.g.*, Chambliss, *supra* note 5, at 7 (reporting minority representation among selected U.S. professions); Elizabeth Chambliss, *Miles to Go in New York: Measuring Racial and Ethnic Diversity Among New York Lawyers* 6 (2007), https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=48254 (stating that diversity among U.S. lawyers lags behind diversity of most other professions); Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 Geo. J. Legal Ethics 1041, 1041 (2011) (maintaining that the legal profession "lags behind other occupations in leveling the playing field"); *Degrees Conferred by Degree-Granting Institutions in Selected Professional Fields, by Sex, Race/Ethnicity, and Field of Study: 2009-10*, Nat'l Center for Educ. Statistics, http://nces.ed.gov/programs/digest/d11/tables/dt11_309.asp (last visited Aug. 20, 2016) (comparing minority participation across professions); *see also* Brad Smith, *Raising the Bar: Exploring the Diversity Gap Within the Legal Profession*, Microsoft Corporate Blogs (Dec. 10, 2013), http://blogs.microsoft.com/on_the_issues/2013/12/10/raising-the-bar-exploring-the-diversity-gap-within-the-legal-profession (discussing how other professions are including women and minorities in greater numbers than the legal profession).

8. *See, e.g.*, Chambliss, *supra* note 5, at 6–7 (reporting minority representation among selected U.S. professions and stating that diversity among U.S. lawyers lags behind diversity of most other professions); Rhode, *supra* note 7, at 1041 (maintaining that the legal profession "lags behind other occupations in leveling the playing field").

9. This article is an abbreviated version of our 2014 study. *See* Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity of the Legal Profession*, 47 Conn. L. Rev. 271 (2014).

By narrowing our focus to young professionals, we get a clearer picture of the current state of diversity in the legal profession.

differing educational requirements inevitably have ambiguous results. This is because diversity in the legal profession is a function of (a) general social forces limiting the number of women and minorities eligible to pursue any type of prestigious employment with significant barriers to entry, and (b) forces specific to the legal profession that encourage or discourage women and minorities to participate in the legal profession in a unique manner.[10] This distinction is important because the legal profession has more control over phenomena influencing diversity specific to the legal profession, such as racial prejudice in hiring; but, the legal profession has much less control over general social phenomena influencing diversity in professions, such as differences in the quality of primary and secondary education available to women and minorities.[11] The strength of our comparative method is that by comparing diversity in the legal profession against the diversity in other comparable fields, we are able to isolate anomalies in women and minority representation that are more likely caused by forces specific to the legal profession. These legal profession-specific anomalies are those that the legal profession is in a better position to address through its diversity initiatives.

The second distinctive feature of our empirical analysis is that we focus on young individuals who have completed their education and recently begun their careers. Results from analyses of diversity in the legal profession that examine workers of all ages are ambiguous because they aggregate the impact of diversity policies and practices that existed decades ago with current policies and practices. By narrowing our focus to young professionals, we get a clearer picture of the current state of diversity in the legal profession.

We perform analyses using methods similar to those used in prior research in addition to analyses using our distinctive methods. Our distinctive methods include controlling for other variables that might influence whether an individual works in the legal profession, such as whether the individual (a) lives in a metropolitan area; (b) is married; (c) is widowed, separated, or divorced; and (d) lives with children under the age of nineteen who they count as part of the individual's family. We include these controls to better isolate the relationship between women and minority status and membership in the legal profession while holding constant potentially confounding relationships.[12]

10. *See* Sarah E. Redfield, *The Educational Pipeline to Law School—Too Broken and Too Narrow to Provide Diversity*, 8 Pierce L. Rev. 347, 371 (2010) (describing the legal profession's failure in its approach to increasing diversity).

11. *See id.* at 376–81 (describing initiatives the legal profession can take to increase diversity).

12. We searched for measures available in the data that we expected could be associated with both women and minority membership in the legal profession and include these variables in the regression models so that the statistical associations we observe between women and minority membership in the legal profession cannot be attributed to uncontrolled differences between individuals in the database. For example, because lawyers often work long hours, we include a number of controls (the relationship status and children measures) intended to capture the extent to which individuals in our sample are under pressure to perform work at home (sometimes called "non-market" or "home production" work). It may be that individuals whose lifestyles require significant home production work are less likely to work as lawyers full-time. In addition, given evidence that women continue to perform a disproportionate share of home production work in the United States, we add controls interacting our female indicator variable with our relationship status and children controls to account for gender differences in the extent to which pressure to perform home production work influences

We emphasize that our method of comparing the diversity of the legal profession to the diversity of other prestigious professions does not speak to the socially optimal level of diversity of the legal profession. We are also quick to point out that what has been accomplished by other professions should not determine the ultimate benchmark by which the legal profession should be assessed. Instead, we make these comparisons in an attempt to isolate anomalies that may be caused by forces specific to the legal profession rather than by external social forces over which the legal profession has less control. While this is a less ambitious goal than assessing social optimality, we believe that it is an instructive way to evaluate the past performance of the legal profession's diversity efforts and to explore where such efforts might be targeted most fruitfully in the future.

Further, we acknowledge and emphasize that our analyses do not evaluate the pressing concern of substantive diversity—or full, meaningful participation—in all levels of the legal profession, including, for example, at the partnership level of private law firms or in supervisory roles in prestigious government positions. We believe that full, meaningful participation is necessary at all levels of the legal profession and maintain that more research and analysis is needed to have a more complete picture of what can be done to achieve this.

II. Data

In its March Current Population Survey, the U.S. Census Bureau collects the data in this study annually. Because the Bureau increased the level of detail in the Current Population Survey's racial classifications beginning with the 1992 Current Population Survey, we examine diversity in the legal profession during three windows of time following that improvement: 1992–1995, 2001–2005, and 2008–2012. Machine-readable microdata from the Current Population Survey is not made available to the public; however, a project called the Integrated Public Use Microdata Series, which is sponsored by the Minnesota Population Center at the University of Minnesota, released to the public a subset of Current Population Survey microdata.[13]

The Integrated Public Use Microdata Series's Current Population Survey permits us to study women, African Americans, Hispanic Americans, Asian Americans, Native Americans, and individuals designated as "other racial minority or multi-racial," which we denote as "Other Race."[14] A significant strength of the Current Population Survey relative to datasets that exclusively describe lawyers is that the Current Population Survey contains data describing members of the legal profession as well as workers in every other major occupation in the United States.[15] As a consequence, we can characterize the diversity of members of the legal profession as well as the diversity of members of other comparable professions. It is through these comparisons that our empirical tests isolate diversity anomalies that are unique to the legal profession.[16]

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the likelihood an individual works full-time as a lawyer. *See generally* Mark Aguiar & Erik Hurst, *Measuring Trends in Leisure: The Allocation of Time over Five Decades*, 122 Q. J. of Econ. 969, 976 (2007) (detailing their study concerning the share of nonmarket work between women and men). We include a control for metropolitan residence because populations of many minority groups have historically been concentrated in cities, likely increasing their representation among occupations whose members are also concentrated in cities. *Id*. We note, however, that while there are many other factors that might influence entry into a profession, we were limited to the data available to us.

13. The Integrated Public Use Microdata Series is constructed by randomly sampling the original Census Bureau microdata from printed pages or microfilm reels, recording it in machine readable formatting, and recoding or "harmonizing" variables whose definitions have changed so that they are consistent over time. These data are available for download from the IPUMS project website using its built-in "data extraction system." *See Integrated Public Use Microdata Series*, Minneapolis Population Ctr.: Univ. of Minn., https://cps.ipums.org/cps/index.shtml (last visited on Aug. 20, 2016); *see also Frequently Asked Questions, How Do I Obtain Data?*, Minneapolis Population Ctr.: Univ. of Minn., https://cps.ipums.org/cps-action/faq#ques10 (last visited on Aug. 20, 2016).

14. *Id*.

15. *See Description, Occupation, 1990 Basis*, Minneapolis Population Ctr.: Univ. of Minn., https://cps.ipums.org/cps-action/variables/OCC1990#description_section (last visited Aug. 20, 2016) (explaining that the Integrated Public Use Microdata Series - Current Population Survey occupation classification system is based on the system of the U.S. Census Bureau but has been adjusted to maximize the consistency of occupational classifications over time).

16. For a detailed discussion of our statistical models, methodology, and findings, including graphs and tables, *see* Nance & Madsen, *supra* note 9, at 306-16.

Minorities who are eligible to pursue professional or advanced degrees appear to be just as likely to become legal professionals as they are to become members of other high status professions.

III. Results and Discussion

The first key finding from our empirical study is that the legal profession appears to be as diverse with respect to African Americans and Hispanic Americans as other similarly prestigious professions among attorneys who are thirty-five years or younger.[17] This is true even after taking into account other variables that might influence whether an individual works in the legal profession, such as whether the individual (a) lives in a metropolitan area; (b) is married; (c) is widowed, separated or divorced; and (d) lives with children under the age of nineteen that are counted as part of the individual's family. This is an important finding for the following reasons. First, this finding provides empirical support for what has been observed anecdotally—that minorities who are eligible to pursue professional or advanced degrees appear to be just as likely to become legal professionals as they are to become members of other high status professions.[18] However, this does not imply that the legal profession is adequately diversified. In fact, African Americans and Hispanic Americans currently are woefully underrepresented in the legal profession when compared to their ratios in the U.S. population. Sarah Redfield estimates that "[p]rojecting population changes to 2030, and assuming that lawyers remain the same percentage of the population they were in the last census . . . some 100,0000 additional black attorneys and more than 230,000 additional Hispanic attorneys would need to join the ranks of the profession to approach parity with the general population."[19]

The fact that Hispanic Americans and African Americans are so underrepresented overall in the legal profession—yet the legal profession appears to be as diverse as other similarly prestigious professions among the occupation's young elites with respect to these groups—highlights why our findings are important. They provide further empirical support demonstrating where the legal profession should focus its efforts to improve diversity. Specifically, the legal profession needs to find better ways to help more students become eligible to pursue all types of advanced degrees. Sarah Redfield has advocated this point for years. She maintains:

[T]here are too few underrepresented minorities moving through the pipeline, too few graduating from high school, too few persisting and succeeding in college, too few presenting LSAT scores and GPAs that meet today's norms for admission to law school. To achieve significant diverse populations, the law academy would need to increase its admissions for blacks and Hispanics well beyond what the current applicant pool, in the current milieu, can bear—at rough count, 1,500 more black students and 7,500 more

17. *See* Nance & Madsen, *supra* note 9, at Tbl. 3, Panel C.

18. *See* Alex M. Johnson, Jr., *Knots in the Pipeline for Prospective Lawyers of Color: The LSAT Is Not the Problem and Affirmative Action Is Not the Answer*, 24 Stan. L. & Pol'y Rev. 379, 387–88 (2013) (observing that the legal profession does well in attracting minority college graduates to apply to law school and pursue a legal career, but the overall pool of minority college graduates is too low to adequately populate all of the professions and academia).

19. *See* Sarah E. Redfield, Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession 10 (2009); *see also* Dorothy H. Evensen & Carla D. Pratt, The End of the Pipeline: A Journey of Recognition for African Americans Entering the Legal Profession xxiv–xxv (2012) (stating that African Americans "remain proportionally under-represented in the legal profession").

Hispanic students a year would be needed to approach parity with the population by 2028, the year Justice O'Connor's twenty-five year window would close for affirmative action.[20]

In other words, while it is important for the legal profession to continue its current diversity initiatives, especially the programs the legal profession has designed to help disadvantaged students overcome the significant barriers they face to be eligible to pursue an advanced degree, the legal profession should significantly broaden its reach. Specifically, entities such as the American Bar Association, law schools, law firms, and local bar associations should collaborate with one another and with government agencies, public schools, and, in particular, other prestigious professions to help these minority groups progress to a point where they will be eligible to pursue a professional degree and enter any prestigious profession.[21]

Other prestigious professions, such as the medical and dental professions, also realize that they must increase the number of students eligible to pursue advanced degrees if they want to successfully diversify their professions.[22] For example, the American Association of Medical Colleges has stated that "poor academic preparation starting early in life is a major barrier to minorities entering training for health careers," and "[p]rograms focusing on improving academic preparation must start early in a student's life, must be intensive, and must persist during all levels and grades of schooling."[23] However, the American Association of Medical Colleges also recognizes that because of their limited resources and experience in addressing this problem, "educational partnerships throughout the education pipeline seem to be the most realistic option for working toward sustained changes that could yield results."[24] A merging of resources from the medical, legal, dental, and other professional communities to build sustainable programs to assist disadvantaged minorities to pursue advanced degrees would benefit the diversity efforts of all prestigious professions and improve our society at large.

A second key finding is that Asian Americans, in contrast to other minorities, are very poorly represented in the legal profession. The odds that an Asian American will join the legal profession are significantly lower than the odds that they will join other prestigious professions with significant barriers to entry.[25] Unfortunately, there is almost no research examining the reasons why Asian Americans are less likely to enter the legal profession than other high status professions. More research should be conducted in this area to identify ways that the legal profession can attract more Asian Americans.

A third key finding is that there is evidence suggesting that women have been well-represented in the legal profession until recently, when they appear to have become slightly underrepresented. This evidence suggests a troubling trend in the integration of women into the legal profession. The legal community has made substantial progress with respect to female representation in the legal profession.[26] Nevertheless, the literature also suggests that private law firms, where women typically begin their legal careers, do not provide just and inclusive workplaces for women.[27] The research indicates that women are more likely to depart from private law firms after three years and express greater dissatisfaction for various dimensions

20. Redfield, *supra* note 19, at 2–3.

21. *See* Evensen & Pratt, *supra* note 19, at 229 ("[P]ipeline programs can serve as structural mechanisms to counteract or leverage against the detrimental effects of poor neighborhoods, underfunded schools, poverty or economic hardship, and the performance gap especially as it relates to performance on high stakes, standardized measures like the LSAT.").

22. *See* Redfield, *supra* note 19, at 119–24 (explaining how the medical and dental professions have made an effort to improve diversity within their respective fields).

23. Ass'n of Am. Med. Colls. & The Health Professionals P'ship Initiative, *Learning from Others*, Health Diversity 1, 3 (2004), http://www.healthdiversity.pitt.edu/diversity/documents/ HPPILiterature Review.pdf (emphasis omitted).

24. *Id.* at 2.

25. *See* Nance & Madsen, *supra* note 9, at Tbl. 3, Panel C. It is important to note, however, that some believe that the number of Asian Americans admitted to and matriculating into law schools is currently increasing. *See* Johnson, *Knots in the Pipeline*, *supra* note 18, at 382 (stating that the number of Asian Americans attending law school is increasing).

26. *See* Nance & Madsen, *supra* note 9, at 279–285.

27. *Id.*

of their professional lives.[28] Thus, it should not be surprising that the latest empirical trends suggest that if women choose to pursue an advanced degree and enter a prestigious profession, they are less likely to choose law than other prestigious professions that may be more conducive to family life or produce higher levels of professional satisfaction.

IV. Conclusion

The purpose of our empirical analysis is to shed more light on the discussion regarding the diversity of the legal profession and to identify productive avenues for the legal profession to further its diversity efforts. The results of our analyses suggest that, although underrepresented as a whole in the legal profession, the representation of African Americans and Hispanic Americans in the legal profession is not significantly different from the representation of these groups in other prestigious professions among workers who are thirty-five years old or younger. This finding does not imply that the legal profession is adequately diversified with respect to these groups, as these groups are very much underrepresented in the legal profession when compared to their ratios in the U.S. population. Rather, this finding provides empirical support for the conclusion that the legal profession needs to find better ways to help more students become eligible to pursue all types of advanced degrees. Once a member of these groups becomes eligible to pursue an advanced degree, it appears that the legal profession fares no worse than other prestigious professions requiring advanced degrees. Armed with this knowledge, the legal profession should consider broadening its efforts, including teaming up with other professions, such as the medical and dental professions, to help more members of these minority groups become eligible to pursue all prestigious employment opportunities that have high barriers to entry.

We find that Asian Americans are poorly represented in the legal profession compared to young professionals in other prestigious professions. We also provide empirical evidence for another troubling trend in the legal profession. Specifically, we find that in the 2008–2012 time period, women were underrepresented in the legal profession when compared to other young workers in prestigious professions. While more research must uncover the precise reasons for this drop, the failure of the legal profession to provide just and inclusive workplaces may cause it, leading to greater dissatisfaction and higher attrition rates among female associates.

28. *Id*.

On a Mission to Bring "True Diversity" to the Field of Law

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A white male partner in a large law firm shares his thoughts on how he came to recognize the privileges from which he has benefited by virtue of his race and gender and, as a result, his journey to understanding how the legal profession can achieve "True Diversity."

When I was younger, some might say my friends and I occasionally did some pretty foolish things. (Well, maybe a little more than occasionally. And maybe a little worse than foolish.) As I look back on those times and consider all of the very serious trouble I could have found myself in, I reflect on one very important life lesson I've taken from those experiences—a life lesson that still benefits me in ways that I am only coming to understand. Boy, am I lucky to be white, upper-middle-class, and male!

Having now spent twenty-six years in the legal profession, I can safely say the benefits keep rolling in—benefits I have despite having had absolutely nothing to do with their (or my) creation. While I'm able to recognize the advantages I've have in my life, I've also come to understand that my background severely limits my perspective. Yes, it cannot be disputed that there exists a white-male-dominated hierarchy in the business and legal worlds in which I practice. It also cannot be disputed that no matter how broad-minded I like to credit myself for being, mine is, in reality, a very narrow perspective, and that narrow perspective is limiting.

Any business (law firms included) that fails to embrace "True Diversity" limits its potential for success. By "True Diversity," I mean the recognition that each person brings a unique perspective, a unique background, and even a unique set of implicit biases to the table; and when put together, the whole is greater than the sum of the parts.

I. My Journey

I was trained to be a leader the old fashioned way: I was a quarterback on my high school football team. It was there that I was trained to lead men and marginalize and objectify women. I was fortunate in that I wasn't a very good quarterback. So life for me after high school meant something other than playing college football.

My professional life started as a high school teacher in a small town. There I witnessed the life changing effects of teen pregnancy—effects that almost entirely fell on the pregnant female teen—and a culture that did not value higher education. When I decided to go to law school, I also decided that no matter my area of practice, I was going to be somehow involved in promoting education for teens to learn about reproductive health, to make smart, responsible choices, and to do whatever you could as a person to realize and fulfill your potential. I've tried to remain focused on this "mission" as a parent, a mentor to younger lawyers, a community volunteer, and most recently a board member of Take The Lead.

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II. Take The Lead

Through my years as a volunteer for Planned Parenthood in Arizona, I had the wonderful fortune of meeting, learning from, and becoming good friends with its former CEO, now author, speaker, and educator Gloria Feldt. When Gloria told me that she was creating a new entity whose mission was to achieve gender leadership parity in all sectors by 2025, I knew that this was something I wanted to be very much involved in. When she asked me join the board of directors of Take The Lead, it was an offer I couldn't refuse (yes, that's a very male thing to say).

What most appeals to me about Take The Lead is that it not only states the goal, the organization also provides the tools needed to make it happen. Take The Lead offers training programs that teach women and men how to change systems and culture in order to create workplaces that are healthier for all. In addition, and because of Gloria's professional background, Take The Lead teaches us how to use movement-building principles to overcome implicit biases, create sustainable change, and collaborate with like-minded organizations. Now that I am in a position where I am charged with leading the growth of a law office, what I have learned through my journey and the skills I've acquired through Take The Lead play a central role in helping me build and benefit from an inclusive and diverse office.

III. Diversity Breakfasts

Over the past several months, I have been meeting one-on-one and with small groups of diverse lawyers from across Arizona and documenting the experience.[1] We are doing this because in order to achieve true diversity in the field of law, we must figure out how to smooth the hurdles and eliminate the roadblocks for women, who currently hold just seventeen percent of equity partner positions[2] despite having been approximately half of law school graduates for years.[3]

1. *See* www.taketheleadwomen.com.

2. Nat'l Ass'n for L. Placement, *The Representation of Women and Minorities Among Equity Partners Sees Slow Growth, Broad Disparities Remain*, Nat'l Ass'n for L. Placement (Apr. 2014) [hereinafter *2014 NALP Bulletin*], http://www.nalp.org/0414research.

3. 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.

Change of that magnitude is going to require a shift in thinking on the part of law firm leadership, and it will also require opening the dialogue to include the voices of women in the field. The conversations during these "diversity breakfasts" have provided an opportunity to generate discussion about diversity in the field of law. We are beginning to define the challenges and work on solutions to the institutional problem of lack of gender and ethnic diversity in the upper echelons of law firms. I can already see that simply having the discussion and engaging in a dialogue is a great first step. But what really counts is what we do after we start talking about it.

Reaching full equality in the legal field is an important and ongoing struggle, but it is not a challenge to fear, and we must recognize the progress that has been made. One breakfast attendee brought up the fact that although there is still much work to be done, we should all recognize that which already been accomplished. This summer, we will have a woman leader of the ABA passing the gavel to another woman (we were honored to have the future ABA leader at the table with us during that particular interview). Another notable victory is the fact that the American Health Lawyers Association has a majority of women on the board, and we were once again honored to have a past president with us at that breakfast.

However, the attendees at these breakfasts also consistently shared anecdotes regarding less than equal treatment and less than equal opportunity. Employers often penalize women because they are assumed to be too involved with their kids and to be responsible for maintaining the home—whether that is actually part of their life at home or not. Employers often assume women are not able to travel to take a deposition. Thus, employers send men on these assignments instead. Too often, employers make these decisions without ever even asking the women, the perception being: "This is what the man is supposed to do, and this is what the woman is supposed to do."

This misguided perception also manifests in the implicit bias that favors fathers but penalizes mothers. So not only is there a "mommy penalty," there is also a "daddy benefit"; the implicit bias is that parenthood makes men more responsible but women less likely to prioritize their work. This perception is the very heart of the problem.

So not only is there a "mommy penalty," there is also a "daddy benefit"; the implicit bias is that parenthood makes men more responsible but women less likely to prioritize their work.

Many firms treat "diversity" as a box to check off rather than a culture to embrace. Firms focus on the appearance of diversity, while the reality behind the appearance doesn't do justice to the concept.

IV. Mentors and Role Models

"It's important for young lawyers—and all young people, for that matter—to see women in positions as senior lawyers and partners." This was one of the statements that sparked a discussion during a recent diversity breakfast. One of my guests told a story about ABA President Paulette Brown and the way she shares her successes and accomplishments with the young people she meets at Boys & Girls Clubs. The more opportunities we have to show examples of successful female lawyers and judges to young women, the more we will encourage girls aspire to careers in law. And the more women we have in senior positions, the more we build the network of support in the field of law. This network has existed for men for many years; however, for the most part, women have been excluded.

Take The Lead understands that networks, mentors, and sponsors are critical in every field, but particularly in the legal field. There is no substitute for senior lawyers who are willing to provide guidance and advice to those who will follow the same path. They can increase awareness of the challenges ahead, suggest how to best survive those challenges, and pave the way for women to advance in a male-dominated profession.

V. From Appearance to Reality: A Shift in Perspective

As I work to grow my firm, my goal is for the office to succeed and for people to be fulfilled in their professions—men and women alike. To do this, we have to overcome the "this is how it's always been done" mentality. I hope that by "taking the lead," I will be a part of the movement to disrupt antiquated stereotypes regarding our values and roles.

"Diversity" has been a word embraced by a significant number of law firms in recent years. But many firms treat "diversity" as a box to check off rather than a culture to embrace. Firms focus on the appearance of diversity, while the reality behind the appearance doesn't do justice to the concept. True diversity, it turns out, is often not the real goal. Website pages devoted to diversity, firm brochures and pitch books that include many different color faces and genders may make the firm feel good about itself, but it's the voice of the members of the firm at every level (and particularly in leadership) that tells the true story. I do believe change is coming. Gender diversity is something clients are beginning to expect and appreciate.

When you bring a diverse group of individuals together to make decisions about firm growth, client development, devising legal strategy, presenting a case to a jury, or giving back to the community, you will be far more successful than you would using a homogenized approach. People from different backgrounds approach things differently, and this is a good thing.

VI. The Research is Clear: Diversity is Good for Business

Time and again, studies show that creating a culturally diverse workforce improves a company's financial performance. A 2014 Gallup study found that gender-diverse teams perform better than single-gender teams.[4] Credit Suisse examined board structure and corporate performance in 3,000 companies and found that greater gender diversity, as measured by the percentage of women on the board of directors, coincides with better corporate financial performance and higher stock market valuations.[5] This should come as no surprise.

Yet the diversity movement in the legal field lags far behind that in other industries. According to ABA statistics,[6] eighty-eight percent of lawyers are white–more than architects and engineers, accountants, physicians and surgeons. Women in the profession often find themselves at a disadvantage if they become mothers. As of 2014, over eighty percent of equity partners in U.S. law firms were men, and over ninety-four percent were white.[7]

VII. Change Happens

Let us not be discouraged. A law firm is a living and malleable body that is constantly changing. At the end of the day, you don't create a diverse workforce for appearance. You do it because it's the better practice—because you want the best people at the table. And the best people don't all look the same.

Our hope is that these discussions will shed light on a solution to the institutional problem of lack of gender and ethnic diversity in upper echelons of law firms and in the overall lack of personal and professional satisfaction for lawyers in firms. Without the dialogue that creates understanding of what each participant brings to the table—regardless of race or gender or more likely because of it—these efforts can often turn into an excuse for not fostering inclusion and the success of the entire group.

Reaching full equality and true diversity in the legal field is an important and ongoing struggle, but it is not a challenge to fear. Recognizing the benefit of creating, fostering, and relying on diversity in your law firm is not just the PC thing to do, it is the smart way to run a business.

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4. *See* Sangeeta Bharadwaj Badal, *The Business Benefits of Gender Diversity*, Gallup Bus. J. (Jan. 20, 2014), http://www.gallup.com/businessjournal/166220/business-benefits-gender-diversity.aspx.

5. *See* Julia Dawson, Richard Kersley, & Stefano Natella, The CS Gender 3000: Women in Senior Management (2014), https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=8128F3C0-99BC-22E6-838E2A-5B1E4366DF.

6. *Lawyer Demographics*, American Bar Association (2012), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf.

7. *2014 NALP Bulletin*, *supra* note 2.

Corporate Lawyers and Diversity Discourse

Cheryl L. Wade

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Corporate lawyers need to be well-versed in diversity issues. Not only does diversity play a role in the hiring and promotion within their own law firms, it is increasingly an issue as they advise their corporate clients on regulatory and legislative matters as well as the client's own corporate culture.

The work of the Institute for Inclusion in the Legal Profession and its advocacy for more diversity in the legal profession is especially salient in 2016. As a nation, we have spoken a great deal about diversity as it relates to race in general and African Americans in particular over the past year. A string of deaths of unarmed African American men at the hands of white police officers summoned the nation's attention. When a white police officer shot and killed Michael Brown in Ferguson, Missouri, there was a great deal of discussion about the gross underrepresentation of African Americans on the police force and among local politicians. Many observers believed that a racially-homogenous police force and homogeneity among political leaders partially explained the mistreatment of African Americans at the hands of the white Americans in charge. In the months after Brown's death, police officers killed more African Americans. The media highly publicized some of the incidents, like the shooting and death of Freddie Gray in Baltimore. But, Gray's death in Baltimore was different. While everyone in charge in Ferguson was white, in Baltimore, the state prosecutor, the mayor, the police chief, and several elected officials were African American. Even the group of six police officers was a diverse group. Three of the officers charged were Black.

The troubled relationship between some African Americans and many police departments provides a symbolic narrative that offers insight regarding the discussion of homogeneity in some segments of the legal profession. Much of the discussion about the racial and gender homogeneity among large law firm partners, on the bench, and in certain practice areas, mirrors the type of discourse about diversity that is typical in the United States. More often than not, Americans engage in a superficial analysis about the value of diversity and how we can achieve it. This superficiality characterizes discussions about police brutality and exchanges about the value of diversity in the legal profession. In the United States, we say all the right words–diversity, inclusion, access–without digging deeply into the causes and cures for the lack of gender and racial diversity. Americans rarely focus on the homogeneity of those who lead our most important professions and institutions unless there is a crisis. We say we want diversity without challenging the omnipresent homogeneity among the most successful business and political leaders and legal professionals. The discourse about race in the United States is plagued by a phenomenon called "doublespeak."[1] As William Lutz has defined it, doublespeak is:

> [l]anguage that pretends to communicate but really doesn't. It is language that makes the bad seem good, the negative appear positive, the unpleasant appear attractive or at least tolerable. Doublespeak is language that avoids or shifts responsibility . . . . It is language that conceals or prevents thought; rather than extending thought, doublespeak limits it . . . . Basic to doublespeak is incongruity, the incongruity between what is said or left unsaid, and what really is.[2]

1. William Lutz, Doublespeak (1989).
2. *Id.* at 1–2.

We witness this shift in responsibility when legal professionals who are responsible for hiring or identifying others for legal jobs explain that the people who occupy the highest level and best paying positions are not more diverse because the pool of women and people of color appropriate for service is small. This is a pipeline problem, they typically lament.

When speaking of diversity, inclusion, and access, commenters rarely speak of antidiscrimination law or a business' efforts to monitor compliance with such law. Few ever utter the words "discrimination, sexism or racism." It is as though these words are epithets to be avoided at all costs. Implicit in the failure to mention discrimination, sexism, or racism is the conclusion that we have resolved these problems. The silence implies that inclusion of women and people of color at the upper levels of the legal profession and in other contexts, access to equal opportunity, and diversity are the only issues remaining when it comes to race, gender, and homogeneity among the highest ranking legal professionals. Few explore the possibility that the racism, sexism, and discrimination that continue in the United States also infect relationships in the legal profession and other professional contexts. This is a phenomenon that I call diversity doublespeak.[3]

Diversity doublespeak has pervaded our national discourse about race and gender for decades. Diversity doublespeak focuses on happy, positive concepts: inclusion, access, affirmative action, equal opportunity, and diversity. It helps to sanitize the conversation about race and gender and obscures the continuing problems of racism, sexism, and discrimination. Lutz says that doublespeak is "language that only pretends to communicate" or "language that makes the bad seem good." Diversity doublespeak does the same thing; it makes the bad (continuing discrimination) seem good (diversity). Lutz notes that "doublespeak shifts responsibility." Diversity doublespeak shifts responsibility from employers. We witness this shift in responsibility when legal professionals who are responsible for hiring or identifying others for legal jobs explain that the people who occupy the highest level and best paying positions are not more diverse because the pool of women and people of color appropriate for service is small. This is a pipeline problem, they typically lament.[4]

Lutz explains that "rather than extending thought, doublespeak limits it…" In the diversity context, happy talk focusing solely on inclusion, access, diversity, and equal opportunity limits thought about the continuing problem of race and gender discrimination. Doublespeak, according to Lutz, reflects "incongruity between what is said and what really is." This is particularly true with respect to diversity doublespeak. When leaders in the legal profession engage in diversity doublespeak, there is a significant gap between what they say about diversity and what really is.

3. *See* Cheryl L. Wade, *"We Are an Equal Opportunity Employer": Diversity Doublespeak*, 61 Wash. & Lee L. Rev. 1541, 1547-50 (2004).

4. Kimberly D. Krawiec, John M. Conley, & Lissa L. Broome, *A Difficult Conversation: Corporate Directors on Race and Gender,* 26 Pace Int'l L. Rev. 13 (2014).

The reasons for concern about board homogeneity become evident when looking at the racial and gender composition of U.S. boards

Corporate lawyers make decisions about diversity when they hire and promote within their own firms, but equally important is the fact that these lawyers advise their clients about matters relating to diversity and the creation of corporate climates that are inclusive. As the twenty-first century's first decade closed, two corporate governance changes–one regulatory, the other legislative–employed the rhetorical discourse of diversity and inclusion that I describe. Both reforms had some potential to elevate the discourse on racism, sexism, and discrimination in the business setting among corporate lawyers and in the legal profession; but, so far, they have fallen short of doing so.

The regulatory focus board diversity began on December 16, 2009, when the Securities and Exchange Commission (SEC) amended Item 407(c) of Regulation S-K.[5] Under the amended rule, corporate boards must disclose in their proxy and registration statements the process they use to find and evaluate individuals to join and serve on the board. In describing this process, boards must disclose whether they include diversity as one of the bases for identifying and choosing board members. If diversity is a consideration, boards must describe how it factors into the decision-making. If boards have a policy covering diversity in the board nomination process, they must disclose the policy and the way they implement it, and they must describe how they evaluate the policy's effectiveness.[6]

The effective date for the SEC rule on board diversity disclosure was February 28, 2010. The reasons for concern about board homogeneity become evident when looking at the racial and gender composition of U.S. boards at the time the rule was enacted. In 2010, 74.5% of Fortune 500 directors were white men.[7] White women held 12.7% of the board seats; African American men held 5.7%; African American women held 1.9%; Latinos held 2.3%; and Latinas held just 0.7%.[8] In 2011, the percentage of white women on the boards of Fortune 500 companies rose slightly to 13.1%.[9] African American women, Latinas, and Asian women held 3.0% of the board seats of Fortune 500 companies that year.[10] In 2011, most Fortune 500 companies (70.7%) had no women of color serving on their boards.[11]

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5. SEC, Proxy Disclosure Enhancements (Release Nos. 33-9089) 4–5 (Dec. 16, 2009).
6. 17 C.F.R. § 229.407(c)(2)(vi) (2012); The exact language of the amended rule is that boards must:
"[d]escribe the nominating committee's process for identifying and evaluating nominees for director…and whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy."
7. Catalyst, Women on Boards, http://www.catalyst.org/knowledge/women-boards.
8. *Id*.
9. *Id*.
10. *Id*.
11. *Id*.

The goal of disclosure is to provide potential investors and security holders with material information. But, disclosure also has the potential to change corporate behavior.

There was some intrinsic potential for the SEC's board diversity rules to inspire corporate directors and the lawyers who advise them to think about the homogeneity of their boards in a meaningful way. The goal of disclosure is to provide potential investors and security holders with material information. But, disclosure also has the potential to change corporate behavior.[12] Diversity disclosure can inspire meaningful change. Corporate managers may change policies or practices that could damage their companies' reputation if they are required to disclose information relating to those policies or practices. Or, companies may boost their reputations by voluntarily disclosing certain facts. For example, some companies voluntarily disclose the racial and gender composition of their boards by sending shareholders proxy materials that include directors' pictures. These companies have more minority and women directors than companies who do not engage in this kind of voluntary disclosure.[13]

With the help of advice from in-house counsel, the SEC board diversity rule could have encouraged boards with no formal or informal diversity policy to think about adopting one. The requirement that boards describe how they implement their diversity policy could have inspired reflection about the process. And, the SEC's mandate for boards that have a diversity policy to disclose how they evaluate their policy's effectiveness had the power to promote introspection about the adequacy of the process. Unfortunately, however, the SEC's amended rule does not seem to have inspired meaningful reflection about the lack of racial diversity on corporate boards.

After the SEC board diversity disclosure rules became effective in 2010, more corporate boards added discussion about diversity in their proxy statements. But, even in the first few months after the rules' effective date, it was clear that the diversity discussion inspired by the SEC's changes was diversity doublespeak. The SEC rules did not define diversity so some companies articulated a commitment to diversity but defined the concept expansively. Many companies expressed a commitment not only to racial and gender

12. In the 1970s, several public interest groups petitioned the SEC to revise mandatory disclosure rules to include information regarding a company's civil rights and environmental performance. The SEC declined to mandate that companies disclose equal employment opportunity practices, nor would it require disclosure of unlawful employment discrimination. Exchange Act Release No. 5,627, [1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 80,310 (Oct. 14, 1975). The Commission stated that "[a]s a practical matter, it is impossible to provide every item of information that might be of interest to some investor in making investment decisions…." According to the Commission, several commenters "suggested more than 100 topics concerning which they desired disclosure. A disclosure document which incorporated each of the suggestions would consist of excessive and possibly confusing detail…"

13. Richard A. Bernardi, David F. Bean & Kristen M. Weippert, *Minority Membership on Boards of Directors: The Case for Requiring Pictures of Boards in Annual Reports*, 16 Critical Perspectives on Accounting 1019 (2005).

Corporate lawyers can encourage their clients to avoid diversity doublespeak and engage in sincere introspection when responding to the SEC's board diversity rules.

diversity but also enumerated a long list of others factors, including ethnicity, age, and national origin, along with diversity of geographic location, experience, background, viewpoint, and skills.[14] The disclosure was vague, superficial, and obscure.

This kind of expansive definition of diversity was common in the business context long before the SEC required disclosure about board diversity. It was evident on corporate websites where companies articulated their commitment to a diverse workforce. The concepts of racial and gender diversity get lost among the various types of diversity that business leaders claim to value. This approach to diversity obscures the fact of historical discrimination against women and people of color. Diversity efforts are necessary because, for decades, women and people of color have faced discrimination that has impeded their entry and success in the business world. The history of discrimination in the United States on the basis of age, ethnicity, and national origin is comparable in many ways. But there is no similar history of discrimination on the basis of viewpoint, experience, background, or skills in the United States. It is true that elitism, class-consciousness, and politics have impeded the professional advancement of individuals with certain viewpoints, or those from modest backgrounds. But these individuals have not faced the pervasive and systematic discrimination that women and people of color have endured. Diversity of skills, viewpoint, experience, background, and even geographical location are essential for successful firms. These are important considerations when hiring employees, promoting managers, and identifying board members. Companies, however, should pursue viewpoint, experiential, and background diversity without eclipsing the very different goals of racial and gender diversity.

The enactment of the SEC's board diversity rules was a missed opportunity for the corporate lawyers who advise boards and their companies. Corporate lawyers can encourage their clients to avoid diversity doublespeak and engage in sincere introspection when responding to the SEC's board diversity rules. It is only with this kind of honest counsel that firms can achieve diversity and inclusion and not merely talk about it.

In 2010, another corporate governance reform addressed racial and gender diversity in the financial sector by employing the rhetoric of "inclusion." Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act creates an Office of Minority & Women Inclusion at various agencies, including: the Federal Deposit Insurance Corporation; the Securities and Exchange Commission; the Treasury; the Office of the Comptroller of the Currency; the Consumer Financial Protection Bureau; and, each of the twelve

14. Kimberly Gladman, *Beyond The Boilerplate: The Performance Impacts of Board Diversity*, The Corporate Library (July 29, 2010).

It is true that elitism, class-consciousness, and politics have impeded the professional advancement of individuals with certain viewpoints, or those from modest backgrounds. But these individuals have not faced the pervasive and systematic discrimination that women and people of color have endured.

Federal Reserve Banks.[15] Section 342 charges these newly created "Inclusion Offices" with monitoring the diversity efforts of the agencies, the entities they regulate, and the firms with whom the agencies do business (including, of course, law firms). The disclosure and monitoring that Section 342 recommends applies to almost all participants in the private sector, because the agencies covered by the provision regulate corporations and do business with financial institutions, investment banks, mortgage banking firms, brokers, dealers, underwriters, accountants, and even law firms.

Under Section 342, each Inclusion Office must establish procedures to "ensure the fair inclusion and utilization of minorities and women" at the businesses with which the agencies contract and the companies they regulate. Regulated firms, contractors, and subcontractors may "provide a written statement that the company will ensure the inclusion of women and minorities in its workforce to the maximum extent possible."[16]

Representative Maxine Waters proposed Section 342. In a 2009 speech to the House of Representatives, she explained that even though they are qualified, minority and women-owned businesses "continue to be excluded from contracting opportunities made available by the government's historic intervention at banks and other financial institutions."[17] Some have criticized the provision, calling it vague and redundant.[18] Rules prohibiting discrimination against women and minorities in the business setting are already in place.[19] However, this is a provision that is intended to reinforce and reiterate principles relating to racial justice and fairness for women, and for these reasons, the provision's redundancy is potentially helpful.

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15. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 342, 124 Stat 1376 (2010) (codified at 15 U.S.C. § 5452).

16. *Id.*

17. Kevin Roose, *Seeking Guidance on Dodd-Frank's Diversity Clause*, N.Y. Times (Nov. 11, 2010, 5:04 PM), dealbook.nytimes.com/2010/11/11/seeking-guidance-on-dodd-franks-diversity-clause/.

18. *Id.*

19. *See e.g.*, Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, as amended, 42 U.S.C. 2000e *et seq.*; Civil Rights Act of 1991, Pub. L. No. 102-166, as amended 42 U.S.C. 1981 *et seq.*; Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-112, 123 Stat. 5.

After Section 342 was enacted, law firms promised clients that they would follow the provision's development and keep clients up to date about its details. This presented an opportunity for meaningful discourse about race. Proskauer, Rose, Goetz & Mendelsohn communicated with its clients that "[t]he ultimate impact of the Inclusion Offices will not be known until they are operational, but it certainly is one reason to stay abreast of developments under the Dodd-Frank Act and ensure that [our clients] are familiar with all of the relevant provisions contained in it."[20] Another law firm, Baker & McKenzie, assured its clients that the firm would "monitor the development of standards by the Inclusion Offices and report on them as the program" evolved.[21]

Section 342 presented an opportunity to elevate the discourse on race with respect to discriminatory attitudes that may exclude women and people of color from the financial sector. Corporate lawyers, however, failed to seize this opportunity. Proskauer issued a client-alert that denounced Section 342, telling its clients that the provision was "a potentially onerous provision."[22] Baker & McKenzie wrote to its clients dismissing Section 342 as a potentially "significant administrative burden for contractors and service providers to Dodd-Frank covered agencies."[23] Neither firm addressed the issue of racial and gender homogeneity in the private sector. Corporate law firms squandered an opportunity to address the issue of racial and gender injustice in the business setting.

Section 342 presented an opportunity to elevate the discourse on race with respect to discriminatory attitudes that may exclude women and people of color from the financial sector. Corporate lawyers, however, failed to seize this opportunity.

20. Uncertainty in the Dodd-Frank Act's "Office of Minority and Women Inclusion" Provision, Proskauer (July 27, 2010), http://www.proskauer.com/publications/client-alert/uncertainty-in-the-dodd-frank-act/.

21. http://www.bakermckenzie.com/files/Publication/3ebf09aa-2986-4b4b-9963-61bac14bd6fe/Preview/PublicationAttachment/b23e3bab-6131-4576-870e-64c0b01a3723/al_employment_ofccpanothername_jul10.pdf

22. Uncertainty in the Dodd-Frank Act's "Office of Minority and Women Inclusion" Provision, Proskauer (July 27, 2010), http://www.proskauer.com/publications/client-alert/uncertainty-in-the-dodd-frank-act/.

23. http://www.bakermckenzie.com/files/Publication/3ebf09aa-2986-4b4b-9963-61bac14bd6fe/Preview/PublicationAttachment/b23e3bab-6131-4576-870e-64c0b01a3723/al_employment_ofccpanothername_jul10.pdf

Diversity of Talent: Maximizing Diversity of Thought, Minimizing the Use of Problematic Heuristics

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How can organizations such as law firms avoid further cultivating and perpetuating cultural biases based upon stereotypes and value-assessments that are already rooted in a dominant culture characterized by privilege, Caucasian ancestry, and heterosexuality? Is the key to countering this a keener appreciation for how we define "talent"?

I. Introduction

Diversity and inclusion strategies have developed through a series of stages, and many of the articles and best practice suggestions within the IILP Review have showcased nuanced approaches to diversity and inclusion. These have developed through what we have categorised into three waves: (1) measures to remove indirect discrimination; (2) initiatives to encourage low participation groups to enter into and thrive within the legal profession; and (3) positive steps to promote an inclusive workplace beyond protected characteristics by attempting to limit the influence of unconscious bias on decision-making. But given the great efforts that have been made to increase equality and diversity, and to create more inclusive workplaces, some wonder why progress appears to have plateaued in some sectors. Our research has led us to examine the talent and organizational management literature—coupled with recent findings in cognitive psychology and decision-making—to consider whether there may be barriers in decision-making that make it difficult to realize the potential within diversity and inclusion strategies.

In this short article, we argue that there is a need to think carefully about what we mean by 'talent' in our organizations to ensure that we are not falling back on stereotypes, such as the most valuable people are those who have the highest fee-earning potential or the best resume loaded down with excellent grades, extra curricula achievements, and exceptional life experiences.[1] We also need a keen understanding of how to structure organizational decision-making if we are to provide developmental opportunities to allow talent to be nurtured and to flourish on individual and team levels. In turn, we suggest strengthening planning, management, and accountability cycles to good effect so as to ensure creativity and success in a context in which it is possible to deliver on the promise of fair access and promotion. With these in alignment, we suggest that effective talent management embraces diversity and inclusion, and successful diversity and inclusion initiatives can help us towards better talent management too.

1. Lisa Webley, Jennifer Tomlinson, Daniel Muzio, Hilary Sommerlad & Liz Duff, *Access to a Career in the Legal Profession in England and Wales: Race, Class and the Role of Educational Background, in* Diversity in Practice: Rhetoric or Reality 198 (Robert Nelson, Spencer Headworth, Ronit Dinovitzer & David Wilkins eds., 2016).

The way we think about talent and the way we make decisions about talent has a real impact on who we hire, who we retain, and how productive and harmonious our workplace is.

II. What is Talent?

Talent is a slippery concept and it can be difficult to state clearly what we mean by it and how to evaluate it within a given role, let alone within a department or an organization. If we cannot define it, it is very hard to recruit, develop, and promote people on the basis of their abilities and performance or to be sure that we are not denying talented people an opportunity while giving colleagues with mediocre performance too much credit for their efforts. We risk falling back on blunt proxies for talent, or on heuristics that will be influenced by our unconscious biases. For example, when hiring new entrants into the profession, some law firms in England and Wales look back to pre-law school grades to attempt to assess lawyer competence because they tend to recruit trainee lawyers before they have more than one year's worth of law school grades. We may describe the sub-conscious thought pattern as: "We want to hire the best people; the best people are the most intelligent people; very intelligent people score highly on standardized tests; we shall hire those with the highest standardized test scores and grades." Sub-consciously, "intelligence" and "grades" become synonymous, and although there is likely to be a reasonable correlation between the two, they are not the same thing at all. Intelligence is difficult to measure even given a clear understanding of what we mean by intelligent in a given situation (IQ, EQ, skills, attributes, knowledge, in combination, and so forth). In addition, other factors can play a major role in skewing performance in standardized tests (class, school attended, and so forth). What we usually want are the best lawyers for our organization to work within a particular context and to work well with the skill-set and personality traits of our existing lawyers. But rarely do we draw up job descriptions and specifications on that basis and then shortlist and interview candidates against the organization's needs. Nor do we often consider the talents of our existing staff and hire new staff to complement them. Talent management research suggests this to be by far the best way of selecting the right staff and retaining our best staff within a productive and effective organization.

III. Organizational Decision-Making

It is no surprise that the way we think about talent and the way we make decisions about talent has a real impact on who we hire, who we retain, and how productive and harmonious our workplace is. Most legal organizations have given a lot of thought to how to modify hiring, evaluation, and promotion processes better to measure excellent contributions from an increasingly diverse workforce. But there is a lot of frustration that these initiatives do not always yield the anticipated diversity gains. The difficulties may be, in part, a function of the way we are all programmed to make decisions; the fault may not lie with the diversity strategies themselves. Much has been written about unconscious bias but less about the practical ways in which we may counterbalance it. However, through advances in cognitive psychology, we now understand far more about how our thinking tends to default to

A diverse workforce affords a greater chance for diversity of thinking, which in turn provides the potential that the range of different biases may lead to challenge. It is not that people from non-standard backgrounds are free from bias, but their unconscious biases are likely to be different from the norm.

quick, seemingly efficient, "system one" thinking,[2] even in complex environments. Harnessing this knowledge may be the key to unlocking the next wave of diversity improvement while also providing real benefits in talent management too.

Daniel Kahneman explains that "system one" thinking produces a degree of certainty that leads us to believe that we have made well-evidenced, objective decisions.[3] In truth, our brains filter out complexity, make use of data we have readily at hand, and rely on our past experiences (and unconscious biases) so that we infer what we should do now based on what we did last time around. It gives us no access to new data or a way to consider what we may have missed out on as a result of our previous decision. It can be very useful for routine decision-making in straightforward situations, but it is less successful in nuanced environments where decisions need to be taken about development opportunities, resource allocations, or appraisals of professional excellence.[4] This is why it is all too easy for us to substitute subtle evaluations about a person's suitability for a role, a pay rise, or a promotion with a range of proxies, such as: being present in the office means being hard-working and committed and in turn better than someone who works flexibly from home part of the week.

It is relatively easy to make similar leaps about an individual's potential excellence as a lawyer with reference to how well they achieved in school and university subjects unrelated to the ones relevant to the organization's mission. Further, prejudices about the university a candidate has attended and the perceived quality of education they experienced (usually based on no objective evidence) can lead to negative assessments of a candidate's suitability for a professional role and may disproportionately affect minority candidates and those from lower socio-economic groups. These heuristics are computed in an instant without us being conscious that we are making unwarranted leaps; these leaps are rarely deliberate. We may sometimes reach the correct assessment of a person, but we may not have done it via reliable means, and along the way we will have overlooked some very talented people.

IV. Diversity Helps with "System Two" Thinking

This may go some way to explain why, in the absence of reflection, we often recruit, mentor, and promote people like us. Homogenous short-listing, interview panels, management teams, and boards

2. Daniel Kahneman, Thinking Fast and Slow (2011).
3. *Id.*
4. *Id.*

made up of people with similar backgrounds are likely to reinforce similar unconscious biases drawing upon similar partial evidence, and lead to decisions based on past practice rather than genuine reflection and evaluation on merit. A diverse workforce affords a greater chance for diversity of thinking, which in turn provides the potential that the range of different biases may lead to challenge. It is not that people from non-standard backgrounds are free from bias, but their unconscious biases are likely to be different from the norm. Challenge slows down our thinking, requires us to consider extrinsic evidence and to deliberate properly in the realm of "system two" thought.[5] Obstacles slow us down; they require us to reflect, to really look at evidence, to justify why we have reached our decisions and how they may be based on faulty reasoning. A diversity decision-making group can help with that. But that does not negate the need for a clear understanding of what kind of person we need for a specified and delineated role.

V. The Importance of Planning, Management and Accountability Cycles

Although many definitions of talent treat it as something rare or unusual, the reality is more mundane: different types of talent are needed in different roles in law firms. Although different forms of talent may be in short supply—for example, leadership talent or entrepreneurial talent—most organizations will need a mix of talented individuals in order to be successful. Moreover, talent is not something that one has or has not. As Carole Tansley notes: "Organisational talent, in order that it can be identified and developed, must be visible, stimulated and nurtured."[6] Individuals can develop and manage talent, but they can also waste and side-line talent. Our organization needs to have this mission at its core, grounded in all levels of the management, planning, and accountability cycles. If we are to capitalise on existing talent and develop it to even greater levels of excellence, this mission must be shared by lawyer-managers and not just the human resources team. Although this may seem like a lot of effort, person-organization fit theory suggests that high-performing women and minority professionals are more likely to base career decisions not just on whether a particular role is right for them but also how well the values of the organization are aligned with their own. Thus, retention of a strong and diverse workforce may rest on how well an organization manages talent within the firm.

VI. Conclusions

If we are serious about diversity and managing talent, we need to examine the things our organization uses as evidence to evaluate potential and current employees. The starting point is: what does talent look like in the role, in the team, and in the organization; and how do we justify the criteria we use to assess talent? Once we are clearer on that, it may be easier to audit the subtler ways in which our organization may make it more difficult for some than others—for example, the mechanisms we use to allocate work and development opportunities, the inputs beyond the obvious critical career points (such as job offers, yearly appraisals, and pay rounds) that we factor into our evaluations of employees' outputs. We need reliable systems that capture that data necessary to allow for balanced and sophisticated evaluations; it is positively beneficial to have processes that slow down our thinking to require us to justify and adjust our assumptions about candidates, colleagues, and our evaluations of their performance. It is not just a question of making colleagues accountable for their performance but all of us accountable for the decisions we take that impact their performance. If we can harness that, we are likely to have more talent filled and diverse workplaces with higher morale and better productivity.

5. *Id.*
6. Carole Tansley, *What do we Mean by the Term "Talent" in Talent Management?*, 43 Ind. & Comm. Training 5: 266 (2011).

IILP Review 2017: Gender Diversity and Inclusion Issues in the Legal Profession

Rising To The Challenge: How the NAWL Challenge Club is Helping Corporations and Law Firms Advance Women in the Profession

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Minority counsel programs – efforts aimed at increasing the use of racial and ethnic minority lawyers by Corporate America – have been in existence for decades. A systematic program to do the same for women lawyers has been lacking . . . until now. In a strategic collaboration, the National Association of Women Lawyers has joined forces with major corporate clients to encourage greater opportunities for high potential women law firm partners and companies interested in retaining them as outside counsel.

I. Introduction

The NAWL Challenge Club is a joint effort by corporations and law firms to provide relationship-building opportunities that will help women lawyers advance to equity partnership in their law firms. Knowing that the percentage of women equity partners has increased only slightly over many years and understanding that business generation is the key to equity partnership, the National Association of Women Lawyers (NAWL) developed the Challenge Club. The Challenge Club brings together high potential women law firm lawyers and companies interested in hiring female outside counsel.

II. History

In 2006, NAWL issued the NAWL Challenge to increase to at least thirty percent the number of women equity partners, women chief legal officers, and women tenured law professors. While some progress has been made in corporations and academia, the number of women equity partners remains relatively stagnant. The Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms,[1] conducted in October 2015, revealed that just eighteen percent of equity partners in AmLaw 200 firms are women. That number is only three percentage points higher than when the NAWL Challenge was issued nearly a decade earlier. NAWL recently issued a new challenge to the legal profession: one-third by 2020. Women comprise one-third of the legal profession. The goal of the challenge is to increase the number of women at the top levels to be representative of the overall number of women in the profession.

1. Lauren Stiller Rikleen, Women Lawyers Continue to Lag Behind Male Colleagues (2015), http://www.nawl.org/p/cm/ld/fid=506.

The NAWL Challenge Club is an initiative designed to help increase the number of women equity partners in law firms. The Challenge Club allows law firms to designate high potential women who are on the path but have not yet achieved equity partner status. The Challenge Club designates those law firm lawyers as the law firm club members, and it invites them to attend various networking events with corporate members. These events take place in connection with NAWL meetings around the country. In the first year of the NAWL Challenge Club, events were held in Chicago, New York, San Francisco, and Minneapolis. While all events are centered on networking, the gatherings have also included in-house speaker panels; "speed-networking" where law firm and in-house lawyers have short one-on-one sessions; roving reporter questions; and other activities to enhance relationship-building. NAWL encourages all participants to attend events with the goal of making personal and professional connections that will build their networks.

III. Challenge Club Membership Criteria

A. Law Firms

For law firms, the impetus to join should be evident; in few other places can a law firm provide its attorneys with personal access to in-house attorneys from a variety of industries. To join, law firms must be a NAWL sponsor and commit to increasing the number of women equity partners in their firms and the profession by:

- Increasing the transparency of the equity partnership process
- Increasing internal transparency regarding equity partnership requirements
- Sharing annually with NAWL, for internal Club purposes only, the percentage of women equity partners and/or the rates of change
- Designating lawyers and supporting participation
- Identifying high potential women lawyers who are on the path to equity partnership
- Supporting designated participants by covering travel and related expenses for networking events, presentations, and mentorship sessions
- Developing policies that support Challenge goals
- Granting origination credit for work that directly relates to Club participation
- Creating a flex-time policy and supporting its use within the firm
- Ensuring that work that originates through the Club is passed along, through succession planning, to other women within the firm
- Increasing the number of women lawyers on the firm's executive, compensation, recruitment, and other committees

In order to increase the benefits of Club membership, law firms should designate which lawyer(s) will consistently attend the Challenge Club events. The number of lawyers firms can designate corresponds with the firm's level of sponsorship of NAWL.

B. Corporate Legal Departments

NAWL asks Corporate legal departments to make available corporate attorneys, including decision-makers on legal work, and give opportunities to women lawyers in the Club to meet with them either at

NAWL events or visits to their corporate headquarters. There are no promises of work. There is no legal spend pledge to meet. For corporate legal departments interested in furthering diversity in the legal profession, joining the Club should not be a difficult decision. In joining, corporate members commit to supporting an increase in the number of women equity partners in law firms by:

- Increasing work given to women lawyers
- Increasing spend with women attorneys or dedicating a percentage of total legal spend to women lawyers every year
- Increasing the number of women outside counsel who serve as their lead trial lawyers, lead project lawyers, and relationship partners
- Welcoming at least four law firm members to their locations for substantive presentations to legal department members
- Participating in networking opportunities
- Participating in two to three Club networking events held in conjunction with NAWL's Annual Meeting, Mid-Year Meeting, the General Counsel Institute, and other regional programs
- Considering law firm members for future work
- Mentorship and publicity
- Creating mentorship opportunities for women lawyers
- Granting permission to publicize membership and participation in the Club

In addition, corporate members should be willing to have an open dialogue with the leadership of their outside law firms about the advancement of women into positions of leadership within the firm. Corporations should be ready to guide and partner with Club participants from firms to work with the corporation and promote the work being done to law firm leadership whenever possible.

IV. The Importance of This Effort

A. Law Firms

Why should law firms—and the men who primarily run them—be interested in creating a pathway to partnership and equity partnership for the women attorneys in their ranks? When law firms lose highly talented lawyers, particularly women lawyers, whom the firms have collectively spent hundreds of thousands of dollars to train and develop, someone should take notice and take steps to end it. Preventing the attrition of women lawyers leads to better efficiency, better client service, and better morale for all lawyers at every level of the firm. Additionally, the ability to demonstrate a high percentage of female lawyers up and down the firm's pipeline will help the firm recruit the best talent in the future. Effects of gender disparity have an equally big impact on attorney morale. To keep all attorneys performing at the highest levels and to prevent costly attrition, law firms must find ways to ensure women lawyers have equal opportunities to secure business and provide a path to equity partnership and other firm leadership positions. This kind of empowerment can start through the firm's membership in the NAWL Challenge Club and supporting its women lawyers who participate in it.

For law firms, the benefits to membership in the NAWL Challenge Club go far beyond the individual women who directly participate. The Challenge Club provides opportunities for the law firm to get in

The NAWL Challenge Club provides access, information, and opportunity to women lawyers from participating law firms. Corporate legal departments are already committed to diversity efforts. The NAWL Challenge Club allows corporations to advance their existing goals by meeting highly talented law firm women who can increase the diversity of the company's outside counsel network.

front of clients that would not otherwise be available. It also demonstrates to clients and potential clients that the firm shares their values with respect to diversity efforts. As it relates to those individuals who directly participate, a firm's designation of a woman lawyer is a confirmation the firm believes in her and is committed to supporting her success in the firm. Those women have the opportunity to forge new relationships and accelerate serendipity with existing contacts. They benefit by growing their network and that can lead to work. That work not only benefits firms as a whole but also will help women lawyers achieve equity partnership.

B. Corporate Legal Departments

Over the last two decades, dating back to when DuPont started using diversity as a criterion in the selection of law firms, corporate legal departments have increasingly been seeking a more diverse and inclusive environment in the legal profession and in the law firms they utilize. That mission has included, as it should, efforts at gender diversity and parity in the profession. Collectively, these corporations have spent tens of millions on a commitment to women in the profession and other like-minded diversity ventures. Yet, it is clear by the NAWL Survey that women continue to leave law firms in larger numbers than men and are still not equally represented among equity partners, firm committee chairs, and other positions of leadership.

The Challenge Club provides those companies interested in seeing gender diversity and equity in the legal profession a chance to meet women lawyers aspiring to equity partnership and have real engagement in their careers. It is not simply writing a check for sponsorship. It is not a corporate press release in support of diversity. The NAWL Challenge Club provides access, information, and opportunity to women lawyers from participating law firms. Corporate legal departments are already committed to diversity efforts. The NAWL Challenge Club allows corporations to advance their existing goals by meeting highly talented law firm women who can increase the diversity of the company's outside counsel network.

Corporations and corporate legal departments can be a guiding light for law firms. As clients and potential clients, companies can give force to initiatives like the NAWL Challenge Club. It starts with signing on as members and participating in Club events, but it must go beyond. Companies that vocalize the need for lead attorneys on their matters to be women send a strong message while raising the profile and

importance of the women attorneys within law firms. Corporations can reinforce the importance of meaningful gender diversity in law firms by providing the motivation to increase it at all levels of the law firm. Law firms will be prompted to recruit and develop more women lawyers who can work on client matters and will necessarily find ways to not only keep them in the firm but to advance them into firm leadership.

V. Early Success

The strength of the Challenge Club is the power of the professional networks possessed by individual participants, whether from a law firm or legal department. When all the networks are joined together, the power is magnified and the individual networks become a large, unified network acting in concert to achieve a common purpose. In this case, the purpose of these networks is the support, retention, and advancement of women in the legal profession, and specifically to increase the number of women equity partners in law firms.

In 2015, its inaugural year, the NAWL Challenge Club had corporate members and guests from over twenty-five separate companies representing a number of industries, including retail, insurance, digital commerce, financial services, restaurants, technology, software, medical devices, and branding/sourcing services. More than thirty-five law firms participated in Club events around the country. Several of the NAWL Challenge Club members earned new work in the last year through the connections made in the Club. Others were invited to visit corporate legal departments to pitch work and to learn more about the corporate members. Many networks grew and opportunities were enhanced.

By investing a small amount of time and resources to create access for women lawyers, both law firms and legal departments can demonstrate support for gender equity in the legal profession. The Challenge Club and its efforts will not change the demographics of the profession overnight. It will not be quick, nor will it be easy; but sometimes the difficult must be done. The good news is that the Challenge Club and its members are ready and capable to take on the task. For those interested in the Challenge Club's mission: join, participate, and even lend your network to the cause. There are few legal profession initiatives where such minimal effort can produce such momentous results.

The mission of the National Association of Women Lawyers is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. To learn more about NAWL and how your organization can join the NAWL Challenge Club, go to http://www.nawl.org/nawlchallengeclub or contact NAWL officers and staff.

The strength of the Challenge Club is the power of the professional networks possessed by individual participants.

The Next Generation of Women's Diversity Initiatives

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It's the 21st Century but to hear some people, gender diversity issues are still mired in the 20th Century. Here, O'Donnell and Owens summarize women's initiatives need to consider, look like, and be, in order to truly help advance women in the legal profession. Here, they describe the Law Firm Women's Initiative and how to drive it forward.

I. Introduction

Diversity is a stated goal of every law firm and corporation today. If you look at the website of any major law firm, you will see that the firm prominently displays diversity and inclusion in its core values and initiatives. Following excellence in legal work, diversity and inclusion typically rank as top priorities for every legal organization. Despite the emphasis placed on these initiatives, however, little progress has been made to change the look of most major law firms.

Men and women graduate from law school in roughly equal proportions, and the summer and first year associate classes of law firms reflect this mix. Law firms celebrate these new classes of associates year after year, yet those who do not move up the ranks tend to be forgotten. It is in the later years that the gender divide begins and the number of women reaching first tier partnership followed by equity status dwindles dramatically.

It comes as a surprise to many in the profession that women still need separate diversity initiatives. However, few realize the severity of women's attrition from law firms. Women enter law firms in equal proportion to men, but make up only sixteen percent of partners in the equity ranks. More focus and attention needs to be paid to engage and retain women between the years of mid-level associate and promotion to equity partner. Creating a path to equity partnership that contains milestones along the way should be the focus for the next generation of women's diversity initiatives.

II. Challenges Faced By Female Attorneys

Women face a number of challenges in the climb to equity partner. These challenges include: lack of female role models; implicit bias; ad hoc succession planning for large or institutional clients; and limited opportunities for management and leadership positions. Taken as a whole, these challenges provide women with less visibility within the firm and fewer opportunities for work on the best cases or transactions.

It is important to note that "work/life balance" or "family" issues are not included in the list of challenges; this was not an oversight. While it is clear that family responsibilities still fall primarily on women in many households, this is not the case across the board, and women should no longer be

In order to groom women to succeed in this system, women's initiatives must shift their focus to providing female attorneys the tools, knowledge, confidence, and opportunity to build and manage large books of business and key client relationships.

stereotyped in this manner. Technology has made it possible for women to stay connected and work remotely when needed, and to juggle family responsibilities that historically might have taken them out of contact with their firms.

III. The Law Firm Women's Initiative

Over the past fifteen to twenty years, most law firms have opted to address gender diversity issues by forming women's programs (sometimes called initiatives or forums), often as a subset of the larger diversity initiative. While many of these programs are highly regarded by women in law firms, without creating measurable change in the number of women at the partnership level, their effectiveness is in question. Serving as a "safe haven" for women in the firm to share experiences does not necessarily provide the valuable resources that women need to stay busy and engaged in high-profile legal work.

What should a women's initiative tackle and how should it be structured to create real institutional change and address the issues set forth above?

The recession that we recently faced demonstrated that power was in business. Work force reductions disproportionately affected women in law firms, often under the notion that women lacked a book of business or the key seat with an institutional client. It was clear that diversity initiatives took a back seat to firm performance and profitability. With law firms operating on a year-to-year basis, the firms reset compensation and performance each year, requiring every lawyer to prove her worth over and over again. This "what-have-you-done-for me-lately" system is unforgiving, but it is the model that firms have been perpetuating and it is familiar to most law firm partners. In order to groom women to succeed in this system, women's initiatives must shift their focus to providing female attorneys the tools, knowledge, confidence, and opportunity to build and manage large books of business and key client relationships.

Key elements in driving the initiative forward are the following:

A. Management Buy-In

There is nothing more important for the success of a program or its attorneys in a law firm than to have the "buy-in" of those in senior leadership and those with the largest books of business. Women's initiatives can no longer be solely for women to support women. Women cannot isolate themselves from their male counterparts. This creates undue tension among men and women in the firm and hidden resentment regarding budgetary allocations and special programs. If a women's initiative is

With fewer female role models and fewer opportunities to engage with more senior partners over lunch, cocktails, or elsewhere, women do not get the same type of informal mentoring that comes naturally in these settings.

focused on business generation and promotion, then involving men who can share their experiences in developing a book of business (or taking on a key client role or those with key client relationships and business) can prove to unlock valuable knowledge and open opportunities. It can also unlock opportunities to bring in more female clients and showcase the women in the firm. If the program generates the support (and even better, the presence) of the managing partner or senior leadership, the firm will immediately give it a much higher priority and status in the firm.

B. Education of all Attorneys

Implicit bias—stereotypes that unconsciously affect our decision making—is found in all attorneys. However, with proper education and understanding, the majority will learn to recognize this behavior and think twice before taking certain actions. If you can educate attorneys about this issue in a non-threatening way so they can recognize potential bias in their own actions, it will begin to change behavior.

Women also need to be trained in networking, business generation, and credentialing—topics that laws schools do not teach and may not be intuitive. With fewer female role models and fewer opportunities to engage with more senior partners over lunch, cocktails, or elsewhere, women do not get the same type of informal mentoring that comes naturally in these settings. It is also less natural for women to ask for business and be direct about what they want. Consistent training can help to alleviate these issues.

All attorneys should understand why diversity initiatives are important, how they relate to the success of the business, and their role in helping the firm accomplish its goal of a more diverse and inclusive environment. Understanding what clients are looking for in their law firms, the benefits of having more diverse pools of thought on client teams, and what doors can be opened will go far in changing the general attitude among law firm partners. Even understanding that women face different struggles will bring to change perceptions and even succession planning strategies.

C. Offer Solutions

In order to effectuate change, we must go beyond identifying the problem and develop creative solutions. Too often, women shift the burden to others to find a solution. For any problem or complaint, there should be a corresponding proposal on how to resolve (or at least start to resolve) that issue. Firms are more likely to address those issues with potential avenues for resolution rather than issues that do not have an obvious path for resolution. Being part of the solution, rather than part of the problem, will open the ear of management much more quickly and should lead to better results.

For some, the sacrifices or choices that were made to achieve success came with bitter consequences, and women do not want to share these stories or fear that it will scare the next generation away from working toward the same level of success.

D. Women Helping Women

As women climb the ranks, they need to look back and offer opportunities to their younger or more junior counterparts. While this seems intuitive, women are often hard on one another and sometimes can be seen as roadblocks. For some, the sacrifices or choices that were made to achieve success came with bitter consequences, and women do not want to share these stories or fear that it will scare the next generation away from working toward the same level of success. If senior and junior women are open and work together to discuss their career paths, it may unlock some of the mystery that clouds women looking at partnership.

D. Transparency

Women need to understand the fabric of the law firm and its components, and the firm needs to be transparent in sharing information. The metrics for success need to be clear; and both senior leadership and those climbing the ranks need to be forthright and honest in their intentions. Women tend to believe that flying under the radar and working hard is all that is needed, but as many will recognize, firms more often reward those that are vocal in their intentions.

IV. Case Study on Collaboration as an Industry Initiative

While each law firm believes that its approach to diversity, training, and educating its lawyers is unique and unprecedented, law firms face common challenges, and every organization has a limit to the number of topics and programs it can offer. Diversity and inclusion issues are systemic problems in the legal industry, and both in-house and outside collaboration are useful in addressing those issues.

Nine years ago, a group of women leading the women's programs at their respective law firms in Chicago came together to see if there would be enough interest in forming a group that could work to better share and collaborate on new areas and topics for law firm women's initiatives. Having reached a roadblock as to what else could be accomplished in their respective firms, these women gathered to share ideas about how take their programs to the next level. Today, the Coalition of Women's Initiatives in Law, with chapters in Chicago and New York, stands as a model of collaboration for law firms and in-house attorneys to come together to make change by giving women the tools to further themselves in the legal profession.

By having the clear goal of increasing the success of women in the legal profession, the Coalition motivates all the women involved to push their careers to the next level.

This section provides an overview of how the Coalition structures its membership, governance, and programming. Its goal is to serve as a model for other diversity initiatives in order to effect change in the profession.

First, for law firms, firm-level membership is required. The Coalition requires law firms to join as members, allowing for a deeper commitment to the mission of promoting women in the legal profession and outreach to a greater number of attorneys. Coalition programs are open to all attorneys at member law firms, which increases participation and outreach and allows younger attorneys to attend programming without having to ask permission or tap an expense budget. In addition, each member law firm delegates specific attorneys who are tasked with communicating information regarding the Coalition to other attorneys at their firm. Delegates also serve on the Board of Directors of the Coalition. As a result, delegates have a leadership role and the Coalition is relieved of the burden of communicating and maintaining a database of thousands of attorneys at member firm.

Second, the Coalition has clear objectives and goals. The mission of the Coalition is to benefit its members by providing positive avenues of communication, collaboration and guidance that help members enhance the recruitment, retention and promotion of women lawyers and support the implementation and relevancy of women's initiatives. By having the clear goal of increasing the success of women in the legal profession, the Coalition motivates all the women involved to push their careers to the next level. Coalition delegates elevate their own careers through Coalition programs and initiatives while helping others to succeed as well.

Third, the Coalition is not afraid to break out of the mold. In its first few years, the Coalition grew exponentially, as did its programming. With this growth, the leadership of the Coalition realized that its objectives—the promotion of women attorneys in law firms—could apply equally to in-house attorneys. In 2011, the Coalition expanded its membership to include in-house attorneys. The Coalition structured in-house membership somewhat differently from law firm membership, in order to encourage in-house attorneys to join and to accommodate the many different sizes of companies in which in-house attorneys work. Lawyers who work in-house at companies can join by company (like a law firm) or individually. The Coalition had an immediate influx of in-house members, and now includes attorneys from more than thirty companies. At the same time, perhaps because of the inclusion of in-house attorneys and the increased opportunities to meet and network with these individuals, the number of law firm members in the Coalition doubled.

Law firms need to pick up the pace of progress for women in order to meet the expectations among non-legal corporations—the clients who fuel the legal industry.

Fourth, the Coalition utilizes the talents of its members. The Coalition has a large board and several committees chaired by individuals who are very passionate about the tasks they are undertaking for the Coalition. The women who chaired these programs used their differing perspectives to make each event successful. Both of the authors served as president of the Coalition and, while the position was incredibly demanding, it was critical to the success of the group to have a talented team in place.

Fifth, the Coalition uses feedback and/or criticism to its advantage. At one of the Coalition's largest events, leadership of the group learned that the lack of ethnic diversity at the event and other Coalition events disappointed many attorneys. The Coalition immediately took action and reached out to other women's groups in Chicago, including the Black Women's Lawyer's Association, the Asian American Bar Association, and the Chicago Committee, to join together for a large event on diversity in the profession. Working with these groups has enabled the Coalition to gain exposure and better diversify.

Sixth, the Coalition directly promotes and credentials its members by nominating them for attorney awards. The Coalition raises the profile of its members by encouraging them to apply for awards and assisting with and often drafting nominations. As a result, the Coalition has helped to increase the number and visibility of women receiving attorney awards.

Lastly, the Coalition is always ready to "sell" by updating prospective members on the benefits of joining. The Coalition utilizes newsletters and large events with high-profile attorneys to educate potential members. The Coalition also organizes committees and task forces to work on expansion. This year, the Coalition created an expansion committee, which led to a new chapter in New York. Within, a year the New York Coalition has a vibrant membership, monthly programming, and a board modeled on the one in Chicago. The fact that New York attorneys at firms and companies immediately embraced the idea of the Coalition suggests that an outside group that assists with diversity initiatives at an institutional level is an important component of taking steps to effect change.

Increasing the pace of integration of women at the top of the legal profession is a difficult task. Law firms need to pick up the pace of progress for women in order to meet the expectations among non-legal corporations—the clients who fuel the legal industry. By changing the model and working together, individual legal organizations can benefit from accelerated programming and opportunities that will exemplify the commitment of the organization to changing the face of the legal industry.

IILP Review 2017: Racial and Ethnic Diversity and Inclusion Issues in the Legal Profession

Looking Back to Push Forward: An Overview of Asian American Involvement in the Civil Rights Movement

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Asian Americans may not be the first group one associates with civil rights issues. Here, Mita provides perspectives on the Civil Rights Movement and the roles Asian Americans have played and the impact that has had in shaping society and the way we look at civil rights.

I. Introduction

Typically when I am engaging someone in a discussion about civil rights and whether certain marginalized groups have been or are still subject to oppressive policies, norms, or societal constructs, the conversation touches upon the plight of the black community in addition to certain civil rights leaders, including Dr. Martin Luther King, Jr., Thurgood Marshall, Malcolm X, Rosa Parks, Bayard Rustin, and Dorothy Height. There is no doubt that their life stories, their achievements, and their teachings merit their celebrated places in our nation's history. Indeed, without their leadership in the face of harrowing and rank subjugation, violence, and discrimination, our society today may very well be far different and lacking in the liberties to which communities of color have grown accustomed.

It must also be said, however, that prejudice, injustice, and efforts to combat the same are not solely limited to the black community. Since Asian groups first began arriving to the United States, communities of Filipinos, Chinese, Japanese, Koreans, and Asian Indians have had to suffer through unjust race-conscious laws that legislators enacted with the intention of depriving these communities of various freedoms. Moreover, like the black community, the Asian American community has had to find its voice and its own leaders. It has also had to find common ground with other communities of color so that each group could build upon the other.

The purpose of this article is to provide a brief history on the discriminatory laws and some of the landmark cases that have affected different Asian American ethnic groups in the United States. This article will also discuss the rise of a cohesive Asian America and the involvement of Asian Americans in seeking broader racial equality and justice by working with other communities.

II. A History of Institutionalized Bigotry Directed at Asians Arriving in America

A. Immigration

Asians were no different from their European counterparts who left their countries in search of lives that offered more than what they previously had. In many cases, early Asian immigrants, including the Chinese, began their lives in the United States as a source of cheap labor.[1] However, once an Asian group

1. *See* Ronald Takaki, Strangers From A Different Shore: A History of Asian Americans 33-36 (rev. ed. 1998).

appeared to be an economic threat to white labor, states and the federal government stepped in.[2] The Page Law of 1875 was one of the first efforts to curtail Chinese immigration to America. The Page Law prohibited the entry of women into America for "immoral purposes," but effectively served to bar both Chinese prostitutes and wives of Chinese laborers.[3] In 1882, Congress enacted the Chinese Exclusion Act, which placed a ten-year bar on Chinese immigration to the United States. The Chinese Exclusion Act also denied naturalized citizenship to any Chinese immigrant living in the United States.[4] The Chinese Exclusion Act excluded entirely the Chinese until legislators repealed it during the height of World War II when the United States viewed China as an ally.[5]

A declining Chinese labor force due to their exclusion meant that cheap labor needed to come from elsewhere. This led to the influx of Japanese immigrants, followed by Filipinos, Koreans, and Asian Indians. Once again, over time, those who championed white economic supremacy began to see these groups as challengers; thus, efforts were made to seek their exclusion. First, the Gentlemen's Agreement of 1908 between the United States and Japan restricted the immigration of Japanese laborers to the United States.[6] In exchange, families of Japanese laborers were allowed to immigrate to the United States.[7]

Subsequently, the Immigration Act of 1917 excluded immigrants from an "Asiatic barred zone," which included China as well as a large geographic area covering South Asia, Arabia, and Indochina.[8] Additional comprehensive immigration reform by way of the Immigration Act of 1924 created national origin quotas based on the number of immigrants in the United States as of the 1890 census data.[9] Importantly, however, the Act specifically barred the immigration of persons whom the United States would not allow to become citizens.[10] As a result, the United States barred individuals from all Asian countries, including Japan, from immigrating to America.[11]

Despite the broad scope of the Immigration Act of 1924, Filipinos were still allowed to immigrate to the United States due to the fact that the Philippines was an American colony.[12] However, the same nativist sentiment that brought about the passages of previous Asian exclusion movements eventually included Filipinos. The Tydings-McDuffie Act in 1934 promised the Philippines commonwealth status, but that status also came at a price. Specifically, Filipinos were now subject to the Immigration Acts of 1917 and 1924, and the United States likewise excluded them from immigrating to America.[13]

B. The Assault on Asians' Rights to Become Naturalized Citizens, Own Property, and to Marry

In addition to statutes precluding Asians from immigrating to America, the federal government also sought to preclude Asians from becoming naturalized citizens or owning property, and restricted their ability to marry. For instance, in 1790, Congress passed the Naturalization Act, specifying that "any alien, being a free white person" residing in the United States for a period of two years may be allowed to apply for naturalized citizenship.[14] The purpose of the 1790 Naturalization Act was to exclude blacks and

2. *See id*. at 101.
3. *See id*. at 40.
4. *See id*. at 111.
5. Angelo N. Ancheta, Race, Rights, and the Asian American Experience 70 (2d ed. 2006).
6. *See* Takaki, *supra* note 1, at 46.
7. *See id*.
8. *See* Ancheta, *supra* note 5, at 72.
9. *See* Japanese American Citizens League, The Journey from Gold Mountain: The Asian American Experience 9-10 (2006), https://jacl.org/wordpress/wp-content/uploads/2015/01/2006_GoldMountain_CurGuide.pdf [hereinafter Gold Mountain].
10. *See* Helen Zia, Asian American Dreams: The Emergence of an American People 31 (2000).
11. *See* Ancheta, *supra* note 5, at 72.
12. *See id*. at 73. In 1898, the United States purchased the Philippines from Spain for $20 million following the conclusion of the Spanish-American War. *See also* Gold Mountain, *supra* note 9 at 10.
13. *See* Ancheta, *supra* note 5, at 73.
14. Andrew Glass, *U.S. Enacts First Immigration Law, March 26, 1790*, Politico (Mar. 26, 2012), http://www.politico.com/

In addition to statutes precluding Asians from immigrating to America, the federal government also sought to preclude Asians from becoming naturalized citizens or owning property, and restricted their ability to marry.

Native Americans from obtaining citizenship; however, Congress extended the ban to Asians. In 1855, a San Francisco federal district court denied the citizenship application of Chan Yong, a Chinese immigrant, even though Yong argued that he was "white" in appearance. The court held that Chinese were not "white."[15] Similarly, in *Ozawa v. United States*,[16] Takao Ozawa challenged the constitutionality of the 1790 Naturalization Act, arguing that his skin color was white and that he was the same as a white American in all other respects. The Supreme Court upheld the denial of his citizenship application and held that "the words 'white person' were meant to indicate only a person of what is popularly known as the Caucasian race."[17] The following year, in *United States v. Thind*, the United States denied an Asian Indian named Bhagat Singh Thind's citizenship after he proved through scientific evidence that Asian Indians belonged to the Caucasian race.[18] The U.S. Supreme Court backed away from its prior holding in Ozawa and held that the Act did not use the word "Caucasian" in the text. The Court went further to state that "whiteness" should be defined using "what is commonly recognized as white" in the United States as opposed to "scientific origin."[19]

Various states, particularly California and Washington, leveraged the fact that Asian immigrants could not become citizens by also thwarting their right to own property through the use of alien land laws. In 1913, California targeted Japanese immigrants by prohibiting landownership to persons ineligible for citizenship.[20] The 1913 law also limited Asian immigrants from being able to lease land for more than three years.[21] Japanese immigrants attempted to maneuver their way around the law by purchasing land in the name of their American-born children. However, California closed the loophole in 1920 by precluding the same "aliens ineligible for citizenship" from leasing agricultural land, acquiring land in the names of their native-born children, or owning stock in any corporation owning real property.[22]

Additionally, both Congress and several states directly interfered with Asians' rights to marry. The Cable Act of 1922 stated that any woman who is an American citizen and marries a non-citizen ineligible for citizenship forfeits her citizenship status.[23] State statutes, such as the California Civil Code,

story/2012/03/the-united-states-enacts-first-immigration-law-074438 (emphasis added).

15. *See* Takaki, *supra* note 1, at 113. *See also* Ancheta, *supra* note 5, at 66 (citing In re Ah Yup, 1 F. Cas. 223 (C.C.D. Cal. 1878) (upholding the racial bar against Chinese immigrants)).

16. Ozawa v. United States, 260 U.S. 178 (1922).

17. *Id*. at 197.

18. *See* United States v. Thind, 261 U.S. 204 (1923).

19. *Id*. at 214-215.

20. *See* Ancheta, *supra* note 5, at 78.

21. *See id*.

22. *See* Takaki, *supra* note 1, at 205.

23. *See* Ancheta, *supra* note 5, at 68.

In total, the United States removed over 110,000 persons of Japanese ancestry from the West Coast, and two-thirds of that number were American citizens.

barred marriages between a white person and a "Negro" or a "Mongolian."[24] Later, fear of Filipino bachelor communities led to increased tension and violence because of the perception that Filipino men were attracted to white women. The thought of Filipinos breeding with whites threatened whites' notions of white racial purity.[25] As a result, California later amended its Civil Code in 1933 to include "Malays," so the law prohibited Filipinos from marrying whites.[26]

C. The Forced Detainment and Incarceration of Persons of Japanese Ancestry During World War II

The most notable form of discrimination towards any particular Asian ethnicity occurred during World War II following the December 7, 1941, bombing of Pearl Harbor. Building on the anti-Japanese climate that existed on the West Coast leading up to the war, calls for exclusion of the Japanese community reached a fever pitch following the attack. Despite government reports that the Japanese posed no security threat, President Franklin D. Roosevelt issued Executive Order 9066 on February 19, 1942,[27] authorizing the Secretary of War to create military areas in order to secure persons of Japanese ancestry under the guise of national security.[28] Congress eventually backed the Order in the passing of Public Law 77-503, which authorized a prison sentence and a fine for any person who violated military orders.[29]

Following the issuance of Executive Order 9066, Lieutenant General John L. DeWitt, Military Commander for the Western Defense Command, issued over one hundred military orders that applied to the Japanese on the West Coast.[30] The government placed Japanese under immediate curfew along with German and Italian nationals.[31] In March 1942, General DeWitt "ordered all persons of Japanese ancestry in California, parts of Arizona, Oregon, and Washington to turn themselves in at temporary detention camps near their homes."[32] These temporary holding areas, comprised of fairgrounds, race tracks, and exhibition halls, were used to detain the Japanese American population until the United States could construct more permanent areas away from military zones.[33]

Having only been allowed to bring what they could carry, the Japanese subject to the exclusion order had a mere matter of days to pack their belongings or dispose of their possessions and property.[34] In total, the United States removed over 110,000 persons of Japanese ancestry from the West

24. *See* Gold Mountain, *supra* note 9, at 12.
25. *See id.*; *see also* Takaki, *supra* note 1, at 329.
26. *See* Gold Mountain, *supra* note 9, at 12.
27. *See* Zia, *supra* note 10, at 41.
28. *See* Ancheta, *supra* note 5, at 81.
29. *See* Japanese American Citizens League, A Lesson in American History: The Japanese American Experience 8 (5th ed., 2011), https://jacl.org/wordpress/wp-content/uploads/2015/01/covers.pdf [hereinafter Japanese American Experience].
30. *See id*.
31. However, the United States did not detain or uproot persons of German and Italian ancestry *en masse* like the Japanese West Coast community. *Id*.
32. *Id*. at 10.
33. *See id*. at 11.
34. *See id*. at 11; Zia, *supra* note 10, at 42.

While the claim was made that this wholesale incarceration was in the name of national security and military necessity, the United States did not subject the nearly 100,000 Japanese living in Hawaii to mass incarceration or evacuation despite the fact that their numbers were highly concentrated. They lived near United States military installments on Hawaii—3,000 miles closer to Japan than their West Coast counterparts.

Coast, and two-thirds of that number were American citizens.[35] The United States constructed ten hastily-prepared camps in America's most remote and desolate areas in California, Idaho, Wyoming, Utah, Arizona, Colorado, and Arkansas.[36] Each camp held between 7,000 and 18,000 Japanese Americans.[37]

Moreover, while the Secretary of War broadly wrote Executive Order 9066 and it contained no geographic restriction, the Order required only the Japanese living on the West Coast and in half of Arizona to comply with the evacuation.[38] Thus, while the claim was made that this wholesale incarceration was in the name of national security and military necessity, the United States did not subject the nearly 100,000 Japanese living in Hawaii to mass incarceration or evacuation despite the fact that their numbers were highly concentrated. They lived near United States military installments on Hawaii—3,000 miles closer to Japan than their West Coast counterparts.[39]

Without regard to the pervasive racism and mistrust by their own government, nearly 33,000 Japanese Americans whom the United States had forcibly detained in those concentration camps, along with the Japanese Americans from Hawaii, served in the U.S. military during World War II under the combined 442nd Regimental Combat Team, the 100th Battalion, and the Military Intelligence Service.[40] Many still recognize the 442nd Regimental Combat Team as the most decorated unit in American military history for its size and length of service.[41]

Japanese Americans made other efforts to challenge their incarceration and the military orders that limited their freedoms. Gordon Hirabayashi and Minoru Yasui challenged the government curfew placed on Japanese Americans prior to the evacuation.[42] In both cases, the U.S. Supreme Court upheld the constitutionality of the government curfew order as applied to citizens and found that such orders were necessary to protect national security interests.[43] Likewise, in *Korematsu v. United States*, Fred

35. *See* Ancheta, *supra* note 5, at 81.
36. *See* Zia, *supra* note 10, at 42.
37. *See* Japanese American Experience, *supra* note 29, at 11.
38. *See id*. at 8.
39. *See id*. at 10; *see also* Takaki, *supra* note 1, at 381.
40. *See id*. at 13-14.
41. *See* Zia, *supra* note 10, at 43.
42. *See* Hirabayashi v. United States, 320 U.S. 81 (1943); *see also* Yasui v. United States, 320 U.S. 115 (1943).
43. *See id*.

Following the conclusion of World War II, Asian Americans began to work together to chip away at a number of anti-Asian laws, both through the courts and the political process.

Korematsu challenged the military exclusion order, but the Supreme Court held that despite the implication of a suspect classification, the government's exclusion met the strict scrutiny standard due to the government's claim that Japanese posed a threat to the national security of the region.[44] The U.S. Supreme Court's ruling in *Ex Parte Endo* held that the government could not continue to indefinitely detain concededly loyal American citizens.[45] The case was brought on behalf of Mitsuye Endo, an American citizen who complied with all military orders and filed a writ of habeas corpus in July 1942.[46] The Court issued its decision on December 18, 1944 but, by then, the Western Defense Command had rescinded its military exclusion and detention order.[47]

III. Fighting Injustice and Finding An Asian American Voice

A. Remedial Justice for Asian Americans

Following the conclusion of World War II, Asian Americans began to work together to chip away at a number of anti-Asian laws, both through the courts and the political process. These efforts included the following:

- In *Oyama v. California*,[48] California attempted to file several escheat actions against Japanese American owners of real property. One of the actions California filed was against Fred Oyama, who had been granted title to land as a minor prior to the Japanese American incarceration. The Supreme Court held in 1948 that California's Alien Land Act violated the Equal Protection Clause of the United States Constitution as applied to Fred Oyama, an American citizen.[49] Lobbyists for the Japanese American Citizens League (JACL) later convinced the California legislature to reimburse individuals whose lands had been escheated.[50]
- In 1948, the Supreme Court invalidated California's statute that prohibited aliens ineligible for citizenship from fishing in ocean waters off the California coast. The Court held that the law improperly violated the Equal Protection Clause as it was based solely on the person's alien status.[51]

44. *See* Korematsu v. United States, 323 U.S. 214, 216 (1944).
45. *See* Ex Parte Endo, 323 U.S. 283 (1944).
46. *See* Japanese American Experience, *supra* note 29, at 14.
47. *See id*. at 16.
48. Oyama v. California 332 U.S. 633 (1948).
49. *See id*.
50. *See* Bill Hosokawa, JACL in Quest of Justice: The History of the Japanese American Citizens League 291-92 (1982).
51. *See* Ancheta, *supra* note 5, at 85-6 (citing Takahsahi v. Fish and Game Comm'n, 334 U.S. 410 (1948)).

The term "Asian American" is a political term reflecting a similarity in the way different Asian American communities were treated as a whole when confronting state institutions.

- In 1949 and 1952, Oregon and California courts, respectively, declared their states' alien land laws unconstitutional.[52] Further, in 1967, Washington repealed its alien land law.[53]
- Through the efforts of the Japanese American Citizens League and its chief Washington lobbyist, Mike Masaoka, Congress passed the McCarran-Walter Act of 1952, which included a provision that eliminated race as a consideration for naturalization.[54]
- Congress subsequently passed the Immigration Act of 1965, which removed national origin quotas from immigration. Under the new immigration scheme, each country that was not in the Western Hemisphere was allocated 20,000 visas.[55] Asians could immigrate to the United States under the employment-based preference system or through the Act's family-based preference system, which aimed to reunite families.[56]
- On February 19, 1976, President Gerald R. Ford rescinded Executive Order 9066.[57]
- Federal courts overturned the convictions for Fred Korematsu,[58] Gordon Hirbayashi,[59] and Minoru Yasui[60] when they violated the government's military orders regarding the exclusion and incarceration of Japanese Americans during World War II.
- In 1980, at the urging of several Japanese American members of Congress, Congress passed a law creating the Commission on Wartime Relocation and Internment of Civilians to study the incarceration and effects on persons of Japanese and Aleutian ancestry. A year later, the United States established a nine-member federal commission, which reviewed more than 10,000 documents and interviewed over 750 witnesses in nine cities throughout the United States. The Commission published its findings in June 1983 in a report titled, Personal Justice Denied.[61] The report confirmed that the incarceration of Japanese Americans was not "justified by military necessity" but was the byproduct of "race prejudice, war hysteria, and a failure of political leadership."[62] Overall, the Commission estimated that the Japanese community's total loss according to a 1983 value equated to between $810 million to $2 billion dollars.[63]

52. *See* Namba v. McCourt, 185 Ore. 579 (1949); *see also* Fujii v. California, 38 Cal. 2d 718 (1952).
53. *See* Ancheta, *supra* note 5, at 86 (citing 1967 Wash. Laws, ch. 163, sec. 7).
54. *See id*. at 87; *see also* Hosokawa, *supra* note 50, at 293-97.
55. *See* Ancheta, *supra* note 5, at 87.
56. *See id*. at 89-90.
57. *See* Japanese American Experience, *supra* note 29, at 17.
58. *See* Korematsu v. United States, 584 F. Supp. at 1406.
59. *See* Hirabayashi v. United States, 828 F.2d 591 (9th Cir. 1987).
60. *See* Japanese American Experience, *supra* note 29, at 31; Ancheta, *supra* note 5, at 84.
61. *See* Japanese American Experience, *supra* note 29, at 17.
62. *Id*.
63. *See id*. at 18.

B. Building an Asian American Identity

As stated by Professors Michael Omi and Howard Winant, the term "Asian American" is a political term reflecting a similarity in the way different Asian American communities were treated as a whole when confronting state institutions.[64] However, it was not until the watershed moment that occurred in the wake of one man's death in 1982 that stirred the collective consciousness of Asian Americans throughout the United States.

With the American economy facing a recession, Detroit, Michigan, and the auto industry were hard hit. Heightened competition from Japan's burgeoning auto industry and its increased production of more cost-efficient automobiles spurred the same anti-Asian angst that plagued Asian Americans prior to World War II.[65] This was the environment that resulted in the tragic death of Vincent Chin, a Chinese American man celebrating at his bachelor party.

While at a bar in Highland Park, Michigan, Chin and his friends encountered a car manufacturing plant supervisor and the plant supervisor's son-in-law, a laid-off autoworker. As the night wore on, the plant supervisor and his son-in-law directed several racial insults at Chin, and ultimately yelled to Chin, "It's because of you motherfuckers that we're out of work."[66] A fight ensued between Chin's group and the plant supervisor and his son-in-law, but security removed both groups from the bar. However, the confrontation did not end there. The plant supervisor, his son-in-law, and a third man whom they paid to assist them, drove around the neighborhood for half an hour looking for Chin before spotting him in a McDonald's parking lot. When they came upon him, the son-in-law held Chin down while the plant supervisor swung a baseball bat hitting Chin's head four times. Off-duty officers who witnessed the incident described the plant supervisor's swing of the bat "as if he were going for a home run."[67]

The plant supervisor and his son-in-law pled guilty and no contest to murdering Chin, but at their sentencing hearing, Judge Charles Kaufman gave them each three years' probation and $3,780 in court costs and fines to be paid over a period of three years.[68] Many Asian Americans were outraged. Helen Zia and other Asian American activists immediately began working with Vincent Chin's mother to seek justice for her slain son. They formed an organization called American Citizens for Justice (ACJ).[69]

Zia described why Asian Americans felt that this incident sparked a collective movement for justice for Vincent Chin:

> Other Asian Americans also found a strong connection to the lives of Vincent, Lily, and David Chin. Theirs was the classic immigrant story of survival: work hard and sacrifice for the family, keep a low profile, don't complain, and, perhaps in the next generation, attain the American dream. For Asian Americans, along the dream came the hope of one day gaining acceptance in America. The injustice surrounding Vincent's slaying shattered the dream.
>
> But most of all, Vincent was everyone's son, brother, boyfriend, husband, father. Asian Americans felt deeply that what happened to Vincent Chin could have happened to anyone who "looked" Japanese. From childhood, nearly every Asian American has experienced being mistaken for other Asian ethnicities, even harassed and called names as though every Asian group

64. *See* Michael Omi & Howard Winant, Racial Formation in the United States: From the 1960s to the 1990s 89 (2d ed., 1994).
65. *See* Zia, *supra* note 10, at 57-8.
66. *Id*. at 59.
67. *Id*.
68. *See id*.
69. *See id*. at 66-7.

A number of organizations that started as ethnic-based civil rights organizations have adopted broader agendas to encompass the Asian American community at large.

were the same. The climate of hostility made many Asian Americans feel unsafe, not just in Detroit, but across the country, as Japan-bashing began to emanate from the nation's capital and was amplified through the news media.[70]

In the end, ACJ convinced federal prosecutors to bring civil rights charges against the two men who murdered Chin. Initially, a jury found the plant supervisor guilty of violating Chin's civil rights and acquitted the son-in-law. However, the case against the plant supervisor was appealed and a new trial was ordered. In 1987, a different jury found the plant supervisor not guilty.[71] Chin's mother earned a settlement judgment of one and a half million dollars in a subsequent civil suit against the plant supervisor, but the plant supervisor stopped making payments towards the judgment in 1989.[72]

Despite the travesty and the senseless loss of Chin's life, the silver lining, if one is possibly conceivable, is that Asian Americans experienced an awakening and a shared sense of purpose. Try as they could, Asian Americans could no longer continue to believe that America would one day see each Asian ethnic group as separate and distinct. Thus, both at that juncture and since then, it has been important for Asian Americans to join hands and address common issues as a collective.

Following in the footsteps of ACJ, other Asian American organizations have picked up the torch by addressing many civil rights issues on behalf of the entire Asian American community. Some of these organizations include Asian Americans Advancing Justice—AAJC, a national non-profit founded in 1991 to advocate for Asian Americans on a broad range of issues and ensure that Asian Americans have the ability to fully participate in America's democratic process;[73] Asian Americans Advancing Justice—Asian Law Caucus, the first nation's first legal and civil rights organization to serve low-income Asian American communities and address issues such as housing rights, immigration and immigrant rights, labor and employment issues, student advocacy, hate crimes, national security, and criminal justice reform;[74] the Asian American Legal Defense and Education Fund, a national organization that protects and promotes the rights of Asian Americans though litigation, advocacy, education and organizing;[75] the National Asian Pacific American Women's Forum, a national membership-based non-profit that is focused on advancing social justice and human rights for women and girls in the United States;[76] the Asian Pacific American Legal Resource Center, a non-profit

70. *Id*. at 63-4.
71. *See id*. at 79-80.
72. *See id*. at 80.
73. *See Who We Are: About Us*, Asian Americans Advancing Justice—AAJC, http://www.advancingjustice-aajc.org/who-we-are/about-us (last visited Aug. 30, 2016).
74. *See Who We Are: About Us*, Asian Americans Advancing Justice—Asian Law Caucus, http://www.advancingjustice-alc.org/who-we-are/about (last visited Aug. 30, 2016).
75. *See About Us*, Asian American Legal Defense and Education Fund, http://aaldef.org/about-us/ (last visited Aug. 30, 2016).
76. *See Home Page*, National Asian Pacific American Women's Forum, https://napawf.org/ (last visited Aug. 30, 2016).

As Asian Americans continued to push back against laws restricting their ability to enjoy the same freedoms as white Americans, Asian Americans also began to understand that they shared experiences and common ground with other communities.

organization that engages in civil rights advocacy and provides legal support and representation to Asian Americans in the metropolitan area for the District of Columbia;[77] and the National Council of Asian Pacific Americans, a coalition of thirty-five national Asian American organizations that strives for equity and justice through organizing and advocacy.[78]

Moreover, a number of organizations that started as ethnic-based civil rights organizations have adopted broader agendas to encompass the Asian American community at large. Some of these organizations include the Organization of Chinese Americans, a national organization whose mission is to advance the social, political, and economic well-being of Asian Pacific Americans;[79] South Asian Americans Leading Together, a non-profit organization that works to elevate the perspectives of South Asians in order to build a just and inclusive society in the United States;[80] the JACL, founded in 1929, a non-profit organization whose mission is to secure and safeguard the civil rights of Japanese Americans and others who suffer from injustice;[81] and the Korean American Coalition, a national non-profit organization that promotes the civic and civil rights interests of the Korean American community.[82]

C. Forming Coalitions with Other Communities to Advance Civil Rights

As Asian Americans continued to push back against laws restricting their ability to enjoy the same freedoms as white Americans, Asian Americans also began to understand that they shared experiences and common ground with other communities. In both a historical and contemporary context, Asian Americans have worked side-by-side with other communities on a number of civil rights issues, including housing, immigration, marriage, education, voting rights, and employment.

77. *See About Us*, Asian Pacific American Legal Resource Center, http://www.apalrc.org/dp/node/22 (last visited Aug. 30, 2016).
78. *See About*, National Council of Asian Pacific Americans, http://www.ncapaonline.org/about (last visited Aug. 30, 2016).
79. *See About OCA*, OCA, http://www.ocanational.org/?page=AboutUs (last visited Jan. 4, 2016).
80. *See About*, South Asian Americans Leading Together, http://saalt.org/about/ (last visited Aug. 30, 2016).
81. *See About*, Japanese American Citizens League, https://jacl.org/about/ (last visited Aug. 30, 2016).
82. *See About*, Korean American Coalition—Los Angeles, http://www.kacla.org/about.html (last visited Aug. 30, 2016).

For example, Yuri Kochiyama, an internee during World War II, worked closely alongside Malcolm X and became an internationally-renowned human rights activist.[83] Kiyoshi Patrick Okura, a civil servant, convinced JACL to endorse and participate in the March on Washington in 1963.[84] Philip Vera Cruz, a Filipino American, worked with Cesar Chavez to help found the United Farm Workers union.[85]

Moreover, a number of Asian American organizations have joined broad-based coalition, such as the Leadership Conference on Civil and Human Rights,[86] to engage in coordinated community and policy-based advocacy, organizing initiatives, and the filing of amicus briefs in key civil rights litigation.[87]

IV. Conclusion

From 2007 to 2010, I attended Howard University School of Law in Washington, D.C. While there, I worked with the brightest and most intelligent individuals I will ever have the pleasure of knowing. Frequently, I engaged my fellow classmates in roundtable discussions about how different communities have impacted our perspectives on civil rights and how we all can work together to achieve the kind of tolerant, multicultural society that many civil rights leaders have aspired to achieve. The biggest lesson that I took away from my time at Howard and continue to carry with me is that the sharing of our respective histories only leads to a greater understanding of where we have come from and where we must go together. It is also something that I hope to share with others in the many years ahead.

In both a historical and contemporary context, Asian Americans have worked side-by-side with other communities on a number of civil rights issues, including housing, immigration, marriage, education, voting rights, and employment.

83. *See* Scott Kurashige, The Shifting Grounds of Race: Black and Japanese Americans in the Making of Multiethnic Los Angeles 282 (2008).

84. *See id*.

85. *See* Richard D. Lyons, *Philip Vera Cruz, 89; Helped to Found Farm Worker Union*, N.Y. Times, June 16, 1994, http://www.nytimes.com/1994/06/16/obituaries/philip-vera-cruz-89-helped-to-found-farm-worker-union.html.

86. *See About Us*, The Leadership Conference on Civil and Human Rights, http://www.civilrights.org/about/ (last visited Aug. 30, 2016).

87. Specifically, JACL filed amicus briefs in *Brown v. Brown of Educ. of Topeka*, 1952 U.S. S. Ct. Briefs LEXIS 26 (Nov. 28, 1952) and *Loving v. Virginia*, 1967 U.S. S. Ct. Briefs LEXIS 8 (Feb. 17, 1967). Even recently, Asian American organizations, like Asian Americans Advancing Justice (AAJC), have organized around or filed amicus briefs in cases like *Fisher v. University of Texas (Fisher II)* (affirmative action), *Evenwell v. Abbott* (voting rights), *Obergfell v. Hodges* (same-sex marriage), and *Texas Dep't of Housing v. Inclusive Communities Project* (housing discrimination). *See What We Do: Publications*, Asian Americans Advancing Justice—AAJC, http://www.advancingjustice-aajc.org/news-media/publications (last visited Aug. 30, 2016).

The Rise of the Uniform Bar Exam: Considerations for the Diversity Pipeline and Indian Law

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Ours is an increasingly mobile society and the Uniform Bar Exam is one means to avoid the temporal and financial burden of having to study for and take multiple bar exams. But what consideration, if any, has been given to the impact the Uniform Bar Exam may have upon minority applicants? Will the "Minority Test Gap" be exacerbated? Will subjects that are especially relevant in some jurisdictions, such as Indian Law – be sacrificed because they may not be relevant in all? What is the appropriate weight that ought to be given to the Uniform Bar Exam and what are its ramifications for efforts to strengthen the diversity pipeline into the legal profession?

I. Introduction

The bar exam has long marked the final rite of passage for new attorneys. While the notion of a general practitioner attorney is increasingly giving way to specialists, the bar examination nevertheless envisions its bar consisting of generally competent attorneys who can at least identify particular issues of law. The subjects on the bar examination have a direct correlation with coursework offered and consumed at law schools, including state-specific subjects like community property. Yet, in an ever-globalizing economy, the American attorney is more mobile than ever, changing firms and locations more frequently.[1] Up until six years ago, particularly for young lawyers, this has meant a costly, time-consuming, and stressful marathon of exams.

The Uniform Bar Examination (UBE) to the rescue! Prepared and coordinated by the National Conference of Bar Examiners, the UBE is a uniformly administered and graded exam with scores that can be transferred to other UBE jurisdictions.[2] The UBE thus offers applicants increased mobility and relief from the temporal and financial burden of taking multiple exams. As expected, the UBE has been warmly embraced, with twenty-one jurisdictions set to offer the exam in July 2016.[3]

1. *See* Rebecca White Berch, *The Case for the Uniform Bar Exam*, The B. Examiner 9–10 (2009), http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2009%2F780109_UBEEssays_01.pdf; Mary Kay Kane, *A Uniform Bar Exam: One Academic's Perspective*, The Bar Examiner 19–20 (2009), http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2009%2F780109_UBEEssays_01.pdf. *See also* Deborah Jones Merritt, *What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession*, 2015 Mich. St. L. Rev. 1043 (2015) (study of new lawyers admitted to the Ohio State Bar Association in 2010 found that women were significantly more likely than men to move out of state within their first five years of practice).

2. *Jurisdictions That Have Adopted the UBE*, Nat'l Conference of B. Examiners, http://www.ncbex.org/exams/ube/ (last visited Aug. 30, 2016).

3. UBE jurisdictions include Alabama, Alaska, Arizona, Colorado, District of Columbia, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, New Mexico, North Dakota, South Carolina, Utah, Washington, Vermont, and Wyoming. *Adoption of the Uniform Bar Examination with NCBE Tests Administered by Non-UBE Jurisdictions*, Nat'l Conference of B. Examiners (2016), http://www.ncbex.org/assets/Uploads/UBE-and-Testing-Maps/2016-AdoptionoftheUBE-withotherNCBEtests-020116.pdf.

The legal profession encourages its adoption. In 2010, the Conference of Chief Justices and the American Bar Association (ABA) Council of the Section of Legal Education and Admissions to the Bar adopted resolutions urging "the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination."[4] In 2016, the ABA adopted a resolution, sponsored by the ABA's Law Student Division, to urge bar admission authorities in each state and territory to adopt expeditiously the UBE.[5] However, the ABA adopted a second resolution in that session, urging those same bar admission authorities to consider the potential impact of the UBE on minority applicants.[6] The resolution additionally cautioned against excluding subjects on the bar exam simply because they are not included on the UBE.[7]

The appeal of a uniform entrance exam is substantial. But minority applicants are at risk. Further, subjects like Indian Law are being unnecessarily sacrificed for the sake of uniformity. While these risks may not outweigh the benefits of a streamlined pathway to the legal profession, they are worthy of careful examination.

II. The Minority Test- Gap

In 2010, racial and ethnic minorities made up approximately thirty-six percent of the U.S. population but less than twelve percent of the practicing attorneys in this country.[8] The racial divide is only widening. It will be impossible to achieve true diversity at the current rate of matriculation into the profession. The pipeline into the legal profession is "leaking" at all points, from pre-kindergarten to the bar exam. Fewer and fewer minority students are enrolling in college or university, matriculating, or enrolling in law school.[9] While the number of minority students matriculating from law school continues to rise, their numbers remain very small in relationship to their increasing numbers in the overall population.[10]

In tracking these leaks, studies show that a test score gap between minority (especially black) students and majority students begins as early as the fourth grade.[11] This gap unfortunately continues throughout students' careers.

The LSAT is often used as predictor of success in law school and racial minorities historically receive lower LSAT scores than their white counterparts.[12] The Law School Admission Council (makers and

4. *Resolution 4: Endorsing Consideration of a Uniform Bar Examination*, Conference of Chief Justices (2010), http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/07252012-Endorsing-Consideration-of-a-Uniform-Bar-Examination.ashx; *Section of Legal Education and Admissions to the Bar: Council Resolution: Endorsing Consideration of a Uniform Bar Examination*, A.B.A. Journal (2010), http://www.abajournal.com/files/Uniform_Bar_Exam_2010_Council_(9-14)_v2.pdf.

5. *Resolution: Report No. 109,* A.B.A. 1 (2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/109.pdf.

6. *Resolution: Report No. 117*, A.B.A. 1 (2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/117.pdf.

7. *Id.*

8. *Census 2010*, U.S. Census Bureau, http://www.census.gov/2010census/ (last visited Aug. 31, 2016); Lawyer Demographics Year 2015, A.B.A. (2015), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf.

9. *Resolution: Report No. 113*, A.B.A. 1 (2006), http://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/113.pdf (urging the National Conference of Bar Examiners, the Law School Admission Council, and all state and territorial bar associations to ensure bar examinations and admission policies do not result in a disparate impact on minority candidates, and to support pre-law and other readiness programs).

10. *Totals and Minority Students (1984-2013),* A.B.A. (2013), http://www.americanbar.org/groups/legal_education/resources/statistics.html.

11. Christopher Jencks & Meredith Phillips, The Black-White Test Score Gap 7 (1998).

12. Susan P. Dalessandro, Lisa C. Anthony & Lynda M. Reese, *LSAT Technical Report Series: LSAT Performance With Regional, Gender, and Racial/Ethnic Breakdowns: 2005-2006 Through 2011-2012 Testing Years*, Law Sch. Admission Council 2, 19–20, 42 (2012), http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf.

administrators of the LSAT) warns against overreliance on numerical qualifiers alone.[13] Indeed, the institutional environment of specific law schools as experienced by minority students leads to deviations from performance expectations as predicted by the LSAT.[14] As early as 1974, the U.S. Supreme Court has questioned the continued use of the LSAT precisely because it is not race-neutral and produces racially disparate impacts.[15] Recent research shows that minority examinees still have significant gaps in LSAT scores from their majority counterparts, which cannot be attributed to individual qualifications but result from the test itself.[16] Yet, the LSAT continues to be one of the premier hallmarks for law school admission due to its uniformity.[17]

Similar to the LSAT, bar passage rates for racially diverse law students are generally lower than whites, though the vast majority of all students who take the bar exam do eventually pass. The oft-cited 1998 LSAC National Longitudinal Bar Passage Study found that 94.8% of all students eventually pass the bar.[18] However, blacks had the lowest bar passage rate at 77.6% while whites passed the bar exam at a 96.7% rate.[19] More recently, in California, 68% of white first-time bar exam takers passed the July 2014 bar exam while only 51% percent of minority students passed.[20] Only 38% of first-time black takers passed.[21] Also unfortunately notable is the low absolute number of graduates who took the exam. For the July 2014 California Bar Exam, the total reported number of first-time takers was 3,454 whites, compared to 303 blacks, 650 Hispanics, 956 Asians, and 471 other minorities.[22] When transitioning from a state bar exam to the UBE, it is critical for state bar administrators to consider the racial disparities currently present and how the UBE might affect those disparities.

III. The UBE and Minority Candidates

Most states already incorporate major elements of the UBE. In 1972, the National Conference of Bar Examiners (NCBE) introduced the Multistate Bar Examination (MBE).[23] Fifty-four jurisdictions offer the MBE (the exceptions are the civil law state of Louisiana and Puerto Rico).[24] Over time, NCBE developed

13. *Cautionary Policies Concerning LSAT Scores and Related Services,* Law Sch. Admission Council 1 (2014), http://www.lsac.org/docs/default-source/publications-(lsac-resources)/cautionarypolicies.pdf (noting cut-off scores may have greater adverse impact upon applicants from minority groups than upon the general applicant population).

14. Cheryl I. Harris & William C. Kidder, *The Black Student Mismatch Myth in Legal Education: The Systemic Flaws in Richard Sander's Affirmative Action Study*, The Journal of Blacks in Higher Educ. (2005), http://www.jbhe.com/features/46_black_student_mismatch.html (“In fact, the institutional environment of law school has a critical impact on law students and their relative performance in school.”).

15. DeFunis v. Odegaard, 416 U.S. 312, 315–16 (1974) (Justice Douglas states “As early as 1974, the some U.S. Supreme Court Justices questioned the continued use of the LSAT precisely because it is not race-neutral and produces racially disparate impacts.”).

16. William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment: A Study of Equally Achieving Elite College Students*, 89 Cal. L. Rev. 1055, 1057 (2001) (“The results indicate that among law school applicants with essentially the same performance in college, students of color encounter a substantial performance difference on the LSAT compared to their White classmates. These gaps are most severe for African American and Chicano/Latino applicants.”).

17. *The Importance of the LSAT in Law School Admissions*, Blueprint (Trent Teti & Jodi Triplett eds.), http://blueprintlsat.com/law-school/free-resources/articles/15 (last visited Aug. 31, 2016) (stating that “[t]he relative weight of LSAT to GPA in law school applications is around 60/40…”).

18. Linda F. Wightman, *LSAC Research Report Series: LSAC National Longitudinal Bar Passage Study*, Law Sch. Admission Council 32 (1998).

19. *Id.*

20. *General Statistics Report: July 2014 California Bar Examination: Overall Statistics,* Cal. B. Assoc. 2 (2014), http://admissions.calbar.ca.gov/portals/4/documents/gbx/JULY2014STATS121814_R.pdf (noting that these percentages reflect only graduates of ABA approved law schools).

21. *Id.*

22. *Id.* (noting that these numbers reflect only graduates of ABA approved law schools).

23. *Id.* at 378.

24. *Comprehensive Guide to Bar Admission Requirements 2015*, Nat'l Conference of B. Examiners & A.B.A. Section of Legal Educ. 25 (Erica Moeser & Claire Huismann eds., 2015), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2015_comprehensive_guide_to_bar_admission_requirements.authcheckdam.pdf [hereinafter *Comprehensive Guide*].

Given that nearly all jurisdictions use the MBE and the MPRE, and most utilize one or more of the other NCBE multistate examinations: "in effect, a common licensing test is already in force."

additional exams, including: (1) the Multistate Professional Responsibility Examination (MPRE), first offered in 1980[25] and now used in all but three jurisdictions;[26] (2) the Multistate Essay Examination (MEE), first offered in 1988[27] and now used in thirty-one jurisdictions;[28] and (3) the Multistate Performance Test (MPT), first offered in 1997[29] and now used in forty-one jurisdictions.[30]

Given that nearly all jurisdictions use the MBE and the MPRE, and most utilize one or more of the other NCBE multistate examinations: "in effect, a common licensing test is already in force."[31] But, because the UBE is only in its sixth year, we do not have the longitudinal data to fully understand the effect of the UBE on minority applicants.

The NCBE scores the MBE component of the UBE; jurisdictions grade the MEE and MPT components.[32] The MBE is weighted fifty percent, the MEE thirty percent, and the MPT twenty-percent of the UBE.[33] Most jurisdictions currently utilize the MBE as a component of their state bar exam.[34] However, not all jurisdictions give such substantial weight to the MBE. For example, if California were to adopt the UBE, students in California, a minority-majority state, would see a significant increase in the importance of the MBE as California currently weighs it as thirty-five percent of the total bar exam score.[35]

Because the UBE places the most weight on the MBE, it is vitally important for states considering adopting the UBE to consider how the MBE emphasis might negatively impact minority students. The NCBE acknowledges that racial minorities score lower on the MBE, but argues that

> [r]esearch indicates that differences in mean scores between racial and ethnic groups correspond closely to differences in those groups' mean LSAT scores, law school grade point averages, and scores on other measures of ability to practice law, such as bar examination essay scores and performance test scores.[36]

25. *ABA Law Student Division UBE Resolution,* A.B.A. 3 (2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/December2015CouncilMeeting/2015_lsd_%20resolution_ube_final.authcheckdam.pdf.
26. Maryland, Wisconsin and Puerto Rico are the exceptions. *See id*.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *UBE Scores*, Nat'l Conference of B. Examiners, http://www.ncbex.org/exams/ube/scores/ (last visited Aug. 31, 2016).
33. *Id.*
34. *Comprehensive Guide, supra* note 24, at 25.
35. *Description and Grading of the California Bar Examination—General Bar Examination and Attorney's Examination*, The St. B. of Cal. Committee of B. examiners/Office of Admissions 3 http://admissions.calbar.ca.gov/Portals/4/documents/gbx/BXDescriptGrade_R.pdf (last visited Aug. 31, 2016).
36. *Resolution: Report No. 117*, Nat'l Native A.B.A. 3 (2014), http://www.nativeamericanbar.org/wp-content/uploads/2014/01/ABA-Resolution-No.-117.pdf.

There is a woeful lack of research concerning the test-gap in MBE scores between minority and majority examinees.

Thus the NCBE distances itself from the systemic discrimination disadvantaging minority examinees' LSAT scores, bar exam scores, and law school GPAs.[37] Nevertheless, there is a woeful lack of research concerning the test-gap in MBE scores between minority and majority examinees. Without further study, it is difficult, if not impossible, to understand how the MBE affects minority applicants.

In addition, states considering adopting the UBE should consider how the MBE interacts with the phenomenon known as "stereotype threat"—the pressure that people feel when they fear that their performance could confirm a negative stereotype about their group. This pressure manifests itself in anxiety and distraction that interferes with intellectual functioning. For the stereotype to affect a student, the student need not believe the stereotype is accurate. He or she need only be aware of the stereotype and care about performing well.[38] Stereotype threat is

> [o]ne of the most extensively studied topics in social psychology over the past two decades. In hundreds of studies, scientists have confirmed the existence of stereotype threat and have measured its magnitude, both in laboratory experiments and in the real world. Because of stereotype threat, standard assessments of academic performance underestimate the ability of students targeted by negative stereotypes by an average of 0.18 standard deviations, the equivalent of 62 points on the SAT.[39]

Combating stereotype threat has been a particular concern of minority communities who have repeatedly called for attention to research that demonstrates that candidates' unconscious reaction to widespread stereotypes disparaging the intellectual abilities of minority group members can adversely affect test scores.[40] Considering the pressure surrounding the bar exam, stereotype threat is a formidable challenge.

IV. The UBE and Indian Law

The appeal of the UBE is its uniformity. The UBE does not prohibit state bar examiners from testing or otherwise ensuring competency with respect to local law. This can take the form of online courses, webinars, CLE programs, or addendums to the exam itself. While bar examiners do not intend the bar exam to require specialized knowledge, they intend to ensure basic competency of its licensed attorneys, including the ability to at least recognize issues of law that are likely to arise within that jurisdiction.

The content of bar exams significantly influences the legal curriculum. The bar exam tests on the subjects in which every lawyer should demonstrate knowledge and skills prior to becoming licensed to practice law.[41] Subjects the examiners test on the bar exam are offered as foundational courses at law schools. They are unquestioned in their critical importance to American law.

37. *Id.*
38. *Id.* at 3–4.
39. *Id.* at 4.
40. *Id.*
41. *Jurisdictions That Have Adopted the UBE*, Nat'l Conference of B. Examiners, http://www.ncbex.org/exams/ube/ (last visited Aug. 31, 2016).

Inclusion of a subject on the bar exam is not definitive statement of importance or influence. Subjects like intellectual property, taxation, and family law are frequently not tested on the bar exam, yet their influence on the American legal system is substantial. Still, inclusion matters. Inclusion especially matters for subjects with profound influence but historical disregard. Including Indian Law on state bar exams formally recognizes and legitimizes Indian Law. It directly challenges the disrespect with which the United States often treats tribal governments.

The failure to recognize Indian Law as a core legal subject has had devastating practical effects on a historically disadvantaged population. Even within states with significant tribal populations, attorneys may acknowledge that a legal issue intersects with Indian Law but still lack the awareness of the complexity of Indian Law.[42] Only approximately sixty-four of the almost two-hundred ABA-accredited law schools offer a course in Indian Law in their curriculums.[43] The lack of licensed attorneys who are competently knowledgeable of Indian Law has exacerbated the hardships faced by low-income Indians when they need representation.[44]

Meanwhile, tribal economies are having a growing impact within their states, increasing the encounters between Indian and non-Indian communities, including in the realms of gaming, taxation, and natural resources development. With 567 federally recognized tribes, 426 tribal court systems, a $30 billion-a-year gaming industry, and tribal natural resource extraction enterprises generating billions, Indian Law is a burgeoning area of law in at least twenty states.[45] Indian Law is becoming increasingly relevant to every area of legal practice.[46]

Thus, it was no surprise when states began to include Indian Law as part of their state bar examinations.[47] The State of New Mexico added Indian Law to its bar examination in 2002, followed by the State of Washington in 2004 and the State of South Dakota in 2006.[48] The National Congress of American Indians,[49] the National Native American Bar Association,[50] and the ABA[51] each have passed resolutions supporting the inclusion of Indian Law on the state bar exam, and for good reason. Indian Law is complex[52] and deserves coverage in states with significant tribal populations. In proposing Indian Law as a testable subject on the New Mexico Bar Exam, the proposal noted that knowledge of Indian Law is increasingly necessary for competent representation.[53]

Exam-takers in New Mexico, Washington, and South Dakota learned the basic jurisdictional principles

42. Gloria Valencia–Weber & Sherri N. Thomas, *When the State Bar Exam Embraces Indian Law: Teaching Experiences and Observations*, 82 N.D. L. Rev. 741, 749 (2006).

43. *Id.* at 745–46.

44. *Id.* at 750.

45. Matthew L.M. Fletcher, *The Growing Market for Indian Lawyering*, 27:2 Tribal C. J. 19–21 (2015).

46. *See, e.g.* Gabriel S. Galanda & Anthony S. Broadman, *The Law of Business in Indian Country,* A.B.A. (2009), http://www.americanbar.org/content/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/business_galanda.html (discussing how "Negotiating and litigating in and around Indian country demands careful attention to tribal, state, and federal jurisdictional nuances—which run through every matter involving Indian people or lands.").

47. Paul Spruhan, *Indian Law on State Bar Exams in the Age of the Uniform Bar Examination*, Federal Lawyer 14 (Mar. 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2567018.

48. *Id.*

49. *Resolution #MOH-04-001: The Examination of Indian Law on State Bar Exams,* Nat'l Congress of Am. Indians 1 (2004), http://www.ncai.org/attachments/Resolution_nTMJaOQXeGJSDVozzzzcjeGFTgIWqJJCFLzOfMOOcYaCkVFZs-vh_04-001.pdf.

50. *Resolution No. 2004-2*, Nat'l Native A.B.A. 1 (2002), https://turtletalk.files.wordpress.com/2009/04/barexammaterials-wkg-1532670-v1-resolution_no__2004-2.pdf.

51. *Resolution: Report No. 117, supra* note 6, at 1.

52. *Resolution: Report No. 117, supra* note 36, at 4 (adopting all of the recommendations contained in the Indian Law and Order Commission's 2013 report, except for the new circuit court provision of recommendation 1.2) (noting that the "institutionally complex" criminal just system in Indian country).

53. Valencia–Weber & Thomas, *supra* note 42, at 751.

of Indian Law as an integral part of their exam preparation, introducing many future lawyers to the concept of tribal sovereignty.[54] At the University of New Mexico, professors observed that after the state started testing Indian Law on the bar exam, enrollment in Indian Law courses increased, thereby increasing the frequency with which the school offered the course.[55]

In 2013, however, Washington stopped including Indian Law on the essay portion of its bar exam and opted to use the UBE essay subjects. In 2014, after adopting the UBE, New Mexico eliminated Indian Law from its bar exam. Arizona, despite the advocacy from its state bar association and presence of twenty-two federally recognized tribes within their borders, decided against adding Indian Law as a subject precisely because it was considering adopting the UBE.[56] South Dakota is currently the only state in the union that tests Indian Law as an essay subject. Increasingly, western states were early adopters of the UBE. Fifteen of the twenty-one current UBE jurisdictions have significant tribal populations.[57]

The UBE and the testing of other relevant legal issues do not need to be mutually exclusive. For example, when the state of Washington adopted the UBE, it eliminated the use of the prior exam that had included federal Indian Law as an essay subject since 2004. However, Washington also developed its own state-specific addition to the UBE that tests examinees on Indian Law.[58] Washington enjoys all the benefits of administering the UBE while maintaining federal Indian Law as a subject, to the benefit of all attorneys that wish to practice law in their state, which shares borders with twenty-nine federally-recognized tribes.

When adopting the UBE, the state should not consider the benefits of uniformity and increased mobility for its attorneys to the exclusion of valuing essential legal areas that fall outside of the big seven.[59] This concern falls squarely within existing ABA policy. In 2011, the ABA adopted Resolution 10B urging law schools, law firms, and CLE providers to provide the knowledge, skills, and values that are required of the successful modern lawyer.[60] Bar administrators should similarly consider what subjects should be required for the successful modern lawyer.

V. Conclusion

The UBE offers uniformity, easing the burden on both bar administrators and applicants. It also offers increased mobility, a critical need in a tightened legal market. However, the pipeline to the legal profession remains rife with barriers for minorities. The bar exam is a critical juncture in that pipeline. When considering adopting the UBE, these barriers must be acknowledged and assessed, especially when the legal profession continues to be one of the least diverse professions in the country. The blessings of the UBE's uniformity do not necessarily need to exclude state-specific legal areas of importance. This is especially important when it comes to federal Indian Law, a topic historically not even offered in many law schools.

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54. Spruhan, *supra* note 47, at 15.

55. Valencia–Weber & Thomas, *supra* note 42, at 756–57.

56. Spruhan, *supra* note 47, at 15 ("Consideration of the adoption of the UBE was the stated reason by the Arizona Supreme Court for not adopting Indian Law, despite support from the state bar association").

57. UBE jurisdictions with significant tribal populations include Alaska, Arizona, Colorado, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, New York, New Mexico, North Dakota, Utah, Washington, and Wyoming. The remaining UBE jurisdictions include Alabama, the District of Columbia, Missouri, New Hampshire, South Carolina, and Vermont. *Jurisdictions That Have Adopted the UBE*, *supra* note 41.

58. *Washington Law Component*, Wash. St. B. Assoc. 105 (2013), http://www.wsba.org/~/media/Files/Licensing_Lawyer%20Conduct/Admissions/WASHINGTON%20LAW%20COMPONENT.ashx.

59. The MBE tests on the subjects of civil procedure, constitutional law, contracts, criminal law, criminal procedure, evidence, real property, and torts.

60. Rachel M. Zahorsky, *ABA Urges Law Schools to Adopt More Practical Training for Students,* ABA Journal (Aug. 9, 2011, 2:59 PM), http://www.abajournal.com/news/article/aba_urges_law_schools_to_adopt_more_practical_training_for_students/.

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Filipinos on the Bench: Challenges and Solutions for Today and Tomorrow's Generations

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In the U.S., Asian ethnic groups tend to be lumped together despite wide variances in their histories, cultures, and challenges. Here, we examine the particular challenges faced by one Asian ethnic group – Filipino Americans – as it pertains to representation on the bench.

I. Introduction

> In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training . . . . Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.[1]

Justice Sandra Day O'Connor, writing for the majority in the landmark case *Grutter v. Bollinger*, highlighted the importance of diversity in higher education and the legal profession. While the legal landscape is much more diverse today, there is still significant room for growth.

On May 27, 1981—just a little over twenty years before *Grutter* was decided—California Governor Jerry Brown appointed the only Filipino judge in the entire western hemisphere, Judge Mel Red Recana.[2] On June 13, 1981, Governor Brown swore in Judge Recana at a crowded McArthur Park in front of the Filipino Americans celebrating Philippine Independence Day.[3] Over thirty years since Judge Recana was first appointed, and over ten years after the decision in *Grutter*, Filipino Americans have made tremendous strides in the judiciary. Important milestones include: the appointment of the first Filipina Chief Justice of the California Supreme Court, Chief Justice Tani Gorre Cantil-Sakauye;[4]

The authors gratefully acknowledge the time and helpful comments provided by Filipino judges Teresa P. Magno, Rob B. Villeza, Ricardo R. Ocampo, and Mel Red Recana of the Los Angeles Superior Court.

1. Grutter v. Bollinger, 539 U.S. 306, 332–33, 123 S. Ct. 2325, 2341 (2003).
2. E-mail from Judge Mel Red Recana, to Serafin Tagarao (Dec. 30, 2015, 09:53 PST) (on file with author) [hereinafter Recana].
3. *Id.*
4. *About the Chief Justice*, Cal. Cts.: The Jud. Branch of Cal., http://www.courts.ca.gov/13338.htm (last visited Sept. 1, 2016).

the appointment of the first Filipina judge to a federal court, Judge Lorna G. Schofield, U.S. District Court, Southern District of New York in 2012;[5] the appointment of Judge Rob B. Villeza in 2014;[6] the election of Judge Teresa P. Magno in 2014;[7] and the 2015 appointment of Judge Julian Recana to the Los Angeles Superior Court by the very same Governor Brown who appointed his father thirty-four years earlier.[8]

But while Filipinos have made great strides, there remains much room for growth. This article calls for increased diversity on the bench, examines the challenges faced by Filipino Americans in achieving positions as judges, and suggests possible solutions the legal profession can implement to increase the number of qualified diverse candidates to the bench.

II. The Current State of Asian Americans and Filipino Americans in the United States

Since 2000, the Asian[9] population has experienced explosive growth, increasing more than four times faster than the total U.S. population, from 10.2 million in 2000 to 14.7 million in 2010.[10] The Filipino population grew to 3,416,840 residents, representing the second largest Asian group behind the Chinese at 4,010,114 residents.[11] Of all the states, California experienced the highest growth in the Asian population, growing from 4.2 million in 2000 to 5.6 million in 2010.[12] Filipinos made up the highest percentage of California's Asian population, comprising 43%,[13] or nearly 1.5 million residents.[14] As of July 1, 2014, the U.S. Census Bureau estimates a total number of 17,339,053 Asian residents in the United States.[15] In California, Asians represent 14.4% of the total population, making them the second largest minority population in the state behind black or African American residents.[16]

Despite the large number of Filipinos both nationally and in California, Filipinos are not well-represented among judicial officers. At the federal level, as of March 7, 2014, there were approximately 673 district court judgeships and 179 circuit court judgeships for a total of 852 total seats.[17] Four of the 162 active circuit court judges were Asian American and one of the senior[18] circuit court

5. *History of the Federal Judiciary: Biographic Directory of Federal Judges Schofield: Lorna Gail*, Fed. Jud. Ctr., http://www.fjc.gov/servlet/nGetInfo?jid=3451&cid=999&ctype=na&instate=na (last visited Sept. 1, 2016).

6. *Governor Brown Appoints Six to Los Angeles County Superior Court*, Office of Governor Edmund G. Brown Jr. (Nov. 12, 2014), https://www.gov.ca.gov/news.php?id=18782.

7. *Los Angeles County Election Results: June 03, 2014 – Statewide Direct Primary Election: Final Official Election Returns,* L.A. County Registrar-Recorder/County Clerk (June 25, 2014, 1:20 PM), http://rrcc.co.la.ca.us/elect/14062043/rr2043p17.htm.

8. *Governor Brown Appoints Eight to Los Angeles County Superior Court,* Office of Governor Edmund G. Brown Jr. (July 16, 2015), https://www.gov.ca.gov/news.php?id=19040.

9. *Census Bureau Statement on Classifying Filipinos,* U.S. Census Bureau (Nov. 9, 2015), https://www.census.gov/newsroom/press-releases/2015/cb15-rtq26.html (stating that "Asian" is broadly defined as a "person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.") [hereinafter *Classifying Filipinos*].

10. Elizabeth M. Hoeffel, Sonya Rastogi, Myoung Ouk Kim, & Hasan Shahid, *The Asian Population: 2010: 2010 Census Briefs*, U.S. Census Bureau 3 (Mar. 2012), https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf.

11. *Id.* at 15.

12. *Id* at 8.

13. *Id.* at 18.

14. *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California*, Asian Am. Ctr. for Advancing Just. – Asian L. Caucus 9 (2013), http://www.advancingjustice-alc.org/wp-content/uploads/2013/03/Communities_of_Contrast_California_2013-1.pdf.

15. *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2014*, U.S. Census Bureau (June 2015), https://www.census.gov/popest/data/state/asrh/2014/index.html.

16. *Id.*

17. Barry J. McMillion, *U.S. Circuit and District Court Judges: Profile of Select Characteristics*, Cong. Res. Serv. 1 (Mar. 19, 2014), https://www.fas.org/sgp/crs/misc/R43426.pdf.

18. *Id.* at 4 (stating that "Senior status judges are those judges who have retired from full-time service but continue, on a part-time basis, to hear cases or perform other duties related to judicial administration.")

While more Filipino Americans hold seats on the bench in California than ever before, they are still severely underrepresented.

judges is Asian American.[19] Out of 603 active U.S. district court judges, seventeen are Asian American.[20] Finally, out of 438 senior U.S. district court judges, only two are Asian American.[21] This amounts to a grand total of twenty-four Asian Americans at the federal level representing only 2.8% of the total seats available. A Filipino American occupies only one of those seats.

While more Filipino Americans hold seats on the bench in California than ever before, they are still severely underrepresented. As of December 31, 2014,[22] there were one hundred Asian[23] members of the California judiciary representing 6% of the 1,655 total available positions: two at the Supreme Court level, one at the Court of Appeals level, and ninety-seven at the trial court level.[24] While 6% may not seem disproportionately low, Filipino judges hold fewer than one percent of the total available seats—approximately eleven of the 1,655 positions.[25] With such a large percentage of Filipinos in the population, why are they represented so poorly on the bench? Part III explores some of the unique challenges facing Filipino Americans.

III. The Need for Diversity

A. What We Mean By "Diversity"

The aim of this article is not simply putting judges into seats to match the proportion of minority groups at the state or federal level. Indeed, the U.S. Supreme Court has summarily rejected such an approach since "[a]ttaining diversity for its own sake is a nonstarter."[26] It would equate to "nothing more than impermissible 'racial balancing.'"[27] One scholar has rejected such an approach, which he calls "checkbox diversity."[28] Instead, he advocates "contextual diversity." "Contextual diversity"

19. *Id.* at 14 n.54.
20. *Id.* at 22 n.83.
21. *Id.* at 22 n.84.
22. The data reflect the number of justices and judges on the bench as of December 31, 2014. For the Courts of Appeal, the data does not include justices who have been appointed, but not yet confirmed. For the trial courts, the data reflects those judges who have taken their oaths of office as of December 31, 2014. *Demographic Data Provided by Justices and Judges Relative to Gender, Race/Ethnicity, and Gender Identity/Sexual Orientation (Gov. Code, § 12011.5(n)) As of December 31, 2014*, Jud. Council of Cal. 1 n.1 (2015), http://www.courts.ca.gov/documents/2015-Demographic-Report.pdf [hereinafter *Demographic Data*].
23. *Id.* at 1.
24. *Id.*
25. E-mail from Judge Tomson T. Ong, to Serafin Tagarao (Jan. 26, 2016, 11:47 PST) (on file with author). Although there is no official tracking of subcategories of Asians done by the California court system, Judge Ong has been keeping track of all Filipinos in the California judiciary. The following are/were the Filipino judges on the Los Angeles Superior Court: Mel Red Recana, Cesar Sarmiento (retired), Raphael Ongkeko, Lisa M. Chung, Bernie LaForteza, Ricardo R. Ocampo, Rob B. Villeza, Teresa P. Magno, Julian Recana. Outside of Los Angeles, Judge Dino Inumerable serves in Ventura County Superior Court, Judge Ronald Quidachay serves in San Francisco Superior Court, and Chief Justice Tani Cantil-Sakauye serves in the California Supreme Court.
26. Fisher v. Univ. of Tex., 133 S. Ct. 2411, 2424 (2013).
27. *Id.* (quoting Grutter, *supra* note 1, at 329–30.
28. *See* Philip Lee, *On Checkbox Diversity*, 27 J. Civ. Rights & Econ. Dev., 203, 209 (2013) (under "checkbox diversity," a self-identified racial minority is presumed to have a different perspective simply by checking off a certain racial category on a form such as in an education setting).

"Contextual diversity" means looking at the experiences of the individual instead of assuming a different perspective than others simply based on the checking of a box.

means looking at the experiences of the individual instead of assuming a different perspective than others simply based on the checking of a box.[29] It means looking at an individual's life experiences.[30] "[T]he personal qualities of the applicant should be what matter most–not a checkbox identity that may have no relation to the applicant's actual perspective."[31] "Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important."[32] In other words, "diversity is about bringing together collective knowledge, born from an array of experiences, in order to ensure the judiciary and its decisions are respected and followed."[33]

B. Why Diversity at the Judicial Level is so Vital

Over thirty years ago, the U.S. Supreme Court held that the arbitrary exclusion from jury service based on race denies a criminal defendant due process of law.[34] In holding such a practice unconstitutional, Justice Thurgood Marshall noted, "when any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable."[35] Thirty years later, the Supreme Court again addressed the importance of diversity in the context of law school admissions in *Grutter v. Bollinger*.[36] There, the Court held that a law school's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits of a diverse student body did not violate the Equal Protection Clause of the Fourteenth Amendment.[37] Writing for the majority, Justice Sandra Day O'Connor emphasized the "overriding importance of preparing students for work and citizenship, describing education as pivotal to 'sustaining our political and cultural heritage' with a fundamental role in maintaining the fabric of society."[38] Recognizing that education is "the very foundation of good citizenship," the Court reasoned "the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity."[39]

These principles justify promoting diversity at the judicial level as well. As Judge Rob B. Villeza put it:

29. *Id.* at 212.
30. *Id.*
31. *Id.* at 214.
32. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 317 (1978).
33. Deanell Reece Tacha, *Diversity in the Judiciary: A Conversation with Deanell Tacha*, 59 U. Kan. L. Rev. 1037, 1038 (2011).
34. Peters v. Kiff, 407 U.S. 493, 504 (1972).
35. *Id.* at 503.
36. Grutter v. Bollinger, 539 U.S. 306 (2003).
37. *Id.* at 343.
38. *Id.* at 331 (quoting Plyler v. Doe, 457 U.S. 202, 221 (1982)).
39. *Grutter*, 539 U.S. at 331.

"[t]he lack of Filipino-Americans on the bench as compared to other Asian Americans results from our past immigrant culture of passive integration."

> You do not want the bench to be one dimensional because you get one-dimensional rulings from one class or category of people. It does not make for a successful judicial system nor does it garner the respect from the people who come to court. You need people with different points of interest.[40]
>
> Judge Teresa P. Magno shared the same sentiments:
>
> Diversity is important in every facet of life. The number of Filipinos in our population is not commensurate with the number of Filipinos on the bench. People look to the court system for justice to remedy a wrong. When people do not see people like them in the court, it can foster a feeling of a non-inclusiveness, which can discourage people from turning to the court system to remedy a wrong.[41]

According to Judge Ricardo R. Ocampo, with a diverse bench, people "will see that justice is dispensed by people like them who can understand their own background."[42]

Scholars agree that diversity promotes public confidence in the legitimacy of the justice system.[43] Not only does it lend legitimacy to the courts, but diversity among judicial officers also leads to better decision-making by incorporating different perspectives.[44] By considering minority viewpoints, judges can avoid simply adhering to the majoritarian ideology.[45] This promotes one of the most fundamental ideas of our democratic society: equal consideration of all ideas, even the non-popular ones.[46]

IV. Challenges Facing Filipino Americans and Their Path to the Bench.

A. Labels Matter

One of the biggest problems with promoting diversity on the bench is a lack of awareness of the problem. While we have population data for Asian Americans and, to a lesser extent, Filipino Americans, we lack data identifying subcategories of Asian Americans at the judicial level. Furthermore,

40. Telephone Interview with Rob Villeza, Judge, Superior Court of L.A. County, in L.A., Cal. (Dec. 25, 2015) [hereinafter Villeza].

41. Interview with Teresa P. Magno, Judge, Superior Court of L.A. County, in L.A., Cal. (Dec. 23, 2015) [hereinafter Magno].

42. Telephone Interview with Ricardo R. Ocampo, Judge, Superior Court of L.A. County, in L.A., Cal. (Jan. 12, 2016) [hereinafter Ocampo].

43. Sherrilyn A. Ifill, *Judicial Diversity*, 13 Green Bag 45, 48 (2009).

44. *See* Joy Milligan, *Pluralism in America: Why Judicial Diversity Improves Legal Decisions About Political Morality*, 81 N.Y.U. L. Rev. 1206, 1229–30 (2006); *see also Broadening the Bench: Professional Diversity and Judicial Nominations*, Alliance for Justice 5–6 (July 10, 2015), http://www.afj.org/wp-content/uploads/2014/11/Professional-Diversity-Report.pdf (stating that "when judges come from all corners of the legal profession – and particular when they've work in the public interest, representing those whose views are otherwise rarely heard – they are equipped to understand the views of each litigant before them, and to render more informed, thorough decisions."); *Ifill*, *supra* note 43, at 48.

45. *Milligan*, *supra* note 44, at 1242.

46. *Id.*

although Filipinos represent one of the largest Asian groups in the country, and specifically the state of California, as of 2015 the Census Bureau "has no plans to classify Filipinos outside of the Asian race category."[47] When Asian Americans are all lumped together for purposes of data collection, the problem does not look nearly as bad for representation. As indicated in Part I, Asian Americans represent about 2.8% of the federal judiciary and 6% of the California judiciary.[48] However, Filipinos make up approximately 0.1% of the total federal judiciary and only 0.7% of the California judiciary.[49]

B. The Numbers

"Diversity on the bench is dependent on the diversity of the bar. We cannot have many Filipino judges if we do not have Filipino lawyers."[50] Judge Ocampo's words reflect the most basic problem behind the lack of Filipino judges in the courts. While Filipinos outnumber many other Asian groups, not enough have chosen a career in the law. On average, over the combined years of 2008 to 2010, there were approximately 1,894,000 Filipinos age sixteen and older.[51] Among Filipinos age twenty-five and older, only 3.1% (or approximately 50,610) Filipinos achieved a professional or doctoral degree.[52] It follows that substantially fewer are seeking law degrees. Indeed, according to Judge Ocampo, "[t]he lack of Filipino-Americans on the bench as compared to other Asian Americans results from our past immigrant culture of passive integration."[53] While "[t]his is definitely changing with the upcoming generations and will hopefully continue to improve,"[54] progress has been slow.

Judge Magno recalls growing up and receiving brochures to community colleges about nursing programs from her high school counselor who did not know much about her.[55] Judge Magno wanted to go to a four-year university but was told, "it's good to have dreams, but you should do what's practical."[56] What was "practical" seemed be perpetuating stereotypes about Filipino culture.[57] Judge Magno's experience is not much different from other Filipino Americans. In fact, compared to other Asian groups, Filipinos were more than three times as likely as non-Asian to work in the healthcare practitioners and technical occupations category–18% versus 5%.[58] More than half of Filipino workers in this group were registered nurses.[59]

Of the few who do decide to pursue the law, not enough are applying for positions on the bench either through the appointment process or the election process. Furthermore, many of the Filipino attorneys work in public service or non-profit sectors, which typically have not been a source of new judges. Recognizing the lack of minority judges, Justice Sonia Sotomayor, in a 2013 speech made to students at American University Washington College of Law, stated that the lack of diversity in race, gender, and background poses a "huge danger" to both the state and federal judiciary.[60] She further criticized the legal profession for perpetuating a glass ceiling for minorities, asserting that the

47. *Classifying Filipinos*, *supra* note 9.
48. *See McMillion*, *supra* note 17; *Demographic Data*, *supra* note 22.
49. *See supra* notes – 17-25
50. Ocampo, *supra* note 42.
51. Mary Dorinda Allard, *Asians in the U.S. labor force: profile of a diverse population*, Monthly Lab. Rev. 5 (Nov. 2011), http://www.bls.gov/opub/mlr/2011/11/art1full.pdf.
52. *Id.*
53. Ocampo, *supra* note 42.
54. *Id.*
55. Magno, *supra* note 41.
56. *Id.*
57. *Id.*
58. Allard, *supra* note 51, at 11–13.
59. *Id.*
60. Tony Mauro, *Sotomayor Says Lack of Diversity is 'Huge Danger' for Judiciary*, The BLT: The Blog of Legal Times (Nov. 20, 2013), http://legaltimes.typepad.com/blt/2013/11/sotomayor-says-lack-of-diversity-is-huge-danger-for-judiciary.html.

number of minority partners in law firms is "dismally small."[61] Indeed, while judicial seats typically go to attorneys who have worked as prosecutors for several years or have significant trial experience as a prestigious firms, there simply are not enough Filipino attorneys in either of these positions, and the ones that are in such a position are not applying to judicial office.

V. How to Get More Diverse Candidates to the Bench

Below are some of the proposed solutions to the barriers outlined above. While we have focused mostly on Asian Americans, specifically Filipino Americans, these solutions should apply to other minorities as well.

A. Identifying the Problem

Getting a more diverse bench starts with recognizing the absence of such candidates in the first place. Such recognition can be advanced at both the federal and state levels by more precisely tracking the statistical makeup of judges. Rather than have a broad category of Asian Americans, the survey should invite judges to select a further subcategory, such as Filipino. Instead of being seen as just another Asian American, Filipinos can begin to be recognized by their specific unique backgrounds. Further, by identifying these subcategories, the federal and state courts can better assess which minority groups are not adequately represented.

B. Encouraging the Next Generation

Filipino American parents should encourage their children to pursue a career in the law. As reported above, most Filipinos are concentrated in the healthcare industry or in technical occupations. According to Judge Villeza, Filipinos need to encourage their children at the grassroots level.[62] This means that existing Filipino lawyers need to participate in "career days," go out to schools, talk to the students, and get them excited about a career in the law.[63] Judge Ocampo supported this idea as well, stating that minority bar associations should "not only reach out to law students, but to the younger communities including high schools and elementary schools."[64] Minority bar associations should also get more involved in the media and social media, whether it is portraying a Filipino lawyer on television or educating students about what it means to be a lawyer on social networks. This needs to happen all the way from elementary school to the university level. After all, "[i]ncreasing the Filipinos in the legal profession is the best way to increase the number of Filipino American judges."[65]

Minority bar associations can also help promote qualified candidates for judgeships. Judge Villeza suggested a "judicial mentorship program."[66] Through such a program, a minority bar association could help introduce potential judicial candidates to current judicial officers or other people with experience in the judicial process, in order to help candidates develop necessary skills and experience. Such professional development would help candidates feel confident that all the bases of their application were covered. Minority bar associations should also work to demystify the application process for their membership. Judge Villeza advocates presenting the issue to the existing membership and indicating that it is a priority to make qualified attorneys judicial officers. These organizations need to get potential candidates involved in the discussion so that these attorneys can start thinking "Who do I know? Who would make a good candidate?"—or asking themselves if they

61. *Id.*
62. Villeza, *supra* note 40.
63. *Id.*
64. Ocampo, *supra* note 42.
65. *Id.*
66. Villeza, *supra* note 40.

should consider the bench. By spearheading this discussion, attorneys who may not yet be qualified can start asking themselves, What do I have to do to make myself a desirable candidate in the next five to ten years?[67] This should be a key initiative for every minority bar association. As Judge Ocampo stated, "[i]t is the responsibility of the minority group to encourage from within."[68]

Minority bar associations should also push potential candidates to try the much-overlooked election route, urges Judge Magno, who found success through such a method herself.[69] Judges seeking election must interact with their constituents in order to elicit votes. The process can helps garner respect for the potential judge's constituents. In addition, a judge seeking election can develop strong political connections and raise his or her profile in the community. Judge Magno believes this can lead to fewer challenges down the road for elected judges.[70] Running for election can be difficult, however, because of the high costs of running a campaign, and the need for self-promotion, which Judge Magno admits pushed her outside of her regular comfort zone.[71]

Finally, existing Filipino judges need to set an example for future judges to follow. "The visible success of [members of a disadvantaged group] can . . . encourage group members to strive for success."[72] For instance, as Judge Magno observed, many California judges have a prosecution background. In fact, the most recent Filipino judges appointed by the California governor had a prosecution background. These prosecutors need to continue to lead by example. Having effective leaders on the bench will encourage more Filipino Americans to become attorneys and obtain positions as judicial officers. As Justice Ming W. Chin stated:

> the best thing we could do for diversity on the bench would start with each of our courtrooms. If we judge well, and if we are respected by our colleagues and our communities, then the stature of minority judges will improve, and the opportunities for future judicial appointees from a qualified pool of ethnic minority candidates will be greater. Those of us on the bench must lead by example.[73]

C. What Attorneys can do to be Considered for Judicial Seats in the Future

While minority bar associations should be encouraging the next generation of attorneys to apply to the bench, would-be judges should be honing their own experience and skills now. Judge Mel Red Recana of the Los Angeles Superior Court offered the following advice to those attorneys considering the bench: "You should not be a wallflower. You must be active professionally, politically and socially. To ask favors, you have to give them first. Networking should be a daily activity. You will be surprised with the unexpected help that you will get."[74]

When it comes to co-counsel and judges, "[b]e a true professional. The test should be: do the judges and your peers—particularly your opposing counsel—respect you? Never lose your temper because that is the sign that you have lost."[75] He warns that counsel need to be mindful of their conduct both

67. Some minority bar associations, such as the Philippine American Bar Association and the Japanese American Bar Association, already have a judicial advocacy program. *See Committees,* Philippine Am. B. Assoc., http://pabala.org/officers-and-board-of-governors/committees/ (last visited Sept. 1, 2016); *Officers/Committees*, Japanese Am. B. Assoc., http://www.jabaonline.org/about/officerscommittees/ (last visited Sept. 1, 2016).

68. Ocampo, *supra* note 42.

69. Magno, *supra* note 41.

70. *Id.*

71. *Id.*

72. Paul Brest & Miranda Oshige, *Symposium: Race and Remedy in a Multicultural Society:Affirmative Action for Whom?*, 47 Stan. L. Rev. 855, 869 (1995).

73. Justice Ming W. Chin, *Keynote Address: "Fairness or Bias?: A Symposium on Racial and Ethnic Composition and Attitudes in the Judiciary"*, 4 Asian L. J. 181, 191 (1997).

74. Recana, *supra* note 2.

75. *Id.*

inside and outside the courtroom. "Cultivate an unimpeachable reputation. A DUI or any criminal conviction could ruin the best strategy."[76] Judge Ocampo echoed these sentiments stating, "reputation is everything. No matter what case you handle, never sell yourself. Always be fair. Always be aware of the relationships you have with the people that sit across from you at the table. As long as you are fair, treat everyone with respect, you will increase your chance of being appointed."[77] .

For trial attorneys, Judge Recana offers the following advice: "Be really good at being a trial lawyer. Always be prepared. At least you should have ten jury trials, whether they are felony or unlimited jurisdiction civil cases, under your belt."[78] He further cautions that the position is not about your ego:

> You will never make millions being a judge. Judicial ethics will restrict your conduct in and out of the courtroom. You will not savor the excitement of destroying a hostile witness on cross-examination à la Clarence Darrow or receiving a multi-million dollar verdict. Instead as a judge you will be a public servant. You cannot dominate the litigants but treat them with respect day after day no matter how obnoxious some of them may be. You will spend hours studying the law so you can do justice to the parties. Justice will be your most important commodity not money or victory. Your life will be dedicated to public service not self-aggrandizement.[79]

.Despite the challenges of being a judge today, Judge Recana states, "[a] judicial appointment will completely change your life. I am thankful to God I made the right decision thirty-four years ago."[80]

VI. Conclusion

Judge Villeza shared the story of visiting a high school during a student government class. The class of thirty-five, like many other high school classes in the Los Angeles area, was comprised of mostly minority students. Judge Villeza asked how many were interested in becoming lawyers. Only two students raised their hands.[81] Yet this lack of interest in the law is not unique to Filipino Americans. All minorities should be educating their children about a possible career in the law. Existing attorneys should take the laboring oar by highlighting the problem of a lack of minority judicial officers, educating younger generations about the law, and encouraging qualified attorneys (or helping attorneys become qualified) to seek judicial positions. Justice Chin, in speaking on a symposium on racial and ethnic composition and attitudes in the judiciary had this to say:

> I encourage you actively to seek judicial positions. Your efforts are increasingly important because, frankly, the people of California want their judges to reflect more closely the diversity they see every day in the general population. And so the quest for diversity on the bench begins with you. Keep in mind that the opportunities are there.[82]

By encouraging diversity on the bench, we can ensure that when we ask future generations whether they want to pursue a career in the law, minority students can answer with a resounding "yes."

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76. *Id.*
77. Ocampo, *supra* note 42.
78. Recana, *supra* note 2.
79. *Id.*
80. *Id.*
81. Villeza, *supra* note 40.
82. Chin, *supra* note 73, at 191.

The Way to Stop Discrimination on the Basis of Race . . .

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Chief Justice John Roberts and Associate Justice Sonia Sotomayor have expressed very different views on how to stop discrimination. By examining affirmative action jurisprudence, Turner highlights the fundamental differences between these two Justices' views on race, racism and discrimination and postulates how this will play out in future Supreme Court cases.

"America has never discriminated on the basis of race (which does not exist) but on the basis of racism (which most certainly does)."[1]

I. Introduction

In the U.S. Supreme Court's 2007 decision in *Parents Involved in Community Schools v. Seattle School District No. 1*,[2] Chief Justice John G. Roberts, Jr. declared: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[3] Focusing on what he framed as race-based discrimination and the mandate of the Equal Protection Clause of the Fourteenth Amendment,[4] the Chief Justice conceptualized race as skin color or phenotype and posited that any and all governmental considerations of race are constitutionally problematic and must end.

More recently, in *Schuette v. Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary*,[5] Justice Sonia Sotomayor stated: "The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes wide open to the unfortunate effects of centuries of racial discrimination."[6] Unlike Chief Justice Roberts's race-based discrimination approach, Justice Sotomayor's focus on racism-based discrimination goes beyond race-as-color-and-phenotype and emphasizes the real and harmful effects of this form of discrimination on the nation's racial and ethnic minorities. She thus rejected the Chief Justice's call for the cessation of all governmental considerations of race, understanding that that approach renders invisible and cannot meaningfully address the legacies and current manifestations of historical and contemporary racism.

This article examines Chief Justice Roberts's and Justice Sotomayor's differing views on "the way to stop discrimination on the basis of race" and the implications of that disagreement on the Court's race-conscious affirmative action jurisprudence.[7] As discussed herein, the Justices' disagreement is grounded in and reflects fundamental differences in their conceptualizations and understandings of race, racism, and discrimination. I argue and ultimately conclude that Justice Sotomayor's approach is cognizant of and best

1. Ta-Nehisi Coates, *This Town Needs a Better Class of Racist*, The Atlantic (May 1, 2014), http://www.theatlantic.com/politics/archive/2015/05/This-Town-Needs-A-Better-Class-Of-Racist/361443.

2. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 127 S.Ct. 2738 (2007).

3. *Id*. at 748.

4. 14 U.S.C.S. § 1 (LexisNexis 2016) (stating that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

5. Schuette v. Coalition to Defend Affirmative Action, 134 S. Ct. 1623 (2014).

6. *Id*. at 1676.

7. This article is a revised and condensed version of my essay, *The Way to Stop Discrimination of the Basis of Race*, 11 Stan. J. Civ. Rts. & Civ. Lib. 45 (2015).

"Justice Powell's reference to 'non-black minorities' helped make more plausible the claim that race operated similarly for all ethnic groups—that the experiences of the Irish and Austrians resembled that of the Chinese, Japanese, and Mexicans in the United States, and by extension tracked the fate of blacks as well."

captures the dynamics of racism-based discrimination as evidenced by the lived experiences of those subjected to and subordinated by the legal and sociopolitical realities of not race but racism.

II. The Court's Race-Conscious Affirmative Action Jurisprudence

The Supreme Court has decided several cases addressing the issue of the constitutionality of race-conscious affirmative action programs in university admissions and government contracting. On display in these cases are the differing race-based and racism-based discrimination analyses also found in Chief Justice Roberts's and Justice Sotomayor's divergent views on the way to stop discrimination.

In *Regents of the University of California v. Bakke*,[8] the Court struck down, as violative of the Equal Protection Clause, a University of California at Davis Medical School special admissions program reserving sixteen of one hundred seats in an incoming medical school class for disadvantaged members of minority groups. In so ruling, the Court held that race could be considered as a "plus" factor in admissions decisions.[9] Of special interest are the Justices' discussions of race. In his opinion announcing the judgment of the Court, Justice Lewis F. Powell, Jr., speaking for himself and adopting a race-based approach, opined that the "guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal."[10] Consequently, "[r]acial and ethnic distinctions of any sort are inherently suspect and call for the most exacting judicial examination."[11]

Furthermore, Justice Powell said that, in its earlier decisions, the Court determined that the purpose of the Fourteenth Amendment was the freedom, security, and protection of enslaved persons newly freed from "the oppressions of those who had formerly exercised dominion over" them.[12] In the years following the 1868 adoption of that amendment and its Equal Protection Clause, "the United States had become a Nation of minorities" all struggling to overcome the biases of "a 'majority' composed of various minority groups . . ."[13] "As the Nation filled with the stock of many lands, the reach of the Clause was gradually

8. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 98 S. Ct. 2733 (1978).
9. *See id*. at 317–20, 326.
10. *Id*. at 289–90.
11. *Id*. at 291.
12. *Id*.
13. *Id*. at 292.

This conceptualization of race "cast whites as vulnerable minorities" and "magically conjured WASPs as America's most vulnerable potential victim."

extended to all ethnic groups seeking equal protection from official discrimination."[14] As noted by Professor Ian Haney-Lopez, "Justice Powell's reference to 'non-black minorities' helped make more plausible the claim that race operated similarly for all ethnic groups—that the experiences of the Irish and Austrians resembled that of the Chinese, Japanese, and Mexicans in the United States, and by extension tracked the fate of blacks as well."[15] For Justice Powell, the Equal Protection Clause applied to all persons, including the various minority groups comprising the white majority, "which can lay a claim to a history of prior discrimination at the hands of the State and private individuals."[16] This conceptualization of race "cast whites as vulnerable minorities" and "magically conjured WASPs as America's most vulnerable potential victim."[17]

The opinion of Justices William J. Brennan, Jr., Byron Raymond White, Thurgood Marshall, and Harry A. Blackmun (the Brennan opinion) agreed with Justice Powell that certain considerations of race in university admissions are permissible, but they disagreed with his conclusion that the medical school's admissions program violated the Equal Protection Clause. Eschewing Justice Powell's "Nation of minorities" approach, the Brennan opinion noted that the Equal Protection Clause "was early turned against those whom it was intended to set free" and that "reality rebukes us that race has too often been used by those who would stigmatize and oppress minorities."[18]

In a separate opinion, Justice Marshall, employing a racism-based approach, argued that the challenged admissions program did not violate the Constitution. He stated:

For it must be remembered that, during most of the past 200 years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier.[19]

Justice Marshall's opinion focused on the nation's historical discrimination against and subordination of African Americans,[20] including slavery; the Court's infamous *Dred Scott v. Sandford* decision;[21] the post-emancipation Black Codes; the failure of Reconstruction in which "with the assistance of this Court, the Negro was rapidly stripped of his new civil rights"; *Plessy v. Ferguson*'s validation of the separate-but-equal doctrine[22] and southern states' expansion of Jim Crow laws; northern states' and the federal government's

14. *Id*.
15. Ian F. Haney Lopez, *A Nation of Minorities: Race, Ethnicity, and Reactionary Colorblindness*, 59 Stan. L. Rev. 985, 1036 (2007).
16. Bakke, *supra* note 8, at 295.
17. Haney Lopez, *supra* note 15, at 1039.
18. Bakke, *supra* note 8, at 327.
19. *Id*. at 387.
20. *See id*. at 388–94.
21. Scott v. Sandford, 60 U.S. 393 (1857).
22. Plessy v. Ferguson, 163 U.S. 537, 16 S. Ct. 1138 (1896).

Justice O'Connor did not doubt that this nation's history of private and public discrimination against African Americans resulted in a lack of opportunities for black entrepreneurs; however, she concluded that observation did not justify "a rigid racial quota" in the awarding of contracts.

discrimination against African Americans; and the state-mandated exclusion of black children from public schools invalidated by the Court's 1954 seminal ruling in *Brown v. Board of Education*.[23] "The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment," Justice Marshall wrote.[24] He referenced data on African American life expectancy, infant mortality, deaths of mothers during childbirth, median income, poverty, and unemployment. "At every point from birth to death the impact of the past is reflected in the still disfavored position of the Negro."[25] Given this "sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society."[26]

The Court's government contracting cases also contain different judicial approaches to the question of discrimination. *City of Richmond v. J.A. Croson Co.*[27] upheld an equal protection challenge to a set-aside program requiring construction contractors to award at least thirty percent of the dollar amount of each contract to minority business enterprises. Justice Sandra Day O'Connor's plurality opinion argued, among other things, that racial classifications "carry a danger of stigmatic harm" and "may in fact promote notions of racial inferiority and lead to a politics of racial hostility."[28] She noted that "blacks constitute approximately 50% of the population of the city of Richmond. Five of the nine seats on the city council are held by blacks."[29] Those facts gave rise to her "concern that a political majority will more easily act to the disadvantage of a minority based on unwarranted assumptions or incomplete facts."[30] A dissenting Justice Marshall argued that this view "implies a lack of political maturity on the part of this Nation's elected minority officials that is totally unwarranted. Such insulting judgments have no place in constitutional jurisprudence."[31]

23. Brown v. Bd. of Educ., 347 U.S. 483, 74 S. Ct. 686 (1954).
24. Bakke, *supra* note 8, at 395.
25. *Id*. at 396.
26. *Id*.
27. Richmond v. J. A. Croson Co., 488 U.S. 469, 109 S. Ct. 706 (1989).
28. *Id*. at 493, 494.
29. *Id*. at 495.
30. *Id*. at 495–96.
31. *Id*. at 555.

Justice O'Connor did not doubt that this nation's history of private and public discrimination against African Americans resulted in a lack of opportunities for black entrepreneurs; however, she concluded that observation did not justify "a rigid racial quota" in the awarding of contracts.[32] Finding no evidence of identified discrimination in the Richmond construction industry, she reasoned that the low level of minority business participation (0.67% of the city's prime construction contracts) could reflect societal discrimination in educational and economic opportunities as well as black and white career choices. "Blacks may be disproportionately attracted to industries other than construction."[33]

Justice Marshall's dissent, joined by Justices Brennan and Blackmun, opened with the following sentence: "It is a welcome symbol of racial progress when the former capital of the Confederacy acts forthrightly to confront the effects of racial discrimination in its midst."[34] Finding "deep irony" in the Court's "second-guessing" of the city's judgment, he noted that the "facts of the Richmond experience"—"the deliberate diminution of black residents' voting rights, resistance to school desegregation, and publicly sanctioned housing discrimination"—were "deeply familiar to the leadership of Richmond."[35] Rejecting the Court's "armchair cynicism"[36] and "cramped vision of the Equal Protection Clause," Justice Marshall opined, "The battle against pernicious racial discrimination or its effects is nowhere near won."[37]

Adarand Constructors, Inc. v. Pena[38] provides yet another illustration of the differing race and racism-based approaches found in the Court's affirmative action rulings. There, the Court, by a five to four vote, held that a federal program providing financial incentives to prime contractors to hire certified small businesses controlled by socially and economically disadvantaged individuals was subject to strict scrutiny judicial review.[39] Justice O'Connor, writing for the Court, stated: "The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality," and "government is not disqualified from acting in response to it."[40] But that action must satisfy strict scrutiny—i.e., the action must serve a compelling governmental interest by narrowly tailored means. The late Justice Antonin Scalia, concurring, made clear his view that "government can never have a 'compelling interest' in discriminating on the basis of race in order to 'make up' for past racial discrimination. . . In the eyes of the government, we are just one race here. It is American."[41] And, in a separate concurrence, Justice Clarence Thomas proclaimed that "Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law."[42] He saw no difference between what he termed benign prejudice and malicious prejudice. "In each instance, it is racial discrimination, plain and simple."[43]

For the *Adarand* dissenters, governmental efforts to address the real-world effects of racial discrimination did not violate the Constitution. Justice David H. Souter, joined by Justice Stephen G. Breyer, concluded that the Constitution did not forbid race-conscious affirmative action even though extirpating the lingering effects of such discrimination may result in hurting members of a historically favored race who are not

32. *Id*. at 499.
33. *Id*. at 503.
34. *Id*. at 528, 561 (stating that "I never thought that I would live to see the day when the city of Richmond, Virginia, the cradle of the Old Confederacy, sought on its own, within a narrow confine, to lessen the stark impact of persistent discrimination…History is irrefutable, even though one might sympathize with those who—though possibly innocent in themselves—benefit from the wrongs of past decades.").
35. *Id*. at 544.
36. *Id*. at 546.
37. *Id*. at 561.
38. Adarand Constructors v. Pena, 515 U.S. 200, 115 S. Ct. 2097 (1995).
39. *Id*. at 227 (noting that race-based governmental classifications "are constitutional only if they are narrowly tailored measures that further compelling governmental interests").
40. *Id*. at 237.
41. *Id*. at 239.
42. *Id*. at 240.
43. *Id*. at 241.

For the Adarand dissenters, governmental efforts to address the real-world effects of racial discrimination did not violate the Constitution.

personally responsible for any discriminatory actions.[44] Justice Ruth Bader Ginsburg, joined by Justice Breyer, observed that "the idea that 'we are just one race'" was not embraced for most of the nation's history,[45] and opined that the effects of racial discrimination

> are evident in our workplaces, markets, and neighborhoods. Job applicants with identical resumes, qualifications, and interview styles still experience different receptions, depending on their race. White and African-American consumers still encounter different deals. People of color looking for housing still face discriminatory treatment by landlords, real estate agents, and mortgage lenders. Minority entrepreneurs sometimes fall to gain contracts though they are the low bidders, and they are sometimes refused work even after winning contracts. Bias both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country's law and practice.[46]

In *Grutter v. Bollinger*,[47] the Court assessed the constitutionality of the University of Michigan Law School's consideration of race as one factor in admissions decisions. Justice O'Connor's opinion for a five-Justice majority held that the school had a compelling interest in the attainment of a diverse student body and that the challenged program was narrowly tailored to serve that compelling interest. She deferred to the law school's judgment that racial and ethnic diversity were critical to the institution's educational mission and would yield educational benefits and accepted the school's goal of enrolling a "critical mass" of minority students "defined by reference to the educational benefits that diversity is designed to produce," and presumed that the school was acting in good faith.[48]

Justice O'Connor also noted that "public institutions of higher education must be accessible to all individuals regardless of race or ethnicity"; that "[e]ffective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized"; and that "it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity" so that "a set of leaders with legitimacy in the eyes of the citizenry" are cultivated.[49] As national leaders are trained in universities and law schools, access to legal education and the legal profession "must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America."[50] Key to Justice O'Connor's and the Court's analysis was the fact that the law school's admissions plan sought to increase student body diversity and not

44. *See id*. at 270.
45. *Id*. at 272.
46. *Id*. at 273–74.
47. Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325 (2003).
48. *Id*. at 329–30.
49. *Id*. at 331–32.
50. *Id*. at 332–33.

remediate past and current wrongs. She recognized that the desired "critical mass" of minority students would be comprised of individuals whose views are likely affected by the "unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters."[51]

III. "The Way to Stop Discrimination on the Basis of Race…"

Thus, one finds in the Court's affirmative action precedents a clear jurisprudential divide between, on the one hand, Justices employing a race-based discrimination analysis focusing on racial classifications and, on the other, Justices employing a racism-based analysis grounded in and cognizant of the harmful effects and current manifestations of discrimination against racial minorities. That divide is on full display in Chief Justice Roberts's and Justice Sotomayor's differing views on the "way to stop discrimination on the basis of race."

In *Parents Involved in Community Schools v. Seattle School District No. 1,*[52] the Court, by a five to four vote, invalidated race-conscious student assignment plans that elected school boards voluntarily adopted in Seattle, Washington and Jefferson County, Kentucky.[53] Chief Justice Roberts's plurality opinion concluded that the plans sought racial balance "set solely by reference to the demographics of the respective school districts" and were "directed only to racial balance, pure and simple, an objective this Court has repeatedly condemned as illegitimate."[54] Quoting Justice John Marshall Harlan's "[o]ur Constitution is color-blind" axiom,[55] the Chief Justice protested that the acceptance of racial balancing would serve as the justification for racial proportionality supporting the "indefinite use of racial classifications, employed first to obtain the appropriate mixture of racial views . . ."[56]

Having framed the issue as one of race-based discrimination and presented a narrative in which the Court serves as the champion of colorblind constitutionalism, Chief Justice Roberts invoked *Brown v. Board of Education*[57] as support for his position. Setting forth a revisionist account of the Court's seminal 1954 decision, he argued that both the *Brown* plaintiffs and the plaintiffs challenging the Seattle and Jefferson County plans made the same claim: that racial classifications according differential treatment on the basis of race violate the Fourteenth Amendment.[58] In doing so, Chief Justice Roberts quoted *Brown* lawyer Robert L. Carter's statement in the 1952 oral argument before the Court: "'We have one fundamental contention which we will seek to develop in the course of this argument, and that contention is that no State has any authority under the equal-protection clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities among its citizens.'"[59] Commenting in 2007 on this characterization of his 1952 argument, then-federal Judge Carter stated: "All that race was used for at that point in time was to deny equal opportunity to black people. . . . It's to stand that argument on its head to use race the way they use [it] now."[60]

Chief Justice Roberts also made this incredible statement: "Before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin."[61] Noting the absurdity of this ahis-

51. *Id*. at 333; *see also* Gratz v. Bollinger, 539 U.S. 244, 123 S. Ct. 2411 (2003) (invalidating the University of Michigan's race-conscious undergraduate admissions policy).

52. Parents Involved, *supra* note 2.

53. Justice Samuel A. Alito, Jr., who replaced Justice O'Connor on the Supreme Court after her retirement, provided the fifth vote for striking down the plans.

54. Parents Involved, *supra* note 52, at 726, 729.

55. *Id*. at 729; *see* Ferguson, *supra* note 22, at 559.

56. Parents Involved, *supra* note 2, at 731.

57. Brown v. Bd. of Educ., *supra* note 23.

58. *See* Parents Involved, *supra* note 2, at 747.

59. *Id*.

60. Adam Liptak, *The Same Words, but Differing Views*, N.Y. Times (June 29, 2007), http://www.nytimes.com/2007/06/29/us/29assess.html?_r=0.

61. Parents Involved, *supra* note 2, at 747.

"Race matters" not simply or only as a matter of color or phenotype; race matters "because of persistent racial inequality in society—inequality that cannot be ignored and that has produced stark socioeconomic disparities."

torical description of the real-world issue addressed by the *Brown* Court, Justice John Paul Stevens remarked that the Chief Justice "fails to note that it was only black schoolchildren who were so ordered; indeed, the history books do not tell stories of white children struggling to attend black schools."[62]

Closing his opinion, Chief Justice Roberts opined that the Seattle and Jefferson County school districts had "to stop assigning students on a racial basis. The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[63] Notably, a majority of the Court did not share this view. Justice Anthony M. Kennedy, while providing the majority-creating fifth vote for the Court's invalidation of the plans, wrote:

> [the] postulate that '[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race' . . . is not sufficient to decide these cases. Fifty years of experience since *Brown* . . . should teach us that the problem . . . defies so easy a solution.[64]

And, a dissenting Justice Breyer, joined by Justices Steven, Souter, and Ruth Bader Ginsburg, made clear that he did "not claim to know how best to stop harmful discrimination."[65] The people and not judges should debate that issue and find answers to

> how best to overcome our serious problems of increasing de facto segregation, troubled inner-city schooling, and poverty correlated with race. . . . [I]t is for them to decide, to quote the plurality's slogan, whether the best 'way to stop discrimination on the basis of race is to stop discriminating on the basis of race.'[66]

Chief Justice Roberts's "the way to stop discrimination" slogan was the subject of debate in the Court's 2014 decision in *Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary*.[67] In that case, the Court held that a voter-approved amendment to the Michigan Constitution prohibiting race-based and other preferences in public employment, public education, and public contracting did not violate the Equal Protection Clause.[68] Writing for a six-Justice majority, Justice Kennedy concluded that the voters of a state may resolve the debate about the use of racial preferences and that the judiciary is not authorized to set aside state laws empowering voters to make that policy determination.[69]

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62. *Id*. at 799.
63. *Id*. at 748.
64. *Id*. at 788.
65. *Id*. at 862.
66. *Id*. at 862, 863.
67. Schuette, *supra* note 5.
68. The amendment was a response to the Court's decisions in *Grutter*, *supra* note 46 and *Gratz*, *supra* note 50.
69. *See* Schuette, *supra* note 5, at 1638.

"The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes wide open to the unfortunate effects of centuries of racial discrimination."

Justice Ginsburg, the senior Justice in dissent, assigned the dissenting opinion to Justice Sotomayor, thereby affording Sotomayor the opportunity to express her views on affirmative action.[70] Justice Sotomayor opened her opinion with this observation: "We are fortunate to live in a democratic society. But without checks, democratically approved legislation can oppress minority groups. For that reason, our Constitution places limits on what a majority of the people may do."[71] Cognizant of context and history, she declaimed that "to know the history of our Nation is to understand its long and lamentable record of stymieing the right of racial minorities to participate in the political process."[72]

Noting Chief Justice Roberts's "the way to stop discrimination" hypothesis, Justice Sotomayor argued that the Chief Justice expressed "a sentiment out of touch with reality, one not required by our Constitution, and one that has properly been rejected as 'not sufficient' to resolve cases of this nature."[73] In her view, "race matters" not simply or only as a matter of color or phenotype; race matters "because of persistent racial inequality in society—inequality that cannot be ignored and that has produced stark socioeconomic disparities."[74] In a gripping passage of her opinion Justice Sotomayor addressed ways in which race matters:

> Race matters to a young man's view of society when he spends his teenage years watching others tense up as he passes, no matter the neighborhood where he grew up. Race matters to a young woman's sense of self when she states her hometown, and is then pressed, "No, where are you really from?," regardless of how many generations her family has been in the country. Race matters to a young person addressed by a stranger in a foreign language, which he does not understand because only English was spoken at home. Race matters because of the slights, the snickers, the silent judgments that reinforce that most crippling of thoughts: "I do not belong here."[75]

Ignorance of or blindness to the ways in which race matters is regrettable, Justice Sotomayor instructed. The way to stop to discrimination on the basis of race is not to stop discriminating on the basis of race. "The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes wide open to the unfortunate effects of centuries of racial discrimination."[76] Judges "ought not sit back and wish away, rather than confront, the racial inequality that exists in our society," she continued, for "it is this view that works harm, by perpetuating the facile notion that what makes race matter is acknowledging the simple truth that race does matter."[77]

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70. *See* Marcia Coyle, *Ginsburg on Rulings*, NAT. L.J. (Aug. 22, 2014), at 1, 6.
71. Schuette, *supra* note 5, at 1651.
72. *Id*.
73. *Id*. at 1675 (quoting Parents Involved, *supra* note 2, at 788).
74. *Id*. at 1676.
75. *Id*.
76. *Id*.
77. *Id*.

Responding to Justice Sotomayor, Chief Justice Roberts stated that "it is not 'out of touch with reality' to conclude" that thoughts of not belonging may be reinforced by "racial preferences" and "that the preferences do more harm than good."[78] To disagree, in good faith, regarding the costs and benefits of race-conscious affirmative action "is not to 'wish away, rather than confront' racial inequality,"[79] and it "does more harm than good to question the openness and candor of those on either side of the debate."[80]

As can be seen, Chief Justice Roberts's race-based approach is disconnected from the effects and realities of this nation's racism-based history. Governmental recognition and consideration of race, whether employed to address and end racial segregation and subordination as in *Brown* or to encourage and facilitate racial integration and inclusion as in Seattle's and Jefferson County's student assignment plans, are labeled racial classifications violative of the Equal Protection Clause. When the Court conceptualizes and understands race in this way, the reason why government has adopted race-conscious policies and programs is deemed to be constitutionally irrelevant. The idea that race is "a superficial individual trait, disconnected from vertical understandings of group hierarchy"[81] is the flawed foundation of Chief Justice Roberts's acontextual and ahistorical jurisprudence in this critically important area of constitutional law.

Compare and contrast Chief Justice Roberts's approach to that taken by Justice Sotomayor in her *Schuette* dissent. She expressly grounded her analysis in history and in the lived experiences of those classified, marginalized, and subordinated by the social, civic, and legal double standard of white supremacy and racism.[82] For Justice Sotomayor, the issue, the indispensable focal point, is the history and current manifestations and effects of racism. Addressing that reality requires more than a tautological observation that the way to stop discrimination on the basis of race is to stop discriminating on the basis of race. Such discrimination cannot be meaningfully addressed by a Court incurious about context and history and unwilling to take into account "the unfortunate effects of centuries of racial discrimination."[83]

As this article is being submitted for publication, we await the Court's latest decision in *Fisher v. University of Texas at Austin* and its resolution of an equal protection challenge to the university's race-conscious undergraduate admissions program. Will the seven Justices participating in that case following the death of Justice Scalia, and in light of Justice Elena Kagan's recusal, adhere to their differing race and racism-based approaches? If so, three Justices—Chief Justice Roberts and Justices Alito and Thomas—likely will find what they view as the university's racial classification of applicants to be constitutionally problematic. Three Justices—Justices Ginsburg, Breyer, and Sotomayor—likely will find the university's contextual consideration of race—with eyes wide open to this nation's history and today's racial inequality—to be constitutionally permissible. All of which brings us to Justice Kennedy, who has never voted in favor of a race-conscious affirmative action plan but did reject Chief Justice Roberts' "the way to stop discrimination" postulate in *Parents Involved*. How he will vote is, of course, not certain, although my educated guess is that he will vote to strike down the university's program. The accuracy of that guess will soon be known.

78. *Id*. at 1639.
79. *Id*.
80. *Id*.
81. Osagie K. Obasogie, Blinded By Sight: Seeing Through the Eyes of the Blind 116 (2013).
82. *See* Karen E. Fields & Barbara J. Fields, Racecraft: The Soul of Inequality in American Life 17 (2012).
83. Schuette, *supra* note 5, at 1676.

IILP Review 2017: Disability Diversity and Inclusion Issues in the Legal Profession

Disability Diversity: A Primer for the Legal Profession

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Are some disabilities more "legitimate" than others? What are the proper terms we should use in conversations about disability diversity so as not to give offense or show ignorance? Of what do law firm lawyers need to be aware so as to more successfully work with those of their colleagues who may have visible or invisible disabilities? Babineau and Goita provide some guidance for lawyers seeking to be more inclusive of disability diversity.

As client and industry requests for information about the teams staffed on their projects become more sophisticated, including data broken down by hours billed, dollars, career stage, race and ethnicity, gender, and LGBT status, attorneys with disabilities remain one of the largest untapped diversity resources in law firms. But some client and industry surveys are already starting to ask for data related to attorneys with disabilities.

I. Disability Defined

As attorneys, we are familiar with the definition of disability under the Americans with Disabilities Act of 1990: "A physical or mental impairment that substantially limits one or more major life activities, a record of such impairment; or being regarded as having such an impairment."[1] We may also be familiar with the medical definition: (1) "Inability to function normally, physically or mentally; incapacity";[2] or (2) "Loss of function at the level of the whole person, which may include inability to communicate or perform mobility, activities of daily living, or necessary vocational or avocational activities."[3]

It is the medical definition that we frequently associate with the disabilities with which we are most familiar such as blindness, deafness, limited mobility, and the like. These disabilities have two common elements that make them feel familiar and relatable. First, people can frequently visually identify disabled people who use canes, wheelchairs, hearing aids, American Sign Language (ASL), or an assistant or service dog. Secondly, many of us feel we can relate to the experience of having these disabilities to some degree because we have the experience of being in the dark, being unable to see, being unable to hear, or having an injury that allows us to temporarily "try on" the experience of having a limited function similar to that of having these disabilities.

1. Americans with Disabilities Act, 42 U.S.C. § 12102 (1990), http://www.ada.gov/pubs/adastatute08.htm#12102.
2. *Disability*, Dorland's Medical Dictionary for Health Consumers (2007), http://medical-dictionary.thefreedictionary.com/disability.
3. *Disability*, Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health (7th ed. 2007), http://medical-dictionary.thefreedictionary.com/disability.

People with disabilities are also the only minority group that anyone can join at any time, with rates of disability increasing as age increases.

There are four main categories that most disabilities will fall into: hidden versus apparent disabilities; and medical versus psychological disabilities. Examples of each type are listed below.

Medical/Hidden	Medical/Apparent	Psychological/Hidden	Psychological/Apparent
• Multiple Sclerosis • Heart Disease • Seizure Disorders • Diabetes	• Missing Limbs • Mobility Impairments • Blindness • Deafness	• Depressive Disorders • Anxiety Disorders • Schizophrenia • Bipolar Disorder	• Tic Disorders • Symptomatic Behaviors

Estimates from the U.S. Census Bureau,[4] the Center for Disease Control,[5] and the National Institute of Mental Health[6] show that between nineteen and twenty-six percent of non-institutionalized, working-age adults (adults aged eighteen to sixty-five) will have one or more conditions in any given year that may qualify as a disability. People with disabilities are also the only minority group that anyone can join at any time, with rates of disability increasing as age increases.

II. Law Firms and Our Clients

It follows from these data that one in four or five people in any law firm will have a disability and, perhaps more importantly, the same is true of our clients. Clients may have updated affirmative action obligations that include a goal of employing people with disabilities as seven percent or more of each job group under Section 503 of the Rehabilitation Act of 1973.[7] This will cause an increased focus on educating workforces about those conditions that the regulation may consider to be disabilities and educating workforces about reasonable accommodations and procedures for recruitment and retention of people with disabilities in underrepresented job groups.[8] These regulations are relevant to any federal contractor, anyone who has a supply and service contract with a federal contractor with the dollar threshold of the combined contracts being $50,000, and any employer having fifty or more employees (including temporary or part-time employees).[9]

4. *See* U.S. Census Bureau, *Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports*, News Releases (July 25, 2012), http://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html.

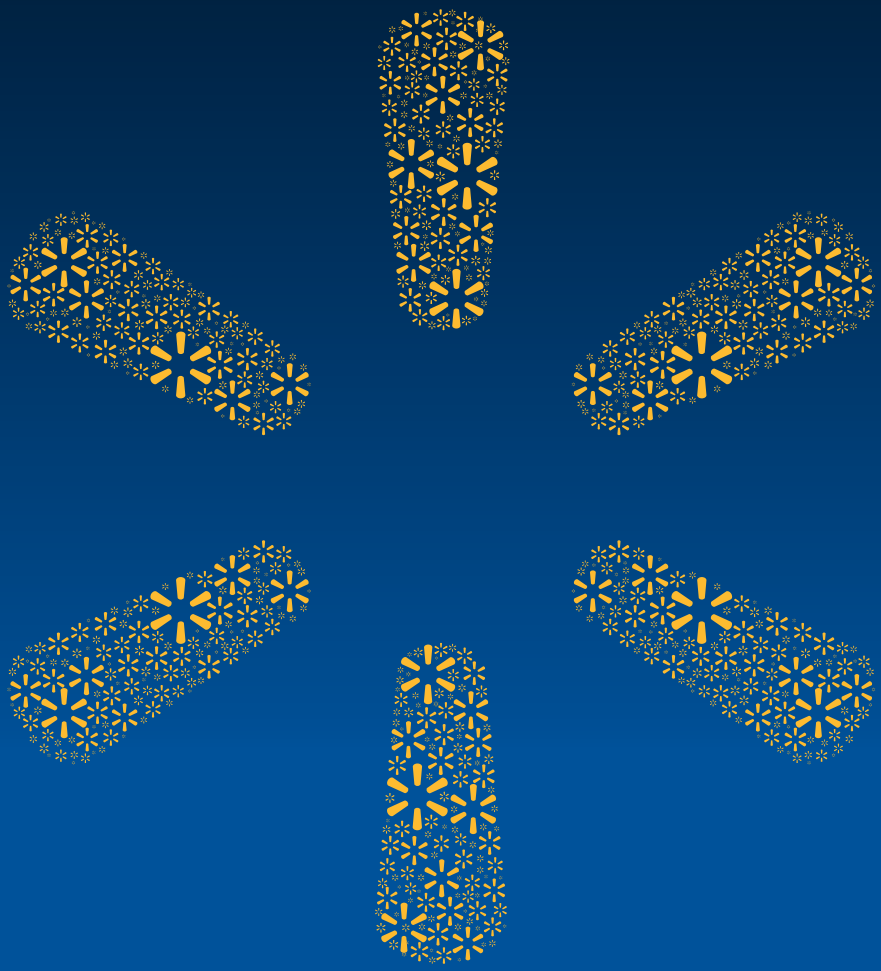
5. *See How Many People Have Disabilities? A Tip Sheet for Public Health Professionals*, Center for Disease Control (2009), http://www.cdc.gov/ncbddd/disabilityandhealth/documents/disability-tipsheet_phpa_1.pdf.

6. *See generally* National Institute of Mental Health, *The Numbers Count: Mental Disorders in America*, Health & Education (Sept. 12, 2014), http://www.lb7.uscourts.gov/documents/12-cv-1072url2.pdf.

7. *See* The Rehabilitation Act, 29 U.S.C. § 701 (1973).

8. *See* United States Department of Labor, *OFCCP's New Regulations to Improve Job Opportunities for Individuals with Disabilities*, Office of Federal Contract Compliance Program (Sept. 24, 2013), http://www.dol.gov/ofccp/regs/compliance/section503.htm.

9. *Checklist for Compliance with Section 503 of the Rehabilitation Act of 1973,*



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Even if our clients do not have affirmative action obligations, people with disabilities had an estimated $220 billion in purchasing power in 2010,[10] with the number of people with disabilities to double by 2030 and their purchasing power increasing exponentially as their disposable income increases with age and work experience.[11] Law firms are well-advised to recognize these market pressures facing our clients, and work toward demonstrating a shared commitment to this demographic and fluency in disability inclusion.

With the rates of self-disclosure of disability in law firms being reportedly much lower than the average rate of disability in the U.S. population, it will be hard to make the case that disability is an important demographic to law firms. Interestingly, the rate of disclosure among associates is higher than the rate of disclosure among older attorneys at the partner level, a statistical improbability given that rates of disability are positively correlated with age. This difference indicates that the stigma of having a disability may influence the rate of disclosure. Generation X and Millennial attorneys may be more accustomed to self-disclosure of personal characteristics such as sexual orientation or gender identity.

A frequent argument against the inclusion of attorneys with disabilities is that top-tier law firms are supposed to provide premiere services to clients; this implies that should an attorney admit to having a highly stigmatized disability, such as clinical depression, clients may believe they are not getting the optimal legal strategy for which they are paying. This logic does not follow for two reasons. First, the fundamental principle from which most law firm diversity programs spring is that a variety of experience, talent, and perspectives provide more and better potential solutions to complex legal problems than homogenous teams.[12] Second, the collective contributions of people with disabilities to American society include breakthrough products and procedures, such as titanium knees, motorized wheelchairs, screen readers, heart and lung transplants, and 3-D printers, that may someday be able to use a person's stem cells to print a new organ for transplant. Without disabilities to have sparked these ideas, there would be no reason for these innovations to exist, proving that the lens of having a disability does indeed result in creative and valuable solutions to complex problems.

III. Integration Starts with Respect: Understanding the Culture of Different Disabilities

Just as we recognize that there are a multitude of cultures within the overarching category of attorneys of color, people with disabilities are similarly diverse in their cultures and experience. People with apparent disabilities frequently say they have to overcome others' tendency to define them in terms of their disability. For example, Aimee Mullins, an athlete, fashion model, and keynote speaker, compared her disability to her shadow, saying, "Sometimes I see a lot of it. Sometimes there's very little, but it's always with me."[13] People with apparent disabilities report having to learn to break the ice and make new colleagues comfortable in their presence before they can prove that they are capable, thinking colleagues.

On the opposite end, people with non-apparent or hidden disabilities constitute seventy-one percent of all people with disabilities[14] and have a conundrum similar to that the LGBT community faces. Questions

As Amended, Department of Labor, https://www.dol.gov/ofccp/regs/compliance/checklistforCompliancewithSection503_JRF_QA_508c.pdf.

10. *See* Darren Bates, *Top 10 Ways to Market to People with Disabilities and Boost Your ROI*, Employment Alliance for People with Disabilities Blog (Apr. 29, 2013), http://eapd.weebly.com/2/archives/04-2013/1.html.

11. Glenn T. Fujiura, *Disability Trends*, in The Future of Disability in America (Marilyn J. Field and Alan M. Jette eds., 2007), *http://www.ncbi.nlm.nih.gov/books/NBK11437/.*

12. Scott E. Page, The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies 41 (2nd ed. 2008).

13. Aimee Mullins, The Opportunity of Adversity (Oct, 2009), (transcript http://www.ted.com/talks/aimee_mullins_the_opportunity_of_adversity/transcript?language=en.

14. Fifth Quadrant Analytics, Sustainable Value Creation Through Disability: The Global Economics of Disability 5 (2013), http://returnondisability.com/wp-content/uploads/2012/09/The%20Global%20Economics%20of%20Disability%20-%202013%20Annual%20Report.pdf.

such as "Should I disclose? To whom? How frequently?" are the dominant drivers of interpersonal interactions at work, coupled with the issue of whether it is better to be upfront about having a disability or to continually try to hide it.

Behavior-related disabilities sometimes give away people with hidden disabilities who choose not to disclose. These behaviors are not a choice but rather a reflex or a consequence of actively managing symptoms. Because the reason for the behavior (the disability) is non-apparent, bystanders may react by becoming angry, assuming the person chose to engage in unusual or unacceptable behavior even though the real reason for the behavior is hidden.

For example, if a person with Post-Traumatic Stress (PTS) is startled by a loud noise at work, he may jump, gasp, or even shout in surprise as a result of the exaggerated startle reflex that is symptomatic of PTS. A superior may rightfully discipline another person who shouts in the workplace for being intrusive or unprofessional. This is a reflex in a person with PTS, and while it may be equally disruptive to others, it is not under the person's control and no kind of discipline will make it so. In other cases, such as with Autism-spectrum disorders, an individual may have difficulty making or sustaining eye contact. It's important to consider the reason for the behavior when working towards a solution to minimize or eliminate its impact.

In these examples, the people with hidden disabilities are in situations in which they are experiencing distress, causing the symptoms of their disabilities to become apparent. Bystanders are unaware these individuals are in distress or unable to feel that the reaction is disproportionate to the stressor, and the bystanders' response is anger. The person with the disability is then forced to simultaneously find relief from the stressor and decide whether to disclose his disability to someone who reacting angrily while he feels vulnerable; he may make a joke to assuage bystanders or in some other way brush the incident aside until, of course, it happens again. Disclosure, advocacy, and education are the only permanent solutions to this conundrum, but whether they are effective depends largely on the receptivity of the audience and the culture of the firm.

The overall experience of being a person with a disability is that of having an additional responsibility. The responsibility includes managing symptoms, advocating for one's own needs, and educating others on the condition. Likening this responsibility to carrying a big box, it is hard to argue that if we saw one of our colleagues working to carry such a box—such a responsibility—that we would not help that colleague by offering to take a corner. Most of us would probably even offer to help a stranger. The culture in most law firms that do not include disability status in their diversity programs, however, does not allow us to see which colleagues may be carrying an additional responsibility. Thus, this culture does not afford us the opportunity to offer our assistance, limiting our ability to create community and inclusion in our firm culture and leaving the responsibility with the individual.

Because our current definitions of disability are based on a model of limitation, loss of function, or incapacity, many of us do not realize that some people with disabilities feel their condition does not constitute something lost but that they have gained something to which others are not privileged. A person who is deaf (with a lower case d) is someone who experiences hearing loss. A person who is Deaf (with a capital D) identifies as being part of the Deaf community, with his or her own culture, language, and social norms. For example, among speakers of ASL, there is no concept of eavesdropping. Any person can see anything that is communicated in ASL. The protocol for keeping a conversation private has evolved differently by necessity. Until recently, there was no concept of sarcasm either. This is changing now thanks to Deaf teenagers who will sign a remark and indicate that they were being sarcastic by raising one eyebrow and scrunching their lips together mimicking stupidity. So Deaf culture evolves.

Consider the concept of color from the viewpoint of someone who has been blind since birth. Those of us who are sighted use color euphemisms for a lot of things that have nothing to do with color. Stop signs are

If you feel that you may have been insensitive, you can always ask the person if this is the case and apologize if appropriate. A good practice for any interactions where you feel unsure how to proceed is to ask how the person prefers to move forward. If they ask you to do something different, it is not a criticism or something to be embarrassed about; you can just say, "Oh, thank you for telling me. I didn't know the etiquette."

red, and when a company is in financial trouble, we say they are in the red. The sky and the ocean are blue, but we also may say of a sad person that he is blue or has the blues. To further add to the confusion, the ocean is blue because bodies of water are blue, but a glass of water is colorless. The sky is blue, but the air in front of us is also colorless. People who are blind from birth have adapted to these sayings and understand the intent despite never having had the experience of color.

IV. Disability Etiquette

The first step in becoming an ally for people with disabilities is to learn how to think and talk about disabilities. We use people-first language. Similar to how the phrase "colored people" evolved to become people of color to emphasize their personhood over their skin color, we no longer use the term "disabled people" but rather people with disabilities. People may use the term "Handicapped" to refer to parking spaces, accessible restrooms, and the like, but we no longer use it to refer to people.

A. Greetings, Common Sayings

When meeting a person with a disability, it is appropriate to offer to shake hands, including people who have missing or partially missing arms or hands. If another person accompanies the person with the disability, assume that the latter can speak for himself. Direct your questions to the person unless he or his companion indicates that you should speak with her instead.

In general conversation, we say things like, "Did you see the article about…?," "Did you hear that…?," and "Do you want to walk over to…?" These common phrases can seem fraught with peril when speaking to a person who is blind, deaf, or has mobility impairments. Unless someone very recently lost these func-

tions, for the most part, they understand this to be an invitation to take part in a social convention without qualification. If you feel that you may have been insensitive, you can always ask the person if this is the case and apologize if appropriate. A good practice for any interactions where you feel unsure how to proceed is to ask how the person prefers to move forward. If they ask you to do something different, it is not a criticism or something to be embarrassed about; you can just say, "Oh, thank you for telling me. I didn't know the etiquette."

B. Deafness

There is a cultural difference between a person who is deaf and a person who is Deaf. The lower case indicates a loss of function or inability, whereas the upper case denotes Deaf culture in which many participants feel they have gained a common language, community, and set of social norms that hearing people cannot access. People with any disability may not view themselves as people who have lost something but rather as people who have gained skills, knowledge, and insight that they would not have otherwise.

When speaking with a person who is deaf, bear in mind that not everyone reads lips. There is no need to speak loudly, but do speak clearly, making sure nothing obstructs your mouth. If there is an ASL interpreter, make eye contact with and speak to the person with the disability, not the interpreter. Though he may be watching the interpreter, it is appropriate to look at the person to whom you are speaking, and when he responds in sign language, he will make eye contact with you, and you can listen to the interpreter. Interpreters will not find you rude if you do not include them in the conversation.

C. Blindness

When you see a blind person in a crowd, it can be difficult to know how to offer assistance. The phrase we recommend is, "Would you like a sighted guide?" If the person accepts your offer, he will either put his hand on your shoulder and walk slightly behind you, or he will take your elbow from behind. This way he can feel your movements and know if you are stepping around, up, or down. It may also be helpful if the terrain is rough to describe what you are going over and how much distance there is to cover.

If you notice a problem that the person does not know about, describing it in a clear and respectful manner is the best way to approach offering assistance. Remember that if the person declines your offer, it does not mean you have done something wrong. It means he has the situation under control. Being respectful of the goal of people with disabilities to remain as independent as possible will help you remember that because they declined your offer, it does not mean they did not appreciate it.

D. Mobility and Service Animals

When you meet someone who uses a wheelchair, it is appropriate to offer more personal space during conversation than you might with someone standing at your level. If you will be speaking for a while, find a place where you can sit so you can be at eye level. This will save both parties a stiff neck. Wheelchairs are considered a part of a person's body. If you would not lean on or grab someone's body, then you would show the same deference to the wheelchair. Some people find it tempting to signal affection by patting a person on the head when he is lower than their standing height. This gesture can come off overly familiar or condescending when applied to a professional adult.

People who have service animals often find that others are tempted to pat or play with it. While a service animal is working, people should not touch nor speak to it because such an action can distract the service animal. You can ask the person if it is okay to speak to or touch the service animal, understanding that the person may say, "She's working right now, so please ignore her."

E. Hidden Disabilities

Hidden or non-apparent disabilities can be particularly tricky because sometimes the only outward indication that the person has a disability is unusual behavior. A person who is preparing for knee surgery may prefer to walk a longer distance to a ramp than to walk up two or three stairs. He may also prefer to take the elevator one floor to avoid stairs. For someone with a psychological disability, such as PTS, an exaggerated startle reflex can be one of the symptoms, which may result in the person jumping at a seemingly insignificant trigger, including someone approaching from behind or a sudden, loud noise. Even if it is the kind of stimulus that might make most people might jump, a person with PTS can be much more startled. The same stimulus may cause the same response in a person with PTS, whereas others will eventually become accustomed to the stimulus and be able to tune it out.

This reflex is comparable to motion sickness. Anyone who gets motion sickness knows that it is not a matter of logically understanding that there is no reason to feel ill. While there is a conscious awareness that there is nothing about reading in the car that should make someone ill, that knowledge will have no influence on how you feel physically. This is not to suggest that people with PTS or other hidden disabilities have no control over their impulses. Most people with PTS are not violent or dangerous and many prefer to avoid confrontations.

Because there is a much higher level of stigma around psychological disabilities than other disabilities, there are far fewer people willing to discuss their hidden psychological disabilities, resulting in more misinformation about how to approach a person who may be struggling. Here are some commonly used remarks, a description of their possible impact, and suggestions for what you might say instead:

Platitudes that you find comforting also may not have the intended effect. Comments such as "this too shall pass," "everything happens for a reason," "count your blessings," "every cloud has a silver lining," and the like can feel dismissive. Demonstrating empathy in a way that lets the person feel like others acknowledge his hard work can go a long way towards making him feel comfortable and may help mitigate some symptoms that could interfere with work.

V. Benefits to Overall Diversity

Of all the demographic categories that we as diversity professionals support, disability is the only one where the following occurs: most people know at least one person in their personal or professional life that has a disability; any one of us can join this demographic at any time; and, those who do not have a disability can "try on" the experience of having certain types of disabilities.

This aspect of "trying on" is unique to disability status. We can marginally relate to the experience of being blind because we have tried to find our way in the dark; we can relate to the experience of being deaf because we have been unable to hear; and, we can relate to the experience of having limited mobility if we have ever sustained an injury, such as a broken bone or pulled muscle, which limited our customary level of function. While these temporary conditions are clearly not the same as having a disability that substantially limits a major life activity, the inconvenience, confusion, and reliance on others for help with routine activities serves to provide a level empathy for those who live with conditions that must be managed daily.

This has great implications for other diversity demographics such as gender, race/ethnicity, LGBT status, and others. Because as much as we may learn about the experiences of people who are different from ourselves, there is no way to fully empathize as closely with these categories. There is no lived experience that others can draw from such as "trying on" a different gender, sexual orientation, or skin color. Through the experience of temporarily identifying with people with certain disabilities, we may forge a greater connection to and respect for all types of minority and marginalized groups, leading to better results from existing diversity programs.

Attorneys with Disabilities: Shedding Light on the Invisible Element of Diversity

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All too often disability diversity is treated as an afterthought or ignored altogether. Yet it is the one diversity category that one needn't be born into, that some members struggle to keep hidden for fear it will influence perceptions about their competence and limit their opportunities, and that any of us can join at any time. Here are some practical steps on how law firms and other employers can move forward with disability diversity.

When we talk about diversity and inclusion in the legal profession, inevitably Pauline E. Higgins's definition of diversity and inclusion comes up: "Diversity is being invited to the party; inclusion is being asked to dance."[1] This definition is a down-to-earth and apt analogy. It makes sense. It's clear. It's understandable. It's digestible. However, it raises some practical questions. How many times have you been to a party where no one is dancing? Where you do not want to dance? Where you are afraid to ask that other person to dance because you do not know whether they want to dance with you or what they'll say if you do ask? Have you had that experience? I have.

I. Imagine This

What does this analogy of invitations and dancing at a party look like in the real world of an attorney with a disability in the legal profession? Inside the courtroom, it looked like this for me: I was fresh out of Cornell Law School and a newly-admitted attorney. It was one of my very first court appearances, and I was making the appearance on my own without one of my law firm's partners or a fellow colleague at my side. I was wearing my regulation black suit. I had the file in my hand. I knew the file inside and out. My skin was crawling with excitement and my stomach was flip-flopping, but I was ready! The judge called the case, and I approached. Before I could state my name and whom I was representing, the judge inquired whether I was the defendant.

Imagine how I felt. I had done everything I was supposed to do to be there. I was at the party ready to dance.

Now, imagine how that judge felt. He was not being malicious. He was sincerely apologetic and embarrassed about his mistake. He simply was not expecting an attorney to look like me: a young, blind, and black woman. By the way, this was not twenty years ago. This was only five years ago.

Trying to enter the profession, it looked like this for me: I was on a callback interview at an elite law firm in a major market. During one of the several one-on-one interviews with the firm's attorneys, a partner stated: "You're saying all the right things, but I just do not know how you can practice law being blind. I could not imagine how I'd do my job if I could not see." I was shocked that an attorney would make this remark. Granted, attorneys do not know every law, but if they are conducting interviews, they should at least know basic employment laws and practices with respect to acceptable and unacceptable questions.

1. Janet H. Cho, *"Diversity is being invited to the party; inclusion is being asked to dance," Verna Myers tells Cleveland Bar,* Cleveland.com (last updated May 27, 2016, 2:21 PM), http://www.cleveland.com/business/index.ssf/2016/05/diversity_is_being_invited_to.html; *see also* Vernã Myers, *Diversity Is Being Invited to the Party; Inclusion Is Being Asked to Dance, in* 1 Moving Diversity Forward: How to Go From Well-Meaning To Well-Doing 5–13 (2011, vol. 11).

People with disabilities and their families control over eight trillion dollars in disposable income worldwide.

Regardless, the partner who was interviewing me was not intentionally trying to be hurtful or to exclude me. He had no ill will toward me. There was only a lack of awareness, experience, and frame of reference for interacting with someone who is different. Again, imagine what it felt like to possess the requisite qualifications and to have a partner deny an opportunity to prove your abilities because, by his own words, he didn't understand how anyone could do the job of a lawyer without being able to see. This was clear ignorance.

Curiously, in my several years of legal practice, I do not recall encountering similar situations with clients but only other members of the profession. Yet, there really is no reason for any of us—whether it is me, the judge, the law firm partner, or you—to have to experience this. Imagine if we could eliminate the fear, embarrassment, shame, guilt, and other feelings of discomfort brought on by these honest yet hurtful mistakes. Imagine what it would be like if there was a venue where we could talk and have open discourse about issues of disability, diversity, and inclusion; about our challenges, the successes, potential strategies, and initiatives in this regard. Imagine where we could resolve and eliminate uncomfortable encounters and get down to the business of advancing the law. Diversity of thought, experience, and background does advance the law and legal practice.

Imagine a party—a legal profession—where everyone is dancing, and everyone is engaged and making a difference. More often than not, these are the people called to the law: people who not only want to make a buck—there's absolutely nothing wrong with that—but people who want to make a buck while making a mark, leaving a legacy, and making a difference for their clients. Also, regarding making a buck, The Return to Disability Group's report estimates that people with disabilities and their families control over eight trillion dollars in disposable income worldwide.[2] So, if they are not your clients directly, they certainly are customers of your clients and will start to matter more and more, particularly as the baby boomer generation is aging.

The truth of the matter is that the public holds us, as attorneys, to a higher standard. Yes, the public holds us to a higher standard in spite of the lawyer jokes and in spite of the clients who tell you how awful lawyers are. In spite of all of this, we are part of an esteemed profession. As attorneys, we are officers of the court, advocates for justice, gatekeepers, and change agents. Many individuals respect and revere our positions. We need to live up to the ideals of the profession, which means being more disability inclusive.

2. Rich Donovan, *Translate Different Into Value: 2016 Annual Report: The Global Economics of Disability*, The Return on Disability Group 2 (2016), http://www.rod-group.com/sites/default/files/2016%20Annual%20Report%20-%20The%20Global%20Economics%20of%20Disability.pdf.

People with disabilities are one of the largest minority groups in America. It is also the only diversity group a person can join at any time.

II. Moving Forward

In order to move forward with respect to disability diversity, we need to start with basic disability awareness and information-gathering. According to the National Association for Law Placement (NALP), only one to two percent of law graduates identify as attorneys with disabilities.[3] However, the U.S. Census Bureau estimates that twenty percent of Americans have a disability.[4] Furthermore, according to the U.S. Social Security Administration, more than twenty-five percent of current workers aged twenty will experience a long-term disability at some point during their working lives.[5] People with disabilities are one of the largest minority groups in America. It is also the only diversity group a person can join at any time. There is a clear disparity between the prevalence of disability in the general population and those in the legal profession. Is this because people with disabilities simply cannot hack it? I think not.

Collecting data on disability is fraught with difficulty for several reasons. First, many individuals with disabilities may not identify as being a 'person with a disability.' Many times when we think of a person with a disability, we think of a person in a wheelchair or a person who is blind. We often forget or do not even associate other non-obvious conditions, such as bipolar disorder, ADD/ADHD, or lupus, as being disabilities. Further complicating this issue of identifying people with disabilities are the varied definitions of disability under different laws and in different contexts. For instance, the Americans with Disabilities Act (ADA) defines disability with respect to an individual as, "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment…"[6] This definition may include a variety of conditions, such as diabetes, cancer, and HIV/AIDS. In addition, the ADA definition (and the ADA itself) fully contemplates a person with a disability as being able to work and provides protections for doing so. Meanwhile, according to the U.S. Social Security Administration, to receive social security disability insurance benefits, disability is defined as "the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work."[7]

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3. *NALP Diversity Infographic: Disabilities*, Nat'l Ass'n for L. Placement, http://www.nalp.org/uploads/Membership/DiversityInfographic-Disabilities.pdf.

4. *Nearly 1 in 5 People Have a Disability in the U.S., U.S. Census Bureau Reports: Report Released to Coincide with 22nd Anniversary of the ADA,* U.S. Census Bureau (July 25, 2012), https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html.

5. *Social Security Basic Facts,* U.S. Social Security Administration (Oct. 13, 2015), http://www.ssa.gov/news/press/basicfact.html.

6. Americans with Disabilities Act, 42 U.S.C. § 12102 (2008).

7. Basic definition of disability, 20 C.F.R. § 404.1505.

How do we begin to shift toward disability inclusion? We need to build a culture of trust and inclusion.

Second, there is a tremendous amount of stigma and misunderstanding associated with having a disability. Remember the law partner who did not think a blind person could practice law? According to his limited understanding of blindness, being blind automatically is a disability as defined by the U.S. Social Security Administration and not a disability pursuant to the ADA, which could be mitigated in a law firm environment with a reasonable accommodation. Given this perception of disability, imagine if you had a non-obvious disability, such as a mental illness, addiction, or learning disability, and could choose not to self-identify or disclose. Would you choose to keep that information to yourself? Or, would you risk being thought of as incompetent or incapable?

Third, the data is not being collected. A review of the *NALP Directory of Legal Employers* reveals that the majority of firms who report to NALP do not collect data on attorneys with disabilities.[8] How can we address disability inclusion if we are not even counting disability (literally or figuratively) as a diversity demographic?

How do we begin to shift toward disability inclusion? We need to build a culture of trust and inclusion. Disability is rarely mentioned in law firm diversity statements, policies, and initiatives. Moreover, in the rare incidence when disability is mentioned, it is in reference to a law firm sponsoring a law student group or providing pro bono services. It is not discussed with respect to support and outreach once an individual has entered the profession and perhaps is even practicing at that very firm. In other words, the diversity marketing materials either ignore disability altogether or only acknowledge disability as existing outside the law firm walls. This actually is the antithesis of inclusion and discourages self-identification.

To fight these challenges with disability as diversity, three practical steps should be adopted and implemented. First, add disability to the traditional categories of diversity on your website, the diversity strategic plan, the agenda of diversity initiatives, and so forth. Including disability in the diversity discussion signals awareness and a certain level of receptivity to prospective and current attorneys with disabilities. It shows that, as a law firm, you are at least thinking about disability as one of the many aspects that positively contribute to diversity in our organization.

8. *See* Nat'l Ass'n for L. Placement, *Diversity Numbers at Law Firms Eke Out Small Gains – Numbers for Women Associates Edge Up After Four Years of Decline,* Nat'l Ass'n for L. Placement (Feb. 17, 2015), http://www.nalp.org/lawfirmdiversity_feb2015 (noting that "information about lawyers with disabilities … is much less widely reported than information on race/ethnicity and gender, making it much harder to say anything definitive about the representation of lawyers with disabilities").

Fifty-eight percent of reasonable accommodations cost nothing, and when there is a cost, the typical expense is only five hundred dollars.

Second, develop a reasonable accommodation process for applicants and employees, and make it known and readily available. Or, at minimum, designate a person that prospective and current employees can contact to request disability accommodations. Pursuant to the ADA, employers with fifteen employees or more are required to provide reasonable accommodations to applicants and employees with disabilities who are qualified for the job.[9] A reasonable accommodation could be as easy as purchasing screen-reading software for a visually impaired attorney, so that they can use a computer or a trackball mouse for an attorney with dexterity limitations. Fifty-eight percent of reasonable accommodations cost nothing, and when there is a cost, the typical expense is only five hundred dollars. [10]

Third, educate yourself. Accept that you probably are not an expert in disability and you may not know about all of the assistive technology, adaptive skills, and other methods and means that a person with a disability uses to successfully accomplish tasks. Be willing to learn and try to keep an open mind.

In essence, it is important to remember to be truly inclusive when you think of diversity and inclusion. It is important to not forget that disability is a very unique part of diversity. Building a culture within the legal profession where lawyers welcome and embrace disability not only benefits attorneys with disabilities, but it benefits all attorneys.

9. 42 U.S.C. § 12112(b)(5)(A) (2008).

10. Beth Loy, *Accommodation and Compliance Series: Workplace Accommodations: Low Cost, High Impact*, Job Accommodation Network 3 (last updated Sept. 1, 2015), http://askjan.org/media/lowcosthighimpact.html.

IILP Review 2017: LGBT Diversity and Inclusion Issues in the Legal Profession

LGBT Equality in the Legal Sector: A View from the United Kingdom

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With data from the InterLaw Diversity Forum's annual Career Progression Study, Winterfeldt highlights career advancement and social issues for LGBT lawyers in the United Kingdom.

The InterLaw Diversity Forum for LGBT Networks (the InterLaw Diversity Forum) is an inter-organizational network for the LGBT networks in law firms and all personnel (lawyers and non-lawyers) in the legal sector, including in-house counsel. The InterLaw Diversity Forum has over 1,500 members and supporters from more than seventy law firms and forty-five corporate and financial institutions. Its objectives are to support LGBT legal professionals, LGBT networks at its member organizations, and LGBT equality and inclusion in the legal profession and the wider LGBT community. In recent years, much of the work of the InterLaw Diversity Forum has focused on multiple identities within the LGBT community, and it has focused on supporting inclusion in the profession across all strands of diversity and beyond to assist employers in creating meritocratic workplaces through our research, sharing of best practice, and the Apollo Project.

The Law Society of England and Wales shares this aim of a diverse legal profession and, in 2009, carried out a survey, in conjunction with the InterLaw Diversity Forum, aiming to assess the profession's attitudes towards and inclusion of its "LGB" members.[1] The 2009 survey was part of a wider study carried out by the Law Society into career barriers faced by LGB, BME, and women solicitors—whose similarity of experience was, in the view of the Law Society, "striking."[2] This intersectional approach to experiences in the legal profession inspired a 2012 survey by the InterLaw Diversity Forum, considering the impact not only of sexuality but also gender, ethnicity, social mobility, and disability on career progression.[3] Building on the foundations of individual perceptions and experiences of the 2009 survey, the 2012 survey sheds further light on LGBT experiences within the broader context of diversity across the legal profession.[4]

1. *Law Society Survey of LGB Solicitors 2009: The Career Experience of LGB Solicitors Conducted by InterLaw Diversity Forum for the Law Society and LGBT Network*, The Law Society 1 (2009), https://www.lawsociety.org.uk/support-services/research-trends/documents/the-career-experience-of-lgb-solicitors/ [hereinafter *2009 Survey*]. At the time of 2009 survey, the Law Society requested that the InterLaw Diversity Forum follow the then-convention of Stonewall, in only considering LGB respondents. "LGB" will accordingly be used in reference to the 2009 survey only. The InterLaw Diversity Forum takes a trans-inclusive approach to its work. *See Transgender Initiative,* InterLaw Diversity Forum, http://www.interlawdiversityforum.org/transgender (last visited Aug. 30, 2016); *Purple Reign,* InterLaw Diversity Forum, http://www.interlawdiversityforum.org/purplereign (last visited Aug. 30, 2016).

2. *Career barriers research studies: findings*, The Law Society (Nov. 11, 2010), http://www.lawsociety.org.uk/support-services/advice/articles/diversity-survey-results/.

3. Stephen Ward, Daniel Winterfeldt & Leslie Moran, *Career Progression in the Legal Sector 2012: A Report on Lawyers and Business Services Professionals by Gender, Ethnicity, Social Mobility, Disability and Sexual Orientation,* InterLaw Diversity Forum 1 (2012), https://www.lawsociety.org.uk/Policy-campaigns/documents/Career-Progression-in-the-Legal-Sector-June-2015/ [hereinafter *2012 Survey*].

4. The two surveys take different methodological approaches: the 2009 survey focused on perspectives and experiences, whereas the 2012 survey took a more quantitative approach, and asked questions in areas not previously surveyed in 2009, such as salary levels.

We cannot overstate the continuing importance of such surveys, seeking to understand LGBT experiences within the profession.

This summary outlines the key findings of the surveys. It also sets the scene for the next groundbreaking piece of research being conducted this year. The 2016 survey will be the most ambitious yet, and will allow us both to observe the progress made within the U.K. profession, as well as to cast our gaze further in comparing our progress with colleagues in Europe and the United States.

We cannot overstate the continuing importance of such surveys, seeking to understand LGBT experiences within the profession. Those who questioned the relevance of such surveys in 2009 only underline this importance:

> I am not certain what an LGB is, but I suspect it has something to do with non-legal activities. In that case this survey has nothing to do with the practice of law or the regulation of solicitors and is a scandalous waste of time and money. The Law Society should be ashamed of itself.[5]

This research is far from "non-legal": the profession is inextricable from the individuals and communities it comprises; their experiences and well being are crucial for its health and success. To remain relevant and effective, the legal profession must reflect the diversity of the population it serves. Clients—from local government to corporate giants—are increasingly demanding that those who advise them not only represent their commercial interests but reflect their values as well. It is therefore important to conduct surveys that help to fully analyze the extent to which equality of treatment exists and to monitor its effects on the profession. We hope that, with wider publication and understanding of these issues, responses such as the above will become increasingly rare. Meanwhile, the InterLaw Diversity Forum will continue its work, based upon the findings of the 2016 research.

I. Out of Bounds: Personal and Professional Divide

One key disparity that was clear from the 2009 survey is the ability of LGB solicitors to be "out" in their professional lives. Whilst a total of 96% of gay male and 92% of lesbian/gay female respondents stated that they were "out" in their personal lives, this figure drops markedly in the workplace.[6] Overall, only 9% percent of gay male and 27% of lesbian/gay female respondents described themselves as "widely out" in the workplace, a clear gulf between the personal and professional.[7]

5. *2009 Survey*, *supra* note 1, at 23.
6. *Id*. at 5.
7. *Id*.

It is therefore important to conduct surveys that help to fully analyze the extent to which equality of treatment exists and to monitor its effects on the profession.

There are some signs of progress having been made with openness higher amongst younger members of the profession: at the time of the 2009 survey, 15% of fifty-one to fifty-five year olds and 16% of forty-six to fifty year olds were out at their training firm, compared to 60% of lawyers twenty-five and under and 66% percent of twenty-five to thirty year olds.[8] However, that 40% of lawyers under twenty-five are still unable to be "out" at all—let alone widely—shows that there remains much to be done.[9]

Whilst it appears there is increasing comfort in being "out" amongst colleagues, the inability of LGB members of the profession to be open about their sexuality with colleagues remains considerable in relationships with clients. Only 26% of gay males and 22% of lesbians/gay females were able to be open to clients about their sexuality.[10]

II. Differing Expectations

It might be questioned to what extent this ability to be "out"—whether to colleagues or clients—is relevant. Some respondents indicated that they felt little need to be open about their sexuality—"something that is private to me and not something that I feel the need to shout about"—with clients.[11] What the 2009 survey results do demonstrate, however, is the existence of behavioural constraints that would be unthinkable to non-LGB members of the profession.

When firm events would invite partners, for example, experiences were divided between those who felt that a same-sex partner was genuinely made welcome by their firm or organization and others for whom the invitation was there in principle but a less welcoming prospect in reality.[12]

Relations with colleagues, however, appeared to vary depending on the dominant culture in the organization; many perceived public sector and in-house legal work as more inclusive, with City and corporate firms and departments coming in for greater criticism. One respondent said the following of corporate departments in firms: "My sense is that it is much easier to be LGB in litigation departments than it is in corporate or real estate where 'macho' antics can still reign supreme (although not always of course)."[13] The results of the 2012 survey reinforces this perception of "macho" cultural

8. *Id.*
9. *Id.* at 4.
10. *Id.* at 7.
11. *Id.* at 9.
12. *Id.* at 6.
13. *Id.* at 10.

There is a clear disparity of confidence within LGBT members of the profession along gendered lines.

dominance: the survey data make clear that elite-educated white males still dominate the profession.[14] They are also the "group most likely to believe that achievement and reward are fairly assessed, that their employer has transparent promotion and reward policies and to be satisfied with those polices are white straight men (52%, 57% and 89%, respectively)."[15] This overwhelming confidence of the dominant in their place in the profession does not easily lend itself to more inclusive behaviour, whether for LGBT colleagues or other minority groups.

With clients, discomfort was even more apparent. When respondents were asked to rate their comfort around clients out of ten, responses were consistently one to two points lower compared to those for management or colleagues.[16] In practice, this means LGBT members of the profession playing variations of "the pronoun game"[17]: it "can be difficult when clients ask about weekends; they discuss life with their children and wives and I simply refer to things that I have done and not with whom I have done it."[18] This represents a major deviation from the degree of openness that non-LGB people take as a given. A straight person, when casually asked about their weekend, will have no such difficulties in response. LGBT people, meanwhile, feel required to scrutinize their behaviour and adopt an almost tactical approach to revealing things that their non-LGB colleagues are able to deal with casually.

This presents a particular problem for LGBT lawyers, both in terms of the energy required to maintain this sort of response and in building relationships with clients: "People can tell when you are hiding something too–and it makes you seem aloof, difficult."[19] Given the increasing trend in law firms for social interaction with clients, such behavioural barriers present a considerable hurdle for LGBT people, which cannot be ignored.

III. Impact on Career

Despite these issues, the results appeared positive as to the experiences of LGBT people in the profession: 45% of gay men and 36% of lesbians who responded to the 2009 survey stated that they did not think their sexuality would affect their career progression at all.[20]

Whilst on the whole positive, there is a clear disparity of confidence within LGBT members of the profession along gendered lines. Among gay men, 45.4% perceived their sexual orientation to have

14. *Id.* at 8.
15. *Id.* at 25.
16. *Id.* at 7.
17. *Id.* at 18.
18. *Id.* at 9.
19. *Id.* at 18.
20. *Id.* at 16.

Although satisfaction was greater amongst male respondents who identified as straight, it is notable that gay women/lesbians report greater satisfaction with their success than that of straight colleagues.

had no impact and 37.7% said it had had little impact.[21] Lesbians and gay women, by contrast, were more likely to report that their sexual orientation had affected their career progression "quite a lot" (21.5% and 13.8%, respectively) or "a lot" (6.2% and 17.2%, respectively).[22] The 2012 survey, which asked respondents whether they were satisfied with their level of seniority, reported similar trends; straight and gay men were more likely to be "satisfied" or "very satisfied" (46% and 43%, respectively) than straight or gay women/lesbians (38% and 41%, respectively).[23]

Although satisfaction was greater amongst male respondents who identified as straight, it is notable that gay women/lesbians report greater satisfaction with their success than that of straight colleagues. This, to some extent, reflects a trend identified in a 2008 Stonewall report on lesbians in the workplace that found that a majority of those surveyed "felt that being a woman was of greater importance and significance to their experience of the workplace," and that those participants who were confident about their sexual orientation "generally felt that being a lesbian or bisexual woman gave them a distinct advantage in the workplace."[24] That their "sexual orientation was secondary," however, cuts both ways. Whilst LGB lawyers "could hide their identity as [LGB] if they wanted to," an option not necessarily available for members of other groups, this also highlights the particular challenges LGB members face in having an identity which can "come out." As observed above, the very choice to be open about LGB identity, with whom, and in what way, create considerations that require time, energy, and emotion to manage.

A large number of respondents did make comments that sounded very positive. On closer inspection, however, these comments contained caveats. Professional success was generally explained not by hard work, personal ambition, or drive but by luck. Respondents considered themselves fortunate not to have been discriminated against because of their sexuality. It goes almost without saying that such relief at having not experienced discrimination would not be a consideration amongst non-LGB members of the profession in assessing their career success.

This is an interesting perspective when viewed alongside the quantitative results of the 2012 survey, which found its LGBT respondents to be particularly high achievers.[25] The salary band for the

21. *Id.* at 5.
22. *Id.* (reporting separate results for lesbians and gay women).
23. *2012 Survey*, *supra* note 3, at 21.
24. Nathanael Miles, *The double glazed glass ceiling: Lesbians in the workplace*, Stonewall 3 (2008), https://www.stonewall.org.uk/sites/default/files/Double-Glazed_Glass_Ceiling.pdf.
25. *See 2012 Survey*, *supra* note 3, at 9. This finding should be considered alongside the relative age and seniority of those LGBT respondents, compared to straight respondents: "the tendency in the legal sector for individuals to come out only once they have reached senior positions […] might well have shaped the group of respondents." *Id.*

Having role models appears to create an atmosphere in which people can be more comfortable, both with revealing this aspect of themselves and standing up for themselves if necessary.

bottom 50% of straight men was £55-70k, and for gay men was £70-85k.[26] For straight women, it was £40-55k, and for gay women/lesbians it was £70-85k. The top 10% of straight men, straight women, and gay women/lesbians were all in the £100-200k band, with gay men reaching the £200-300k band.[27]

Arguably, this disparity between perceived luck and actual salary levels is reflective of the "widely held belief that those who are set apart from dominant groups in professional settings have to work harder and demonstrate greater ability in order to progress in the same way as the dominant group."[28] Thus, talented LGBT lawyers may be less able to recognize their successes as their own.

IV. Support, Networks, and Role

Slightly more than 37% of respondents reported that there was an LGB network at the firm/organization where they worked.[29] Of those respondents, 76% were active participants in the network.[30] As with other trends, however, a disparity emerges along lines of gender. Gay male participants were most likely to work at an organization with an LGB network (43%), whereas lesbian and gay female participants were less likely (30.4% and 22.6%, respectively).[31]

Of those working in private practice, 40.7% indicated that there was at least one "out" LGB role model at their firm.[32] Just over one third of respondents (34.9%) working in an in-house corporate team also reported an "out" LGB role model.[33] Central government was most likely to have an "out" role model (53.4%).[34] A total of 41.0% of respondents said that they had an "out" LGB co-worker whom they considered to be a "role model."[35]

The value of having such a role model was made clear by many participants, with others expressing their frustration at the lack of role models, meaning "it's hard for younger lawyers to have the confidence to be out at work. Do they feel that they can be honest about who they are and still progress up the ladder towards partnership?"[36] Having role models appears to create an atmosphere in

26. *Id*. at 11.
27. *Id.*
28. *Id*. at 9.
29. *2009 Survey*, *supra* note 1, at 19.
30. *Id.*
31. *Id.* (reporting separate results for lesbians and gay women).
32. *Id.* at 21.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*

Disadvantage and dissatisfaction when compared to straight, white, male, elite-educated lawyers cuts across the spectrum of gender, ethnicity, sexuality, disability, and social class.

which people can be more comfortable, both with revealing this aspect of themselves and standing up for themselves if necessary.

Given the clear value of networks, mentors, and role models in supporting and building the confidence of LGBT lawyers–particularly those at the beginning of their careers–it is concerning that the 2012 survey found that only "a minority of respondents in any of the demographic groups has benefitted from having a mentor, sponsor or role model. . . . Strikingly, male lawyers are the group of respondents most likely to have had a mentor, sponsor or role model."[37] More progress clearly must be made if efforts to support LGBT lawyers are to have any effect on the entrenched dominance of straight, white men within the profession–and the consequent abundance of mentors and role models who represent that dominance.

V. Conclusions, Recommendations, and Next Steps

The InterLaw Diversity Forum's research to date provides considerable insight into a profession facing a shared inequality but with diverse challenges at its source. Disadvantage and dissatisfaction when compared to straight, white, male, elite-educated lawyers cuts across the spectrum of gender, ethnicity, sexuality, disability, and social class. The experiences of LGBT lawyers, however, present distinct challenges, which require particular consideration.

It is clear that an increasing number of LGBT lawyers feel able to come out about their sexuality at work, particularly younger entrants to the profession. Unfortunately, however, fear of a negative reception remains commonplace. The way in which this affects LGBT lawyers' careers is a complex issue, requiring individuals to manage their personal and professional identities in a way non-LGBT colleagues need not. Time, energy, and emotion that LGBT lawyers invest in guarding themselves against perceived discrimination could—and should—be better spent in realising the full potential of their talents.

Increased openness amongst young lawyers will mean, we hope, far more role models and mentors for future LGBT people entering the profession. It will take time, however, for such figures to progress to prominence, and LGBT lawyers alone cannot shoulder the responsibility to provide support and inspiration. Organizations must do more to bring the societal advances of recent years into the office by fostering working environments that allow LGBT lawyers to be fully comfortable in their identities.

The InterLaw Diversity Forum aims to use its 2016 research as a benchmark for progress, and to set out a roadmap for moving forward towards equality and inclusion in the legal profession.

37. *2012 Survey*, *supra* note 3, at 28.

Thirty Years of Progress, Far from Perfection: The LGBT Experience in the Legal Industry from the 1980s to the Present

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With many new advances in LGBT rights, it is sometimes easy to assume it has all just happened instantaneously. Here, with a focus on the legal profession, the authors trace the past thirty years of LGBT experiences in the law.

For most legal industry professionals, the first day of a new job brings the excitement of hope and possibility. Whether one is beginning an entry-level paralegal position, joining a firm as a first-year associate, or assuming a senior role as a law firm partner or general counsel, the new position likely represents the culmination of years of hard work, academically and in the workforce, and the end of a rigorous job search process. Imagine, then, having this excitement turn to anxiety and possibly dread when faced with routine first-day tasks that are not even related to the substance of the position: providing emergency contact details; signing up for medical and life insurance; placing personal photos in one's work area; or discussing one's family over a welcome lunch with new colleagues. Sobering concerns that merely being oneself may result in direct or indirect discrimination, exclusion, and lost opportunities may quickly temper the excitement of a new professional opportunity. Even in 2016, LGBT members of the legal profession still face these concerns from the first day of a job onwards: how will being out impact our careers? Will we progress based on our hard work and abilities, or will we ultimately face glass ceilings due to who we are?

Certainly, recent decades have brought significant improvements for LGBT personnel in the workforce, including in the legal sector. As of 2016, more than half of U.S. states now offer some form of protection against sexual orientation discrimination in the workplace, and some jurisdictions have interpreted Title VII, which protects against gender-based discrimination, to include protections against sexual orientation discrimination.[1] Organizations that cite diversity as a core value are increasingly including LGBT diversity, and diversity committees within these organizations may offer LGBT affinity subgroups. The reality, however, is that even when working in states that prohibit

1. *In Your State*, Lambda Legal, http://www.lambdalegal.org/in-your-state (last visited Aug. 19, 2016).

Certainly, recent decades have brought significant improvements for LGBT personnel in the workforce, including in the legal sector.

sexual orientation discrimination on the job, LGBT legal professionals still face particular challenges with regard to both inclusion and advancement opportunities. Thus, how far have we come, and where do we go from here?

This article examines the comparative and collective experiences of three LGBT attorneys who began their careers at differing points in the past several decades: Sherry Jetter, currently Counsel at Mayer Brown LLP, who began work in the industry in the 1980s; Brian Winterfeldt, currently Co-Head of the Global Brand Management and Internet Practice at Mayer Brown LLP, who entered the industry in the late 1990s; and Timothy D'Arduini, currently an associate at Mayer Brown LLP, who began a legal career within the past decade. Despite their differing starting points, each attorney's experience includes concerns over being out, some negative experiences with colleagues, and progress toward a better, more inclusive time—with much work still ahead.

Sherry Jetter, now an intellectual property attorney in private practice, began her career in the late 1980s as an assistant district attorney. Jetter, who at the time was not out, remarks that, at that time, diversity in general was something that "just wasn't discussed" in her workplace, and that "no one would have dreamed of" mentioning LGBT status at the office.

When she did come out, several years later, Jetter had moved to an in-house role in the fashion industry. As the fashion world tended to be more forward thinking than other industries in terms of embracing LGBT diversity, Jetter did find acceptance among her colleagues in the sense that she did not encounter overt discrimination and was able to progress to increasingly responsible legal management positions. Missing, however, was a true sense of community and inclusion. "I had out colleagues at the fashion companies where I worked, but they were nearly all men," she states. "There were almost no other out lesbians–especially in the legal department."

As a result, Jetter faced a sense of awkwardness in her role. "It was as if no one quite knew what to do with me," she said. "Disclosing that I had a same-sex partner automatically placed me in some sort of 'other' category in which I was not part of the group, even if there was no malicious intent. It was difficult to connect with people who couldn't relate to me, particularly with few to no other lesbians in my work environment."

Jetter reports that the sense of community has improved quite a bit within the most recent decade. With more and more members of the legal community now out, including women, the sense of awkwardness has lessened considerably. "I have been able to develop an affinity with the general diversity community, the LGBT legal community, and especially with other gay women lawyers. Ironically, when there are more of us, we can better be seen as individuals rather than as a singular stereotype." In addition, Jetter reports a sense of responsibility for being a role model for other LGBT attorneys, especially women. "Our 'out' numbers are growing, but it still isn't a huge number, so every one of us counts. Of course the decision to be out in the workplace is an intensely personal one, but I want to demonstrate that one doesn't have to hide or minimize one's true self in order to progress professionally."

> Of course the decision to be out in the workplace is an intensely personal one, but I want to demonstrate that one doesn't have to hide or minimize one's true self in order to progress professionally.

For Jetter, this sense of community is a springboard to new diversity activities, rather than an endpoint. "We are building our community, which is an excellent step, but it is important for that community to have a voice which is heard throughout all levels of an organization," she advised. "A firm's LGBT affinity group shouldn't just be a social club; it should have a direct line to management. This will improve LGBT recruitment and retention, and ultimately this will support the needs and expectations of clients who require a broad commitment to diversity from their outside counsel."

Anyone viewing Brian Winterfeldt's profile might find it difficult to believe that he has ever faced challenges in the workplace as a result of his LGBT status. After all, Winterfeldt has spent the majority of his private practice career as an equity partner at prominent law firms, is now the head of a cutting-edge practice blending branding and Internet issues at a global law firm, and participates in a number of elite industry leadership activities, such as serving on the International Trademark Association's Board of Directors. His experiences, however, reveal significant struggles along the way–as well as ideas for improving the legal industry experience for the next generation of LGBT lawyers.

Winterfeldt, who began working in law firms in the late 1990s as he was finishing law school, describes himself as out from the beginning of his legal career. He began his career in a small boutique environment where he first trained as a trademark attorney, an environment he found very nurturing and supportive. However, after a couple of years, he moved to a larger firm in order to explore opportunities in a larger environment and work on business development opportunities. While he was never "not out," during his early months at the larger firm, he focused on establishing himself at work and did not speak much about his personal life. Without him mentioning his LGBT status explicitly, he learned that his colleagues would make the assumption he was straight–an assumption he sought to correct.

As his career progressed, Winterfeldt was determined to be clearer about his LGBT status and at a subsequent firm sought to join the minority associates' committee, wanting to meet and connect with colleagues who faced similar challenges with assumptions and exclusion. Rather than finding acceptance, however, Winterfeldt was told that LGBT diversity wasn't included in the purview of the committee and that he wouldn't be permitted to join the group or participate in its activities. "I was shocked and disappointed to learn that, in the view of the firm, I belonged–really nowhere," he states. The exclusion was particularly demoralizing because he had begun to develop a significant book of business within the first few years of practicing law—much more rapidly than many colleagues of a similar class year—but was still made to feel completely devalued. Unfortunately, this experience repeated itself at a couple of other firms as well: the firm either expressly excluded Winterfeldt from the firm's designated diversity group or found that few to no resources could be allocated for support of LGBT activities.

Even in 2016, LGBT members of the legal profession still face these concerns from the first day of a job onwards: how will being out impact our careers? Will we progress based on our hard work and abilities, or will we ultimately face glass ceilings due to who we are?

In recent years, and particularly at Mayer Brown, which he joined in 2015, Winterfeldt has had much greater success with finding acceptance in diversity groups as well as with gaining firm management support for LGBT initiatives. In particular, Mayer Brown's Director of Diversity, Jerry DeBerry, has offered tremendous support and has sought advice from Winterfeldt on continuing to build the firm's LGBT diversity profile and presence. In addition, Winterfeldt found acceptance and support immediately from Mayer Brown's LGBT affinity group and its co-leaders, Lori Boatwright and Brian May. The head of Mayer Brown's DC office, Dan Masur, has also embraced Winterfeldt's desire to grow the local LGBT diversity presence and has offered significant support for The Trevor Project, a longstanding pro bono client of Winterfeldt's practice for which Winterfeldt is also a member of the Board of Directors, serving as Secretary and a member of the Executive Committee. This broad support from multiple firm offices, including personnel in senior leadership roles, has ensured that Mayer Brown could not only provide an excellent platform for Winterfeldt's Global Brand Management and Internet Practice, but also it is a match for the practice's core values of inclusion. This contrast, however, will also ensure that Winterfeldt never forgets the early years of his career that were marked by exclusion. "Honestly, being in a leadership role–as an equity partner and leader of a practice area–is a big help. I have needed to show that I have a great roster of clients and that LGBT diversity in particular is important to them, and I am able to do that in a more impactful manner than in the early years of my career when I was just starting to build my practice."

Despite having a stronger voice now, Winterfeldt cites the ongoing need for diligence. "I find that, particularly in a law firm environment where there just may not be that many out attorneys, people may not think much about LGBT diversity unless they are prompted to do so," he said. "While no one has an imperative to be an activist, the reality is that those of us who are members of the LGBT legal community–and who are in leadership roles where we can have an impact–need to make sure that others in our firms understand the importance of supporting this area of diversity and the opportunities to do so." Like Jetter, Winterfeldt feels strongly that out LGBT attorneys in leadership positions can do a great deal to inspire more junior LGBT personnel to join their teams and to feel comfortable with being out. "We need to show that there is a path to great success for those who are LGBT and out, and that one doesn't have to choose between being true to oneself and optimizing professional development."

Associate Tim D'Arduini, who specializes in complex global immigration and employment matters, is just a few years into his career as an attorney. Despite beginning over two decades after Jetter and over a decade after Winterfeldt, D'Arduini has faced a number of similar challenges, including making decisions whether to be out and when, navigating interactions with colleagues that were

A firm's LGBT affinity group shouldn't just be a social club; it should have a direct line to management.

uncomfortable at best and discriminatory at worst, and determining the best strategies for moving his legal career forward while being true to himself.

Prior to law school, in the 2000s, D'Arduini worked as a paralegal for several years. He wasn't out professionally or generally at that time, but upon beginning law school in 2010, he "made an affirmative choice to be out as an associate," which required working through a good deal of "personal discomfort." D'Arduini cites the 2010 repeal of "Don't Ask, Don't Tell," the law enacted in 1993 that had prevented LGBT U.S. military service members from serving openly,[2] as particularly influential in his decision to be out in the workplace going forward. "It seemed like the legal community would be ready to have gay associates from that point forward," he states. "Before that, I was worried about being stigmatized, or creating a distraction, and I wanted to be judged on the quality of my work, not other factors."

Like both Jetter and Winterfeldt, D'Arduini had some mixed experiences in prior law firm environments, primarily finding that discussions of diversity were not a priority. What D'Arduini did find, however, was tremendous support within his own practice team. "Immigration practices tend to be very diverse in general, so I found that my own type of diversity was embraced and included," he advises. Particularly as a junior associate, he found that the support of his own team and manager mitigated some of the concerns about the larger firm's priorities (or lack thereof) in the diversity arena. When D'Arduini did encounter discriminatory comments from a colleague–who complained about him "flaunting" his LGBT status just for dressing in a particular style and mentioning his same-sex partner–he also found that his management was supportive in response to his request not to work directly with this colleague in the future.

Looking to the future, D'Arduini cites a need for ongoing mentorship from diverse attorneys in the senior ranks, and for real growth in the numbers of LGBT attorneys in leadership roles. A firm may cite that its number of LGBT partners has increased by fifty percent, but if this only means that there are now three LGBT partners instead of two, the number is not particularly impactful. On the other hand, a true growth trajectory over a period of years, coupled with mentoring programs and a careful examination of why diverse attorneys may not be reaching the most senior echelons of a firm, should result in ongoing progress.

2. *See Repeal of "Don't Ask, Don't Tell,"* Human Rights Campaign, http://www.hrc.org/resources/the-repeal-of-dont-ask-dont-tell (last visited Aug. 19, 2016).

Several common themes emerge from the experiences relayed by Sherry Jetter, Brian Winterfeldt, and Tim D'Arduini:

- A highly inclusive definition of diversity is extremely important; otherwise, "diversity" becomes just another avenue to exclusion.
- LGBT individuals should control whether or not they are out in the workplace and generally. However, they should never feel as if they will suffer adverse consequences in terms of their comfort in their work environment and/or their professional development if they are out.
- Today's LGBT attorneys want to work not only in an environment where they won't face discrimination but where they will truly feel included as part of a community.
- Clients increasingly are including LGBT diversity in the diversity measures they expect to see from their outside counsel. Firms that do not become more inclusive may begin to miss out on business opportunities, and highly qualified LGBT attorneys will also likely choose to work elsewhere.
- Mentorship is extremely important. Junior LGBT attorneys need role models who can show that there is not an opportunity cost to being out–and that on the contrary, attorneys who do not have devote energy to hiding who they are or to working around others' discomfort will have more resources to develop to developing their careers substantively.
- Support from senior firm management is also critical. Ideally this means that firms have LGBT members at the most senior ranks (i.e., C-suite and/or Executive Committee), but at a minimum, members of the firm who represent LGBT interests need to have a strong voice that senior leadership can hear.

We have come a long way in the thirty years since Sherry Jetter began her career in the district attorney's office, a place where legal professionals would never discuss LGBT issues in any context. In today's workplace in the legal community, not only are more anti-discrimination measures being memorialized in law, but clients themselves are demanding true diversity and inclusion. Achieving genuine inclusion will continue to require significant diligence both from members of the LGBT legal community and from its allies, who will need to keep aligning their voices to ensure that the most senior decision-makers keep LGBT matters at the forefront of any diversity discussions, initiatives, and resource allocations.

In a law firm environment where there just may not be that many out attorneys, people may not think much about LGBT diversity unless they are prompted to do so.

IILP Review 2017: The Intersection of Diversity and Inclusion Issues in the Legal Profession

Latina Lawyers – Still Too Few and Far Between: The Hispanic National Bar Association Latina Commission's Efforts to Chart a More Open Path

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After the groundbreaking research on Latinas in the legal profession spearheaded by the HNBA's Latina Commission, Cruz, one of the principal researchers reports on the results of the implementation of the original study's recommendations.

I. Introduction

Latinas[1] are members of the largest—and also one of the fastest growing—minority groups in the United States, constituting 8.4% of the total U.S. population.[2] Notwithstanding their notable presence and growth, there has not been a proportionate increase in the number of Latinas becoming attorneys and few reach the more senior echelons of the legal profession.[3] Recent data indicate that, relative to their representation in the U.S. population, Latinas are among the most underrepresented groups within each of the principal legal sectors, particularly at the most senior levels—i.e., private law firm partners,[4] Fortune 500 and Fortune 1000 general counsel,[5] federal judges,[6] full-time law professors and law school

1. For purposes of this report, "Latina" refers to women who self-identify as being of Latin American descent, including but not limited to women from Mexico, Central America, South America, Puerto Rico, Cuba, and the Dominican Republic.

2. *See Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States, Population Division*, U.S. Census Bureau (June 2014), http://www.factfinder.census.gov/population/www/socdemo/hispanic/cps2006.html.

3. *See* Jill L. Cruz & Melinda S. Molina, Few and Far Between: The Reality of Latina Lawyers (2009), http://hnba.com/wp-content/uploads/2015/02/Latina-Commission-Publication.pdf [hereinafter *2009 HNBA Commission Study*]; *see also* Jill L. Cruz, Melinda S. Molina & Jenny Rivera, *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest* (2010), http://hnba.com/wp-content/uploads/2015/02/La-Voz.pdf [hereinafter *2010 HNBA Commission Study*]; *see also* Miguel A. Méndez & Leo P. Martínez, *Toward a Statistical Profile of Latina/os in the Legal Profession*, 13 Berk. La Raza L.J. 59, 60 (2002), http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1107&context=blrlj.

4. *See generally* Nat'l Ass'n for Law Placement, *Women and Minorities in Law Firms by Race and Ethnicity – New Findings for 2015*, NALP Bulletin (Jan., 2016), http://www.nalp.org/0116research (stating that within private practice law firms, Latinas constituted a mere 0.6% of partners and 2.0% of associates in 2015).

5. *See 2014 Survey of Fortune 500 Women General Counsel*, Minority Corp. Counsel Ass'n (Dec., 2014), http://www.diversityandthebardigital.com/datb/november_december_2014?pg=20#pg20 (identifying only six Latinas in top legal officer positions in the Fortune 500 companies and one in the Fortune 501-1000).

6. *See Federal Judicial Center Chief Justices by Gender and Ethnicity* (Dec. 23, 2015), http://www.fjc.gov/history/home.nsf/page/research_categories.html (counting 1,053 federal judges, of which 951 (90%) were men; 102 (9.7%) were women; 19 (1.8%) were Latino; and 6 (0.6%) were Latina).

Recent data indicate that, relative to their representation in the U.S. population, Latinas are among the most underrepresented groups within each of the principal legal sectors, particularly at the most senior levels—i.e., private law firm partners, Fortune 500 and Fortune 1000 general counsel, federal judges, full-time law professors and law school deans, and in senior roles within the public interest sector.

deans,[7] and in senior roles within the public interest sector.[8] The underrepresentation of Latina attorneys is particularly troubling when compared to the significant and growing presence of Latinas in this country over this same time period.

In 2008, in response to this troubling disparity, the Hispanic National Bar Association (HNBA) established the Commission on the Status of Latinas in the Profession (the Latina Commission), which it tasked with studying the status of Latinas across the legal profession and examining why Latinas appeared to be the most demographically underrepresented group in the legal profession. The HNBA also asked the Latina Commission to identify factors impeding Latinas' entry, retention, and advancement within the legal profession, and to provide insight into the practices and strategies critical to Latinas' success in their educational and career pursuits. This article examines the findings of the Latina Commission, and the programs and strategies it has employed to increase Latina representation amongst attorneys.

II. The HNBA Commission Studies

Upon the Latina Commission's creation, the HNBA commissioned two national studies[9] on the status of Latina attorneys in the profession. These studies, among the first of their kind, were designed to shed light on the formative and career-related experiences that contribute to the continued underrepresentation of Latinas in the legal profession.

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7. *See ABA Approved Law School Staff And Faculty Members, Gender And Ethnicity*: *Fall 2013,* A.B.A. (Dec. 23, 2015), http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down to "Law School Faculty & Staff by Ethnicity and Gender") (reporting that, in 2013, Latinas made up 3.7% of full-time law professors and 5.5% of all law school deans).

8. *See 2010 HNBA Commission Study*, *supra* note 3 (finding evidence that Latina attorneys are not well represented in leadership roles with the public interest sector of the legal profession, which includes both government and non-government employers).

9. *See 2009 HNBA Commission Study*, *supra* note 3; *2010 HNBA Commission Study*, *supra* note 3.

In 2009, the Latina Commission published the results of its initial landmark study, entitled *Few and Far Between: The Reality of Latina Lawyers*.[10] This mixed-method study gathered qualitative and quantitative data on more than 600 Latina attorneys from across the United States employed primarily in law firms, corporate law offices, the judiciary, government, and legal academia. On the heels of this broad-based study, in 2010, the HNBA Commission published a companion report entitled *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest*.[11] This report summarized the more granular analysis conducted on the status and experiences of over 200 Latina attorneys employed in the public interest sector of the legal profession.

The HNBA Commission studies provided evidence that Latina attorneys generally held positions of lower hierarchical status as compared to other demographic groups,[12] and some indication that Latina attorneys were paid less than non-Latina counterparts in comparable positions.[13] Furthermore, the HNBA Commission studies theorized that a "multi-layered glass ceiling"[14] negatively impacted Latina attorneys' careers as a result of the intersection of their gender, ethnicity, and race which, when taken together, serve as a "triple threat"[15] to Latinas' retention and advancement within the legal profession.[16]

While these findings were less than encouraging regarding the plight of Latina attorneys and their occupational standing within the legal industry, the studies provided critical benchmarks against which the progress of Latina attorneys' professional status can be measured going forward, and provided practical recommendations for increasing Latinas' presence and success in the legal profession.

Since the publication of HNBA Commission studies, the Latina Commission has implemented many of its recommendations, promoted best practices for increasing the representation of Latina attorneys across the profession, and helped these women advance into leadership roles. These initiatives span the gamut from educational and mentorship programs directed at Latinas as early as middle school, to executive training programs and mentoring programs for junior and senior lawyers to enhance their professional development opportunities and competitiveness in the job market. The key recommendations from the HNBA Commission studies and resulting Latina Commission programs are summarized below.

A. Visible Latina Role Models

The HNBA Commission studies found that a lack of information and exposure to the profession, as well as certain cultural and gender inhibitors that circumscribe career choice, hamper many young Latinas in their consideration and pursuit of legal careers.[17] To counteract this barrier, the studies emphasized the

10. *See 2009 HNBA Commission Study*, *supra* note 3.

11. *See 2010 HNBA Commission Study*, *supra* note 3.

12. *See 2009 HNBA Commission Study, supra* note 3, at 10, 48 (comparing Latinas attorneys to other racial groups in the legal profession, which include white, black, and Asian populations).

13. *Id.* at *26* (stating that the median compensation of Latina law firm survey respondents is considerably lower than the levels reported in studies of other majority and minority groups). For example, the median compensation for white women is $254,746, compared to $157,290 for women of color. *Id; see also 2010 HNBA Commission Study*, *supra* note 3, at 37–38, 52.

14. *See 2009 HNBA Commission Study*, *supra* note 3, at 48.

15. *Id.*

16. *See generally* Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction (2001) (discussing intersectionality, which examines the interplay of disadvantaging factors such as race, sex, class, national origin, and sexual orientation); Maureen Ebben & Norma Guerra Gaier, *Telling Stories, Telling Self: Using Narrative to Uncover Latinas' Voices and Agency in the Legal Profession,* 19 Chicano-Latino L. Rev. 243, 259 (2008) (considering how Latina attorneys encounter "double oppression" based on their gender and ethnicity). The HNBA Commission studies underscore the importance of considering Latina attorneys' gender, ethnicity, *and* race as three separate but intersecting constructs that work together to contribute to the barriers these women encounter).

17. *2009 HNBA Commission Study*, *supra* note 3, at 31; *see generally* Lisa Y. Flores et al., Career Counseling with Latinas, in Handbook of Career Counseling for Women 271 (W. Bruce Walsh & Mary J. Heppner eds., 2nd ed. 2006) (discussing research on Latinas' career development and suggesting Latinas may view the world of work differently because of their gender-role socialization within Latino communities and families).

need for increased visibility of Latina and attorney role models to inspire Latina youth and encourage them to consider professional and non-traditional careers, including those in the legal profession.[18] These studies consistently found that many of the women who achieved successful careers in the legal profession had strong Latina role models, both in their early lives and at critical points along their educational paths, who inspired and encouraged them to pursue their academic and career goals.[19] These role models provided young Latinas with guidance and encouragement, which appears to be especially important throughout their formative years.

Sharing stories of how established Latina attorneys have achieved success in the profession is critical to helping young Latinas follow in their footsteps. For this reason, the Latina Commission has sponsored a number of inspirational events featuring trailblazing Latina lawyers, judges, law firm partners, and corporate leaders, who met with students about the importance of higher education and, more specifically, about pursuing a career in the law. One notable example is attorney Anna Maria Chavez, CEO of Girl Scouts of the USA, and also the daughter of Mexican American immigrants growing up in rural Arizona, who was the Latina Commission's keynote speaker at its annual Plenary Luncheon during the 2015 HNBA Annual Convention. Ms. Chavez shared her stories of how she achieved success—not only as a lawyer but also as a prominent leader in business—and encouraged other Latinas to follow in her footsteps.

In 2015, the Latina Commission also sponsored programs aimed at serving middle school and high school students, such as "Pearls of Wisdom" and "Making the Dream a Reality," which included panel discussions among prominent Latina lawyers. The Commission also has provided opportunities for junior attorneys to learn from more established attorneys about building credibility, gaining influence, and paving a strategic path for career success and leadership.

B. Pipeline Programs

In addition to lacking visible Latina role models, Latinas also face barriers in the educational pipeline.[20] The impact of such barriers is evident by the disproportionately low number of minorities who apply to and attend law school.[21] As reflected in both of the HNBA Commission studies, a critical first step in expanding the pipeline of Latina lawyers are outreach programs directed toward Latina youth as early as elementary school to encourage and prepare them academically and psychologically for professional careers. This outreach requires the advancement of educational pipeline programs in schools serving Hispanic communities to expose children to models for professional career success. To address this need, the Latina Commission created a Pipeline Committee to develop and implement an increasing number of mentoring and pipeline programs targeted at schools and students in predominantly Hispanic communities.

In 2015, the Latina Commission held more than ten pipeline events for middle and high school students living in underserved Hispanic communities across the country. One signature pipeline event included the

18. *2009 HNBA Commission Study*, *supra* note 3, at 9; *2010 HNBA Commission Study*, *supra* note 3, at 60.

19. *2009 HNBA Commission Study*, *supra* note 3, at 31–32; *2010 HNBA Commission Study*, *supra* note 3, at 41–42.

20. *See* Richard Fry, Latino Youth Finishing College: The Role of Selective Pathways (2004), www.pewhispanic.org/files/reports/30.pdf; *see also* Irma D. Herrera, *Barriers to Latinos/as in Law School,* 13 Berk. La Raza L.J. 55, 56–57 (2002) (discussing the barriers to Hispanic women in law schools and recognizing the existence of educational inequalities and limited educational opportunities in Hispanic communities); *see also* Daniel G. Sólorzano, Octavio Villalpando & Leticia Oseguera, *Educational Inequities and Latina/o Undergraduate Students in the United States: A Critical Race Analysis of their Educational Progress,* 4 J. of Hisp. Higher Educ. 272, (2005) (analyzing the educational inequalities and racialized barriers faced by Latina/o college students when navigating the educational pipeline leading to a college degree).

21. *See* Advisory Council on Diversity, The Critical Need to Further Diversify the Legal Academy & the Legal Profession (2005), http://www.abanet.org/op/pipelineconf/report.html (discussing the crisis in the pipeline to the legal profession continues in disproportionately lower application, enrollment, and graduation rates of minorities in U.S. law schools); *see also* Gita Z. Wilder, Race and Ethnicity in the Legal Profession: Findings from the First Wave of the After the JD Study (2008), http://www.americanbarfoundation.org/uploads/cms/documents/race_and_ethnicity_monograph.pdf.

Since 2014, over one hundred Latina attorneys and law students have participated in these training programs free of charge. In 2015, Leadership Training Programs sponsored by Walmart were held during the HNBA Annual Convention and the HNBA Corporate Counsel Conference.

opportunity for twenty-three Latina middle school students to tour the U.S. Supreme Court and meet with Justice Sonia Sotomayor after participating in a multi-week program during which they studied the life and career trajectory of Justice Sotomayor and digested several seminal Supreme Court cases impacting the civil rights of minority groups in the United States. Eight Latina Commissioners served as mentors for the students and their families throughout the program and thereafter.

While many of the students who participate in these programs have repeatedly encountered sociocultural barriers that make law school attendance less likely than their non-Latina counterparts, exposing them to Latina attorneys who grew up in similar communities and achieved educational success may help counteract students' past negative experiences. By stressing the importance of higher education and inspiring young students to work hard and dream big, these role models can help students open their minds to a career in the law.

C. Latina Leadership Academy

The HNBA Commission studies found that, as women working within a male-dominated profession, Latinas face many barriers along their path to positions of leadership, including both overt and subtle forms of gender bias and discrimination and questions about their suitability as leaders.[22] In response, the Latina Commission launched the Leadership Academy to help Latina attorneys develop strong leadership skills, improve their business development and negotiation skills, navigate organizational power and politics, and leverage their professional relationships. Since 2014, over one hundred Latina attorneys and law students have participated in these training programs free of charge. In 2015, Leadership Training Programs sponsored by Walmart were held during the HNBA Annual Convention and the HNBA Corporate Counsel Conference. The two-part training programs included a morning session on developing a "Grit & Growth" mindset followed by an afternoon session during which the participants learned to "Negotiate Compensation More Effectively."

D. Educational Programs and Support for Hispanic Families

In addition to educational obstacles, many Latina attorneys report feeling pressure from their families and communities to assume more traditional feminine roles and responsibilities.[23] Such culturally-gen-

22. *See 2009 HNBA Commission Study, supra* note 3, at 38–39.
23. *See 2009 HNBA Commission Study*, *supra* note 3, at 33.

dered expectations may discourage Latinas from pursuing non-traditional or male-dominated careers, such as those in the legal profession. Moreover, many Hispanic families may not realize the critical role they play in influencing their daughters' educational and career aspirations.[24] To help address this, the Latina Commission has sponsored several parent education programs to generate support and encouragement for the educational advancement of young Latinas. One particular program focused specifically on the culturally-gendered barriers facing young Latinas with respect to their career choice, and emphasized the importance of parents staying involved in their children's schooling and advocating on their daughters' behalf. This can be culturally difficult for many Hispanic families who tend to avoid conflict and often display deference and respect to authority figures, including teachers.[25]

Many of the Latina attorneys who took part in the HNBA Commission studies were the first in their families to attend law school, or even college,[26] thus their families were not familiar with the college preparation and application process. To address this need, the Latina Commission provides parents and families with information on the tactical and financial issues associated with higher education and the college preparation and application process, including timelines and standardized testing requirements. Such preparation can help Latinas prepare for many professions, including becoming a lawyer who serves the community in important and interesting roles in addition to earning a good income.

E. Latina-Based Networking Opportunities

One key recommendation from the HNBA Commission studies was to encourage the creation of more Latina-based networking opportunities and affinity groups as a way for women to network and socialize, express their concerns, and share their experiences.[27] Answering this call, the Latina Commission fosters many opportunities for Latinas to network with each other as well as with a diverse pool of individuals. One example is the Walmart Latina Commission Leadership Academy, which has provided a unique networking opportunity for Latina attorneys across the country. Other events include regional and national networking receptions and other events highlighting the Commission and prominent Latina lawyers. The American Bar Association Margaret Brent Award event also drew a large contingent of Latina attorneys to recognize the Honorable Mari Carmen Aponte, U.S. Ambassador to El Salvador.

F. Mentoring Opportunities and Developmental Relationships

The findings from the HNBA Commission studies as well as other research on women of color in the legal profession[28] have underscored the importance to women of having access to mentors throughout their legal careers. Mentoring and other developmental relationships with a variety of individuals both inside and outside their organizations can provide Latina attorneys with the necessary career development and psychosocial support to help them navigate career experiences and overcome the isolation and loneliness that jeopardize their retention and advancement.

Many Latina attorneys report that informal, rather than formal, mentors have played a more critical role in supporting their professional development and career advancement.[29] Since its inception, the Latina Commission's vast array of tailored programs and networking opportunities has created many

24. *Id.* at 33–34. *See also* Maria J. Gomez et al., *Voces Abriendo Caminos (Voices Foraging Paths): A Qualitative Study of the Career Development of Notable Latinas*, 48 J. of Counseling Psychol. 286 (2001).

25. *See generally* Elizabeth Ruiz, *Hispanic Culture and Relational Cultural Theory*. J. of Creativity in Mental Health 33, 39 (2005) (noting that Hispanics often display *respeto* (respect), a cultural value that emphasizes showing and reciprocating respect and deference to others, especially authority figures).

26. *See 2009 HNBA Commission Study*, *supra* note 3, at 31.

27. *Id.* at 52–53.

28. *See*, *e.g.*, Deepali Bagati, Women of Color in U.S. Law Firms (2009), http://www.catalyst.org/knowledge/women-color-us-law-firms%E2%80%94women-color-professional-services-series.

29. *See 2009 HNBA Commission Study*, *supra* note 3, at 43; *2010 HNBA Commission Study*, *supra* note 3, at 10, 59, 62–63.

opportunities for Latina attorneys to develop organic and long-lasting mentoring relationships with a variety of individuals, including non-Latinas across the profession. Many of these opportunities have led to established Latina attorneys mentoring law students and junior attorneys, and helped to connect Latina attorneys with a wide variety of sponsors both inside and outside of their organizations.

G. Educate, Research, and Monitor Progress

The HNBA Commission studies emphasized the need to increase awareness about the underrepresentation of Latinas in the profession,[30] for instance by sponsoring forums to address the experiences and barriers that Latinas face. To that end, the Latina Commission and its affiliates have been involved in several significant research projects to highlight and pay homage to the history of Latina lawyers. Two such projects are Las Primeras[31] and Luminarias de la Ley, which document the experiences of the first Latina lawyers in the United States.[32] The Latina Commission also provides original and related research on the barriers and discrimination faced by Latina lawyers as part of its collaboration with the United Nations Working Group on the Issue of Discrimination Against Women in the Law and in Practice.

Increasing the representation of Latinas across all legal sectors is a significant goal that requires monitoring their occupational status across the legal profession. Measuring Latinas' progress will promote accountability and awareness not only within their own organizations but also within the larger legal community. As a commitment to monitoring Latina progress, the Latina Commission continues to monitor the status and progress of Latina lawyers. In 2015, the Latina Commission provided an update to the HNBA Commission studies at the HNBA's Corporate Counsel Conference. At that time, it was noted that since the 2009 HNBA Commission Study, Latina attorneys have made incremental progress in several legal sectors. However, when compared to their population within the United States, Latinas still appear to be the most underrepresented racial or ethnic group within the legal profession, especially in senior-level positions.

III. Conclusion

Since its inception, the Latina Commission has made great strides to open the educational pipeline and career pathways for Latina attorneys, and to facilitate their accession to its upper echelons. However, there is still much to do in order to achieve lasting and measureable change.

The Latina Commission cannot work in isolation to achieve this goal; it requires active support and commitment from the larger legal community. As the Hispanic population continues to grow in this country, the legal profession must work harder to counter the barriers to Latina attorneys' success, and ensure that the profession reflects the growing diversity of the nation. To that end, the profession must continue to support the development and implementation of research-based strategies aimed at identifying and addressing attitudinal, structural, and organizational barriers, so that each generation of prospective attorneys has a greater opportunity to reach its full potential and to achieve success and satisfaction in the legal profession.

30. *See 2009 HNBA Commission Study*, *supra* note 3, at 9–10, 53–54; *2010 HNBA Commission Study*, *supra* note 3, at 59, 60, 64.

31. *See 2009 HNBA Commission Study*, *supra* note 3, at 82; *2010 HNBA Commission Study*, *supra* note 3, at 88.

32. Dolores Atencio, *The First Latina Lawyers, Luminarias De La Ley*, University of Denver Portfolio (2015), https://portfolio.du.edu/Dolores.Atencio/page/54484.

A Qualitative Study of the Lived Experiences of Black Women Equity Partners in Elite Law Firms

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How are the experiences of Black women equity partners different from others? How do Black women who have attained equity partnership in law firms view that accomplishment with respect to its impact on their professional and personal lives? And what can we learn from this that might allow law firms to better support the career advancement of Black women into the ranks of equity partnership?

I. Introduction

This article discusses the results of my recent qualitative study of black women equity partners in AmLaw 100 law firms.[1] The impetus for the study was a series of observations that are well-known to law firm diversity professionals. First, despite their ostensible commitment, elite law firms have a long-term challenge in improving diversity and inclusion. Second, by disaggregating lawyers of color in these firms, a better picture of the nature and extent of the challenges emerges. Finally, it is important to understand not only the business-related considerations that are essential for the success of black women equity partners but also their values, attitudes, motivation, and perspectives.

Studies focusing on black women equity partners in AmLaw 100 firms are rare. Moreover, extant studies tend to focus on the economic considerations related to business development and client relations that contribute to or inhibit success in corporate law firms. Such considerations are relevant for all partners, and the women in my study provided important insights into the economic drivers of success at the equity level. However, my study took the further step of examining the subjective insights and personal perspectives of black women equity partners in AmLaw 100 firms. This examination revealed a more intimate view with respect to their professional and personal lives.

The examination of subjective and interpersonal factors that impact lawyers, including women of color, is not new. Studies by Catalyst[2] and the American Bar Association (ABA) Commission on Women in the Profession[3] explored interpersonal factors that shape the experiences and perspectives of lawyers in various settings, including elite law firms. The Catalyst study examined the behavioral adjustments required of women of color to "fit" into law firm settings.[4] The Catalyst study also highlighted the challenges lawyers of color must confront as they work to build and sustain relationships within their firms. The ABA study analyzed success strategies for women of color in law firms and the role of

1. Keith H. Earley, *A Qualitative Study of the Lived Experiences of Black Women Equity Partners in Elite Law Firms*. (Mon. x, 20xx) (unpublished Ph.D. dissertation, Georgetown University) (on file with author).

2. *See generally* Deepali Bagati, Women of Color in U.S. Law Firms (July 15, 2009), http://www.catalyst.org/knowledge/women-color-us-law-firms%E2%80%94women-color-professional-services-series.

3. *See generally* Arin Reeves, from Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms (2008), http://www.americanbar.org/content/dam/aba/migrated/women/woc/VisiblySuccessful.authcheckdam.pdf.

4. Bagati, *supra note* 2, at 20-21.

interpersonal factors such as self-confidence; a commitment to excellence; and a commitment to physical and spiritual self-care.[5]

The second wave of the After the JD Study, likewise, explored a number of variables that affect the careers and experiences of lawyers, including dimensions of job satisfaction, intrinsic motivation, and relational considerations.[6] It also included results related to work and personal life balance and the impact of marriage and family on women and lawyers of color.[7] These studies offered important data that contributed to a more complete picture of the experiences of attorneys of color in the legal profession. They did not consider equity-level attorneys in elite law firms, however; therefore, I distinguish these studies from my research, which is specifically related to black women equity partners.

II. The Law Firm Environment

A beginning point for a discussion of the experiences of any attorney pursuing a long-term career in a large law firm is an examination of the drivers of and impediments to success. Inasmuch as white males dominate elite law firms, an understanding of the explicit and subtle ways that such dominance is expressed is important for historically underrepresented groups.

Black women who have achieved equity partner status must develop the capacity to navigate individual and systemic variables in settings that have historically been dominated by white men. Inasmuch as elite law firms have persistently underrepresented black women, an understanding of their ability to meet challenges beginning as associates and continuing to partnership informs their path to success. Law firms have sought to address the long-term effect of white male dominance through various diversity-related efforts. Seminal research amply demonstrates that success in elite law firms cannot occur without vital prerequisites. The subjective nature of the process of having a successful career creates challenges for associates of color and oftentimes means that they are not well positioned to be as productive and profitable to their firms. The low representation of black women at the equity partnership level is directly tied to a winnowing process that starts at the associate level.[8]

Despite these challenges, some black women equity partners have been highly successful and have achieved positions of significant influence within their firms. The challenges and successes of black women provided a framework for developing a research-based perspective regarding their experiences as senior level partners in elite law firms.

Against this backdrop, an examination of research related to subtle forms of exclusion, marginalization, and constraint elucidated the experience of the women in my study. This was achieved through an analysis of research related to coping, resilience, stress management, non-physical aggression, and the related concept of micro-aggressions, second-generation bias, and emotional intelligence.

Racial and gender considerations provided an important context for data collection. My study included research that informed a discussion of race and gender and their implications with regard to the experiences of black women equity partners. I also reviewed research related to black women in senior level positions in other professional settings. In each professional setting, I considered the impact of race and

5. Reeves, *supra note* 3, at 14-16.

6. See generally Katharine W. Hannaford, *New Results From After The JD, Wave II: Seven Years Into A Lawyer's Career*, Researching Law, 2009, at 5, http://www.americanbarfoundation.org/uploads/cms/documents/abf_rl_spring09_final.pdf.

7. *Id.* at 5.

8. *See* David B. Wilkins & Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms—An Institutional Analysis*, 84 Cal. L.R. 843, (1996), http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2077&context=faculty_scholarship.

The low representation of black women at the equity partnership level is directly tied to a winnowing process that starts at the associate level.

gender on structural, cultural and behavioral dynamics.

III. Profile of Study Participants

My study included eighteen women from firms with offices across the country. Although they shared similarities in various respects, there were a number of differences within this group and, to an extent, among their firms. Those differences provided an important context for discussing their experiences.

The women in my study completed a questionnaire and participated in extensive interviews. The data collection process provided a framework for the discussion of key questions about their experiences. Similarities and differences emerged based on the following factors that the written questionnaire captured:

- Age range
- Other work experience
- Partnership tiers
- Time to equity partnership
- Billable hours
- Total work hours
- Personal relationships (significant others; children)

Qualitative data came from interviews of the black women. Such data provided the foundation for the grouping of participants and the development of key themes.

IV. Key Findings

A. Participant Groupings

The experiences of women in this study can be understood through three distinct categories of the participants:

- Strategic Relational Group
- Adaptive Resilient Group
- Alternative Career Group

The collective impact of these challenges was significant enough that the women in this group retired, were resigned to leave, or were giving very serious consideration to other professional options.

Interview data from the women in the Strategic Relational Group reflected high levels of success and broad satisfaction with their firms. They did not view their race or gender as having a limiting or negative impact on their experiences of becoming or maintaining their status as equity partners. They were able to develop strong relationships with key partners who actively promoted their ascension to equity partnership. Their experiences are consistent with the following quote:

> What I did feel was, what I've always felt at this firm, and what I still feel at this firm, and that is it's truly a meritocracy. I've never felt any judgment or decision-making based on anyone's background. It's always based on ability, personality, and willingness to be part of a team and to build the firm.

By contrast, participants in the Adaptive Resilient and Alternative Career Groups identified race and gender as having an impact on them. The participants in the Adaptive Resilient Group had similar outcomes to the women in the Strategic Relational Group although they faced significantly greater challenges getting to those outcomes. Women in the Adaptive Resilient Group exhibited a strong ability to overcome difficulties related to race and gender to achieve success. Their experience is captured in the following observation:

> We don't have a lot of institutional clients; it's all independent—getting your own clients basically. Here we're almost all entrepreneurs and rainmakers. And I can see it around the table; the people with the highest origination make the most money and they can pretty much do what they want. It's much harder for me to get business definitely because of biases. I mean there are gender biases to begin with, and then on top of that you've got the fact that I'm a minority woman. So I believe I have to work much harder, getting business from people who don't know me because I have to prove myself multiple ways over.

The women in the Alternative Career Group reported greater barriers within their firms in comparison to women in the other two groups. They had the most personal difficulty as equity partners and were more inclined to ascribe certain aspects of their experiences to race and gender based behaviors. The collective impact of these challenges was significant enough that the women in this group retired, were resigned to leave, or were giving very serious consideration to other professional options. Although their challenges differed, the following statement captures the frustration that women in this group articulated:

> I do have a passion about (my career). But it's a tired passion. You know, I've been doing this for a long

time. Sometimes it feels like Sisyphus's rock, you push it back and then it rolls back over you. And so you get up and you're bruised and bleeding, and you push forward a little bit more.

In essence, success for the women in my study was correlated to the barriers they identified. Table 1 provides an overview of the impact of firm barriers on participants based on the three group designations. My study explored these barriers and the extent to which they constrained success, if at all.

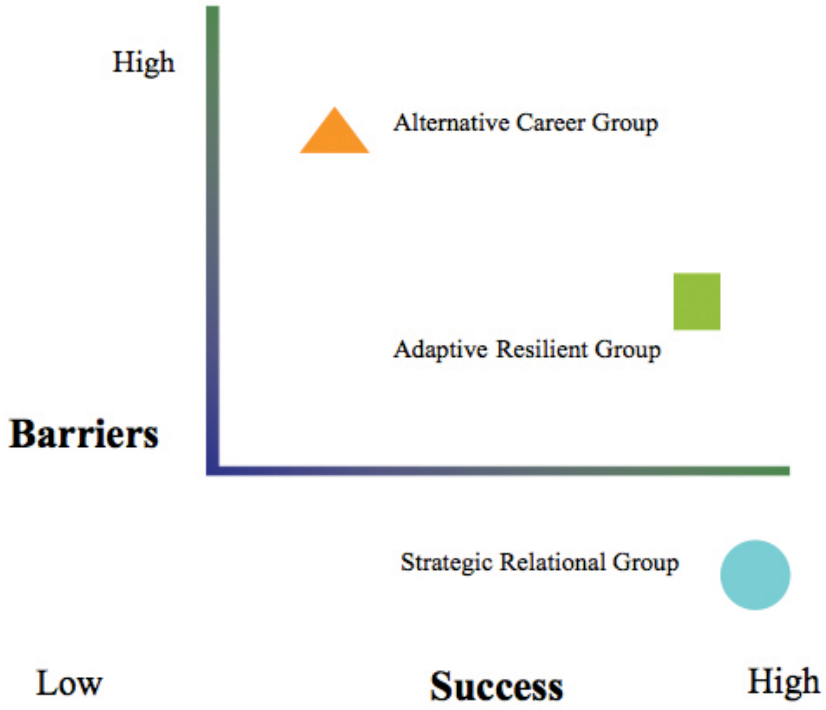

Table 1. Impact of Barriers on Success of Black Women Equity Partners in Elite Law Firms

V. Key Themes

Five themes provide more specific context for the experiences of women in this study and were examined in detail. The first was Firm Culture, Structure, and Processes. It was the most complex theme, giving rise to the following subthemes:

- Client Relationships
- Leadership Opportunities
- Mentorship and Sponsorship
- Diversity Commitment and Impact
- Lateral versus Organic Partners

The remaining four themes provided significant details regarding the values and more personal aspects of the experiences of the participants. Those themes were denoted as follows:

- Racialized and Gendered Interactions with Dominant Group
- Coping and Stress Management
- Motivation and Inspiration
- Work Family Integration

The collective import of these five themes suggests complex and nuanced dynamics that explain law firm life and shape the perspectives of the participants with regard to their firms.

A. Discussion of Key Themes

Culture, Structure, and Processes. The narratives of study participants revealed a mix of experiences related to firm culture, structure, and processes. For the most part, the participants did not discuss culture, structure, and processes as independent drivers of their experiences and perspectives but rather as integrated factors that crossed multiple dimensions. However, certain aspects of law firm life are so fundamental that they tended to have overarching significance. These were captured by the aforementioned sub-themes:

- Client Relationships. Virtually all participants discussed whether the predominant client relationships were institutional or the result of a more entrepreneurial approach and how that impacted their experience. Inasmuch as a significant majority of participants worked for firms with a more entrepreneurial orientation, client development emerged as a key challenge—one that was complicated by relational and broader systemic dynamics. Most of the eighteen participants in this study expressed the view that race and gender or both were seen as relevant to client development challenges.

- Leadership Opportunities. In each of the participants' firms, numerous administrative committees were typical, and the opportunity to participate on committees, particularly the more influential committees, affected the experience of participants. By taking a leadership role, a participant can enhance her reputation and gain greater influence. At the same time, assuming administrative roles can impinge on billable opportunities. Further, several participants questioned whether some appointments were offered to them as "window dressing" to burnish the firm's ostensible commitment to diversity. Thus, committee appointments were a source of ambivalence for participants especially in those cases where client development opportunities were constrained.

- Mentorship and Sponsorship. Having a sponsor or champion is an essential prerequisite to success in elite law firms. There was a range of participant perspectives regarding their experience with sponsors or champions and the quality of their relationship with these individuals. In addition, virtually all participants recognized that part of their responsibility was to support associates, especially associates of color.

- Diversity Commitment and Impact. Participants' view of the quality of their firms' commitment to diversity was central to all discussions. However, their perspectives regarding that commitment varied. For the most part, participants defined the quality of the firms' commitment to diversity based on improvement in the numbers of historically underrepresented groups. Focusing only on numbers suggests an approach that does not give adequate consideration by firms to systemic or structural impediments to improving diversity. It seemed to contribute to the frustration articulated by some participants regarding the lack of meaningful progress in improving diversity and promoting inclusion within their firms. The quality of a firm's commitment to diversity and the experiences of

Frequently, being "the only one" created a quandary for participants. Although it reflected a frustrating lack of diversity-related progress, it also led to opportunities.

participants also could be evaluated based on personal considerations. Such considerations included whether the participants were among the few black women, or the only one, at the partner level, and their experience related to such status. Frequently, being "the only one" created a quandary for participants. Although it reflected a frustrating lack of diversity-related progress, it also led to opportunities.

- Lateral versus Organic Partners. The effect of being among a small group of black women or people of color was compounded if the attorney joined her firm as a lateral hire at the partner level. The experience of joining a firm as a lateral hire rather than moving up organically in a firm gave rise to significantly different experiences for participants. The lateral partner must develop relationships, learn firm culture, and learn to navigate perils and pitfalls. In some instances, participants made the transition smoothly. In other cases, they confronted various challenges. A number of participants who joined their firms as lateral partners offered comments reflecting the impact of race and gender on their transition and opportunities for success.

The remaining four themes also shaped the experiences of the black women equity partners in my study. These themes tended to reflect more subjective or personal views.

Racialized and Gendered Interactions with Dominant Group. The extent to which race, gender, and other social ascriptions had an impact on participants' experience as partners was a consistent theme. However, there was a range of experiences among participants. In some cases, participants did not perceive the impact as significant. In a number of other instances, race and gender-based interaction was subtle and took the form of micro-aggressive behavior. Micro-aggression included direct encounters, marginalization, insensitivity, and exclusion. Such behavior was reported as explicit or subtle. Sometimes the behavior reflected approaches or attitudes that were confusing, unusual, or held unclear motivations. In other instances, as a result of interactions with dominant groups, certain participants reflected that they did not receive any benefits of doubt, the groups viewed them as less deserving to be in the firm setting, or were less likely to survive mistakes.

In other instances, as a result of interactions with dominant groups, certain participants reflected that they did not receive any benefits of doubt, the groups viewed them as less deserving to be in the firm setting, or were less likely to survive mistakes.

Coping and Stress Management. The women in my study epitomized clarity, strength, and grit. They were savvy, driven, resourceful, focused, highly credentialed, and motivated to excel. Nevertheless, their experiences differed, as did their reactions to the challenges they faced and ways they were able to overcome adversity, including the behavioral and attitudinal adjustments they made reflecting varying degrees of aggression, assertiveness, compromise, sacrifice, adaptability, avoidance, humor, serendipity, and faith. These adjustments were directly related to their coping skills, ability to manage stress, and exhibit resilience.

Motivation and Inspiration. The women described the foundations for their success and for achieving long-term goals based on their personal goals, values, and commitments. A number of them explained the exhilaration associated with being an equity partner. Others offered more pragmatic views of their motivation reflecting concrete goals related to family, money, or clients.

Work Family Integration. Most of the participants had to confront the challenge of integrating their personal and professional lives. Their success or frustration in both arenas was directly related to their effectiveness in managing this challenge. Age, the number of young children, and the presence of a spouse or significant other were important factors for participants regarding this challenge. Thus, for example, older women with teenage or adult children faced fewer challenges than participants with younger children. Participants whose partner also had a demanding job faced additional challenges coordinating family matters.

The discussion of the above themes was elucidated through extensive and compelling discussions with study participants. My study captured these discussions in comprehensive detail. It also provided details as to how the themes played out for participants based on which of three groups they occupied.

VI. Importance of the Research

Notwithstanding the extensive research with regard to the intersection of race and gender in Big Law, there is a gap with respect to black women equity partners. In large part, this is the result of their extremely low representation in this setting. It also results from the tendency to group members of this cohort with all women or, more frequently, with all attorneys who are women of color or people of color.

The absence of research regarding black women equity partners is important for two reasons. First, the

The intersection of race, gender, and, to some extent, class was a significant underlying dynamic for most participants. These intersectional variables differed substantially among participants based on personal, interpersonal, and structural considerations. Underlying consequences tied to stereotypes and patriarchal culture attested to the double bind that participants face as women and individuals of color.

experience of blacks, Asians, Hispanics, and other minority groups are not the same. As Daryl Smith has noted, "When identity intersects with power, privilege, or inequity, the experience of identity is likely to be asymmetrical, depending on where one is positioned socially."[9] Although my study did not offer a comparative analysis of other attorneys of color in elite law firms, the results do inform an understanding of their experiences. An examination of the challenges and successes of black women equity partners provides a foundation for a broader understanding of the process for other groups—especially minority and women associates—to achieve higher rank.[10] Second, an understanding of the experience of black women equity partners has important implications for other black attorneys, especially black women associates who are part of the pipeline for future equity partners. Given the dramatic drop-off in the number of black women associates who become partners, an understanding of the drivers and inhibitors of success is important. Those variables can be understood in the context of very pragmatic strategies that have been the focus of the limited research related to this group.

Many researchers and legal groups have an interest in the experiences of black women equity partners in elite firms. My research provides an expanded understanding of law firm cultural and behavioral considerations that inform the experiences of the subjects of my study. The three groupings provide an analytic framework that may be extended to capture the experiences of any partner from a non-dominant group in an elite firm.

VII. Observations From the Study

The data that emerged from interviews with study participants provided an important context for understanding the key themes described above. How they managed structural variables more directly related to business and economic success informed the context. This included business and client

9. *See* Daryl Smith, Diversity's Promise for Higher Education 25 (1st ed. 2009).

10. *See generally* Bagati, *supra* note 2; *see also* Barbara M. Flom, Report of the 7th Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (2012); Arin Reeves, One Size Never Fits All: Business Development Strategies Tailored for Women (And Most Men) (2014).

development opportunities, relational dynamics, availability of a mentor, and so forth. At the same time the themes helped explain participant perspectives based on internalized or intrapersonal considerations.

The intersection of race, gender, and, to some extent, class was a significant underlying dynamic for most participants. These intersectional variables differed substantially among participants based on personal, interpersonal, and structural considerations. Underlying consequences tied to stereotypes and patriarchal culture attested to the double bind that participants face as women and individuals of color. In some cases, race and gender insensitivity was subtle and difficult to discern, an episodic annoyance, or something participants experienced prior to ascension to the equity level. In other instances, the participants experienced the impact as more pernicious insofar as it was obvious, insulting, or exclusionary even after some women became equity partners.

Participants tended to face greater challenges tied to intersectional variables along the path to becoming an equity partner than they did after reaching such status. For some, such challenges began with the motivation to become an equity partner including the willingness to work very long hours and sacrifices by family and loved ones. A number of participants offered a view that they faced greater challenges as associates than their peers. For example, social ascriptions (based on how participants were perceived by other partners) compounded challenges for participants who found it difficult to identify a champion or develop viable client relationships. Time is currency in elite law firms. The cascading impact of devoting time to efforts to things such as fit within the firm, cultivating relationships, and improving overall diversity often imposed unique challenges for participants that made their experiences different from those of their white counterparts.

Once participants reached the equity level, the challenges they confronted were clearly differentiated among participants including the extent to which such challenges were tied to social ascriptions. Although many participants experienced significant success as equity partners, such success was frequently individualized, leaving participants painfully aware of the ongoing difficulties their firms face with regard to improving diversity more broadly. At the equity level, firm approaches to client solicitation (aggressive or more relaxed), compensation allocation systems (bands, allocation of points), and lateral hires (inclusion or marginalization) could be the source of difficulties. These examples are noteworthy because of the implications for diversity efforts. In some instances, participants managed personal, interpersonal, and structural dynamics related to these examples to their advantage, but more frequently such dynamics created challenges for participants.

Data from participants suggested that the success in responding to the foregoing challenges was dependent on developing refined strategies for coping and having a high capacity to manage stress, as well as external support systems, faith, and an unwavering commitment to improve diversity within the firms of participants.

The law firms of the participants in this study also were not monolithic in terms of their culture and business practices. For example, some firms had more long-term, institutional clients while others had a more entrepreneurial orientation wherein partners were expected to generate clients. Most of the participants in the study were affiliated with firms that did not have strong institutional relationships. As such, client development opportunities and underlying relationships with influential partners affected success. In some cases, this gave rise to behavioral dynamics that participants perceived as having racial and gender implications.

My study also examined the subjective mindset of the participants through an examination of resilience, stress management, and coping theory. These areas were examined independently, but an examination of emotional intelligence models informed this areas. With regard to emotional intelligence, the following elements helped to inform the personal perspective of women in my study:

- emotional Skills and Abilities (expressed as high self-expectations)
- assertiveness and Independence
- stress Tolerance
- social Responsibility
- interpersonal Relationships

It is important to understand that the expression of these emotional intelligence elements differed substantially based on the group designations of particular study participants. For example, all participants came to their work with high self-expectations and a willingness to be very assertive. However, women in the Alternate Career Group faced great challenges achieving independence because of structural or relational constraints that limited their client development opportunities. Women in the Strategic Relational Group and the Adaptive Resilient Group had very different experiences in this regard. I analyzed all elements of emotional intelligence based on the group framework.

VIII. Implications

My research has important implications for each of the following areas:

- contributions to relevant scholarship
- implications for law firm diversity
- implications for other historically underrepresented groups in elite law firms
- implications for black women in elite law firms
- implications for black women in other professions

My research explored each of these areas at length. For purposes of this discussion, the implications for law firms may be particularly salient. Studies have extensively examined diversity efforts in Big Law. Most firms articulate strong commitments to improved diversity, and many devote substantial resources to their efforts. Nevertheless, the representation of African Americans among elite firm partners is stagnant.[11] The challenges are even greater with regard to equity partnerships at America's largest 100 law firms. Out of seventy-seven Am Law 100 firms that recently reported minority numbers for equity partnerships, thirty-one either had no African American equity partners or had only one.[12] Only one firm had more than ten—it had a dozen, which amounts to 1.8% of its equity partners.[13] These results do not separate out black women equity partners. This is likely the result of their small numbers and perhaps the assumption that women of color at the equity level do not have different experiences.

Despite the limitations of a qualitative study of eighteen women, their stories have potentially significant implications for several reasons. Developing three categories to explain the experiences of the participants in my study is a useful way to understand how firms can position equity partners for success or marginalized. Such an understanding also provides a foundation for developing strategies to support a pipeline of diverse talent at the associate level.

11. *See* MP McQueen, *Diversity Scorecard: Minorities Make Small Gains in Big Law*, The American Lawyer, May 23, 2016, http://www.americanlawyer.com/id=1202757858000/Diversity-Scorecard-Minorities-Make-Small-Gains-in-Big-Law

12. *See* Debra Cassens Weiss, *Only 3 Percent of Lawyers in BigLaw are Black, and Numbers are Falling*, ABA Journal, May 30, 2014.

13. *Id.*

Barring Black Men: Character and Fitness and the Underrepresentation of Black Men in the Legal Profession

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Does the character and fitness portion of the bar exam have a disparate deterrent and exclusionary impact on black men seeking to enter the legal profession? Given the disproportionate numbers of black men who have been processed through the criminal justice system, a significant number of black men will find it a virtually insurmountable hurdle to be admitted to the practice of law. Can we address the underrepresentation of black men in the legal profession without also addressing the application of the character and fitness inquiry?

This article illustrates the disparate, deterrent, and exclusionary impact that the character and fitness portion of the bar exam may have on black men. This illustration is premised on the fact that a disproportionate number of black men are or have been processed through the criminal justice system. Of the 2.3 million people currently incarcerated in America, one million are black Americans, the majority of whom are black men.[1] And given that one in six black men has been incarcerated as of 2001, one in three black men born in the United States can be expected to serve time in prison.[2] Tens of thousands more have been arrested, processed, or otherwise involved in the criminal justice system.[3] Based purely on these numbers, it is clear that a large number of black men would face a virtually insurmountable hurdle in being admitted to practice law in any state. It is thus dubious whether it is possible to ameliorate the underrepresentation of black men in the legal profession without also addressing the effects of the character and fitness inquiry.

I. Introduction

The underrepresentation of black Americans in the legal profession is well documented, and there are theories to explain this phenomenon. These theories seem to coalesce around the consensus view that black Americans are simply self-selecting out of pursuing legal careers. The American Bar Association (ABA) has stated that, "[d]iversity efforts will encounter inherent obstacles as long as there remain too few people of color who decide to enter the profession in the first place."[4] In the same vein, the National Council of Bar Examiners (NCBE) claims that the small number of students of color in law schools "occurs because there

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1. *Criminal Justice Fact Sheet*, Nat'l Assoc. for the Advancement of Colored People, http://www.naacp.org/pages/criminal-justice-fact-sheet (last visited Aug. 31, 2016).

2. *Id.*; *see also* Simon McCormack, *Nearly Half Of Black Males, 40 Percent Of White Males Are Arrested By Age 23: Study*, Huffington Post (Jan. 23, 2014, 12:50 PM), http://www.huffingtonpost.com/2014/01/06/half-of-blacks-arrested-23_n_4549620.html?utm_source=buffer&utm_campaign=Buffer&utm_content=bufferccfec&utm_medium=twitter.

3. *See id.*

4. Sarah E. Redfield, Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession (2009) (citing *With All Deliberate Speed: Achievement, Citizenship and Diversity in American Education*, Metropolitan Center for Urban Educ. (2005)).

are not too many [minorities] graduating college with the grades that are needed for even special admission programs."[5] But, even if we accept these explanations as true, they are inadequate because they merely highlight the symptoms of a systemic problem. They are outward-looking explanations that do not inform a solution. They do not tell us why black Americans are disproportionately forgoing legal careers. Such explanations also remove responsibility from the various stakeholders in the legal community who must spearhead any meaningful or effective solution. These sorts of explanations also breed complacency with the status quo because, "if demonstrable, [underrepresentation] means little if it is inconsequential or if there is a plausible explanation for it."[6]

In this article, I focus on one set of stakeholders—State Bar Examiners—who are the ultimate gatekeepers of entry into the legal profession. This focus is based on the proposition that the character and fitness criterion—particularly the past bad conduct inquiry—may be partially responsible for the underrepresentation of black men in the legal profession. That is, the character and fitness inquiry, which has a deterrent function, may have a disparate deterrent effect on black men, given that a disproportionate number of them have criminal records. I do not argue that the bar is rejecting black men disproportionately because of their criminal records. This would be an untenable position as very few applicants are denied admission to the bar based on character and fitness. In fact, only about one in five hundred applicants is denied admission to the bar on this basis,[7] which is itself proof of the inquiry's efficacy as a deterrent mechanism. Although I focus only on one stakeholder and one potential factor, our goal is to suggest that the ultimate solution must come from the combined efforts of all the stakeholders in the legal community. Ultimately, I hope this article will be the first step toward disrupting conventional approaches to the black underrepresentation crisis in law.

II. The Underrepresentation of Black Men in the Legal Profession

Black men are underrepresented in the legal profession in the sense that there are significantly fewer black male lawyers than the legal community reasonably expects. Studies use various methodologies to make this determination, but the conclusion is always the same. A Microsoft Corporation study found that black Americans were underrepresented in the legal profession when compared to other similar professions with licensing requirements—that is, physicians and surgeons, accountants and auditors, and financial managers.[8] In 2012, for example, only about 13% of American lawyers were minorities even though minorities comprise over 30% of the US population.[9] The numbers are particularly dire for black Americans, as they comprise just under 5% of lawyers[10] even though they represent over 12% of the U.S.

5. William Kidder, *The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure, and Racial and Ethnic Stratification*, 29 Law & Soc. Inquiry 547, 572 (2004) (citing Stephen P. Klein, *Bar Examinations: Ignoring the Thermometer Does Not Change the Temperature*, 61 N.Y. St. B. J. 28, 32 (1989)).

6. Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 Mich. L. Rev. 1005, 1008 (1997).

7. Deborah Rhode, *Moral Character as a Professional Credential*, 94 Yale L. J. 491, 516 (1985).

8. *See, e.g.*, Brad Smith, *Raising the Bar: Exploring the diversity gap within the legal profession*, Microsoft Corporate Blogs (Dec. 10, 2013), http://blogs.microsoft.com/on-the-issues/2013/12/10/raising-the-bar-exploring-the-diversity-gap-within-the-legal-profession/#sm.00001f8lxyoyqsegws0owazt4eikk; *see also* Deborah L. Rhode, *Law is the least diverse profession in the nation. And lawyers aren't doing enough to change that*, The Wash. Post (May 27, 2015), https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/.

9. *See* Richard Meade, *Life Cycle of Diversity Programs*, IILP Rev. 2014: The St. of Diversity in the Legal Profession 78 (2014), http://www.theiilp.com/Resources/Documents/IILP_2014_Final.pdf.

10. Elizabeth Chambliss, *Demographic Summary*, IILP Review 2014: The State of Diversity in the Legal Profession 13 (2014), http://www.theiilp.com/Resources/Documents/IILP_2014_Final.pdf; Floyd Weatherspoon, *The Status of African-American Males in the Legal Profession: A Pipeline of Institutional Roadblocks and Barriers*, Race, Racism & the Law 3 (2010), http://racism.org/index.php?option=com_content&view=article&id=1474:legal-profession&catid=40&Itemid=158.

No matter what metric studies use, it is clear that black Americans—and black men in particular—are severely underrepresented in the legal profession.

population.[11] And, black men make up 2% of lawyers, although they comprise about 6% of the U.S. population.[12] By contrast, non-Hispanic or Latino white Americans constitute less than 64% of the U.S. population[13] but over 85% of lawyers.[14]

No matter what metric studies use, it is clear that black Americans—and black men in particular—are severely underrepresented in the legal profession. In fact, the underrepresentation is so alarming that the ABA concluded that "the proportion of minorities in the legal profession is not likely to attain parity with that in the general population in the foreseeable future."[15] One researcher estimated that to achieve this parity by 2028, the year when affirmative action would/should end, according to Justice O'Connor, about 1,500 more black students would need to be admitted to law school each year.[16] And, given the current composition of black men and women in law, the majority of these "additional admittances" would need to be black men. It is unlikely, however, that such additional admittances, standing alone, would fix this problem given the large number of black men who have or will have criminal records or be incarcerated. Put another way, addressing the underrepresentation of black men in law requires a multi-pronged solution; and, modifying the character and fitness inquiry is one crucial aspect.

III. The De Facto Barring of Ex-Offenders

A law school graduate must take and pass the bar examination of the particular state in which he intends to practice in order to become a licensed attorney. In addition to a knowledge test, the state also examines an applicant's moral character and fitness. Even if the applicant passes the knowledge exam, the state will reject him if the character and fitness committee finds that he does not "possess the requisite character needed to protect the public from dishonest lawyers and incompetent legal services."[17] Although the ABA has issued guidelines that state bar examiners should follow when evaluating an applicant's character and fitness, the ABA does not require states to adopt these standards. The specific requirements thus vary widely among the states. However, every state places great emphasis, albeit via different approaches, on the applicant's past criminal or bad conduct. Some states follow a detailed, guided approach, and others take an unguided, subjective approach.[18] But, there is no meaningful variance in how a record of bad conduct operates in the barring calculi.

11. *Quick Facts: United States*, U.S. Census Bureau, http://www.census.gov/quickfacts/table/PST045215/00 (last visited Aug. 31, 2016).

12. *See* Weatherspoon, *supra* note 10, at 3.

13. *Quick Facts: United States*, *supra* note 11.

14. *See* Meade, *supra* note 9, at 78; *see also*, Chambliss, *supra* note 10, at 13.

15. *ABA Leadership: Office of Diversity Initiatives*, A.B.A., http://www.abanet.org/leadership/diversity.html (last visited Aug. 31, 2016).

16. Redfield, *supra* note 4.

17. Anthony J. Graniere & Hilary McHugh, *Are You In or Are You Out? The Effect of a Prior Criminal Conviction on Bar Admission and a Proposed National Uniform Standard*, 26 Hofstra Lab. & Emp. L. J. 223, 223 (2008) (citing Evan Gutman, St. B. Admission & the Bootlegger's Son Ch. 6 (2005)).

18. *Id*.

According to the ABA's 2015 Comprehensive Guide to Bar Admissions Requirements, "the primary purpose of character and fitness screening before admission to the bar is the protection of the public and the system of justice."[19] Therefore, "[a] record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission."[20] The guide then enumerates past conduct that, if the committee reveals or discovers, should result in further inquiry by the bar admissions committee before it decides whether to admit an applicant. The first and seemingly most important conduct is "unlawful conduct."[21] In determining whether particular unlawful conduct disqualifies an applicant from being admitted to the bar, the ABA instructs the examiners to consider the following factors: the applicant's age at the time of the conduct; the recentness of the conduct; the reliability of the information concerning the conduct; the seriousness of the conduct; the cumulative effect of the conduct or information; the evidence of rehabilitation; the applicant's positive social contributions since the conduct; the applicant's candor in the admissions process; and, the materiality of any omissions or misrepresentations.[22] However, the ABA does not indicate whether any particular factor should be weighed more heavily than others.

Some states closely follow the ABA's proposed standards, but many do not. In Illinois, for example, convicted felons must first receive a character and fitness certification before being permitted to take the bar examination. In Mississippi, convicted felons, except those who were convicted for manslaughter or a violation of the Internal Revenue Code are not eligible to apply for admissions to the bar. To be eligible for admission to the bar in other states, like Alabama and Florida, an applicant must be granted a full pardon and have their civil rights restored.[23] Arizona, Connecticut, Indiana, and Utah take a different approach. In these states, committees presume applicants who have been convicted of a felony to not possess the necessary moral character to practice law.[24] Under this approach, a felony conviction creates a rebuttable presumption of the absence of good moral character and fitness.

Regardless of the approach a state takes, a criminal record ultimately presents a virtually insurmountable hurdle for ex-felons to gain admission to the bar. One commentator noted that "[t]here are boundaries even for flexible bar admissions standards. Mississippi, for instance, is the only state that explicitly bars convicted murderers from becoming lawyers, but it is unlikely a convicted murderer would have much luck in seeking admission to the bar in any state."[25] For example, in *In the Matter of Hamm*,[26] the Arizona Supreme Court denied James Hamm's application for admission to practice law. Hamm was convicted of murdering two college students, although he denied responsibility for the murders. He completed law school after his release from prison. But, Arizona refused to admit him to the bar because he did not meet the burden of showing "extraordinary" moral character, in light of his criminal background. The court reasoned that he failed to make this showing because he did not accept responsibility for the murders, was not candid in his application, and did not acknowledge his child support obligations.[27]

In Illinois, a criminal record also tends to be a de facto bar to admission even though the official state rule is that rehabilitated criminals can be admitted. An applicant with a criminal record must "show[] by clear

19. *See Comprehensive Guide to Bar Admission Requirements 2015,* Nat'l Conference of B. Examiners & Am. B. Assoc. Section of Legal Educ. & Admissions to the B. vii (2015), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2015_comprehensive_guide_to_bar_admission_requirements.authcheckdam.pdf.

20. *Id*. at viii.

21. *Id*.

22. *Id.* at ix.

23. *Id*. at 5.

24. Graniere & McHugh, *supra* note 17, at 245.

25. Mark Hansen, *Lines in the Sand*, ABA Journal (Aug. 11, 2006, 11:57 PM), http://www.abajournal.com/mobile/mag_article/lines_in_the_sand.

26. In the Matter of Hamm, 211 Ariz. 458, 460, 123 P.3d 652 (2005).

27. *See Id*.; *see also* In re Loss, 119 Ill. 2d 186, 189–90, 518 N.E.2d 981 (1987).

and convincing evidence that his rehabilitation is such that he is a fit person to practice law."[28] The stated criteria for meeting this burden includes evidence of:

(1) Community service and achievements, as well as the opinions of others regarding present character; (2) candor before the court; (3) the age of the applicant at the time of the offenses; (4) the amount of time which has passed since the last offense; (5) the nature of the offenses; and (6) the applicant's current mental state.[29]

However, satisfying this evidentiary burden seems to border on impossibility. In *In re Krule*,[30] the Illinois Supreme Court upheld the character and fitness committee's denial of admission to an ex-convict, explaining, among other things, that "an applicant for admission does not become entitled to certification of his character and fitness simply by fulfilling the education requirements and by participating in civic and charitable activities."[31] The court stated further that "[a]s impressive as Krule's character references and public service may be, an applicant's subsequent exemplary behavior cannot lessen the enormity of an earlier offense."[32] Apparently, the "enormity" of the applicant's crime was that he was "a mature adult when he engaged in the fraudulent [insurance] scheme that culminated in his conviction."[33] But, based on other cases where applicants were denied admission to the Illinois bar, it is still not clear that it would make much difference if the applicant in Krule had not been a mature adult when he committed the crime for which he was convicted. [34] The heightened, amorphous burden of proving complete rehabilitation effectively results in a categorical denial of admission for applicants with criminal records.

It is conceivable, perhaps even inevitable, that this de facto bar deters untold numbers of potential law school applicants with criminal records.[35] This would certainly be the case in states where a criminal conviction is a per se bar to being admitted to practice law. The same would be true in states, such as Florida, where ex-felons can only be admitted to the bar if their civil rights are restored. For example, Vikki Hankins spent almost twenty years in federal prison for selling cocaine in 1990. She now wants to be lawyer but has deferred her plans to attend law school until Florida grants her petition to restore her civil rights.[36] "I can go to law school, but when I'm done . . . I won't be able to go to the Florida bar and take the exam, unless I have my rights restored . . . I was optimistic when I came out of prison. I have an interest in law. Why should I go into some other [field] that I have no interest in?"[37] This deferral may, however, be a permanent one, as the Florida clemency process takes many years and favorable results are extremely rare. Ms. Hankins' case is also indicative of how the character and fitness requirement functions to deter individuals with criminal records from even applying to law school in the first instance. Given the emphasis on and costs of the character and fitness inquiry, the fact that less than one percent of applicants are denied admissions based on

28. In re Krule,194 Ill. 2d 109, 117, 741 N.E.2d 259 (2000) (citing In re Loss, *supra* note 27, at194.)

29. *Id.* at 125 (citing In re Childress, 138 Ill. 2d 87, 100, 561 N.E.2d 614 (1990)).

30. In re Krule, *supra* note 28.

31. *Id.* at 113.

32. *Id.* at 120 (citing In re Childress, *supra* note 29, at 101).

33. *Id.* at 119.

34. As the court notes, it denied applicants' petitions for admission in: *In re Glenville*, 139 Ill. 2d 242, 565 N.E.2d 623 (1990), where the applicant had a history of juvenile delinquency, arrests for battery and convictions for disorderly conduct, driving under the influence, and theft. In *In re Childress*, *supra* note 29, the applicant had been convicted of rape and robbery and sentenced to prison while a teenager. In *In re Loss, supra* note 27, the applicant's history involved juvenile delinquency and convictions for disorderly conduct, possession and sales of marijuana and other drugs, and theft.

35. Leslie C. Levin, Christine Zozula, & Peter Siegelman, *LSAC Grants Report Series: A Study of the Relationship Between Bar Admissions Data and Subsequent Lawyer Discipline*, Law School Admission Council 5 (2013), http://www.lsac.org/docs/default-source/research-%28lsac-resources%29/gr-13-01.pdf (noting that in addition to the applicants who are denied admissions based on character fitness, there is also an additional number of individuals who are past "bad actors").

36. *See* Marisa Peñaloza, *For Ex-Felons, Limited Rights Mean A Future On Hold*, NPR (Oct. 22, 2012, 6:15 PM), http://www.npr.org/2012/10/22/163414484/for-ex-felons-limited-rights-mean-a-future-on-hold.

37. *Id.*

character and fitness[38] strongly suggests that the inquiry functions ex ante to deter people with criminal records from applying to the bar—and even to law school.

IV. Barring the Aspiring Black Lawyer and Ex-Convict

The National Conference of Bar Examiners' (NCBE) chief psychometric consultant, Stephen Klein, famously asserted that the bar exam "does not discourage qualified students from entering law school nor does it pose an unfair challenge to their becoming practicing attorneys. In short, the exam is not the reason the minority group members constitute such a small percentage of the bar. It is primarily an educational pipeline problem."[39] This argument can be, and probably has been, extrapolated to explain away the under-representation of black men in the profession as a function of a shortage of qualified black men. But, the data tell a different story. Between 1993 and 2008, black Americans' LSAT scores and undergraduate GPAs saw significant improvements, and some 3,000 ABA-accredited law school seats were added across the country.[40] However, the percentage of black and Mexican law students actually declined during that same period from 4,142 in 1993 to 4,060 in 2008.[41] When combined with the increase in law school capacity, this decline represented a 7.5 percent and 11.7 percent decrease in black and Mexican American first year law students respectively. [42]

The available data suggests that this decline resulted from the increasing number of minority applicants who were shut out of law school. That is, there was an increase in the number of minority, particularly black, applicants who law schools did not accept. Between 2003 and 2008, for example, the shutout rate for black Americans was a mind-boggling sixty-one percent.[43] Another study shows that by the mid-1990s, white applicants with undergraduate GPAs of between 3.0 and 3.24 had higher rates of admissions than underrepresented minority applicants with undergraduate GPAs of between 3.5 and 3.74; whites with 3.25–3.49 GPAs also had higher rates of admission than underrepresented minorities with 3.75+ GPAs.[44] If the issue were purely a matter of academic qualification, an improvement in LSAT and GPAs would result in a commensurate increase in minority representation. And, high performing minority students would not have lower admission rates than whites who have lower undergraduate grades.

The contention that black men are less interested in applying to law school is similarly unavailing and illegitimate because the argument is unsubstantiated and assumes preferences based on race and gender. It is also unlikely that black men would have a negative preference for law but not for other similar professions where black Americans are much better represented. Black Americans comprise approximately 8.6% of accountants and auditors, over 8% of financial managers, and just over 6% of physicians and surgeons.[45] It must be the case then that there is something unique to the legal profession, such as the past bad conduct requirement, that is fueling the low numbers of black men in law.

Given the deterrent function of the past bad conduct requirement, it is likely that black men with criminal records will forgo law school. Although this group will most likely consist of individuals who do not

38. *See* Levin, Zozula, & Siegelman, *supra* note 35, at 4 (noting that Deborah Rhode's study in the early 1980s found that only about 0.2 % of all applicants were denied admissions based on character and fitness, compared to the 0.15 % – 0.48% that are currently denied on that basis).

39. Kidder, *supra* note 5, at 566.

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

41. *Id.*

42. *Id.*; *see also*, Drew Combs, *Study: Minority Law Student Numbers Dip as Law School Capacity Rises*, The Am Law Daily (Jan. 6, 2010, 5:51 PM), http://amlawdaily.typepad.com/amlawdaily/2010/01/minoritystudy.html.

43. *A Disturbing Trend in Law School Diversity*, Colum. Blog, http://blogs.law.columbia.edu/salt/ (last visited Aug. 31, 2016).

44. *See* Kidder, *supra* note 5, at 574.

45. *See* Chambliss, *supra* note 10, at 13.

have college degrees, some will have attended college given that college-educated black men also have a higher risk of imprisonment. In 1999, for example, the cumulative risk of imprisonment for college-educated black men was about 5% by age thirty to thirty-four, compared to 0.7% for white men in the same age group.[46] The imprisonment rate for non-college educated black men was 30.2%; and 58.9% for those who did not finish high school.[47] Although the number of college-educated black men with criminal records is low when compared to the numbers for those without a college education, it is striking when compared to the numbers for white men. Thus, as a comparative matter, the number of college-educated black men with criminal records is quite significant and disproportionately high. To the extent that these men are deterred by, or denied admission to, the bar on account of their criminal records, this could have a noticeably negative effect on the number of black male lawyers. This effect would help to explain the gap between the number of black men with college degrees and the number enrolled in law school. In 2012, black men comprised 4% of students enrolled in colleges,[48] but they comprised less than 3% of law school matriculants[49] and about 2% of lawyers.[50] It would also help to explain why black men are better represented in the other professions that do not have such stringent character and fitness requirements.

The majority of black men with criminal records have no college education. Thus, the past bad conduct's deterrent effect on this group, as compared to the group with college degrees, would have a more noticeable impact on the low numbers of black male lawyers. To illustrate this, however, it is necessary to establish that for this group, being deterred from pursuing law also means being deterred from attending law school and college. I did not find any data to support or undermine the proposition that there is any appreciable number of black ex-convicts who are deterred from pursuing legal careers and hence forgo law school and college altogether. Of course, some might argue that because a college degree is so independently valuable for employment potential, an ex-convict who has the opportunity to get a degree would not decline doing so simply because he cannot become a lawyer. However, there is some anecdotal evidence that suggests otherwise.

The difficulties faced by ex-convicts who wish to attend law school and practice law are indeed onerous and seemingly insurmountable. For example, Jarrett Adams spent almost a decade in prison and developed an interest in law as he toiled to secure his own release.[51] After the Seventh Circuit overturned his conviction and erased his record, the state prosecutors offered him a deal whereby he would plead guilty "for time served" or be retried and risk being sentenced to an additional twenty years. He rejected this deal, insisting on his innocence and the prosecution dropped the charges. After his release, he went to community college, completed law school and is now clerking for Seventh Circuit judge. He is currently heading up a legal clinic at Loyola University School of Law in Chicago that focuses on wrongful convictions. After his clerkship, he wants to represent the poor and be an advocate for re-entry programs and policies.[52] Mr. Adams represents the rare case where a former inmate's criminal record was erased. But he is still left with the task of explaining to potential employers why there is a nine-year gap on his resume and has to deal with the stigma of having been incarcerated. But, a law degree, a prestigious Seventh Circuit clerkship, and law license have provided Mr. Adams with an "out" that eludes most former inmates with similar talents, passions, and interests.

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46. *See* Becky Pettit & Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration*, 69 Am. Soc. Rev. 151, 161 (2004), http://www.asanet.org/images/members/docs/pdf/featured/ASRv69n2p.pdf.

47. *Id.*

48. Cassaundra Baber, *Report: Only 4 percent of college students are black males in U.S.*, The Frederick Douglass Foundation Community Blog (Feb. 21, 2012), http://tfdf.org/blog/2012/02/21/report-only-4-percent-of-college-students-are-black-males-in-u-s/.

49. *See LSAC Resources*, Law Sch. Admission Council, http://lsac.org/lsacresources (last visited Aug. 31, 2016); *see also* Weatherspoon, *supra* note 10, at 3.

50. *See* Weatherspoon, *supra* note 10, at 3.

51. *See* Ari Melber, *Jarrett Adams' unlikely path from prison to lawyer*, MSNBC (Oct. 11, 2015, 10:04 AM), http://www.msnbc.com/msnbc/jarrett-adams-unlikely-path-prison-lawyer.

52. *Id.*

The employment outlook for black ex-convicts—even those with college degrees—is so dismal that getting a college degree alone is likely seen as a waste of time and scarce resources. One study found that employers provided black ex-felons two-thirds fewer job offers than black non-ex-felons (14% versus 34%), while employers provided white ex-felons only half as many job offers as their non-ex-felon counterparts (34% versus 17%).[53] The researchers concluded that "race and ex-offender status seem to interact in powerful ways in reducing the job market opportunities of black men with criminal records, with black offenders receiving less than one-seventh the number of offers received by white non-offenders with comparable skills and experience."[54] Another study found that "[black] men with criminal records tend to be shunned by employers, and young black men with clean records suffer by association."[55]The combination of being black and an ex-felon operates as such a powerful barrier to employment that it seems unlikely that a college degree alone would improve a black ex-felon's job prospects.[56] It is thus unlikely that an ex-convict will invest in a college degree alone. To make matters worse, employers usually hire ex-felons in jobs that do not require college degrees—that is, blue-collar jobs in construction or manufacturing and jobs with minimal customer contact.[57] Thus, incarcerations and convictions disrupt key transitions and restrict access to career jobs for the college-educated and non-college educated alike.[58] This disruption also may have a generational effect, wherein black boys may perceive the law as being foreclosed to them because that has been the reality of the black men in their families and communities.[59]

Contrary to this gloomy outlook, being admitted to practice law offers certain flexibilities and opportunities for employment that a college degree alone does not. Reginald Dwayne Betts' explanation of why he chose to go to law school is a powerful testament to this. Mr. Betts is a nationally acclaimed poet, a student at Yale Law School, and an ex-convict. He was convicted at the age of sixteen for carjacking and sentenced as an adult to eight years in prison. He explained in an interview with NPR why he decided to attend law school: "When Howard [University] rejected me, when I was rejected for jobs, when I have to fill out applications for apartments and they ask if I've been convicted of a felony, when my friends don't get apartments because of their records … until law school, I never thought that you could do something about that. And so I decided to work on the civil side of things and I plan on doing employment discrimination work. I plan on representing people in pardons. I plan on representing people on parole . . . "[60]

This example illustrates the possibility that a black ex-felon would pursue a college degree in order to get into law school but may forgo college altogether if he believes the state would not admit him to the bar. The primary flexibility that a license to practice law would facilitate is the potential for self-employment,

53. *See* Harry Holzer, Steven Raphael, & Michael A. Stoll, *Employment Barriers Facing Ex-Offenders*, Urban Institute 12 (May 19, 2003), http://www.urban.org/sites/default/files/alfresco/publication-pdfs/410855-Employment-Barriers-Facing-Ex-Offenders.PDF.

54. *Id*.

55. Erik Eckholm, *Plight Deepens for Black Men, Studies Warn*, N.Y. Times (Mar. 20, 2006), http://www.nytimes.com/2006/03/20/national/20blackmen.html?pagewanted=all.

56. See *generally* Devah Pager & Bruce Western, *Discrimination in Low-Wage Labor Markets: Evidence from an Experimental Audit Study in New York City*, Princeton U.2 (2005), http://paa2005.princeton.edu/papers/50874 (finding no evidence that a black ex-convict's educational credentials improve his employability).

57. *See generally id.*

58. *See, e.g.*, Robert J. Sampson & John H. Laub, Crime in the Making: Pathways and Turning Point through Life (1993); *see also* Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 Am. Soc. Rev., 526, 528 (2002) ("The stigma of conviction also has legal consequences that mostly affect career jobs. A felony record can temporarily disqualify an individual from employment in licensed or professional occupations, skilled trades, or in the public sector. The stigma of conviction thus reduces ex-convicts' access to jobs characterized by trust and continuity of employment.").

59. *See generally* Marilyn Price-Mitchell, *How Role Models Influence Youth Strategies for Success*, Roots of Action (Jan. 14, 2014), http://www.rootsofaction.com/role-models-youth-strategies-success; *Role Models Critical in Children's Lives*, U. of Wis. Health (Oct. 8, 2008), http://www.uwhealth.org/news/role-models-critical-in-childrens-lives/13891.

60. *In 'Bastards of Reagan Era' A Poet Says His Generation Was 'Just Lost*,' NPR (Dec. 8, 2015, 1:48 PM), http://www.npr.org/2015/12/08/458901392/in-bastards-of-the-reagan-era-a-poet-says-his-generation-was-just-lost.

The primary flexibility that a license to practice law would facilitate is the potential for self-employment, non-profit work, and perhaps government employment.

non-profit work, and perhaps government employment. Also, the lengthy and arduous process of becoming a licensed attorney—college, law school, the bar exam, and the character and fitness inquiry (a modified inquiry that does not categorically exclude ex-felons)—would give employers confidence that law school properly trained and screened these individuals. The legal education and licensing process would thus act as a kind of intermediary agency, which would improve an ex-felon's employment opportunities. One study found, for example, that many employers are more willing to hire former offenders who are recommended by intermediary agencies working with them.[61]

V. Conclusion

My argument in this article can be reduced to the following syllogism: the character and fitness inquiry creates a de facto bar to admission for individuals with a criminal record and thus serves to deter such individuals from pursuing a legal career; a disproportionately large number of black men have criminal records; thus, the character and fitness inquiry may have a disparate deterrent effect on black men and may be partially responsible for the chronic underrepresentation of black men in law.

I recognize that this proposition might seem premature. There are many other issues to confront before addressing the effects of the character and fitness inquiry. For example, there are various socio-economic and educational issues that also narrow the pipeline to college and consequently to law school. The high attrition rates for black lawyers also further depress the number of black attorneys. To make matters worse, employment in private industry—primarily, in law firms—is often foreclosed to black Americans because of various cultural and structural issues inherent in that sector. In 2015, black associates comprised less than 4% of associates and less than 2% of counsels and partners at law firms.[62] This fact mitigates some of the financial incentives that attract many potential lawyers and further diminishes black representation, as many are not willing to invest the money and resources where the expected returns are so uncertain.

As stated at the outset, however, it is important and appropriate to consider concurrently all the potential contributing factors and engage all stakeholders. Otherwise, the concerted and multi-front strategy that is necessary to solve this underrepresentation crisis will remain forever elusive.

61. Holzer et al., *supra* note 53, at 14.

62. *Women and Minorities at Law Firms by Race and Ethnicity – New Findings for 2015*, Nat'l Association for L. Placement (Jan. 2016), http://www.nalp.org/0116research.

Expanding the Pie: A New Approach to Big Law's Never-Ending Diversity Problem

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As large law firms continue to struggle with their diversity and inclusion efforts, Harper and Boyce propose a new Pipeline Program that they argue could, through its novel grassroots approach, increase the pool of prospective diverse partners, especially Black women. In this article, they explain just how this could work.

It's no secret—big law has a diversity problem that firms just can't seem to overcome. Year after year, diversity numbers continue to decline or modestly improve despite big law's best efforts.[1] Despite millions of dollars of investments in the recruitment of diverse candidates at elite law schools, diversity scholarship programs, and the like, large law firms are no closer to diversifying the legal profession than they were when the Call to Action was signed over a decade ago.[2] Call to Action author Rick Palmore recently analyzed the status of law firm diversity eleven years later and concluded, "there are [still] categories of people who don't get the same kinds of opportunities as other categories of people," and thus, "it's hard to make the logical case that you've got the best talent and the right talent at the table."[3]

Much of the lack of progress can be attributed to how large law firms constrict the pipeline of diverse candidates by requiring a high level of prestige and pedigree that is not always required of white candidates.[4] This article posits that large law firms can increase diversity in the legal profession and create more diverse legal teams to handle some of their clients' most complex legal issues by investing in the pipeline and pipeline programs. Pipeline programs do the hard work at the law school level that law firm recruiting committees do not by identifying and pouring resources, professional development, and skills training into highly-qualified diverse candidates who can blossom into excellent lawyers.

The way that big law chooses to recruit law students and lateral lawyers is simplistic and harms efforts to increase diversity in the legal profession. As a recent *Harvard Business Review* article pointed out, "by adopting exclusionary school lists and school quotas [for recruitment purposes], firms systematically close

1. *See, e.g.*, Press Release, Nat'l Ass'n for L. Placement, *Women, Black/African-American Associates Lose Ground at Major U.S. Law Firms* (Nov. 19, 2015), http://www.nalp.org/lawfirmdiversity_nov2015 (stating "the percentage of African Americans at major U.S. law firms has fallen from 4.66 percent in 2009 to 3.95 percent in 2015; the percentage of African American partners is at 1.77 percent compared to 1.71 percent in 2009").

2.Nearly every law firm in the AmLaw 100 boasts a prominent diversity page on their website and staff committed to handling all things diversity–chief diversity officers, directors of diversity, diversity managers, and more.

3. Rebekah Mintzer, *Sara Lee's Ex-GC, Now at Firm, Calls for More Diversity*, Corp. Couns., Dec. 31, 2015, http://www.corpcounsel.com/id=1202745984874?keywords=rick%20palmore&publication=CC%20Corporate%20Counsel&slreturn=20160004201401.

4. *See* Tiffany Harper & Chasity Lomax, *An Exercise in Limiting the Pipeline: How the Application of the Standard of Excellence in Large Law Firm Diversity Initiatives Eliminates Black Attorneys*, IILP Review 2014: The State of Diversity and Inclusion in the Legal Profession 133 (2014).

Much of the lack of progress can be attributed to how large law firms constrict the pipeline of diverse candidates by requiring a high level of prestige and pedigree that is not always required of white candidates.

their eyes to talent that resides elsewhere."[5] Moreover, when the recruitment strategy in big law focuses solely on an exclusionary list of top law schools, firms place efforts to increase diversity in the hands of law school admissions directors.

> By limiting consideration to students at listed schools, which often have relatively low levels of racial diversity, firms are defining the pipeline in an artificially narrow manner . . . Firms are scrambling for diversity. They want gender diversity, racial diversity, you name it, and [they] go to great lengths to attract diverse applicants. They are all fighting for the same tiny piece of the pie. But they are focusing on that slice rather than expanding it, which is the real problem.[6]

It is irresponsible for law firms to allow the law school admission process to be so outcome-determinative on diversity advances in the legal profession.[7]

Desperate times call for desperate measures, and that time is long overdue for big law. While law firms might be content with their modest progress on diversity, some of the legal community is dismayed and rapidly reaching the conclusion that diversity is not as important as big law websites, diversity directors, and management proclaim. As certain groups, such as black women lawyers, continue to decline at all levels within large law firms, it's time for big law to embrace a different approach that will quickly yield results and directly impact the pipeline. We believe this approach is the support of and recruitment of students who receive intensive training and development through initiatives like the Diverse Attorney Pipeline Program (DAPP).[8]

DAPP employs a bottom-up, grassroots approach to big law's diversity problem by cultivating and training diverse candidates to succeed in large law firms. The pipeline program does all of the things that law firm recruitment programs cannot—identify talented, diverse students at a range of law schools and equip them with the necessary skills to succeed in law school and large law firms. Participants leave the program with an understanding of the work ethic necessary for law firm success, top-notch professional

5. Lauren Rivera, *Firms Are Wasting Millions Recruiting on Only a Few Campuses*, Harv. Bus. Rev., Oct. 23, 2015, https://hbr.org/2015/10/firms-are-wasting-millions-recruiting-on-only-a-few-campuses.

6. Rivera, *supra* note 5.

7. Big law will likely argue that their recruiting methods are the most cost-efficient way to recruit top candidates. Law firms simply do not have the recruiting staff and budget to interview students at every law school and determine where talented law students.

8. Created by Tiffany Harper and Chasity Boyce in 2013, the Diverse Attorney Pipeline Program began as a pilot program in 2014 at Loyola University School of Law in Chicago, Illinois. *See* Claire Bushey, *Helping Black Women Find the Path to Law Firm Partner*, Crain's Chi. Bus., November 7, 2015, *http://www.chicagobusiness.com/article/20151107/ISSUE01/311079992/helping-black-women-find-the-path-to-law-firm-partner*.

Even when minority students and attorneys do have the opportunity to work in big law, they may not feel empowered to succeed and take charge of their progression and growth. This lack of empowerment makes them less likely to be on track and more likely to leave the law firm environment before advancing. Empowering minorities well before they reach competitive, big law environments is critical to solving the legal profession's diversity problems.

development skills, a network of attorney and law student mentors, and rigorous professional development training that makes them ideal candidates to thrive in a big law environment and in front of clients.

Due to the correlation between LSAT scores and first year law school performance,[9] and reports that minority students score, on average, between two to ten points lower than their white counterparts,[10] rigorous academic support and preparation is one of the components of DAPP. Pipeline students are given additional academic resources beyond those provided by the law school and are paired with law student and attorney mentors who coach students on everything from writing a law school exam to proper outlining and study methods. This additional academic support is evident in the students' first year grades and also boosts students' confidence and self-esteem so they believe they can and will be competent lawyers.

DAPP also focuses on empowering students to take initiative and be active participants in their career growth and development. Oftentimes, minorities are first generation college and law students and do not have the requisite knowledge to be active participants in their careers. Even when minority students and attorneys do have the opportunity to work in big law, they may not feel empowered to succeed and take charge of their progression and growth. This lack of empowerment makes them less likely to be on track and more likely to leave the law firm environment before advancing. Empowering minorities well before they reach competitive, big law environments is critical to solving the legal profession's diversity problems.

9. *See, e.g.*, Lisa A. Stilwell, Susan P. Dalessandro, & Lynda M. Reese, Predictive Validity of the LSAT: A National Summary of the 2009 and 2010 LSAT Correlation Studies (2011), *http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-11-02.pdf* (stating "[r]esults reported in the current study indicate that LSAT scores alone tend to be a better predictor of law school performance compared to UGPA alone").

10. *See* Vasant M. Kamath, *Report Shows LSAT Score Gap*, The Harv. Crimson, Oct. 2, 1998, *http://www.thecrimson.com/article/1998/10/2/report-shows-lsat-score-gap-pa/*.

If the goal of big law really is to recruit competent, well-trained lawyers, they can do this without relying so heavily on prestigious institutions that have a limited pool of diverse candidates.

All law students, especially those who attend law school directly after completing their undergraduate degrees, can benefit from professional development, so they are better equipped to integrate into big law and have client interaction early on in their careers. Pipeline students complete intensive professional development sessions during their first year of law school and are regularly put in situations where they must interact with attorneys, judges, and other legal professionals. Due to this preparation, Pipeline students are ahead of the rest and have developed their own professional presence and demeanor before they step foot in a law firm.

If the goal of big law really is to recruit competent, well-trained lawyers, they can do this without relying so heavily on prestigious institutions that have a limited pool of diverse candidates. These antiquated ways of identifying diverse talent are responsible for the stagnant diversity statistics that show that minorities, and especially black women, are almost non-existent in large law firms. Contrary to popular belief, diverse attorneys from less prestigious institutions can perform at high levels at large law firms just like many of their majority counterparts who often get opportunities to work in big law despite the low rank of their law school. In the spirit of Albert Einstein, it's insane to continue with the same diversity recruitment efforts and expect a new outcome. When law firms decide to get serious about increasing diversity in the legal profession, they will start to invest in and recruit from programs like the Diverse Attorney Pipeline Program, which lay diverse candidates, trained and ready to succeed, at their feet.

South Asian American Women Lawyers: Supporting Each Other

Mona Mehta Stone

Vice President & General Counsel, Goodwill of Central Arizona

There is a great diversity of ethnicity, religion, and socioeconomics within the South Asian community. In some instances, there exists among these disparate groups a history of bigotry and prejudice, sometimes even leading to violence. But within the legal profession, South Asian American women have been learning to set aside those religious and cultural differences so as to support each other professionally.

During a job interview, a senior Caucasian male colleague told me, "Hmmm, 'Mona Stone' doesn't sound like an Indian name," and that he "hated Indian food." I believe that one hallmark of a good attorney is thick skin, so I ignored his comments and focused on the substance of my skill set rather than his irrelevant and, I felt, ignorant remarks. A client also once asked me what my national origin was. I replied that I was from India, and her response was, "Well, you all look alike anyway."

As a female India-born attorney, I am regarded as a minority in the U.S. legal profession. Specifically, I identify as a South Asian American attorney. This article explores the ways in which, despite professional obstacles, South Asian American female attorneys support each other and build bonds across lines of differences—like national origin, language, and religion—and how those relationships impact our professional lives (for example, business referrals, recruiting opportunities, promotion to partnership, and so forth).

In addition to innate bias, further obstructing advancement opportunities for South Asian American women attorneys are the significant changes in the practice of law. Many new associates in law firms do not covet the "golden ring" of making partner. In fact, the number of project and staff attorneys who are not on the traditional partner track is increasing and, as it turns out, those service attorneys provide more profitable service with a high rate of job satisfaction.[1] In-house legal departments likewise are growing as they are being asked to handle more assignments internally with increasing complexity.[2]

Additionally, attorneys at all levels are making lateral moves with greater frequency (whether from one firm to another or to in-house, judicial, government, or academic positions), and there no longer is the job security that there once was for established partners.[3] As law firms become more attuned to revenues per partner, they are letting go of unproductive attorneys.[4] Moreover, private law firms are merging, shrinking, or dissolving, and minority female attorneys are finding it even harder to advance in their field.

This article examines how, even with support from their peers, South Asian American women attorneys still face deep challenges in advancing their careers, being given top assignments, being compensated fairly, getting client interaction, and so forth. These ongoing hurdles are partly why support relationships among South Asian American women attorneys are so critical.

1. Jeffrey A. Lowe, *BigLaw 2016: A Look Ahead,* Law360 (Jan. 12, 2016, 11:32 PM), http://www.law360.com/articles/745606/biglaw-2016-a-look-ahead.
2. *Id.*
3. *Id.*
4. *Id.*

I. Facts About South Asia

South Asia includes Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, India, Pakistan, and Sri Lanka. This region is ethnically diverse, with more than 2,000 distinct ethnic entities. In terms of language, South Asians speak several hundred languages. According to the 2001 Census, the most common spoken language in South Asia is Hindi, followed by Bengali, Punjabi, and Urdu. Other languages spoken in South Asia include Assamese, Bengali, Gujarati, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Panjabi, Sanskrit, Sindhi, Tamil, and Telugu. There also are numerous religions that South Asians follow, with the largest religious group comprised of Hindus, followed by Muslims. Buddhism, Islam, Jainism, and Sikhism are other prevalent religions in South Asia.

According to a July 2012 fact sheet by the South Asian Americans Leading Together (SAALT) and the Asian American Federation (AAF), the South Asian American population became the fastest growing major ethnic group in the United States between 2000 and 2010, and over 3.4 million South Asians reside in the United States.[5] Indians make up the largest portion of the South Asian community in the United States at 80% of the total South Asian population.[6] The South Asian community in the United States grew by 81% from 2000 to 2010.[7] SAALT and AAF further report that South Asians are the fastest growing population in the United States. The growth rate for the South Asian population (81%) greatly exceeds that of the Asian American population as a whole (43%), as well as that of the Hispanic American population (43%), and non-Hispanic whites (1.2%). Moreover, South Asians make up one of the largest Asian American ethnic groups in the country.

II. Statistics from the Legal Profession

Notwithstanding the growing number of South Asians in the United States, the number of South Asian American women attorneys remains low. A Google search for the "number of South Asian American women attorneys," retrieves a number of studies about Asian American attorneys, but few concrete statistics on the number of South Asian American female lawyers.

According to the American Bar Association's 2015 Lawyer Demographics report, there were 1,300,705 licensed lawyers in the United States last year,[8] of which 3% were "Asian Pacific American, not Hispanic."[9] Notably, there are no separate statistics for South Asian American lawyers or, more specifically, for South Asian American women attorneys. Other studies indicate that, while Asian American attorneys as a whole are increasing within law firm ranks, their presence decreases in the more senior positions or leadership roles. The National Association for Law Placement reports that "equity partners in multi-tier law firms continue to be disproportionately white men."[10] In 2014, only 17.1% of equity partners were women and only 5.6% were racial/ethnic minorities.[11]

III. Perspectives from South Asian American Women Attorneys

For purposes of this article, I interviewed several South Asian American women attorneys throughout the United States who are at differing stages of their careers. When I asked them about their experiences,

5. *A Demographic Snapshot of South Asians in the United States,* Strengthening South Asian Communities in America 1 (2012), http://saalt.org/wp-content/uploads/2012/09/Demographic-Snapshot-Asian-American-Foundation-2012.pdf.
6. *Id.*
7. *Id.*
8. *Lawyer Demographics Year 2015*, A.B.A. (2015), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf.
9. *Id.*
10. *Minorities & Women: (NEW) NALP Diversity Infographics,* NALP, http://www.nalp.org/minoritieswomen (last visited Aug. 19, 2016).
11. *Id.*

Despite being a minority and facing certain challenges, I personally find great support through my network of South Asian American women lawyers throughout the country and even overseas.

these women not only acknowledged professional challenges but also focused on sources of their inspiration and success. Their paths to professional development and fulfillment may vary, but one common theme is the importance of support and encouragement from fellow South Asian American female attorneys.

The interviews explore the following topics: feelings of isolation that arise from the lack of other South Asian American female attorneys in the workplace; how South Asian American females foster relationships with each other; the benefits of involvement in South Asian American professional organizations; the many professional challenges faced by South Asian American female attorneys; the importance of mentors and family as sources of strength, growth and opportunity for South Asian American female attorneys; professional development advice for South Asian American women attorneys; how South Asian American female attorneys can support one another; and what legal organizations can do to promote diversity and inclusion.

From my own perspective, I graduated law school in 1997 and my first job was as in-house counsel. I later transitioned to private law firm practice and have had opportunities to work on aviation defense matters, complex litigation, labor and employment, and compliance and regulatory affairs. My religion is Hinduism, and I was born in Ludhiana, India.

I speak Hindi and Punjabi, and for me, these language skills proved valuable in connecting with other South Asian attorneys both in the United States and on a recent work project in India. I have had to learn to leverage the qualities and characteristics that make me "different" than my non-minority colleagues. My Indian heritage and language skills have helped me get assigned to projects in India and domestically in transactions with India-based companies and clients. Despite being a minority and facing certain challenges, I personally find great support through my network of South Asian American women lawyers throughout the country and even overseas.

A. The Lack of Other South Asian American Female Attorneys in the Workplace Can Lead to Feelings of Isolation

One senior associate who was born in Bangladesh and practices corporate law at a firm in Santa Fe, candidly shared that the lack of other minority attorneys in her office—South Asian or otherwise—makes her feel excluded from "the pack." She commented that diversity is not a top priority in her office. "I do

The lack of role models contributes to the low number of South Asian American women attorneys.

not mind taking the initiative to join minority bar organizations or find minority client development programs on my own, but it would be nice to have someone else in my office who is interested in events geared towards minority associate development and advancement." Her colleagues' unfamiliarity with South Asian customs is uncomfortable. She notes that her colleagues are not aware of South Asian traditions, stating "I also find it awkward to ask time off for Diwali or other Indian family events because I have to explain my religious and cultural background. It makes them and me feel uncomfortable."

The lack of role models contributes to the low number of South Asian American women attorneys. A junior associate serves as a Clinical Legal Fellow at an International Human Rights Clinic at a U.S. law school. She is a Hindu who was born in London and moved to the United States when she was six years old. The lack of other South Asian American female attorneys in her workplace makes her feel isolated. She puts it quite succinctly, yet effectively: "I wish there were more of us."

Sehreen Ladak is a first year associate litigator. She is Muslim, her national origin is Pakistani, and she speaks Hindi and Urdu. Ladak shares this perspective, stating "It would be nice to have a South Asian female attorney in the office. However, I do not feel alone. My firm is quite diverse." Jolsna John, in-house counsel with a focus on labor and employment law and non-profit governance, is a Roman Catholic who identifies as a South Asian American attorney. She speaks limited Malayalum. There are no other South Asian American female attorneys in her office, which she says contributes to feeling alone. She was the only female for a long time in construction law, which is a very male-dominated area.

Magan Ray is a Shareholder at Greenberg Traurig's Silicon Valley office, with a practice in ERISA employee benefits. She is Indian and was raised as a Sikh. Having practiced since 1994, she explains that she never expected to see South Asian American women attorneys in the legal profession, so she was more attuned to gender bias. At her past firm, in fact, she was the first South Asian elected to partner. "It never made me feel isolated; I viewed it more as gender bias." She adds that the lack of minorities in general can make it difficult to build diverse teams of lawyers for client projects.

A South Asian American litigation partner in a Chicago law firm recalls that, as an associate, her colleagues never asked her to go on a client pitch, despite volunteering to do preparatory research, and drafting marketing materials.

"I think this generation will have more South Asian attorneys because awareness of the profession and the various avenues it can lead to is growing."

> Even today, I find it shocking that I am excluded from certain client pitches, especially where the client has expressed a desire to have a diverse team of outside counsel! When I question my colleagues about it, they simply shrug it off and say 'next time.' My frustration has gotten to the point that I am looking for another position, but frankly I fear it will not be much different at another firm.

Nikhita Godiwala is a first-year corporate associate at Greenberg Traurig's Phoenix, Arizona, office. She observes that South Asians are definitely a minority in the legal profession.

> I think it is growing, but we still have a long way to go. I think this generation will have more South Asian attorneys because awareness of the profession and the various avenues it can lead to is growing. There is also familial pressure as a South Asian to stay within certain fields of work, but that is slowly changing. There is a better attitude towards law and I hope it will help bridge the gap. I remember the first South Asian Bar Association event in Missouri. The founder said he started the Association at a pub thirty years ago with three friends. He looked around the room at the approximately forty South Asians and felt very proud of how it has grown. We are still a minority in terms of representation; there simply aren't many of us. But we are growing and that is progress.

The Clinical Legal Fellow shares:

> During law school there were only about five South Asians total. I've never felt so isolated so I clung to my culture and religion more than I ever have. I got way more involved in SABA, SAN, and SAHARA, because I just wanted a space where I felt that I belonged. I connected deeply with South Asian judges and lawyers and now I have solid bonds with all of them. I thought they understood me better. I externed at a Federal District Court House in 2014. Each time I entered the court house the security guards would ask me where I was from. When I said the [United States], they said, 'No really . . . where are you from?' They would also tell me my name was exotic. That was unsettling. Nobody should feel bothered in a federal court house.

Ladak also notes:

> I believe both as a woman and as a person of South Asian descent, I am a 'minority' in the legal profession. Because, while there is an increasing number of South Asians and women in this

The similarity in backgrounds, prioritization placed on family and traditional values, and strong work ethic contribute to relationship-building among South Asian American women attorneys.

industry, they are limited. Most established attorneys including those in prominent partner positions are mostly men and Caucasian. Even at 'diversity' events there is very little South Asian representation.

Samantha Ahuja is a Real Estate Shareholder at Greenberg Traurig's Washington, D.C. office. She observes:

> The practice of Law involves requires the balancing of so many aspects at one-time—including billable work, maintaining and growing existing client relationships, business development, mentoring, billing and invoice maintenance, writing, and many other day-to-day activities—that sometimes it is easy to feel overwhelmed and lose sight of the big picture. I have found that over the years of practicing law these pressures seem to grow and change in priority. As you get more senior, I think the pressure evolves from just practicing law to 'building a practice' that can change and withstand the change in economic cycles and evolution of the market.

B. Being a South Asian American Female Attorney Can Help Build Relationships

The similarity in backgrounds, prioritization placed on family and traditional values, and strong work ethic contribute to relationship-building among South Asian American women attorneys. They are able to freely share confidences and experiences with each other. According to a Sikh litigator in a firm in Denver, Colorado, "I find myself developing an instant rapport with the South Asian women attorneys in my firm and in other firms. We are able to open up about our professional hurdles and the 'glass ceiling' we sometimes face." These challenges include the lack of advancement opportunities, compensation disparities, and being assigned project work versus long-term, substantive cases. She adds, "There is an immediate level of trust that I do not establish that easily with my other colleagues. If I tell other South Asian women lawyers something private about my job, I know it stays in the vault."

A first year Hindu associate agrees, commenting that she does identify as a South Asian American woman attorney.

> As an Indian born and raised in the United States, I always felt like I had two different cultures/experiences. Being a South Asian American woman is a point of pride and a source of strength for me. I have had a unique upbringing compared to my American counterparts, and I think this provides me with an additional perspective in the workplace.

There are many challenges that all attorneys share, and the career difficulties shared by South Asian American female attorneys may translate to other minorities.

The Clinical Legal Fellow has not found that her Hindi and Gujarati language skills have helped her connect with other South Asian attorneys, but she may receive a future assignment because she is Indian and speaks Hindi. She thinks that having a South Asian background may be fruitful in getting work. Ladak also believes that her identity as a South Asian American attorney has helped her get work assignments. "I was able to build a strong rapport with another South Asian female attorney who hired me to be her law clerk while I was in law school. I believe, among other things, our South Asian background gave us a common ground to build our professional relationship."

Mugdha Kelkar, an Associate Director of Compliance at Galderma in Texas, is a Hindu who speaks Murati. She believes her language skills have helped her connect with South Asian business people all over the world and have helped her get assignments working in India and with Indian clients. Her cultural background has helped her easily build bonds with clients who identify with her.

Godiwala is Hindu and speaks Hindi, Gujrati, and some Tamil. She does not know if her language skills specifically helped, but she notes:

> South Asian networking was a huge part of my job search. Reaching out to Indian or South Asian attorneys while I was in law school helped me get my 1L internship at the General Counsel's office of the Rehabilitation Institute of Chicago. I was also able to join the South Asian Bar Association in Chicago and in Missouri.

Being of South Asian descent also helps establish identity and build client relationships. Godiwala believes her identity as a South Asian attorney helps her develop clients.

> I recently went to a client meeting where the potential client was Indian. We connected and spoke about India and his visits back home. After the meeting he reached out to me and retained the firm for his legal work. I think connecting with another South Asian can instill trust and a degree of familiarity making some clients more comfortable to reach out to you with questions.

Priya, a Muslim in-house attorney at a start-up technology company in San Francisco, attributes her current position to a relationship she made with a senior female South Asian attorney who follows Jainism. Through her involvement in pro bono work, Priya met Lana. They became friends, and Lana eventually introduced Priya to the president of the company where she now works. "Lana knew that I had been looking for an in-house job for several months. Without Lana's connection, I never would have been able to meet the president and get this job." Even though Priya was born in the United States and Lana was born in north India, Priya attributes her South Asian descent as helping her bond with Lana.

> It was a rare opportunity, and Lana's vote of confidence in me with [the president] helped secure

As a Pakistani attorney, I am viewed and treated differently and afforded lesser opportunities for promotion and professional development.

> the deal. Lana was able to highlight my professional accomplishments because she really took the time to get to know me and my background–including my steadfast work ethic despite family commitments–and really speak up on my behalf.

Another South Asian American female attorney in Peoria, Illinois also believes that building relationships across lines of religion, language, and national origin can lead to professional and personal fulfillment. She is a commercial litigator born in Nepal who immigrated to the United States seven years ago with her husband. She shares:

> Peoria is a small town. One of my contacts who is originally from north India and I built a good relationship, and he introduced me to his daughter who is just a little older than me and who is a litigator in Chicago. I do not speak Hindi, and she does not speak Maithili. I am a Christian, and she is not religious at all.

Nevertheless, they were able to build an instant rapport and share stories about strict parents growing up, favorite South Asian recipes, and even stories of racial bias.

> Through her friendship, I receive career advice geared to improving my substantive skills . . . for example, she recently sent me deposition materials to help me with my first expert deposition. She also sends me job openings in Chicago in my field. If my husband I and decide to move there, I know that I have at least one person who truly "has my back."

C. Involvement in South Asian Professional Organizations May Not Always Help Advance Career Objectives, but Does Lead to a Sense of Belonging

There are a number of South Asian American bar associations and professional organizations throughout the United States that serve an important role in helping to recruit, retain, and support South Asian American attorneys. A seventh-year attorney in Miami shares this view:

> While I am so glad that these organizations exist and I am an active member, I do not necessarily find new referral sources from being a member of South Asian American legal groups. However, I do find that my participation gives me a sense of belonging to a community. It is nice to interact with people who understand my background and my professional struggles. They appreciate that we, as South Asian Americans and, as females, have to work twice as hard as our Caucasian male counterparts to achieve success.

When I asked her to expand on this last statement, she explained:

> As far as I see it, the Caucasian male associates in my office seem to have a 'clique' and are groomed for advancement by senior white partners. I do not get that same level of formal or informal support. I feel like I have to fight for top assignments, bill as many hours as possible, and

Generational differences also may factor into the limited number of successful South Asian American women attorneys.

really showcase my skills, while the white male associates go have lunch with the senior partners at least twice a week and even socialize after work. In fact, I was overlooked for a promotion last year, while a male associate who is my class year and in my practice group was elevated to partner. Even though my supervising attorney recognized that I have had stellar performance reviews and exceeded my skillset objectives, he gave me the ambiguous feedback that I 'need another year to develop.' When I asked for more clarity, he could not give me specific examples. I am at a loss, so am turning to other minority female mentors in my office for guidance.

Kelkar likewise does not necessarily find that her membership in South Asian professional organizations has helped her career objectives, but it has helped her to expand her network. On the other hand, Godiwala is a member of the South Asian Bar Association in Missouri and Illinois and still involved with the South Asian Law Student Association (SALSA). She feels that such memberships help her advance her career goals. "They helped me when I was searching for a job/internship in those geographic regions. I met with many South Asian attorneys for coffee and lunch to network and learn more about developing myself. I met many of them at the Bar Association events, as well . . . [and] happy hours, etc."

John is active in South Asian professional associations and finds that they serve as a good sounding board. In addition, as an in-house attorney, she finds that these organizations are a good source of referral options when she needs outside legal counsel.

The Clinical Legal Fellow observes:

I don't know if it helps my career objectives, but it certainly gives me a feeling of comfort. I feel so isolated in the legal profession. Most people don't look like me, talk like me, or value things the way that I value them. This makes me feel like I'm somewhere far away from what I'm used to and sometimes makes it harder to occupy that space. I do think, however, that knowing more South Asian women is good for my future career. I know they would pull for me if needed.

D. There are Many Professional Challenges Facing South Asian American Female Attorneys

There are many challenges that all attorneys share, and the career difficulties shared by South Asian American female attorneys may translate to other minorities. For example, a South Asian American in-house attorney in Palo Alto, California, shares that, prior to going in-house, she was a partner at a sizable law firm. Billing over 2,200 hours annually, she faced tremendous work-life balance issues, along with pressure to continuously build her book of business and cross-sell to other partners.

My decision to transition to an in-house role was primarily driven by the fact that I was tired of the law firm politics that favored the non-minority attorneys in my firm. Admittedly, I had to take a pay cut by transition to an in-house position, but there is a much more diverse workforce in my new company, and I am rewarded for my contributions to the organization. Unlike my law firm days, I have taken on a leadership role within the South Asian affinity group here, and I

"It's time I find a career that gives me true job satisfaction."

truly feel that the corporate world appreciates diversity and actively encourages ways to embrace new ideas.

On the other hand, a former South Asian in-house attorney at a publicly-traded corporation in Los Angeles is so burned out that she resigned from her position and now is looking for a non-law position. To further elucidate her situation, she is not married and in charge of supporting herself but was so dissatisfied with her job that she quit without having other job prospects in hand. When asked why she was so disgruntled by her past position and the practice of law, she reflected that this is her way for standing up for herself.

> It wasn't just this last job; my decision to leave the legal profession came about as I looked back on all of my past jobs. I have worked as an in-house attorney at different companies and faced different challenges at each one. What was one constant, however, is that as a Pakistani attorney, I am viewed and treated differently and afforded lesser opportunities for promotion and professional development.

She notes that she worked harder and more efficiently than her non-minority colleagues, with demonstrated performance metrics that exceeded target goals. Nevertheless, compared to her peers, she did not get the same bonuses, the firm did not offer her the same perks (such as telecommuting), and the firm did not give her opportunities for lateral or upward movement. She declares, "It's time I find a career that gives me true job satisfaction."

Ladak faces challenges in client development and networking opportunities. "In some ways, I do believe that being a minority woman has contributed to those challenges because there have been very few role models and mentors who are of South Asian descent available to pave the way for my generation of attorneys." Generational differences also may factor into the limited number of successful South Asian American women attorneys. "I do not mind putting in hard work, but I also feel I should have the flexibility in working remotely or setting my own hours," discloses a third-year associate in Indianapolis, Indiana. She adds:

> I do not place the same importance on face time that my superiors do. Also, I see many partners–male and female–who seem totally dissatisfied with their jobs. I do not want to become like that, so do not view partnership as something that is the end all, be all for me.

The Clinical Legal Fellow wonders whether she will be able to have a successful career and balance family life. "It seems that the women I work with give up a lot of their family life and I don't want to have to do that. But I feel I will have to." She adds:

> Growing up, I've always been taught that family is number one. You don't give it up or lose it for

When asked about their greatest sources of strength, growth, and opportunity, many women identify family support and guidance from mentors as key to their motivation and success.

anything. So it's hard for me to be in this field and see so many women who are so dedicated to their career, but still want the vision I was brought up with.

As noted above, some attorneys find that simply being a woman is more of an obstacle than being a South Asian American. Kelkar said that, when she was in private practice, billable hours were a challenge and being in a unique practice area made it difficult to find long-term, meaningful assignments. In her ten years of practice, she did not feel that being a minority was as big of an obstacle as being a woman in law, given that law is a heavily male-dominated profession. A junior employment law shareholder in Chicago worries, "There is succession planning with the white male attorneys at my firm. I do not have that luxury, so am laser-focused on developing and sustaining my book of business."

Godiwala also finds being a female more of an issue that being a minority.

> Sometimes I feel that I may not be able to 'network' the same way others do, but that may have more to do with being a female attorney. However, I think being South Asian in a heavily global market like today's market is a huge advantage . . . . I think being South Asian can help advance my career since I connect with a whole untapped group of people who are highly successful in business, medicine, start-ups, and beyond.

Ray offers an entrepreneurial viewpoint. She acknowledges that billable hours are always a pressure for outside counsel but that she is productive by originating her own work and not being dependent on others for assignments. While it is important to develop internal relationship with other attorneys within a firm, she admits, "I am a control freak and want to control my own clients" rather than simply being a service provider to other attorneys in her firm. She has taken care to develop relationships with clients in order to have ongoing work. Ray recognizes that the billable hour and book of business pressures are real, but her advice to young attorneys is to be the best in solving client problems. "It is important to know your substantive area of law and be practical."

John also acknowledges the "old boy network" and says that another challenge she faced in the past is receiving less pay than her former male counterpart for the same role. She believes that being a minority woman contributed to those challenges, coupled with age, because she received lower wages and less support than her male predecessor.

According to Ahuja:

> I definitely think that the legal field, specifically law firms, are struggling in the area of diversity. While I think it is frustrating that there are few people who look like me in law firms, I have found that over time, it motivates me. I want to focus on being a great attorney and helping younger lawyers enjoy and excel in the practice of law. While there a clear absence of diversity, I have found other attorneys in and outside of my law firm that can provide solid guidance as

While I feel comfortable going to many people in the firm with my questions, it is often nice to go to someone who understands what you are going through on a personal level.

to the many steps of my career. Building a close inner-circle is important and, over the course of time, I have learned that being a minority woman is an asset to my career.

"Right or wrong, people do identify more readily with people who look and act like them," shares Aamira, a Muslim partner at a national firm based in Los Angeles, California.

> I know the deep struggles I faced getting job interviews, being placed on top cases, and even being invited to serve on committees within my firm. My background and upbringing do not fit the traditional mold in terms of the way I dress, speak, or act. Stereotypes are dangerous . . . I therefore make it a priority to help other South Asian American women attorneys, and it does not matter to me what languages they speak or whether they are Hindu, Sikh, Buddhist, or even atheists.

In fact, Aamira has created and spearheaded formal and informal programs at her firm specifically for South Asian American female attorneys. "There aren't that many of us yet, but I invite these women to come to me with their struggles, and I try to offer advice and solutions. It is important that we serve as role models for the next generation."

One source of pride for Aamira is that she publishes the successes of the South Asian American women across the firm.

> As a member of the diversity committee, I am able to publish a newsletter that congratulates and recognizes the success of the South Asian American attorneys at my firm. Some of these women are generally too shy or nervous to toot their own horn, so I am glad to do it!

She also uses her seniority in the firm to help connect South Asian American associates with billable work across offices.

> One of the South Asian female attorneys in my office was part of a big team that successfully completed a big transaction. Afterwards, her workload was a little slow. I pointed her recent success out to one of my colleagues in Sacramento and immediately got her put on another significant deal. Connections within a firm are critical, so I am always willing to do my part.

E. Mentors and Family Are Some of the Greatest Sources of Strength, Growth, and Opportunity

When asked about their greatest sources of strength, growth, and opportunity, many women identify family support and guidance from mentors as key to their motivation and success. A first year associate answers, "I would say my parents. The story of how they came to this country as immigrants and achieved

You have to develop relationships with people. I like my clients and have become friends with them.

'the American dream' is a constant reminder of how their struggles and eventual successes have paved the way for me." The Clinical Legal Fellow concurs. "My family support system is my greatest source of strength. For growth and opportunity, I think my greatest source is my hard work and interaction with other lawyers." Godiwala also places great importance on family. She notes:

> My mom is a huge role model for me. She came from India and started as a teller in a bank. Today she runs three large child care facilities in the Valley and continues to grow and expand her business and opportunities. She is such an entrepreneur and a great mother. She is the reason I work hard and have such a strong ambition to succeed. She has never used excuses or neglected any part of her life. She does it all and that shows me I can too. I also get a lot of motivation from my fiancé. He encourages me to work hard and always do my best. He wants to know the feedback I get at work because he cares about my success. He helps me improve and work through any scenario I come across. Just knowing that he cares about my career as much as I do gives me great strength and drive to keep striving when it comes to working extra hours or going above and beyond what is asked.

Mentoring likewise has been a significant factor in meeting career objectives for many South Asian American women attorneys. One junior associate says:

> I had the opportunity during my undergraduate education to shadow/work for a female attorney. Before I even applied to law school, I was able to see how an independent woman could achieve work/life balance. During law school, my International Human Rights Clinic professor was a huge influence on me, as she encouraged a constant line of communication and had an open-door policy for advice.

Ahuja attributes her success in large part to mentoring. "Navigating the complexities of law firm politics and structure can be maze, not to mention all the aspects of practicing law. By building a strong circle of mentors around me, I know that I can look to one or multiple people for guidance and advice."

For Ladak, her greatest sources of strength are her "own determination and the support of mentors who are supportive despite differences of gender and/or background." The Clinical Legal Fellow agrees that mentoring has been a significant factor in her success. "I've also really valued the relationships I've valued with South Asian lawyers and judges. Those have been invaluable." Additionally, John notes that former bosses have been great mentors to her and that one of her former mentors got her a position within into her current organization.

Godiwala shares her perspective that having bonds with another South Asian American female attorney in her office helps with her career development.

> While I feel comfortable going to many people in the firm with my questions, it is often nice to go to someone who understands what you are going through on a personal level. I am planning my Indian wedding, my family holds many religious events, and my fiancé is also South Asian but from a different part of India with different customs. It can be overwhelming to deal with the

You never know when the seed of a professional connection will blossom into a career opportunity.

demands of it all but venting to someone who has gone through it before and has successfully navigated the same waters is so helpful. I am grateful for an understanding ear and advice when I need to balance the challenges of work and home. It is also nice to have someone who celebrates the same holidays as you so you can share stories and celebrations.

As noted above, failure to see or interact with sponsors and role models can impact perceptions of South Asian American women attorneys. Godiwala adds that having another South Asian American woman attorney as her mentor allows her to see her future goals come into fruition. "Sometimes I can't relate to senior attorneys because they have such a different background and their journey to success was so different. Having a South Asian mentor helps me see how different journey's and backgrounds can lead to the same success."

Ahuja shares:

I am competitive in nature, mostly with myself. Every year I set goals for myself and work towards the goal over the course of the year. My parents came to the USA and left everything behind in India: their family, safety, comfort, etc. Thinking of how they must have felt and what they wanted for their kids reminds me daily that no matter how 'outside' my comfort zone I may feel, I have all the comforts of home and that is something my parents didn't have–so I have no reason not to push myself. In my first years of practicing of law, a mentor of mine told me that because there are so few of me in the upper ranks of law firms, that it was very important for me to be the better than the best in my field and not count on second chances. I find myself repeating those words to myself when I am tired and frustrated to motivate me.

F. Examples of Professional Development Advice for South Asian American Women Attorneys

As with the frustrations facing South Asian American women attorneys in developing and advancing their careers, the advice given to them applies to other minorities in the legal profession as well. According to a South Asian American female shareholder in a real estate boutique firm in St. Louis, Missouri:

The best piece of professional development advice I received was to maintain my integrity and be true to myself. Long ago at a law school reception, a judge once told me I only have one reputation, and that it will always precede me. She taught me that it is important never to take shortcuts or engage in questionable or unethical conduct.

Ray counsels that junior attorneys should pursue their interests, but the reality is that when they look upstream, white men still dominate those positions, so it is important to be open-minded about selecting a practice area. She notes that employment and benefits law, as well as intellectual property transactional work, tend to have more women that other areas of law. Ray also points out that it may be easier to find suc-

cess as a specialist in a particular field of law because there will be a demand for that expertise and skillset.

Ray also emphasizes the importance of client development. "You have to develop relationships with people. I like my clients and have become friends with them. I do a lot of wining and dining, including dinners, lunches, concerts, and sporting events." She acknowledges the existence of an "old boy's network" in the legal profession but developed a strategy to work around it. "I never tried to join it. It takes a lot of work, but I look for one-on-one opportunities with significant clients."

"The first partner I worked closely with told me fairly early on, that before asking for help on an issue or question, to spend time, study the issue and come up with possible solutions to the problem or issue," remembers Ahuja. "I found that this has forced me to always try and come up with multiple solutions and now am in a better position to guide a client."

Another junior associate attorney shares:

> I would say the best piece of advice I have received is to always ask questions. Over the years I have come to realize that asking question is not a sign of inability to understand a concept, but rather, it shows that I have taken the time to think about issues, and that I am invested in making sure the final product contains my best effort.

A third-year attorney in Dallas welcomes professional advancement guidance from senior South Asian American attorneys.

> They are pioneers in my eyes, as they have had to face obstacles and biases to become successful. Their candor about their experiences and how they overcame them are invaluable as I frame my future as a minority attorney. In particular, as a South Asian American, my parents and in-laws expect me to start a family, raise my kids with traditional Indian values, and have a successful career. I am not sure how to do that given the demands of the profession and the competitive nature of my practice area . . . . It scares me to think that maybe we as female Indian attorneys cannot have it all.

According to Ladak, the best piece of advice she has received as a junior attorney is to work hard and continue to build professional relationships. She shares, "You never know when the seed of a professional connection will blossom into a career opportunity." The Clinical Legal Fellow agrees, "Work hard and be nice."

Hard work resonates with Godiwala, as well. She supplements that advice with "have a good attitude towards work." Godiwala notes, "Everyone can complain about hours or workload, but working hard and taking pride in the work you do is something that will set you apart."

Kelkar says it is critical to develop relationships, even when traveling. "I came to realize that everybody has a story to tell. I found great success in talking to people when I was traveling internationally for business. I am not the person who puts on headphones or watches movies for the whole flight. I talk to everybody." She said she always had her business cards handy and suggests investing money into upgrading flights or other opportunities where good relationships can be made with high profile people.

G. How South Asian Female Attorneys Can Help One Another

"I absolutely look for ways to partner with and support other South Asian female attorneys," advises a partner in Seattle, Washington. She adds that, even though she is a Buddhist born in Pakistan, she actively seeks out ways to mentor any South Asian American women, regardless of their religion or nationality.

> My practice area focuses on antitrust, but I am constantly looking for ways to make introductions that I think can help other South Asian women. It is important to keep an open mind; the con-

In terms of guidance or advice from senior South Asian American female attorneys that would be helpful as they navigate their careers, they want to learn about how being a South Asian female attorney in the workplace has affected professional decisions and what to be aware of on the day-to-day front and in the larger sense of advancing one's career.

nections I have made in the past have led my contacts to a new job placement, speaking opportunities, and even a marriage proposal! Having a strong support network with my fellow South Asian women lawyers is critical to making new relationships that can pay dividends professionally and personally.

The South Asian American attorneys I interviewed who have been practicing between one and five years all appreciate that other, more experienced South Asian female attorneys have always been receptive to career questions. They are grateful for the feedback and guidance, including the general career advice, input on resumes and cover letters, and introductions to other attorneys and mentors that they receive. The Clinical Legal Fellow appreciates that other South Asian American female attorneys put in good names for her when she applies to jobs, and they send her job announcements. "They connect me to people who will help me figure out what I want to do."

In terms of guidance or advice from senior South Asian American female attorneys that would be helpful as they navigate their careers, they want to learn about how being a South Asian female attorney in the workplace has affected professional decisions and what to be aware of on the day-to-day front and in the larger sense of advancing one's career.

Ladak believes that advice on how to leverage her identity as a South Asian American female attorney in the legal profession will be very beneficial. The Clinical Legal Fellow adds that it will be helpful for South Asian American female attorneys to act as a sounding board for her. She wants them to be open-minded about her values and career goals. Godiwala would like to see guidance about how to balance a strong cultural identity while succeeding in the workplace.

A junior partner in Boston credits her recent advancement to advice she received from a South Asian attorney she met at a networking event in Atlanta. She recalls:

> I met this Sikh woman attorney who was born in South Africa. I am a Hindu from Sri Lanka. Despite these so-called differences, we bonded right away, and I shared with her my struggles towards building a book of business. She said, 'been there, done that' and volunteered to help me prepare a solid business plan and shared ways to help me execute it. Her time, advice, and willingness to help me have been invaluable. Honestly, without her support, I doubt I would have been able to grow my originations to the levels I needed to get promoted. And the best part is she is still helping me find ways to grow my client portfolio.

As an experienced attorney, Ray does a lot to pay it forward to minority female attorneys. Ray recalls that she had a great mentor who took Ray under her wing and helped her get promoted to partner, even while Ray was working part-time. She advises younger attorneys to do a great job and be sincere in nurturing relationships. "I try to convey the business aspects of law that are not intimidating." Ray notes that all female attorneys have more caregiving requirements than men (for example, taking care of children or elderly parents) and that the legal profession can be inflexible. However, she advises that it is acceptable to go on a reduced career track for a number of years, and it is perfectly fine not to work a full-time schedule.

As a Shareholder, Ahuja adds:

> I believe the most helpful . . . advice I received with respect to my career is this: make sure your race and gender don't matter by focusing on conducting your law practice with the focus and diligence [with which] you live your life and being the best attorney you can be, and the rest will come. You can't control all the outside forces, just you.

"For me, just having someone I can trust with questions and concerns means a lot," states Neha, a fifth year associate from India who works in Tampa. "I do not view it so much as crossing national origin, religious, or language lines as much as identifying with someone who understands the pressures of law firm practice while being the odd woman out." She recently was asked by her Caucasian colleagues about her parents' plan to arrange her marriage:

> Not that it should matter to my job, but it felt strange to be singled out for my family's and my wishes. Honestly, I felt like I was being interrogated by some of them! Most people are nice about it, but some of my more senior supervising attorneys make me feel like my beliefs are from the Dark Ages.

Neha finds support from her mentor, who is in the Washington, D.C. office of her firm and from Bangladesh.

> I know when I call her she will pick up the phone or get back to me as soon as possible. She is a true confidant and has given me insights into the personalities of my supervisors, which helps me deal with them. She also told me it is fine for me to keep my personal activities and beliefs to myself, or to try to educate people who are sincerely interested in them.

I. What Legal Organizations Can do to Promote Diversity and Inclusion

The topic of diversity and inclusion within the legal profession is not a new one. However, to make meaningful change, top leaders with the ability to influence stakeholders must take stock of the current statistics and commit to a cultural shift in how South Asian American women are viewed and treated. The Center for Legal Inclusiveness (CLI) offers an Inclusiveness Manual that shares ideas on how to promote diversity and inclusion in the legal profession.[12] Some of the tips include the following:

- Helping leaders improve the status quo with respect to inclusiveness.
- Finding ways to avoid apathy in diversity initiatives.

Identifying external partners to provide accountability.

- Examining organizational culture and preparing ways to remove hidden barriers that marginalize diverse attorneys.
- Implementing accountability measures with respect to inclusiveness and evaluating progress against benchmarks.

12. Kathleen Nalty & Arin Reeves, *Beyond Diversity: Inclusiveness in the Legal Workplace*, Center for Legal Inclusiveness (2013), http://www.legalinclusiveness.org/create-inclusiveness/the-inclusiveness-manual/.

[D]iversity should be at the forefront of every legal organization.

The Defense Research Institute (DRI) also suggests ways in which organizations can cultivate a culture of inclusion and diversity,[13] including the following:

- Define diversity and inclusion broadly to reflect the culture of the community.
- Link diversity and inclusion metrics to performance reviews and business objectives.
- Be creative in diversity and inclusion training, educate minority and majority employees on different perspectives, and build a culture of honest and open communication.
- Encourage community outreach and build a diverse talent pipeline for the profession.
- Identify and remove assumptions that systematically work against diverse lawyers.
- Train mentors and remove mentors who are not committed, interpret the job too narrowly, or are not effective.
- Create an Assignment Committee to regulate the proper matching of attorneys with assignment projects to ensure that junior attorneys develop appropriately.

As the above recommendations make clear, diversity should be at the forefront of every legal organization, whether as in-house counsel responding to a diverse customer base, or as outside counsel responding to diverse clients. It is critical that senior management create an environment of open communication where all attorneys are engaged yet committed to success without regard to ethnicity, national origin, gender, or sexual orientation.

IV. Conclusion

This article attempts to show the challenges, successes, and future opportunities for mentoring that South Asian American women attorneys share. As a beneficiary of solid mentoring, I am passionate about advancing minorities, especially South Asian American women attorneys, within the legal profession. The key takeaways from this article should be to raise awareness of feelings of isolation within the legal profession, suggest ways to build bridges and foster relationships, and propose ways to mentor and guide junior associates as they work to succeed and flourish as the future leaders of tomorrow.

13. *Id.*

About the Authors

ALA

The Association of Legal Administrators, ALA, is the undisputed leader for the business of law, focused on the delivery of cutting-edge management and leadership products and services to the global legal community. We identify and provide solutions to the most strategic and operational challenges our members and customers face today, while we prepare them for the opportunities and challenges of tomorrow. The ALA Diversity Initiative aims to increase awareness of and sensitivity to the differences among our workforce and to advance the concept of inclusiveness and acceptance. To that end, the mission of the ALA Diversity and Inclusion Committee is to provide each ALA member with the tools and resources required to be a leader in meeting ALA's goal. The ALA Committee on Diversity and Inclusion is tasked with providing guidance, education, and resources in support of the ALA Diversity Initiative. ALA's goal, and more specifically that of the Committee on Diversity and Inclusion, is to increase diversity and inclusion in the Association, in the legal management community and in all legal service organizations.

Sarah Babineau

Sarah Babineau, PHR, SHRM-CP is the managing partner of Compass Metrics, LLC, a woman-owned, disability-owned DBE. The consultancy focuses on strategies to keep stakeholders engaged in diversity and inclusion efforts and disability inclusion in the legal profession. Babineau also provides management side expert witness testimony in matters related to the employment of people with disabilities.

Gretchen C. Bellamy

Gretchen C. Bellamy is a Senior Culture, Diversity, and Inclusion Strategist in the Global Office of Culture, Diversity and Inclusion at Walmart Stores, Inc. Through her role, she is working to develop and support global culture, diversity, and inclusion strategies that transform and drive the company's culture and that embed diversity and inclusion as integral components for supporting the company's 2.2 million employees and business operations. Working collaboratively with executive leadership, she is developing strategies related to measures and analytics, activating company culture evolution, and embedding the culture into the employee lifecycle.

In her previous role with the company, Ms. Bellamy served as an Assistant General Counsel where she counseled regarding global internal and external diversity and inclusion and attorney talent development in the Legal Operations group. In January 2015, she was awarded by the

corporation, on behalf of the legal department, the "Dr. Martin Luther King, Jr. Visionary Award" for an innovative global diversity and inclusion program. In April 2015, she was honored as the 2015 "Outstanding International Corporate Counsel" by the American Bar Association Section of International Law. She has served in various leadership positions within the American Bar Association including as the Diversity Officer for the Section of International Law, a member of the Standing Committee on Meetings and Travel and currently, as a commissioner on the Commission on Racial and Ethnic Diversity in the Profession. She currently serves as an advisory board member for the Institute for Inclusion in the Legal Profession as well as for the University of Arkansas School of Business. She is an editor of Corporate Responsibility for Human Rights Impacts: New Expectations and Paradigms, which was published in April 2014 and is the first book on corporate accountability published by the ABA.

Ms. Bellamy is a community activist, having co-founded a community group called the Bentonville Public Schools Citizens for Equality, the mission of which is to encourage the local school board to revise its EEO policy to comply with federal law as well as provide equal protections for unprotected groups. For this work, Ms. Bellamy and her co-founder were awarded the Arkansas Advocacy Award for 2015.

Ms. Bellamy received a J.D. and LL.M. in international and comparative law from Duke University School of Law and is admitted to the Maryland bar. Prior to Wal-Mart, she served as the Director of International Public Interest and Pro Bono Programs at the University of Miami School of Law. She also worked as an associate in the corporate law department of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP in Raleigh, NC and as a summer associate at Shearman & Sterling, LLP in New York, NY. She is a Returned Peace Corps Volunteer (Cameroon 2001).

Chasity Boyce

Chasity is an attorney and diversity leader who has served as a mentor for over a decade. As co-founder of the Diverse Attorney Pipeline Program (DAPP) and Uncolorblind, a diversity blog and enterprise that addresses a wide range of diversity issues prevalent within the legal and corporate fields, Chasity is often found empowering the next generation of attorneys and developing them to overcome the barriers to success inside of large law firms. Professionally, Chasity Boyce is a Diversity and Inclusion Projects Manager for Skadden, Arps, Slate, Meagher & Flom LLP, where she helps develop and implement the firm's strategic diversity and inclusion goals and manages D&I efforts in the firm's satellite offices.

Prior to joining Skadden, Chasity served as Associate General Counsel to Governor Bruce Rauner, where she oversaw the clemency process and served as legal counsel on public safety, child welfare, and

education issues, overseeing 17 agencies, boards and commissions. Prior to joining the Governor's legal team, she practiced premises and products liability in both a mid-size and boutique litigation firm. Chasity is a commissioner on the Illinois Executive Ethics Commission.

Chasity is a past president of the Black Women Lawyers' Association of Greater Chicago, Inc. (BWLA) and sits on the Diversity and Inclusion Advisory Board for the Illinois Supreme Court Commission on Professionalism. Her awards and honors include being named to the Lawyers of Color Inaugural Hot List for the Midwest Region, which recognizes early- to mid-career attorneys under the age of 40; The National Black Lawyers-Top 100; the National Bar Association's 40 under 40 Nation's Best Advocates; the Women's Bar Association of Illinois' 2016 Top Women Lawyers in Leadership; and the Chicago Lawyer and Law Bulletin Publishing Company's Top Forty under 40 Illinois Attorneys to Watch (2016). The American Bar Association's Section on Litigation awarded DAPP the Diversity Leadership Award for its efforts in creating a pipeline program for women of color 1L law students. Chasity earned her B.A. in Public Policy and a certificate in Markets and Management from Duke University and her J.D. from the Howard University School of Law.

Angela Beranek Brandt

Angela Beranek Brandt is an accomplished trial lawyer at the St. Paul Minnesota based law firm Larson King, LLP. She focuses her practice in the areas of commercial, employment, and products liability litigation. Angela regularly serves as lead counsel in cases in Minnesota, North Dakota, Wisconsin, and South Dakota for Fortune 500 companies. She also has a national role in developing corporate and expert witnesses for mass tort cases around the country for a Fortune 100 company. Angela has experience working with clients as an in-house attorney and as outside general counsel.

Angela is known for her ability to develop high level strategy for efficient and effective solutions to difficult problems. She works with her clients to explore unique approaches to litigation. When a matter cannot be resolved, she puts her talent and trial experience to work in front of arbitrators, judges, and juries. In an effort to work in a manner consistent with her clients' businesses, Angela spearheaded an effort at her firm to undergo Lean training. Along with other members of Larson King, Angela continues on her Lean journey to identify improvements to internal processes and management of client work. These Lean efforts translate to a better understanding of her clients and to cost effective legal services.

Angela is active in a number of local and national organizations. She is currently President-Elect of the National Association of Women Lawyers ("NAWL"). She is a former President of the Ramsey County Bar

Association in St. Paul, Minnesota. She has been elected to membership in the American Board of Trial Advocates (ABOTA) and the Federation of Defense and Corporate Counsel (FDCC). She is also a member of the Campaign for Legal Aid, a committee that raises money for Southern Minnesota Regional Legal Services ("SMRLS") which provides access to justice for low income members of the community. Angela holds an AV Martindale Hubbell rating, the highest rating for both skills and ethics, and has been repeatedly named to the Minnesota Super Lawyer list.

Lisa Brown

Lisa Brown is the Professional Development Partner at Schiff Hardin LLP. She leads all aspects of strategic attorney talent development, including law student, lateral associate and partner, and senior administrative recruiting; attorney professional development, training, and mentoring; talent management, evaluation, and compensation; and retention and promotion.

Lisa's expertise includes designing and implementing path-breaking recruiting and professional development programs for lawyers, law students, and legal executives that have achieved the firm's strategic goals and propelled it to national recognition in attorney satisfaction and diversity.

Lisa received her J.D. from the University of Chicago Law School in 1995 and her B.A. from Wesleyan University in 1990. Lisa began her two-decade career at Schiff Hardin as a summer associate, joined the firm upon graduation from law school, and practiced as an associate and then as a partner in complex commercial litigation and class action defense.

Collette A. Brown

Collette A. Brown is a member of Neal Gerber Eisenberg's General & Commercial Litigation practice group. Collette represents clients in complex civil litigation matters including breach of contract, commercial lease disputes, tort defense, business torts and products liability. She has drafted and argued dispositive motions, and taken multiple depositions.

Collette has co-first chaired a four-day jury trial before the U.S. District Court for the Northern District of Illinois, and also co-first chaired a two-day state court dependency hearing. Collette maintains an active pro bono practice with experience ranging from employment law to representing petitioners seeking orders of protection.

Before attending law school, Collette was a legal intern for the Equal Employment Opportunity Commission. She was also a summer associate for Neal Gerber Eisenberg in 2012, and currently serves on the firm's Women's Network Leadership Team.

Before beginning her legal career, she worked as an English teacher for nearly three years.

Alan Bryan

Alan Bryan is Senior Associate General Counsel for Wal-Mart Stores, Inc. where he leads the Office of Outside Counsel Management and Legal Operations, overseeing certain internal operations and processes, as well as the relationship with all company law firms throughout the United States. Mr. Bryan previously managed litigation at the Fortune 1 company for many of its approximately 5,000 Walmart stores and Sam's Clubs across the United States. Before joining Walmart in 2011, he was a litigation partner with Arkansas's largest law firm.

The Federation of Defense and Corporate Counsel ("FDCC"), which limits international membership to approximately 1400 attorneys worldwide, initiated Mr. Bryan into membership in 2013. He is a member of FDCC's Diversity, Corporate Counsel, Premises & Security Liability, and Trial Tactics, Practice, & Procedure Committees. He has served as Program Co-Chair and overall Co-Chair for FDCC's Corporate Counsel Symposium.

In 2014, Mr. Bryan helped develop an "International Integration" program to incorporate best practices of Walmart's U.S.-based legal department in its Latin American markets. An extraordinary and simultaneous opportunity arose allowing Mr. Bryan and two colleagues to create a diversity initiative aimed at improving diversity for the legal profession in Latin America. In October 2014, he helped Walmart announce a development program for underrepresented members of the Chilean legal community which was a direct result of these efforts. The pilot program won Walmart's Martin Luther King, Jr. Visionary Award and was nominated for the Minority Corporate Counsel Association's 2015 George B. Vashon Innovator Award.

Also in 2014, Mr. Bryan joined the board of DirectWomen, a national non-profit organization that works to increase the representation of women lawyers on corporate boards. He serves on its Advisory Council, as well as its Strategic Planning, Steering, and Development Committees. He additionally supports the 30% Coalition through his work on its Chief Legal Officer initiative.

Over the course of 2015-16, Mr. Bryan served on the American Bar Association's Diversity & Inclusion 360 Commission. Created by ABA President Paulette Brown, the Commission formulated methods, policy, standards, and practices to best advance Goal III of the ABA. The Commission reviewed and analyzed diversity and inclusion in the legal profession, the judicial system, and the ABA, with a goal of developing sustainable action plans. Practical tools were produced that will help move the needle on diversity and inclusion in an impactful way, including through a Model Diversity Survey developed by its Economic Case Working Group. Bryan served as Co-Chair of the 360 Commission's Economic Working Group. Continuing the 360 Commission's mission,

Mr. Bryan currently serves as the Co-Chair of the Corporate Counsel Sub-Committee to the ABA's Commission on Racial and Ethnic Diversity in the Legal Profession. Through this work, Bryan has led an effort that has seen dozens of Fortune 1000 companies agree to use the ABA's Model Diversity Survey.

Mr. Bryan is an active member of the National Association of Women Lawyers ("NAWL") and has served on its Annual Meeting and GCI Committees, as well as participating in its mentorship program. He was a founder of the NAWL Challenge Club, designed to help meet the NAWL Challenge and increase to at least 30% the number of women equity partners in our nation's law firms. Mr. Bryan is an active participant in the National Association of Minority and Women Owned Law Firms ("NAMWOLF"). He serves on the NAMWOLF In-House Advisory Council, as a NAMWOLF Practice Area Committee liaison, and as a mentor in its Emerging Leaders Program. He also serves as his company's representative in the Inclusion Initiative, a collaborative effort of companies committed to an immediate and measurable increase in the retention and utilization of minority and women owned law firms by America's corporations.

Mr. Bryan is a frequent speaker, panelist, and moderator for his company, bar organizations, and affinity groups. The Association of Corporate Counsel, a global legal association representing more than 35,000 in-house counsel employed by over 10,000 organizations, named him one of its "Top Ten 30-Somethings." In 2015, the Northwest Arkansas Business Journal named Mr. Bryan one of its "40 Under Forty," an annual honor for 40 individuals under the age of 40 who are nominated as best in class by their peers in all industries. In July 2016, he received the Lead By Example Award, the highest honor bestowed upon a male lawyer by the National Association of Women Lawyers, for his role as a leader and advocate for the advancement of women in the profession.

In the past, he has served in the Arkansas Bar Association House of Delegates, as an officer of the Arkansas Association of Defense Counsel, as a committee member for the Defense Research Institute, and as a barrister of both the W.B. Putman and William Overton Inns of Court. Mr. Bryan participates in Walmart's Medical-Legal Pro Bono Partnership with Arkansas Children's Hospital and is a past United States District Court pro bono attorney.

Mr. Bryan graduated cum laude from the University of Arkansas School of Law after serving as Managing Editor of the Arkansas Law Review. He was a Phi Delta Theta International Graduate Fellow and a Charles Pearson Fellow while in law school. Prior to law school, he graduated as a J. William Fulbright Senior Scholar and Phi Delta Theta International Fellow from the University of Arkansas.

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 assessment of new models for civil legal services delivery.

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.

Kori Cordero

Kori Cordero serves as a Tribal Justice Specialist for the Tribal Law and Policy Institute (TLPI), which includes facilitating technical assistance to tribal programs and tribal courts, including Healing to Wellness Courts. While at TLPI, Kori has contributed to several publication resources covering a range of topics, including sex trafficking in Indian country, civil code development, and tribal-state court collaborations. In addition to publication and website resource development, Kori has provided support to TLPI's projects related to violence against Native women and children. They recently received a J.D. from the UCLA School of Law, with specializations in Critical Race Studies (CRS) and The David J. Epstein Program in Public Interest Law and Policy. While in law school, Kori focused their CRS specialization on tribal and federal Indian law. Before joining TLPI, Kori worked as a law clerk at the Pascua Yaqui Prosecutor's Office in Tucson, Arizona and the San Bernardino County Office of the Public Defender in Victorville, California.

Jill Lynch Cruz

Jill Lynch Cruz of JLC Consulting is an executive and career development coach and consultant who partners with individuals and organizations in the career and talent development space. JLC Consulting has particular expertise working with women and racioethnic minorities, especially Latina attorneys, to help them navigate and advance their careers more successfully.

Jill has over 20 years of senior level human resource management experience, including as the Chief Human Resources Officer for an AmLaw 100 DC-based law firm. She holds a doctorate in Organization and Management from Capella University, a master's degree in Human Resource Management from the University of Maryland, as well as a bachelor's degree in Psychology from the University of Maryland. She is also certified as a Global Career Development Facilitator (GCDF) and Senior Professional in Human Resources (SPHR). She also serves as an Associate Professor, Dissertation Chair, and Research Affiliate for the University of Phoenix Graduate School of Business and Technology and School of Advanced Studies.

As a scholar practitioner, Jill is actively involved in research and writing on topics primarily related to Hispanic women in leadership, including as the co-author of several landmark studies and law review articles on the unique experiences and barriers encountered by Latina attorneys, as well as, several academic book chapters and articles about Hispanics in the workplace. She is an expert lecturer and frequent presenter at legal industry events, legal bar association conferences and peer-reviewed management symposiums. She has also served as a member of the Research Advisory Board for the American Bar Association's Commission on Women in the Profession. Jill has also been actively involved with the Hispanic National Bar Association Latina Commission as a researcher, author, and current Latina Commissioner.

Timothy D'Arduini

Timothy D'Arduini is an associate in Mayer Brown's Washington DC office and a member of the Employment & Benefits practice focusing on global mobility and immigration. He assists Fortune 500 clients in the financial services, healthcare, insurance, defense and information technology industries to develop and execute global mobility strategies for their work corps. Tim has experience with business visitor, work permit and resident permit requirements in multiple jurisdictions including Brazil, Canada, China, Iraq and the United Kingdom. He also has advised multinational corporations on the impact of corporate transactions on work and resident permit holders on assignment in jurisdictions across the globe.

He has deep knowledge of the legal requirements and procedures for processing nonimmigrant visas, PERM Labor Certification

applications, immigrant visas, adjustment of status applications, naturalization applications and waivers of admissibility before the Department of Labor, US Citizenship & Immigration Services and the Department of State. He also has significant experience with O-1 non-immigrant and EB 1A immigrant visa petitions (extraordinary ability) for business executives, research scientists, award-winning television screenwriters, actors, musicians and chefs.

Tim has been involved with US District Court for the District of Columbia and US Court of Appeals for the DC Circuit litigations on issues involving the interpretation of L-1B (specialized knowledge) and H-2B (temporary non-agricultural workers) regulations.

Prior to joining Mayer Brown, Tim served as a Law Clerk for Senior Associate Justice Jaynee LaVecchia of the Supreme Court of the State of New Jersey and as a Marsha Wenk Public Interest Law Fellow at the American Civil Liberties Union of New Jersey. He also has extensive experience working in multidisciplinary and boutique law firm practices, as well as at immigration legal services organizations.

David L. Douglass

Mr. David L. Douglass is a partner in the Government Contracts, Investigations & International Trade Practice Group in the firm's Washington, D.C. office.

David is an experienced trial attorney who has won trials as a prosecutor, plaintiff, and defense counsel. David has represented numerous companies and individuals in criminal and civil, investigations and litigation. A large portions of David's practice consists of representing health care companies, government contractors, and individuals in criminal and civil fraud investigations and litigation including False Claims Act litigation.

David is a Fellow of the American College of Trial Lawyers. The College is composed of the best of the trial bar from the United States and Canada. Fellowship is extended by invitation only and only after careful investigation to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Membership in the College cannot exceed one percent of the total lawyer population of any state or province.

A distinguishing feature of David's practice has been working on behalf of the government, as well as private companies. In 2013, David was appointed by the U.S. District Court for the Eastern District of Louisiana as the deputy federal monitor over the New Orleans Police Department responsible for reviewing, assessing, and reporting publicly on the NOPD's compliance with a far reaching Consent Decree. David has also led two high-profile government investigations. In 1994, he served

as executive director of the White House Security Review, which resulted in the closing of Pennsylvania Avenue in front of the White House. In 1993 he served as assistant director of the Treasury Department's investigation of the raid on the David Koresh compound in Waco, Texas. David served as a Department of Justice Trial Attorney in the Civil Rights Division, Criminal Section. Prior to that he served as an Assistant United States Attorney for the District of Massachusetts.

David received his J.D. cum laude from Harvard Law School and his B.A. from Yale College.

Liz Duff

Liz has taught on undergraduate and postgraduate courses offered by the Westminster Law School, principally contract and torts, legal skills, the English Legal System and research methods. She currently combines her research interest in diversity in the legal profession with her teaching teaching through the Legal Profession and Legal Services. Liz is also a PhD supervisor and supports LLB students as a Personal Academic Tutor and dissertation supervisor. As Head of School Liz is primarily involved in academic management, teaching, learning and assessment policy, as well curriculum design and quality assurance. She has been a consultant to the UKCLE on matters of LLB curriculum and widening participation and has also advised a number of universities on this area. Liz was also one of the founders of the Law & Diversity programme at the University of Westminster School of Law.

Liz was on secondment to the Vice Chancellor's Student Experience Project from 2006-8 and was the Senior Project Director liaising with all branches of the University to assist in the Vice Chancellor's strategic development.

Liz has carried out funded empirical research for a number of organisations including the Legal Services Board, Law Society of England and Wales and has undertaken consultancy work for magic circle law firms. Liz has given or contributed to a number of conference papers including at the Law & Society Association/Canadian Law and Society Association; Socio-Legal Studies Association and the International Legal Ethics Conference. Details of some of her publications are set out below.

Dr. Keith H. Earley

For more than ten years, Dr. Keith Earley has been an organization development consultant with a broad range of experience in change management, executive coaching, diversity and inclusion strategies, team building and group facilitation. Keith has worked extensively in corporate, government, legal and non-profit sectors. Following completion of his doctorate, Keith joined American University's School of Public Affairs, and Georgetown University's School of Continuing Studies, as an adjunct faculty member. He also has served as the

Director of Diversity & Inclusion at the Finnegan, Henderson, Farabow, Garrrett & Dunner, a global intellectual property firm. Prior to that he was the Vice President—Employee Strategies & Practices in Freddie Mac's Human Resources Division, which he assumed following 17 years of practice in Freddie Mac's Legal Division.

Keith has a PhD in Human & Organization Systems from Fielding Graduate University. He holds Masters degrees in Organization Development from Fielding and from American University. Keith is a graduate of Rutgers University Law School and he completed his undergraduate work at Cornell University.

Jason Goitia

Jason's father is from the Basque region of Spain, and came to the United States to play professional Jai-alai. His mother is a native of Tampa. He grew up in Tampa, where he is a graduate of Hillsborough High School, and graduated from the third International Baccalaureate class in Hillsborough County. He also became an Eagle Scout in high school.

Jason received his undergraduate degree, with honors, from the University of Florida and his law degree from the University of Chicago. At UF, Jason was an officer in Florida Blue Key, president of his fraternity, a Presidential Recognition award recipient, and on the Dean's List several times. At the University of Chicago, he was a class representative and editor-in-chief of the law school newspaper. After law school, he worked for Gardner Carton & Douglas LLP (now Drinker Biddle & Reath LLP), a Chicago law firm with around 250 attorneys at the time, practicing commercial bankruptcy. He then joined the Chicago office of the international law firm Mayer, Brown, Rowe & Maw LLP (now Mayer Brown LLP), with around 1500 attorneys worldwide at the time, practicing finance and securities law.

Jason then worked for Goldman, Sachs & Co. as part of its Fixed Income, Currency and Commodities group. While at Goldman, he also served as chairman of the Board of Advisors of his college fraternity, reorganizing its operations and managing a capital campaign study; he has also managed the board's legal affairs since 2004. Additionally, in 2007 and 2008, he served on the reunion committee for his law school class.

Jason has been named to the Florida Bar's Committee on Professionalism, as the Diplomat to the Business Law Section of the American Bar Association (ABA), as an officer in the University of Chicago Club of Mid-Florida, and as a board member of Tampa Hispanic Heritage, Inc. A leader in the eLawyering movement named him one of eight innovative attorneys on an International list. Additionally, he actively participates in the Hillsborough County Bar Association's Diversity Committee and the ABA Law Practice Management Section's eLawyering Task Force. He has worked on several comment letters by the

ABA Business Law Section's Federal Regulation of Securities Committee, and a comment letter by the ABA Business Law Section's Middle Market and Small Business Committee. In addition, he has represented the U.S. Department of Treasury in its Small Business Lending Fund program.

Tiffany R. Harper

Tiffany R. Harper is Associate Counsel at Grant Thornton LLP, a top accounting firm, where she supports the business in a myriad of human resources, bankruptcy, litigation, and corporate matters. Prior to going in-house, Tiffany was a senior associate at Polsinelli PC, where she focused her practice on corporate bankruptcy, restructuring, loan enforcement, and a Judicial Law Clerk for the Honorable Jacqueline Cox of the Northern District of Illinois Bankruptcy Court. Tiffany has been recognized as a 2015 and 2016 Rising Star by Illinois Super Lawyers, a top attorney in corporate bankruptcy and restructuring by the Top 100 Black Lawyers, one of the National Bar Association's 40 Under 40 Nation's Best Advocates in 2015, a 40 Under 40 Illinois Attorneys Under Forty to Watch in 2015 by the Chicago Lawyer and Law Bulletin Publishing Company, and was named to the inaugural "Hot List" by Lawyers of Color, LLC.

Tiffany is also heavily committed to her community and serves in a number of leadership roles. From 2013-2014, she served as the Past President of the Black Women Lawyers' Association of Greater Chicago, Inc. (BWLA), and laid the foundation for BWLA's highly successful and renowned 2015 National Summit of Black Women Lawyers where she served as the conference co-chair. Tiffany has been recognized numerous times for her service and commitment to BWLA, and received the President's Award in 2011, the Rising Star Award in 2012, the Distinguished Service Award in 2013, and the Visionary Award in 2015.

Tiffany is also dedicated to educating and mentoring the next generation of diverse attorneys. She is a co-founder of the Diversity Attorney Pipeline Program (DAPP) aimed at developing and preparing diverse, female law students for placement in large law firms and other prestigious positions. Tiffany's very first mentee, who she mentored through college and law school, recently graduated from Harvard Law School and works as an associate at an AmLaw 100 firm.

Tiffany is also very active in various diversity initiatives in Chicago and across the nation. She previously served as a member of the Chicago Committee on Minorities in Large Law Firms Associate Board, led a state-wide module on diversity and inclusion, and has spoken at several diversity conferences on topic related to issues related to hiring, promotion, and retention of black female associates in large law firms. Tiffany is also the co-founder of Uncolorblind, a diversity blog and enterprise dedicated to alleviating diversity and inclusion issues in corporate America.

Tiffany received her undergraduate degree from Dartmouth College, with honors, and her Juris Doctorate degree from Washington University in St. Louis.

Stacy Hawkins

Professor Stacy Hawkins is an Associate Professor at Rutgers Law School where she teaches Employment Law, Constitutional Law and an original seminar on Diversity and the Law. Her scholarship focuses on the intersection of law and diversity and has been published in the Fordham Law Review, the University of Pennsylvania Journal of Constitutional Law and the Columbia Journal of Race and Law. She has also been a frequent contributor to a monthly column in The Legal Intelligencer focusing on diversity in the legal profession.

Prior to law teaching, Professor Hawkins spent more than a decade in private practice advising clients in both the public and private sector on the development of legally defensible diversity policies and programs. She holds a number of professional and civic appointments, including as a member of the Advisory Board of the Public Interest Law Center, as an inaugural member of the Pennsylvania Bar Association Diversity Team, and as co-chair of the Diversity Committee for the Pennsylvania Bar Association Commission on Women in the Profession.

Sherry L. Jetter

Sherry L. Jetter is counsel in Mayer Brown's New York office and a member of its Global Brand Management and Internet/Intellectual Property practice. She brings a wealth of international commercial experience to Mayer Brown, having worked in-house at top luxury fashion brands and manufacturers including Hickey Freeman, Ralph Lauren, Donna Karan and fashion500.com, in addition to serving both in government and as outside counsel. Focusing primarily in the intellectual property and Internet arenas, she provides pragmatic counsel to start-up and leading Fortune 100 organizations throughout their lifecycles, offering insights that improve her client's bottom line and resolve key business issues. Sherry's intellectual property practice includes trademark counseling, clearance, prosecution and enforcement; global licensing; Internet governance; and domain name law. Sherry also has a wide-ranging transactional practice, including commercial contracts, information technology, privacy and data security, and she collaborates with her clients on day-to-day business matters to develop and execute comprehensive strategies that mitigate risk and strengthen brand value.

Prior to joining Mayer Brown, Sherry worked in the intellectual property practice of another large law firm, and prior to that, she worked at HMX, LLC as senior vice president and general counsel for multimillion-dollar labels such as Hickey Freeman, Hart Schaffner Marx, Ivanka Trump and Bobby Jones, leading international legal strategy across the organizations. In addition to co-founding the high-end e-commerce site fashion500.com—where she served as executive vice president and general counsel—Sherry also spent 10 years at Polo Ralph Lauren, where she served as vice president for intellectual property and legal affairs. Prior to that, she worked as the assistant general counsel and senior director of intellectual property at Donna Karan, where she directed the intellectual property program and anti-counterfeiting efforts, negotiated contracts and served as the chief counsel on all matters pertaining to international trade.

Sherry's experience as an entrepreneur and her roles as both outside counsel and general counsel uniquely position her to provide tailored and efficient business solutions to her clients in all stages of development, and has elevated her status within the fashion and retail industries. She has been highlighted in the 2012 edition of Courageous Counsel: Conversations with Women General Counsel in the Fortune 500 and was lauded as a "Woman on the Rise" in its 2011 issue. She was also featured in a BLS LawNotes article, "In Fashion: Four BLS Alumni Who Rule the Runway" (Spring 2012).

Sharon Jones

Sharon Jones is a lawyer by training and a diversity consultant who specializes in providing diversity/inclusion consulting and training to individuals, law firms, corporations and other types of organizations. She is the founder and President of Jones Diversity. Her firm's broad range of services enhance an organization's competitive edge by enabling the organization to fully utilize, retain and promote diverse individuals into leadership roles and create inclusive workplace cultures.

Ms. Jones has practiced law and been a community leader over a 25-year career, including positions as a federal prosecutor, with major law firms and with Fortune 500 Corporations. She has been highly successful as a litigator, a counselor, an educator and a problem-solver with regard to extremely complex and sensitive matters. Most recently, she served as Chief Operating Officer and Executive Vice President for the Chicago Urban League, an organization with over 75 employees and a $10 million budget.

Ms. Jones is the past President of the Black Women Lawyers Association of Chicago. Previously, she served as the Program Chair and created the innovative monthly BWLA Roundtable luncheon series designed to increase mentoring and networking opportunities for its members. She has served as a consultant to the ABA General Counsel

Steering Committee to the Minority Counsel Program. She is the past Chair of the Chicago Bar Association Committee on Racial & Ethnic Diversity and was instrumental in the 2006 adoption of the Chicago Bar Association's Diversity Initiative and Commitments on Racial & Ethnic Diversity. She is the past President of the Harvard Law School Alumni Association and former member of the Board of Directors of Women Employed. She is currently an elected Director of the Harvard Alumni Association, the National Association of Women Lawyers, the Institute for Inclusion in the Legal Profession and the Federal Defender Program for Northern Illinois.

Ms. Jones is a co-author of a guide published by the American Bar Association in May 2004 entitled, "Walking the Talk: Creating a Law Firm Culture Where Women Succeed" which deals with the retention and promotion of women in law firms.

Ms. Jones is a graduate of Harvard Law School and Harvard College.

Sidney K. Kanazawa

Sidney K. Kanazawa is a litigation partner in the Los Angeles office of McGuireWoods who has successfully tried cases many thought could not be won and reached agreements many thought improbable. In the largest oil spill in the Port of Los Angeles, his team settled 600 claims within 2 weeks of the spill and all 2000+ claims within 3 months of the spill. Mr. Kanazawa is an invited member of the American Law Institute (ALI), Litigation Counsel of America (LCA), Maritime Law Association (MLA), and Product Liability Advisory Council (PLAC), is a past chair of the DRI Trial Tactics Committee, and is a frequent instructor with the National Institute of Trial Advocacy (NITA). He currently serves as pro bono General Counsel of the National Asian Pacific American Bar Association (NAPABA) and is a member and diversity subcommittee chair of the ABA Standing Committee on Continuing Legal Education (SCOCLE). Mr. Kanazawa is admitted to practice in California and Hawaii.

Paul E. Madsen

Paul E. Madsen is an Assistant Professor in the Fisher School of Accounting at the University of Florida Warrington College of Business. His research primarily focusses on quantitatively evaluating professions along many dimensions including their education quality, regulatory systems, and diversity, by comparing prestigious professions against one another. His research is published in the Connecticut Law Review, The Accounting Review, Accounting Horizons, and Accounting, Economics, and Law. Professor Madsen teaches courses in financial accounting and accounting and risk management to students earning master's degrees in business. He has bachelors and master's degrees in finance from the University of Utah and a Ph.D. in accounting from Emory University.

Brandon R. Mita

Brandon R. Mita is an attorney in the Washington, DC office of Littler Mendelson, P.C. In his practice, Brandon represents a diverse range of clients before federal and state courts as well as government agencies on various claims, including Title VII, the American with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Family and Medical Leave Act, and numerous other state and local fair employment practice laws. Brandon also dedicates a significant amount of time providing pro bono legal services to a number of non-profit organizations, including primarily the Japanese American Citizens League where he serves as their National Legal Counsel. He received his law degree from Howard University School of Law in Washington, DC and his undergraduate degree from the University of Illinois at Chicago.

Jay Mitchell

Jay Mitchell is a Litigation Associate at Skadden, Arps, Slate, Meagher & Flom LLP, Chicago. He graduated from The University of Chicago Law School in 2015 with a Doctor of Law degree and from Wesleyan University (Middletown, CT) in 2011 with a Bachelor of Arts degree. Prior to attending law school, Jay was a Business Analyst in the Strategy and Operations group at Deloitte Consulting LLP, Boston.

In addition to a range of paying client matters, Jay has represented various pro bono clients, including as counsel of record in a habeas corpus appeal in the Seventh Circuit Court of Appeals. Jay is committed to giving back through pro bono representation and is also passionate about charitable giving, particularly with respect to educational initiatives. As such, Jay founded a non-profit organization aimed at providing financial support to high-performing, low-income high school students in Jamaica.

Melinda S. Molina

Professor Melinda S. Molina is an associate professor at Capital University Law School. Her scholarship focuses on how the law impacts subordinate and marginalized groups in the United States. She coauthored two national studies on Latina lawyers: National Study on the Status of Latinas in the Legal Profession, 37 PEPP. L. REV. 971 (2010) (with Jill Cruz) & La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest Sector, 14 N.Y. CITY L. REV. 147 (2010) (with Jenny Rivera and Jill Cruz). Professor Molina was a fellow at 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. Professor Molina serves as the faculty advisor to the Hispanic Law Students Association. She is also the Chair of the Hispanic National Bar Association (Region X) MetLife Mentoring Program.

Emily D. Murray

Emily D. Murray is the non-attorney Brand Management & Internet Practice Manager for Mayer Brown LLP, where she is based in the Washington, DC office and supports the practice team in the Washington, DC and New York offices. In her role, Emily coordinates workflow for the practice's attorneys and support staff, and also supports marketing and practice development activities. Emily also provides non-legal policy and business advice to clients in the brand management and Internet arena, with a particular focus on Internet-related IP issues such as domain name management and social media, as well as the new generic top-level domain program and other ICANN matters. In addition, Emily coordinates many of the practice's pro bono and diversity efforts.

Emily offers over 17 years of experience in the legal industry, primarily supporting intellectual property practices. Prior to specializing in intellectual property, Emily's experience included work in connection with international trade, transportation, general litigation, and public finance practices. Before entering the legal industry, Emily worked in scientific publishing, and also lived and worked in Japan as a teacher of English as a second language.

Emily earned her B.A. in English from the University of Maryland Baltimore County, and her M.B.A. from the University of Maryland University College. She is an active member of the International Trademark Association, where she has served on the Internet and Trademark Administrators Committees, and has spoken on domain name enforcement issues at a Trademark Administrators Conference.

Jason P. Nance

Jason P. Nance is an Associate Professor of Law and the Associate Director for Education Law and Policy at the Center on Children and Families at the University of Florida Levin College of Law. He teaches Education Law, Remedies, Torts, and Introduction to the Legal Profession. He focuses his research and writing on racial inequalities in the public education system, school discipline, the school-to-prison pipeline, students' rights, and other issues in education law. His scholarship has been or will soon be published in the Washington University Law Review, Wisconsin Law Review, Emory Law Journal, Arizona State Law Journal, Colorado Law Review, and Connecticut Law Review among several other journals. Professor Nance currently serves as the reporter for the American Bar Association's Joint Task Force on Reversing the School-to-Prison Pipeline, where he is co-authoring a report and recommendations and proposing resolutions for the ABA to adopt to help dismantle the school-to-prison pipeline nationwide.

In addition to earning a J.D. at the University of Pennsylvania Law School, Professor Nance has a Ph.D. in Education Administration from

the Ohio State University, where he also focused on empirical methodology. Prior to joining the University of Florida Levin College of Law in 2011, Professor Nance was a Visiting Assistant Professor of law at the Villanova University School of Law and a Visiting Assistant Professor of Applied Statistics at the Ohio State University's College of Education. He also was a litigation associate at Skadden, Arps, Slate, Meagher & Flom LLP for several years and clerked for Judge Kent A. Jordan of the U.S. Court of Appeals for the Third Circuit and the U.S. District Court for the District of Delaware. Before attending graduate school and law school, Professor Nance served a public school math teacher in a large, metropolitan school district.

Marcia Owens

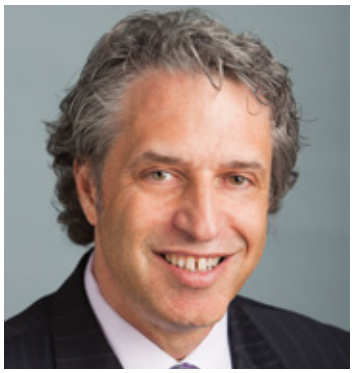
Marcia Owens is a partner at Hamilton Thies & Lorch LLP. Marcia represents clients in all aspects of real estate, from finance and workouts to leasing and development. Marcia has experience in office, industrial, and mixed use transactions, with a parti- cular concentration in retail development and leasing, and the restructuring and workout of loans and distressed assets. Marcia has represented clients in numerous transactions involving acquisitions and dispositions (including vacant, improved or income-producing assets), complex debt and equity financing, retail leasing (including the negotiation of leases with national department stores, big box retailers, junior anchors, grocery stores and national small shop tenants), and complex development and reciprocal easement agreements. Her experience spans the country, representing clients with transactions in states such as Illinois, Indiana, Wisconsin, Missouri, Kansas, Oklahoma, South Carolina, Texas, Arizona, Colorado, California, Minnesota, Ohio and Kentucky. Marcia not only has the technical experience necessary for a sophisticated real estate transaction, but prides herself on partnering with her clients to implement the strategies necessary to accomplish the client's goal and get a deal done.

Marcia is also a leader in advancing women in law. She served as chair of the Women's Global Collaborative at Edwards Wildman Palmer LLP, the chair of the Women's Initiative at Wildman, Harrold, Allen & Dixon LLP and has served as the President of the Coalition of Women's Initiatives in Law. She has been recognized for her achievements as a lawyer and regularly writes and speaks on various topics regarding advancement.

Marcia has a passion for the increased education and opportunity of children in the Chicagoland area. She represents Friends of Coonley School, a not-for-profit organization operating for the benefit of the John C. Coonley School in Chicago, serves on the Board of Trustees for the Kohl Children's Museum of Greater Chicago and is a member of the Leadership Council of the Chicago Public Education Fund.

Lauren van Schilfgaarde

Lauren van Schilfgaarde serves as the Tribal Law and Policy Institute's (TLPI) Tribal Law Specialist, which includes facilitating technical assistance to tribal courts, including Healing to Wellness Courts, and researching legal and policy issues as they face tribal governance and sovereignty. Prior to TLPI, Lauren served as law clerk for the Native American Rights Fund and the Legal Aid Foundation of Los Angeles. Lauren is licensed in the State of California, and currently serves on the board of the National Native American Bar Association, the American Bar Association's Center for Racial and Ethnic Justice, and the American Bar Association's Tribal Courts Council. She recently finished serving a 3-year term on the board of the California Indian Law Association. Lauren graduated from the UCLA School of Law, where she focused her studies on tribal and federal Indian law. While in law school, she served as president of the Native American Law Students Association and on the board of the National Native American Law Students Association. Lauren participated in two tribal clinics, including the Tribal Legal Development Clinic and the Tribal Appellate Court Clinic.



Leon Silver

Leon Silver is the co-Managing Partner of Gordon & Rees' Phoenix office and is the National Practice Leader of the firm's Retail & Hospitality Practice Group. He is also a member of Gordon & Rees' Privacy & Data Security and Commercial Litigation Practice Groups.

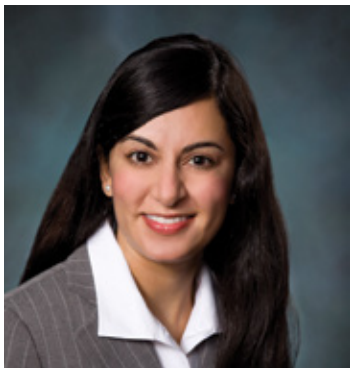
An experienced trial lawyer, Leon handles complex commercial and real estate disputes for national retailers, restaurants, hotels and management companies, sophisticated real estate investors and developers. He has worked on a variety of finance, accounting, business fraud and real estate related disputes and advises clients on data security issues. Leon draws on his significant experience in trials, arbitrations, mediations and appeals, to help his clients find the most effective and efficient solutions to the myriad disputes faced by businesses today. Leon has authored, lectured, and led seminars on the national security and business ramifications of the collection of consumer data and preparing for, preventing and mitigating the loss from data-breach incidents and litigation.

Leon currently serves as Co-Chair of the DRI Retail and Hospitality Committee's Commercial Litigation SLG. He is a member of the Sedona Conference Working Group 11 for Data Security and Privacy Liability, a fellow of Litigation Counsel of America and a Sustaining Member of Arizona's Finest Lawyers. He has been recognized by Az Business Magazine as one of the top 100 lawyers in Arizona in 2016 and top 10 Litigators in 2013. He has also been recognized by Southwest Super Lawyers since 2008.

A long committed volunteer and former high school art teacher, Leon is the founder and community advisor for the Liberty Project, a think tank,

networking and mentoring program for law students and young lawyers. He serves on the Board of Directors of the TakeThe Lead, an advocacy and training group committed to reaching gender parity in all sectors. He is a former board Chair and current Chair of the Trustees of Planned Parenthood Arizona and a former board member of the YWCA of Greater Phoenix. He writes periodically for Take The Lead's "The Movement Blog" and has been featured in the Huffington Post for his work for gender parity in the legal profession.

In addition to his law practice, Leon plays bass and sings in a popular local classic-rock band and his large, colorful abstract paintings can be seen online and in homes, offices and public spaces throughout the Southwest. He has two children and one grandchild.



Mona Mehta Stone

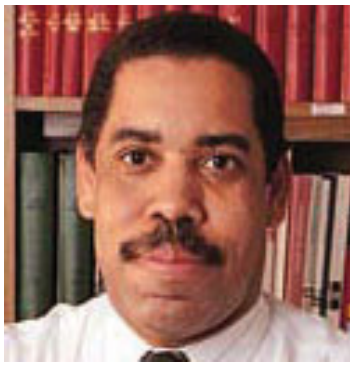
Mona Mehta Stone is Vice President and General Counsel with Goodwill Industries of Central Arizona, Inc. With nearly twenty years of legal experience, Ms. Stone oversees and manages all aspects of Goodwill's legal affairs and compliance operations. She is responsible for partnering with many business units within Goodwill, including Real Estate/Commercial Maintenance, Human Resources, Finance, Retail, and Workforce Development. Prior to joining Goodwill, her areas of practice focused on business and commercial litigation, labor and employment, antitrust, Foreign Corrupt Practices Act and anti-bribery and corruption enforcement. Mona has authored several books and countless articles, and is a frequent speaker at numerous seminars, conferences, and forums. She was named one of the Top 25 Arizona Women attorneys by 2016 Southwest Super Lawyers and one of Chicago Law Bulletin's "40 Under Forty Attorneys to Watch" in 2008. She also was named "2014 Career Development Liaison of the Year" at her prior law firm, Greenberg Traurig. She is admitted to practice in Arizona, Illinois, and before the U.S. Court of Appeals for the Ninth Circuit, U.S. District Courts for the Northern and Central Districts of Illinois, and the U.S. District Court for the District of Arizona. Ms. Stone earned her juris doctor from Tulane University School of Law and bachelor's degree from Bradley University.

Serafin Tagara

Serafin Tagarao is a labor and employment at Gordon & Rees, LLP and a member of the Philippine American Bar Association (PABA) Board of Governors. Edward Dailo is a member of the PABA Board of Governors. Christine Gonong is a former clerk for the Supreme Court of Hawaii, United States District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit and President of PABA for 2015.

Based in Southern California, PABA, the largest local association of Filipino-American lawyers in the United States, is comprised of attorneys, judges, and law students. It was formed in response to the legal issues

confronting the Filipino-American community and the professional concerns of Filipino-American lawyers and students seeking to enter our profession. PABA aims to strengthen, educate, and support our community through advocacy, legal clinics, pro bono legal services, continuing education seminars, mentoring programs, and scholarships.



Ronald Turner

Ronald Turner is the A.A. White Professor of Law at the University of Houston Law Center. A graduate of the University of Pennsylvania Law School and Wilberforce University, he teaches employment discrimination, employment law, labor law, constitutional law, and other courses and is the recipient of several teaching awards. He has published several books and numerous law review articles addressing various issues of law and policy, and is a member of the American Law Institute and a Fellow at the American Bar Foundation. Prior to joining the Law Center faculty, he taught at the University of Alabama School of Law and practiced law in Chicago, Illinois. He also served as a visiting professor of law at the William & Mary Marshall-Wythe School of Law and as a visiting professor of history at Rice University.

Cheryl L. Wade

Cheryl L. Wade is the "Dean Harold F. McNiece" Professor of Law at St. John's University School of Law. She teaches Issues of Race, Gender and Law, Business Organizations, Corporate Governance and Accountability, and Race and Business. Professor Wade is a member of the American Law Institute, a national organization of prominent judges, lawyers and academics who work to clarify, modernize and reform the law.

Professor Wade has written book chapters and law review articles on securities, education law and the intersection of race and business. She has been invited to present at and write for many symposia including articles published by Boston University Law Review, Tulane Law Review, The Maryland Law Review, The Washington & Lee Law Review, and The Iowa Journal of Gender, Race & Justice. Her articles have been cited in several leading law reviews. One of her articles on education law, When Judges Are Gatekeepers: Democracy, Morality, Status and Empathy in Duty Decisions (Help From Ordinary Citizens) was listed in The National Law Journal's Worth Reading Column. Another article, Corporate Governance as Corporate Social Responsibility: Empathy and Race Discrimination, was excerpted in a text entitled "Corporate Governance: Law, Theory and Policy. Her article, Transforming Discriminatory Corporate Cultures: This is Not Just Women's Work was listed on the Social Science Research Network's Top Ten Download List for Diversity Studies.

Professor Wade has been invited to present at many university conferences and workshops on issues of corporate and civil rights law including the UCLA School of Law Critical Race Theory Workshop, the Theory and Practice of Business Decision Making At Boston College School of Law, Boston

University's conference on "The Role of Fiduciary Law and Trust in the Twenty-First Century" and the Western New England School of Law Clason Speaker Series. Professor Wade was chosen among several applicants to participate in the "Corporate Citizens in Corporate Cultures: Restructuring and Reform" workshop sponsored by the Feminism and Legal Theory Project at Cornell Law School. She delivered the keynote address at the University of British Columbia Faculty of Law Symposium on Shareholder Activism.

Professor Wade is a frequent speaker and panelist at conferences organized by the Society of American Law Teachers, The American Association of Law Schools, The National Bar Association, The National Association for the Advancement of Colored People, The Law and Society Association, and The Association of University Women. She was invited to appear on the opening plenary session for the 2009 American Association of Law Schools Midyear Conference on Business Associations. In 2008, her paper was selected to be presented at the American Association of Law Schools' Section on Securities Regulation. The paper was presented at the AALS Annual Meeting and published with the other panelists' papers in the Brooklyn Journal of Corporate and Financial Regulation. Professor Wade has appeared on radio and cable television programs discussing issues relating to corporate and civil rights.

Professor Wade organized a symposium, "People of Color, Women and the Public Corporation: Conference on Racial and Gender Equity in the Business Setting", sponsored by St. John's University School of Law. This symposium brought together leading scholars in the areas of corporate governance, critical race theory, employment discrimination and feminist legal theory. The papers from this symposium were published in the St. John's Law Review. Professor Wade is a regular contributor to a blog on issues about social justice and corporate governance at http://corporatejusticeblog.blogspot.com/

Professor Wade was a Visiting Professor of Law at Washington and Lee School of Law in the fall, 2003. In 2001, she taught Law and Race in Sydney, Australia at the University of New South Wales.

Professor Wade has received two teaching awards from St. John's University School of Law's Deans. Prior to joining the faculty at St. John's Law School, Professor Wade served on the faculty at Hofstra Law School. While at Hofstra, Professor Wade was chosen to serve as an associate for The Merrill Lynch Center for the Study of International Financial Services and Markets. Professor Wade received the Outstanding Faculty Member and Outstanding Alumna Award from The Hofstra Black Law Students Association in 1996, and received faculty recognition awards from the group in 1993, 1998, 1999, 2000 and 2001. Before joining the Hofstra faculty, Professor Wade was an associate in the corporate department of the New York City law firm, Paul, Weiss, Rifkind, Wharton & Garrison. For several years, Professor Wade served on the Board of Directors of the Women's Action Alliance, a not-for-profit corporation devoted to the study and analysis of issues related to the sociological development and empowerment of women and girls. She served as the chair of the Task Force on Diversity in Law Faculty Hiring, which was part of the Committee on Law Student Perspectives of The

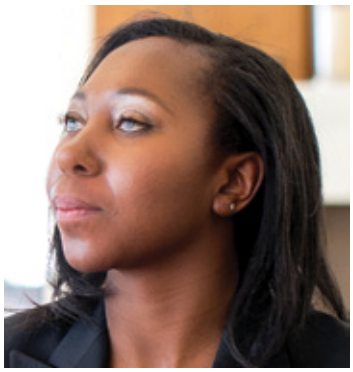
Association of the Bar of the City of New York. Professor Wade served on the 2009 Scholarly Papers Review Committee of the American Association of Law Schools.

Before attending law school, Professor Wade was a teacher of Spanish and bilingual education for the Board of Education of the City of New York. She received a Masters' degree in Spanish from St. John's University where she was installed in Sigma Delta Pi, an honor society for the study of foreign languages.

Professor Wade was awarded a Juris Doctorate with distinction from the Hofstra University School of Law where she was a member of the Law Review. She graduated in the top 2% of her law school class. While a student at Hofstra Law School, Professor Wade received the Law School's Citation of Excellence for Corporation Law Courses and the New York State Trial Lawyers Association's Thurgood Marshall Award.

Lisa Webley

Dr. Lisa Webley is Professor of Empirical Legal Studies and director of the Centre on the Legal Profession at Westminster Law School, University of Westminster. She also holds a Senior Research Fellowship at the Institute of Advanced Legal Studies University of London and is a Senior Fellow of the Higher Education Academy. She has extensively researched gender and diversity in the legal profession and legal education, which has included collaborative research projects on the barriers and challenges faced by women and minority individuals within the legal profession and the role of women in law firms, recent publications include: Sommerlad H. & Webley, Duff, L., Muzio, D., Tomlinson, J. (2013) Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices (London: University of Westminster Law Press. She also conducts research on legal education, legal ethics and access to justice and has undertaken funded empirical research and consultancy for public bodies and organisations including: the European Commission; the Ministry of Justice; the Law Society of England and Wales; the Legal Services Board; the Legal Services Commission. She serves on the Equality, Diversity and Inclusion Committee of the Law Society of England and Wales, is an academic advisor to the Interlaw Diversity Forum and the Apollo Project and she is Secretary of the International Association of Legal Ethics. You may find out more information about Lisa here: http://www.westminster.ac.uk/about-us/our-people/directory/webley-lisa



Angela Winfield

Angela Winfield is the Program Manager for the Northeast ADA Center, a grant funded project of the National Institute of Disability, Independent Living and Rehabilitation Research at Cornell University's K. Lisa Yang and Hock E. Tan Employment and Disability Institute. In this role, she coordinates the Northeast ADA Center's technical assistance activities, develops informational materials and delivers training programs on the Americans with Disabilities Act for New York, New Jersey, Puerto Rico and the U.S. Virgin Islands. Angela also is Of Counsel at Barclay Damon, LLP where she is a member of the commercial litigation practice group representing individuals and entities in various disputes at trial and on appeal. She also serves on the firm's diversity leadership team. Angela has served on multiple not-for-profit boards of directors, including serving as President of her community's United Way. Angela was appointed to the American Bar Association's Commission on Disability Rights in 2015. Angela earned a J.D. from Cornell University and a BA from Barnard College of Columbia University.

Brian J. Winterfeldt

Brian J. Winterfeldt is an Intellectual Property partner in Mayer Brown's Washington DC and New York offices, and co-leader of the Global Brand Management & Internet practice.

Brian advises clients on the creation of global trademark and branding strategies. He also develops programs to register and enforce clients' intellectual property rights and protect against infringement of their trademarks and other branding elements in the US and internationally, including domestic and international trademark counseling, clearance, prosecution, enforcement and litigation. In addition, Brian advises clients on trade dress, Internet governance and domain name issues, including domain name disputes such as Uniform Domain Name Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension System (URS) complaints, and other similar processes for country code top-level domains (ccTLDs), to disable or recover infringing domain names. He regularly counsels global leaders in the retail and apparel, media, financial services, insurance, consumer products, food and beverage, hospitality, and Internet and technology industries.

Brian has developed one of the leading practices specializing in advising on evolving Internet issues, and is an expert on the Internet Corporation for Assigned Names and Numbers' (ICANN's) new generic top-level domain (gTLD) program.

This work includes drafting and prosecuting new gTLD applications for applicants, negotiating related agreements, and advising them on the legal and policy work needed to support new registries. He also develops advocacy and enforcement strategies in this space for brand owners, including advice surrounding registration of trademarks in the Trademark Clearinghouse (TMCH) and assessment of domain name porfolio management

strategies in light of the influx of new gTLDs. In addition, he regularly counsels clients and provides training on cutting edge Internet issues such as social media plaforms, including developing and administering social media policies and promoting and protecting clients' brands in this ever-evolving space. Brian is a member of ICANN's Intellectual Property Constituency (IPC), which serves as a voice for brand owner concerns in Internet policy development. He has held leadership roles within the IPC for several years, including serving for the past four years as a representative for the IPC on ICANN's Generic Names Supporting Organization (GNSO) Council, the body that creates global domain name policy, as well as previously serving as IPC Treasurer.

As a prominent voice in the IP arena, Brian has written numerous articles on trademark law and is a frequent speaker at industry events on topics such as trademark law, Internet governance and social media. He has served as co-chair to several major conferences for the International Trademark Association (INTA), including the Trademarks and the Changing Internet Landscape conference in 2013, and is currently a special advisor for INTA's Internet Committee and

co-chair for INTA's Trademark Administrators Committee Internet Project Team. He also received INTA's 2011 Volunteer Service Award for his work on behalf of INTA in the Internet field, is a member of the project team for the 2016 INTA Annual Meeting, and is serving a term on INTA's Board of Directors through 2017.

In addition to his IP practice, Brian is a leading voice for diversity in the legal industry, particularly in connection with lesbian, gay, bisexual, and transgender (LGBT) issues. Brian chaired the IP Law Institute during the 2014 and 2016 Lavender Law Conference & Career Fairs (the largest national conference in the United States for LGBT attorneys and law students), and chaired another IP Law Institute in August 2015 that featured panels on trademark, patent and Internet law. Brian serves on the Board of Directors for The Trevor Project, the leading provider of suicide prevention and crisis management services for lesbian, gay, bisexual, transgender and questioning youth in the United States. Brian was also recently appointed Secretary of the Trevor Project, earning him a place on the organization's Executive Committee. In addition, he was successfully nominated, while at a prior firm, for INTA's 2014 Volunteer Service Award for Pro Bono Services, almost exclusively in connection with his pro bono work for diversity-related organizations. Brian also was awarded the prestigious Rainmaker Award by the Minority Corporate Counsel Association in 2013, an award given to only 15 diverse partners in the United States who distinguish themselves by being leading practitioners with robust practices. Brian also co-authored an article in 2014 on issues facing LGBT attorneys in the legal sector for the Institute for Inclusion in the Legal Profession (IILP), and spoke in April 2015 at a symposium in New York, presenting his article to attendees.

Daniel Winterfeldt

Daniel is a partner in the firm's Financial Industry Group. Currently based in Reed Smith's London office, Daniel's practice focuses on representing US, UK, European and Asian investment banks and corporate issuers in a wide range of securities transactions, including Rule 144A and Regulation S equity and debt offerings; Category 3, Regulation S transactions for US companies listing in the United Kingdom; rights offerings; exchange offers; equity-linked securities offerings; initial public offerings and secondary and follow-on offerings of equity securities, including SEC-registered transactions. He also provides ongoing US securities advice to the London Stock Exchange. Daniel's US securities practice is highlighted in various directories:

- Chambers & Partners 2016 states that Daniel "is tenacious, determined and has a deep knowledge of US securities law," comments one client, who adds: "This enables him to think about solutions that work from a UK and US legal and commercial perspective."
- Legal 500 2015 recognises Daniel as being a "technically strong and driven" key contact, as well as recommended by Legal 500 for US securities matters.
- Chambers & Partners 2014 states: "Daniel Winterfeldt is 'someone you want to have on your side' according to sources, who also highlight that he is 'commercial and energetic.'"
- Legal 500 for 2013 stated: "Daniel Winterfeldt is a 'star performer' praised for his 'tireless, collegial and commercial' approach."

Daniel is founder and co-chair of the The InterLaw Diversity Forum for Lesbian, Gay, Bisexual and Transgender ("LGBT") Networks; an inter-organisational forum for the LGBT networks in law firms and all personnel (lawyers and non-lawyers) in the legal sector, including in-house counsel. InterLaw has over 1,500 members and supporters from more than 70 law firms and 40 corporates and financial institutions.

As the InterLaw Diversity Forum's work has expanded into best practice in inclusion and cultural change, the Apollo Project was founded by Daniel in 2014 with the Financial Times as its media partner. The Apollo Project is a cross-sector initiative for businesses and organizations of all sizes, aiming to give organizations the learning and practical tools to better embed more inclusive working practices and culture.

Daniel's work in international capital markets, as well as diversity and inclusion, has been recently shortlisted this year by the FT Innovative Lawyer Awards for Innovation in Legal Expertise and Innovation in People, respectively.

Margo Wolf O'Donnel

Margo Wolf O'Donnell is a Shareholder at Vedder Price, a member of the firm's Litigation and Employment practice areas, and the Chair of the firm's Diversity Committee.

Margo has received numerous accolades for her work defending companies in cases involving breach of contract, business torts and employment issues, as well as for her training and counseling in the prevention of litigation. Law Bulletin Publishing Company recognized Margo as one of 15 "Women Making an Impact" in its first edition of Women in Law, and selected Margo for its inaugural "40 under 40 Hall of Fame" award. Today's Chicago Woman magazine featured Ms. O'Donnell as one of its "100 Women to Watch," and Illinois Super Lawyers picked Margo as one of the "Top 100 Attorneys in Illinois," and "Top 50 Women Attorneys in Illinois." Margo holds an "AV Preeminent" Peer Rating by Martindale-Hubbell (the highest possible rating). She was honored as one of The Best Lawyers in America, and Legal 500 United States recognizes Margo in the Labor and Employment—Workplace and Employment Counseling category. Margo also is a Fellow of the American Bar Foundation and the Litigation Counsel of America.

In addition to her client work, Margo has taken on leadership roles in many professional and civic groups. She is a past President and Expansion Chair of the Coalition of Women's Initiatives in Law, a legal association with attorneys from 70 member law firms and 25 corporations, which supports and fosters women's success in the law. She is a past chair of the Young Leaders Fund of the Chicago Community Trust, and she currently sits on the boards of the Yale Alumni Fund, the Auxiliary Board of the Art Institute of Chicago, the Development Committee of the University of Chicago Laboratory Schools, and the Woman's Athletic Club. Margo graduated magna cum laude with distinction from Yale University, and she received her juris doctorate from the University of Michigan Law School.

Drew Gulley

Drew Gulley is a Program Manager, Diversity & Inclusion at Bloomberg LP. As a member of Bloomberg's global Diversity & Inclusion team, Drew provides strategic direction and subject matter expertise to a portfolio of business units and employee resource groups.

Drew's current business guidance includes Bloomberg's Financial Products groups (encompassing the sale and development of the Bloomberg Professional Service), Legal, and Chief Risk & Compliance functions. In addition, he has oversight across Bloomberg's Military & Veterans and Abilities Communities, serving also as the primary contact and catalyst for relationships with external partners in those affinities. As a recovering attorney, Drew is responsible for advocating for policy changes, including, for example, Bloomberg's parental policies and support for public non-discrimination positions. Regionally, Drew's role encompasses operations in North America and in Asia.

Prior to joining Bloomberg, Drew was Director of Strategic Partner Programs at Lambda Legal, a national organization committed to achieving full recognition of the civil rights of LGBT people and those with HIV. His background also includes work as a bank finance associate with Latham & Watkins LLP (including a secondment to the leverage finance desk at Barclays PLC) and as a law clerk on the Federal Fifth Circuit Court of Appeals.

Drew received his J.D. from the Maurice A. Dean School of Law at Hofstra University (summa cum laude and Editor-in-Chief, Hofstra Law Review) and holds a B.A. from Drake University (cum laude and current member, National Alumni Board). Before law school, Drew spent a year teaching in Chongqing, China and retains an interest in all things Asia. He is currently a member of the New York City Bar Association's LGBT Rights Committee and the Enhancing Diversity in the Profession Committee.

Meredith Moore

Hallmarks of Weil's diversity efforts under Ms. Moore's leadership include biennial diversity month celebrations globally, individual affinity group conferences, Upstander@Weil diversity ally initiative, and an annual two hour mandatory diversity training requirement for all attorneys and staff. In addition, she spearheads the Weil Pay it Forward initiative which fosters inclusion by empowering associate and staff led teams to leverage Funds into lasting community impact.

Prior to joining the Firm, Ms. Moore launched the Office for Diversity at the New York City Bar Association. In that capacity, she worked with major legal employers (law firms, in-house legal departments and government legal employers) to foster more diverse and inclusive work environments. Many of the efforts she initiated continue on over 10 years later such as the Diversity Benchmarking Report series and the annual Diversity Champion Award.

Ms. Moore previously served as Director of Research and Information Services at Catalyst, the leading research and advisory organization working with businesses and professions to build inclusive environments and expand opportunities for women at work. During her seven years at Catalyst, Ms. Moore was instrumental in many of Catalyst's significant accomplishments, including the groundbreaking study, "Women in the Law." Ms. Moore spearheaded research on global diversity, including leading a study of female and male leaders in European business and developing a practical guide for increasing the number of women in global business.
Ms. Moore chairs the Leadership Institute Advisory Board for the Council of Urban Professionals (CUP) and serves on the Board of Directors for PALS (Practicing Attorneys for Law Students.) She has also been honored by the YWCA of New York City's Salute to Women Leaders and the Girls Scouts Council of New York City as a Woman of Distinction. Ms. Moore previously served as an adjunct assistant professor at New York University's Wagner School of Public Service and Columbia University's School of International and Public Affairs.

She received her master's in Public Policy and Administration from the School of International and Public Affairs at Columbia University and her Bachelor of Arts in Political Science from the State University of New York College at Geneseo.

2017 DIVERSITY AND INCLUSION IN PRACTICE ROUND-UP

2017 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 IILP 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.TheIILP.com.

Pipeline Efforts

Sedgwick LLP, The Inclusion & Diversity Committee's Pipeline Initiatives

Sedgwick's Pipeline Programs sponsor young minority students interested in pursuing legal careers as part of Sedgwick's efforts to create and preserve a diverse workplace and to promote diversity in the legal profession in general. For several years, Sedgwick has been involved with Posse and SAGE, which involve college and high school students, as well as law school interns. In 2014, the pipeline subcommittee examined these programs and determined that, while they are all worthwhile efforts at developing a more diverse work force, it would be more effective to allocate available resources to law school internships for diverse candidates.

In 2015 and 2016, several of Sedgwick's offices offered company-funded, 4 to 10-week internships through collaboration with local law schools that share the firm's inclusion and diversity goals. The aim of the program is to create relationships with rising stars in the legal field, so that we can hire them as lateral associates in the future. The benefit is twofold; the firm gains ongoing access to a diverse pool of talented candidates, and the law students get invaluable hands-on training and experience during their internship. This initiative advances the Firm's overall pipeline goals to attract, retain and promote diverse candidates.

For more information about Sedgwick LLP's Inclusion and Diversity Committee's Pipeline Initiatives, please contact Katelin O'Rourke Gorman at (212) 422-0202 or katelin.gorman@sedgwicklaw.com.

Programs for Law Students

Beveridge & Diamond, P.C. Thurgood Marshall Clerkship Program

The Thurgood Marshall Clerkship Program (the Program) is a collaborative effort of the Maryland Office of the Attorney General, several local law firms, and area law schools designed to attract diverse law students who demonstrate exceptional leadership potential to the field of public service. The goal is to encourage these students to consider public sector service during their legal careers by providing them with an excellent summer internship that enhances their future employment opportunities.

In 2013, Beveridge & Diamond (B&D) helped establish the Program and has been a key leader of it ever since. Thurgood Marshall was a native Marylander, the first African-American member of the U.S. Supreme Court, and a strong believer in advancing opportunities for young people interested in the law.

The Program was conceived following a conversation among B&D's managing principal Benjamin Wilson, Baltimore office managing principal Pamela Marks, firm diversity principal Paula Schauwecker, and Maryland Attorney General Douglas Gansler (Ms. Marks previously worked as an Assistant Mary-

land Attorney General). The conversation focused on ways the Attorney General (AG)'s office could help improve diversity in the public sector legal community and the broader Maryland legal community, and promote public sector career opportunities. With the promise of the initial concept, B&D took the lead on convening planning sessions with other Maryland law firms, law school deans, and the AG's office to further develop and secure funding for the Program.

To select the inaugural class of participants (referred to as "Marshall Fellows"), in May of 2013 a diverse panel of six attorneys reviewed 57 applications from 11 different law schools. The selected Marshall Fellows hailed from the University of Maryland, the University of Baltimore, and Howard University. The six students who accepted the fellowships were assigned to various divisions within the AG's office where they had substantive and meaningful work experiences on a range of regulatory, litigation, contractual and other issues, and participated in training programs during which they learned about the range of work performed by the Office of the Attorney General. Since 2013, the Program has seen the same strong level of interest and participation.

The program was initially sponsored by five law firms, and later a sixth joined: B&D; Gordon Feinblatt LLC; Miles & Stockbridge, PC; Saul Ewing, LLP; Whiteford, Taylor, Preston, LLP and DLA Piper.

The Program consists of a summer clerkship designed to attract students who possess a broad array of diverse talent, background, and experience. In order to be considered for the Program, interested first-year law students must submit a résumé, current law school transcript, and an essay articulating their commitment to equality and diversity and how they have overcome a social and/or economic disadvantage. Marshall Fellows are selected from a variety of schools based on criteria that include devotion to public service and the public good and exceptional leadership potential.

The clerkship program is 8-weeks and participants are expected to work 40 hours per week and to attend all program-related events. The Fellows receive a $3,300 stipend and are assigned to one of the several divisions of the Maryland Office of the Attorney General.

Since personal connections are important for helping law students grow into successful practitioners, these internships are supplemented with programs that provide forums for the Fellows, their mentors within the AG's office, and sponsoring firms to engage in topical discussions related to career development and diversity in the legal profession. For example, on June 8, 2016, B&D's Baltimore office hosted a breakfast for this year's clerkship class during which Mr. Wilson, associate Hana Vizcarra and an assistant attorney general addressed the group on their career development and litigation.

In addition to hosting networking events and coordinating with other law firms on the Program generally (including providing funds for other events), B&D provides mentoring opportunities to the Marshall Fellows.

Since its inception in 2013, more than 20 law school students have participated in the program. This year the Program had seven participants. In addition, the Program receives support from countless lawyers from the sponsoring firms and employees within the AG's office.

Each Marshall Fellow receives a $3,300 stipend (thus, roughly $26,000 annually). The Program also requires approximately $5,000 annually to fund its activities and events.

The program was initially sponsored by five law firms, and later a sixth joined: B&D; Gordon Feinblatt LLC; Miles & Stockbridge, PC; Saul Ewing, LLP; Whiteford, Taylor, Preston, LLP and DLA Piper. The firms provide financial support and volunteer time and meeting space for Program activities.

Every year since its founding, the Program has been a success and has benefited all of the stakeholders involved. First, the Marshall Fellows have benefitted from the opportunities the Program provides to gain valuable hands-on work experience and to build relationships with their colleagues and mentors. Each year, the Program garners a strong pool of applicants from regional and national law schools including Harvard Law School, Georgetown Law Center, University of Virginia, University of Maryland, University of Baltimore, Howard University, George Washington University, Tulane University, North Carolina

Central University, John Marshall Law School, Stetson University, Southern University, American University, and Washington and Lee University.

Second, we understand that the AG's office has been extremely pleased with how smoothly the Program has evolved though the AG's staff devotes significant resources into planning the program and mentoring the participants. At the same time, the AG's office benefits from the work of the talented professionals that the Program draws and the opportunity to lead by example in supporting a program that improves diversity in the public sector legal community. Also, as a pipeline program, the Program has enabled both the AG's office and the law firms to connect with top-notch diverse legal students with strong qualifications for success.

Finally, convening law firm partners in Baltimore to discuss diversity and inclusion and to work together on the Program resulted in the establishment of a Diverse Law Firm Partners Network in Baltimore. The Program serves as an example of how innovation, hard work and perseverance can result in significant and long-term impact in the community.

Obstacles that the Firm, and any other organization seeking to launch a similar program, might encounter include obtaining sufficient and sustained commitment from supporting law firms or other partner organizations to fund and launch (and maintain) the program. Also, this program was helped in large measure by support from the Maryland AG's office, which had to navigate operational and potential ethical issues relating to collaboration with private entities and receipt of private funds to support the program. We are pleased that the Maryland AG's office was able to work with us to resolve these issues so the program could launch.

If replication is not ideal, some ways to support the program and its ideals include:

- Promoting/publicizing the program's existence
- Possibly funding travel or housing expenses for law students who are not in the Baltimore, Maryland area
- Considering other kinds of public private partnerships that would give diverse students a meaningful experience early in their career
- Exploring independent or even individual ways to provide mentoring and networking opportunities to first year law students in their first year summer.

For more information, please contact Pamela Marks, B&D Baltimore Office Managing Principal at 410-230-1315 or pmarks@bdlaw.com.

See also the FAQ page on the website of the Maryland Office of the Attorney General.

Programs for Young Lawyers

Neal, Gerber & Eisenberg LLP's Associate Stay Interview Program

Neal, Gerber & Eisenberg LLP formalized its diversity efforts in 2002 with the formation of a Diversity & Inclusion Committee which is comprised of 8 attorneys and director-level administrators. Our Diversity & Inclusion Committee works to expand and enhance the firm's diversity initiatives and to build upon the philosophy of inclusion long existing in the firm. In discussing its strategic plan to better support the firm's diverse attorneys, one of the Diversity & Inclusion Committee members suggested that rather than speculating about problems and experiences based on exit interviews or general hunches, we should ask our lawyers directly. And thus was born our Associate Stay Interview program.

Our goals for this program were two-fold: 1) to learn about the experience of our associates and associate counsel, particularly that of women and minorities; and 2) to foster communication and enhance the sense of belonging and value among our younger talent.

We retained Arin Reeves, Ph.D. and her company Nextions to assist us. Dr. Reeves is a lawyer and sociologist with many years of experience using interviews to learn about an environment. Because one goal was enhancing inclusion and building social connections, Dr. Reeves recommend that we utilize confidential 1-on-1 peer interviews, rather than professional interviewers.

The suggestion of conducting these interviews was not met with universal approval. Some were concerned that we might learn about problems that we would be unable to fix, while others thought that associates would not feel comfortable honestly sharing quite personal experiences. Fortunately, we had the support of our leadership and the trust of our associates and associate counsel who committed to the process.

Dr. Reeves trained a diverse group of associates to act as peer interviewers. The interviewers were selected based on their reputation for discretion and their listening skills. The peer interviewers conducted 25 recorded interviews. Dr. Reeves reviewed the transcript of each interview and drafted a report of findings and recommendations, which were reviewed and approved by the peer interviewers, and then submitted to the firm's Executive Committee.

There have been many benefits. First, while overwhelming perspectives in the interviews were that the associates and associate counsel were having positive and engaged experiences at the firm, the fact of investing the time, money and other resources in order for the Executive Committee and Diversity & Inclusion Committee to hear the voice of our lawyers contributed to that engagement. Second, we also learned where we do have pressure points. For example, we learned that one area of discord shows up in generational differences surrounding firm culture and values. The findings and recommendations have informed our decision to implement a more diffuse strategy for inclusion with visible and vocal support coming from the Managing Partner, with a focus on forming interpersonal relationships and communicating through various channels rather than creating complex structures or hosting one-off programs within the firm.

For more information or questions about this project, please contact Director of Professional Recruitment & Development, Maria J. Minor at 312-269-5226 or at mminor@ngelaw.com.

Nurturing Top Talent at McDermott Will & Emery

McDermott Will & Emery's Diversity Talent Development Initiative affords racially and ethnically diverse junior associates at the Firm the opportunity to develop relationships with key partners across the Firm, who serve as mentors and career counselors.

This year 18 participating associates will be meeting regularly with their own boards of advisors, which work with the associate to create and review career plans and monitor the quality of work assignments and professional development opportunities, both internally and externally. Each board of advisors includes four partners (the associate's practice group leader, a member of the Firm's Racial & Ethnic Diversity & Inclusion Committee, the associate's career advisor partner and a "sponsor" partner to champion the associate's development) as well as a professional development specialist and a senior marketing staff member.

This coaching and oversight from Firm leaders helps associates develop their practice and lay the groundwork for a successful career, including representing the Firm's clients in their highest level matters, receiving promotion to partnership, and assuming leadership positions in the Firm. The overriding goal is to make sure that every associate at McDermott gets the same opportunities to succeed by facilitating work on important projects with key people.

Funded through the annual budget of McDermott's Diversity & Inclusion Committee, DTDI is driven solely through the efforts of McDermott lawyers and administrative support and requires no additional paid staff. In our view, there are no obstacles to other organizations replicating this initiative beyond the willingness of its people to dedicate considerable amounts of time to it.

While DTDI is still relatively new, it has garnered extremely positive feedback from participants and

stands to be an effective long-term means of fostering diverse talent. Currently, the initiative operates in the Chicago, New York and Miami offices, with hopes for future expansion. Because Firm leadership has embraced DTDI since its inception, it is clear that this is not simply an initiative from the Diversity & Inclusion Committee but a Firm initiative that we believe is creating a cultural shift in how people view mentoring, sponsorship and diversity at McDermott.

For its work on DTDI, McDermott was honored to receive the Minority Corporate Counsel Association's 2014 George B. Vashon Innovator Award, which recognizes best practices assisting diverse lawyers.

For more information on DTDI, please contact Brent Hawkins, partner and co-chair of McDermott's Racial & Ethnic Diversity and Inclusion Committee, at 312-984-7764 or bhawkins@mwe.com.

Perkins Coie Retention: Mentoring Individual Performance – Back to the Basics

Created in 2009, Perkins Coie developed a process in which our diverse associates and counsel are proactively monitored in a collaborative process on a systematic and monthly basis. This mentoring program allows us to identify resources and create action plans specific to each diverse individual, which has resulted in an increase of diverse lawyers promoted to partnership. Since the inception of this mentoring program, five out of the last seven partner program promotion classes were at least 50% diverse with none of those years less than 40% and having one year as high as 83% diversity. In six of those years, the lawyers of color partner promotions were at least 12% with the highest class at 24%. During this time period with regard to gender, there were at least 20% women partner promotions each year, with the highest at 66.6%.

A key element of the program's success and a larger differentiator is the collaboration with strategic partners. On a monthly basis, personnel partners and business managers from the Business, Commercial Litigation, and Intellectual Property practice groups meet with Chief Diversity Officer to track the performance of our diverse associates in each of these practice areas. Together, they review the same data from a complex, but user-friendly monitoring template provided by our finance department. This template allows us to review each of the 169 diverse associates and counsels individually. All the data fields relevant to production, mentoring, professional development and citizenship.

In addition, this monitoring program brings our recruitment and retention, attorney development and diversity departments together. The combination of key leadership and key departments working together keeps the success of our diverse lawyers front-of-mind on these levels. This allows us to be proactive – not reactive – in their development and success. By providing a proactive approach, this collaborative effort presents opportunities for each diverse lawyer to excel before and after they go through the yearly evaluation process.

For more information, please contact Theresa Cropper at TCropper@perkinscoie.com or 312-324-8593.

LEAD's Financial Institution and Law Firm Mentoring Program

A number of financial institutions and law firms have collaborated to form the Lawyers for Empowerment and the Advancement of Diversity or "LEAD". LEAD is a mentoring program partnership between financial institutions and law firms in which in-house lawyers at financial institutions mentor minority junior associates at law firms. Partnering financial institutions and corporations include Credit Suisse, The Bank of New York Mellon, Morgan Stanley, and Thomson Reuters. Partnering law firms include Cadwalader Wickersham & Taft LLP, Cleary Gottlieb Steen & Hamilton LLP, Clifford Chance US LLP, Mayer Brown LLP, Milbank Tweed Hadley & McCloy LLP, Reed Smith LLP, Sidley Austin LLP, and Wilmer Cutler Pickering Hale and Dorr LLP. Mentors include diverse and non-diverse individuals from the financial institutions. The program includes second through fourth-year law firm associates who participate as mentees.

The initiative for the program came from John Mbiti, an in-house lawyer at Credit Suisse. He felt that while

minority associates at law firms were getting excellent training in the technical skills required to be successful lawyers, law firms were businesses whose success ultimately depended on the ability of a particular lawyer to generate revenues. Unfortunately, because business relationships often tend to develop from personal relationships, minority associates were at a disadvantage because they often did not have extensive personal relationships at corporations and financial institutions. In order to help minority lawyers develop personal relationships which could over time blossom into business relationships, he thought that a mentorship program involving a partnership between financial institutions and the law firms that such institutions already had existing relationships with, would serve as a foothold on which to build and foster relationships for minority associates at such institutions. In order to have a meaningful impact, Mr. Mbiti felt that such a mentorship program had to extend beyond an individual financial institution and a partner law firm. Accordingly, he contacted Sean Fairweather at The Bank of New York Mellon, Seendy Fouron at Morgan Stanley and Deirdre Stanley at Thomson Reuters to see if their institutions would be willing to partner on such a program. The financial institutions enthusiastically endorsed the concept and agreed to invite law firms that they had existing relationships with who were also committed to diversity and inclusion. The law firms in turn welcomed the initiative and working together with the financial institutions, created the framework for the program which successfully launched in November 2015.

Since its inception, LEAD has grown to 100 participating mentors and mentees. Mentor/mentee pairs have informal meetings at a mutually agreed time and place at least once a month. In addition to the informal meetings, the participating institutions host formal scheduled events for all mentors and mentees on a rotating basis. These events are held at least quarterly and are designed to foster the one-on-one relationship while enabling broader networking within the group. The formal scheduled events are a mixture of networking and substantive events. The relevant institution sponsoring an event decides on the format and nature of the event and is responsible for the costs associated with such event. Since LEAD's mentoring program launched last year, events have included panel discussions on career development, cocktail events and networking, and a film screening on the life of Bayard Rustin, a leading civil rights activist, followed by a group discussion on themes from the film such as mentorship, leadership, diversity and partnership.

Diversity Lab LLC OnRamp Fellowship

The purpose of the OnRamp Fellowship is to address the "leaky pipeline" in the legal profession that has contributed to the dearth of women in positions of power (e.g., only 16-19% of partners). In large law firms there is typically a 50/50 gender split at the entry level, but many women leave the profession early in their careers, often for family reasons, and face significant obstacles when they attempt to return. The Fellowship helps law firms and legal departments tap into this untapped pool of experienced high performers who have a strong desire to return to and advance in the legal profession. It also serves as an experiential learning program that provides women returning to the profession an opportunity to demonstrate their value in the marketplace while broadening their experience, skills, and contacts.

The Fellowship is a re-entry platform that matches experienced women returning to the legal profession with top law firms and legal departments for one-year paid positions. The women are paid a stipend and receive benefits with the expectation that they will be engaging with complex client projects while updating their skill sets and taking advantage of training opportunities.

A unique aspect of the Fellowship program is the use of custom assessment tools to both evaluate applicants and analyze organizational values, cultural profiles, and success traits (detailed further below). The Fellowship directors combine this objective data with information from interviews to match candidates and workplaces with the greatest potential for a successful outcome.

Women who have at least three years of post-licensure legal experience and have been on a hiatus from full-time practice for two or more years are eligible to apply for Fellowship positions at participating organizations. All applicants are rigorously screened by the Fellowship to assess their current experience, skill set, and desire to return to and advance in their profession. As part of the screening process, each applicant is expected to:

1) Complete a battery of online skills, personality, and values assessments, which are similar to the hiring and development tools used in corporate environments;

2) Take a writing assessment developed by leading writing authority Ross Guberman; and3) Participate in a behavioral interview conducted by a hiring expert.

Once the initial interview process is complete, the Fellowship directors create a "Screening Scorecard" that is sent to the participating organizations with the outcomes of the assessments and other application details. The Scorecard also compares each candidate to the organization's culture and success traits, which are ascertained through the two supporting talent analyses detailed below. After reviewing the applications, the organizations are encouraged to personally interview their top applicants to determine who will receive a Fellowship offer.

(1)An assessment of the organization's culture is conducted through a brief scientific survey – only 10-15 minutes per participant – similar to the ones used in corporate environments to hire and develop executive talent. The organization's assessment results are analyzed by office, group, and other demographics to better understand the cultural similarities and differences that exist within the organization. These results, along with the organizational success traits, are used to guide the interview and matching process.

(2)High-performing women and men at the organization are interviewed to gather information on their success. Typically called a Bright Spot Study in social science, this analysis allows the organization to better understand why women and men in particular offices or groups are successful. The goal is to learn what contributes to their success so that those behaviors, skills, and approaches can be replicated in the Fellowship program and beyond at the organization.

To support the Fellows' re-entry and career advancement, they receive external support from professional development experts and career counselors. The additional benefits offered through the Fellowship include:

- Training by specialists in negotiations, leadership, oral advocacy, and project management;
- Monthly meetings with other returners to share experiences and exchange ideas for effectively re-entering the profession; and
- Counseling from experienced career coaches who work one-on-one with the Fellows throughout the Fellowship to assist with their skill development and to navigate work/life integration.

Organizations are asked to provide each Fellow with an internal "mentor" and high-level sponsor who can assist with navigating organizational nuances and offer support to the woman as she eases back into the profession.

A Fellow who does excellent work will conclude the Fellowship with a current professional reference that can be leveraged as she pursues her next endeavor. If a relevant position is available, the hope is that the Fellow will be offered a longer-term role in the organization.

Of the women who have completed the OnRamp Fellowship, 86% have transitioned into longer-term positions with prestigious law firms and other organizations. Those who have not received longer-term opportunities in law have leveraged their experience for jobs in academia and other career choices.

As of July 2016, 43 fellows have been hired in 11 cities throughout the United States. Of these, 37% are women of color. The Fellowship launched its pilot in January 2014 with four law firms in the U.S. (Baker Botts, Cooley, Hogan Lovells, and Sidley). In just 2.5 years, it has grown to include 35 organizations that have posted more than 200 positions in the U.S., Australia, Canada, and the U.K., including 29 law firms, five legal departments (3M, Accenture, Amazon, Microsoft, and BMO), and a compliance department (Barclays).

Costs include an annual subscription to an online application management system; travel expenses as-

sociated with meeting with participating organizations and current Fellows, as well as for marketing and education events; fees for the assessments that are part of the screening process; and pay/salary to staff and contractors (see below).

Participating organizations pay an annual fee to participate in the program, which covers the costs of the organizational studies, candidate screening, and the staff required to manage the program. Fellowship applicants pay $175 to defray the costs of the skills, personality, and writing assessments.

Five full-time Diversity Lab employees devote 25-95% of their time to managing the Fellowship. Additionally, the Fellowship contracts with a number of professionals who provide key services, including career coaches and professional development experts, who provide coaching and training to Fellows; data scientists, who provide technical assistance and statistical analysis for the organizational studies; and legal hiring experts, who assist with candidate screening and interviewing.

Law firms and other organizations are now making strides on gender diversity in an entirely new way—by "activating" the experience of women lawyers who paused their practices for life reasons. Would-be returners who previously searched unsupported are now able to take advantage of a supported pathway with a built-in peer network to the next chapter of their legal careers. We have opened a new point in the diversity pipeline and in two years, increased the number of experienced women lawyers in the profession.

The OnRamp Fellowship is unique as a returnship program for a number of reasons, including the rigorous screening process of candidates and the culture and bright spot studies done for the participating organizations, which facilitate the best possible matches between candidates and Fellowship roles. Additionally, both the fellows and their employing organizations receive support from the program throughout the duration of the Fellowship term, and, in many instances, this assistance has facilitated adjustments by a firm and/or a Fellow without which a Fellowship may not have had a successful outcome. Because of the amount of resources necessary to provide the above, it likely would be difficult to replicate the program.

Interested applicants or organizations wishing to explore participating can visit onrampfellowship.com to learn more about the program or contact Jennifer Winslow, Managing Director of the OnRamp Fellowship, as specified below.

For more information, please contact Jennifer Winslow, Managing Director, OnRamp Fellowship at jennifer@diversitylab.com or 720.799.7588.

Programs for All Lawyers

Diversity Lab, LLC, in partnership with Stanford Law School and Bloomberg Law

Women in Law Hackathon.

Law firm leaders have been working internally in their firms for many years to solve the gender parity challenge, but little progress has been made. Despite graduating in equal numbers from law school for the past two decades, women represent only 18 % of partners in large law firms. Created by Diversity Lab in collaboration with Stanford Law School and Bloomberg Law, the Hackathon was developed to disrupt the diversity dialogue by generating innovative ideas and solutions that will lead to greater retention and advancement of women in law firms.

Nearly two-thirds of the Hackathon's participants were managing partners, practice group chairs, or other high-level leaders in their respective firms. They worked together virtually in teams advised by talent experts from January to June 2016 to devise initiatives to help retain and advance experienced women in law firms. They pitched these initiatives to nine high-profile judges including the General Counsel of PepsiCo and the President of Catalyst, Inc. in a Shark Tank-style competition at Stanford Law School on June 24, 2016.

Each team was comprised of six partners from across the country, two talent/diversity thought leaders, and a Stanford law student. The nine teams collectively met approximately 135 times between January-June 2016 to strategize and develop innovative ideas. During this time, they reviewed articles, webinars, and other resources to further their understanding of current research and key challenges. After six months of focused learning, strategizing, and collective wisdom devoted to advancing and retaining talented women in law firms, the teams developed nine original ideas and pitched them to the judges in front of an audience of approximately 200 participants, members of the press including the Wall Street Journal and the ABA Journal, and guests.

Participants, press members, and guests shared key Hackathon moments through social media under the hashtag #hacktheglassceiling and the event achieved "trending" status on Twitter throughout the day. The social media momentum and the nearly one dozen press articles following the event generated further interest in and awareness of gender equity issues in the law as well as the proposed solutions.

In conjunction with the Hackathon, students in the Stanford Law School (SLS) Law and Policy Lab conducted intensive research into gender inequality issues in law firms and released a white paper, Retaining and Advancing Women in National Law Firms, identifying the causes of the gender gap and recommending several steps to close it.

The top three teams selected by the judges and the co-winners in the tie for Crowd Favorite granted their prize money to nonprofit organizations that are helping to advance women in the legal profession and beyond. The winners were as follows:

1st Place: The SMART (Solutions to Measure, Advance and Reward Talent) platform, which includes an app and a dashboard, is a gender-neutral reporting and evaluation system that promotes the retention and advancement of women by aligning firm values and culture with compensation and promotion. The goal of the SMART platform is to balance contributions and credit, realign rewards with value systems, reward non-billable work that adds value to the firm, encourage sharing previously undervalued work, and promote transparency to help disrupt unconscious bias.

Award of $10,000, donated by Bloomberg Law and Philanthropies, granted to Ms. JD.

2nd Place: The Power Development Program serves as an innovative and multidimensional twist on the traditional secondment concept by immersing two generations of women lawyers – a partner and an associate – with clients for 12 months to learn their business, service their matters, and eventually gain economic credit for the relationship. The goal is to enlarge the women's economic influence at the firm and position them to become key relationship partners for the client, which will positively impact compensation and promotion considerations.

Award of $7,500, donated by Bloomberg Law and Philanthropies, granted to Center for Women in Law, University of Texas School of Law.

3rd Place: Applying metrics-driven and experiential solutions, the "Five Year Moment" program aims to eliminate systemic and individual barriers to business development success for women lawyers during the two to three years prior to promotion, through the two to three years following elevation to partner. Encompassing a menu of 20 potential solutions, the Five Year Moment targets systemic biases, such as barriers to sharing origination credit or exclusion from client contact by mapping out ways to more effectively track and share credit.

Award of $5,000, donated by Bloomberg Law and Philanthropies, granted to National Association of Women | Lawyers (NAWL).

Crowd Favorite (Tie): "Making law firm leadership more than a Man's Field—The Mansfield Rule."

The Mansfield Rule is based on the premise that the best way to retain and advance women is to place more women into positions of power, where decisions that affect their lives and the lives of other firm

lawyers are being made. The Rule would require participating firms to interview and consider women lawyers for key firm leadership roles by mandating the active consideration of at least one woman candidate for seven high-level positions in law firms, including managing partner, practice group leadership, client relationship leads, and executive committee membership.

Award of $5,000, donated by Diversity Lab, granted to Catalyst.

Crowd Favorite (Tie): The OnTrack-for-Partnership program tackles women lawyers' advancement through a holistic approach involving four entities working in concert to support, guide, and develop partnership-ready associates, including: (1) a team of three firm partners; (2) an external executive coach; (3) a client executive who will serve as a client coach; (4) and an international peer network of similarly situated women lawyers who will connect through the program's app and social media. The goal is to support and elevate more women lawyers into the partnership.

Award of $5,000, donated by Diversity Lab, granted to Institute for Inclusion in the Legal Profession.

9 law students, 18 diversity advisors, 54 partners, and 9 judges are involved in this program.

Costs included the virtual collaboration tool, monetary awards ($32,500), the awards given to the winners, travel to the event, dining, lodging, bus transportation, giveaways to thank participants and guests, and the cost of signage and printed materials.

BloombergLaw donated the money ($22,500) for the first, second, and third place winner awards and Diversity Lab provided the money ($10,000) for the two crowd favorite awards. Law firms paid a fee for partners' participation that defrayed some of the Hackathon costs. The talent advisors generously donated their time and were reimbursed $500 for their travel costs by Diversity Lab. As mentioned above, Stanford Law School donated the use of its facilities and hosted a cocktail reception for participants. The remainder of the costs were covered by Diversity Lab.

Between October 2015 and July 2016, four Diversity Lab staff members and a consultant on contract with Diversity Lab spent between 25%-100% of their time establishing, planning, and managing the Women in Law Hackathon.

The Women in Law Hackathon can claim many "firsts" in the legal profession—most importantly, it represents the first time in the legal profession that rival law firms have joined together in a large collaborative effort to focus on solutions to the gender parity issue. It also marked the first time a major law school has created a policy practicum to examine and help solve the problem. And, of course, it generated nine new solutions towards moving the needle on gender diversity in the law.

The enormous effort and cost required to gain buy in, plan, and coordinate an event of this magnitude might make it difficult to replicate.

Yes! Anyone interested in supporting the ideas generated by the 2016 Hackathon or the next Hackathon should visit diversitylab.com for updates.

For more information, please contact Caren Ulrich Stacy, Founder & CEO of Diversity Lab caren@diversitylab.com or 303-520-5899.

McDermott Will & Emery's Coaching Program Equips Women Partners for Leadership

McDermott Will & Emery's Women's Business Development Initiative Coaching Program provides select women income partners at the Firm with grants that allow them to work one-on-one with professional coaches who provide guidance on developing business and honing leadership skills, all with a focus on promotion to equity partner.

The program enables participants to choose an individual coach who best matches their practice, geographic location and career goals. Although participating lawyers may select their coaches, Jennifer Mi-

kulina, co-chair of McDermott's Gender Diversity & Inclusion Subcommittee, works closely with McDermott's professional development team to interview and recommend potential coaches.

McDermott has built an impressive list of coaches and advisors, and consistently strives to improve this dynamic program. Our underlying belief is that the more the Firm invests in its women lawyers as they approach equity partnership, the better we will be able to nurture and retain these talented attorneys.

Periodic group forums provide opportunities to share experiences and network with others in the program. Recently, the Firm brought all nine participants in the 2015 program together for a face-to-face meeting in Chicago, where they shared best practices and discussed ways of raising their profiles both inside and outside of the Firm. "One of the best parts of the program is getting to know and collaborating with other women within McDermott," said Megan Rooney, a partner in Chicago who has participated in the coaching program for the past two years. "The participants are like-minded, working hard to get to the next level of our careers within the Firm."

The Program is funded solely through the annual budget of McDermott's Diversity & Inclusion Committee, which compensates the outside coaches for their work. We believe there are few obstacles to other organizations replicating this initiative if they are committed to spending the time and relatively modest amounts of money necessary to do so.

For more information about the Women's Business Development Initiative Coaching Program, please contact Jennifer M. Mikulina, partner and co-chair of McDermott's Gender Diversity & Inclusion Committee, at 312-984-3620 or jmikulina@mwe.com.

Cadwalader Sponsorship Program

At Cadwalader, the diversity of our firm is a source of strength, vital to our ability to effectively represent our clients. To compete among the elite in our field, we need to deliver more than reliable execution. We need to deliver more creativity, more strategy, more understanding of our clients' businesses and their industries. We believe that teams composed of lawyers of varying gender, race, ethnicity, religion, and sexual orientation are not only more representative of our clients, but offer a variety of viewpoints and a wider range of experience that is critical to solving the toughest problems and giving the best and most creative legal advice.

Law firms like ours sustain themselves by attracting the brightest, most hard-working, most ambitious and generally most high-achieving attorneys possible, regardless of background. Intellectual capital is the legal industry's stock-in-trade and without it, we cannot deliver at the highest levels for our clients. Recruiting diverse classes is in many ways the easy part: the real goal is to develop and retain high performing lawyers. We recognize that bringing in talent does not get you very far if you are not successful in turning that talent into your next generation of leaders. Providing a path to success is very important.

In 2012, a group of partners working on retention issues for women and other diverse attorneys at our firm came across a Harvard Business Review report entitled The Sponsor Effect: Breaking Through the Last Glass Ceiling. The report highlights the fact that most successful business executives have benefitted from sponsorship, a form of support in their careers that transcends mentorship. While part of sponsorship involves developing a personal mentoring relationship, giving advice and coaching, it is really more about influence. Influential sponsors have the ability to identify opportunities for their junior protégés and make sure they are positioned in a way that will bring attention to their talents and achievements.

Based on this insight, extensive research and consultation with numerous diversity experts, we determined that of the many concepts organizations explore to promote diversity, a formal sponsorship program would be most likely to move the needle. In 2013, the firm launched a pilot sponsorship program for female attorneys, selecting 16 of our most talented women to serve as protégés, and 27 sponsors from among the most senior partners at the firm, including our Managing Partner. Because that program was so successful we expanded it in 2015 to include other diverse attorneys in addition to women. 13 protégés and 13 sponsors are currently participating in the 2016 program.

The goal of the sponsorship program is to ensure that our talented diverse attorneys with at least six years of experience have the opportunity to gain the skills necessary to move up the ranks and have long-term successful careers at the firm. To achieve our goal, each protégé is assigned a senior partner to act as a sponsor for at least one year, providing guidance, assignments, more exposure throughout the firm, marketing opportunities and leadership opportunities. We essentially empower the protégés to approach the most powerful partners at the firm about their careers. We recognize that in order for our sponsorship program to have an impact on the protégés' careers, we have to empower them to seek opportunities and capitalize on them. The program consists of monthly touch points, balancing substantive programming with social events that facilitate camaraderie and trust between sponsors and protégés. Trainings are provided to ensure that sponsors and protégés are equipped to capitalize on their new sponsor relationships. The program also offers opportunities for sponsors and protégés to expand essential leadership skills via trainings that will benefit both the participants and the operations of the firms. The costs of the programs include facilitators, catering, and travel for sponsors and protégés in other offices.

Governed by the firm's Taskforce for the Advancement of Women and managed by the Director of Attorney Development & Training and Manager of Diversity & Inclusion, the sponsorship program represents the leading edge of the firm's talent management initiatives implemented for all attorneys, and provides an accelerated and aggressive approach to supporting the careers of women and diverse attorneys at key career points. Since the program launch, five protégés have been promoted to Partner and eight protégés have been promoted to Special Counsel. Our goal is to continue the success of the program in this and future years.

We have gained valuable insights from our experience creating and launching a unique sponsorship program, and we are eager to help others develop ground-breaking ideas to increase diversity at all types of organizations. These are not the only tools we need to establish our program, but they were some of the most critical. Hopefully, they will help others build the foundation for successful sponsorship.

- Get buy-in and concrete support from power. The single biggest asset in establishing the sponsorship program has been the support of our firm's Managing Partner and Management Committee. As active champions of the program, these leaders sent a powerful message to all of the partners that participation is valued and important. To that end, all significant sponsorship communications come directly from our Managing Partner.

- Do it yourself. Consultants and experts are useful for certain aspects of establishing a program, and we utilized those resources in developing our sponsorship pilot. But we found that to really address the tough issues, we had to devote significant internal resources. No one on the outside can truly understand an organization and its unique needs. No consultant can predict internal allies and challengers, or perfectly craft the internal messaging that can motivate the most senior people. Only you know how to do that, so you have to be ready and willing to roll up your sleeves and "just do it."

- There's no right way to communicate. Establishing a sponsorship program requires a significant cultural change requiring considerable communication to constituencies across the firm, from partners to junior lawyers and senior lawyers to administrative staff. We started by explaining the basic sponsorship concepts, the nuts and bolts of the program, and detailing the expectations and requirements of participating partners. To do this we used every conceivable means of communication—e-mail, face-to-face group meetings, personal visits to critical partners, and seminars for administrative staff. We learned that, no matter what communication we thought would resonate, it wasn't enough. You have to communicate, then communicate again … and again.

- Tell people exactly what to do. We found that while many of our partners already utilized sponsorship principles, they still needed (and wanted) explicit guidance on the actions that make a truly good sponsor. No matter how well-intentioned or excited they were about the program, our sponsors still needed concrete examples of what to do. So we detailed activities for sponsors to suggest with protégés, and celebrated when sponsors undertook those tasks. Similarly, the protégés sought and were given granularity as to how to approach their sponsors, what types of activities or assign-

ments to seek, and what their expectations should be from the program. As we suggested more ideas to all participants in the program, the program gained impressive traction.

- Be flexible and open to unique ideas. There is no secret formula for a successful sponsorship program. What may work in one organization could fail in another. In developing our sponsorship pilot, we considered numerous ideas from experts on how to structure the program and concluded that we had to create our own formula. For example, rather than utilize more traditional sponsor–and–protégé pairings, we created sponsorship circles giving each protégé not just one but several sponsors with whom they could work. This resonated with the way we work among multiple offices and areas of law, and it ultimately became a strength of the sponsorship pilot.

- Establish metrics and accountability. Structure and accountability for both sponsors and protégés is critical to ensuring that a sponsorship program gains momentum beyond the launch. We developed an internal database where participants could log their sponsorship activities, and we established monthly reporting requirements to be shared with the firm's Management Committee. This effectively provided regular reminders to interact with their sponsor/protégé and helped establish program discipline. We also conducted periodic interviews to obtain feedback on the program and ensure that sponsors and protégés were actively participating. Finally, we established internal goals on activities conducted within the program, as well as longer-term goals for the promotion of our talented diverse attorneys.

Cadwalader is committed to identifying and facilitating success for our attorneys and to fostering diversity throughout the firm. Encouraging and facilitating sponsor relationships is an important step toward creating an environment at Cadwalader that attracts, retains and promotes the best and brightest talent available to serve our clients, but it is only the first step. The Cadwalader Center for Diversity & Inclusion will continue to develop and fund the Sponsorship Program and additional programs to assist our attorneys in honing their skills, including leadership programs and team building programs.

For questions contact Aisha Greene, Director of Attorney Development & Training at Aisha.Greene@cwt.com or Taylor Biancone, Manager of Diversity & Inclusion, at taylor.biancone@cwt.com.

Walmart Ready

"Walmart Ready" is a program developed within Walmart's law department to address a persistent barrier that prevents many diverse attorneys from being retained to provide legal services to many corporate clients: lack of knowledge about the client's business, lack of familiarity with the client, and lack of time on the part of in-house counsel to train these lawyers so that they are ready to handle assigned matters. Walmart found that it had a large number of dynamic diverse lawyers among its panel of lawyers as well as others who had the potential to join the panel but like many corporations, there was hesitancy to use some of these lawyers for these and similar reasons. Never one to shy away from the cutting edge, Walmart decided to tackle these concerns head-on: in November, 2015, Walmart invited these firms to send a maximum of two attorneys per firm, representing diversity in all its manifestations. In all, some 100+ attorneys came together in Bentonville, AR for a daylong series of presentations and meetings designed to help prepare them if they were asked to represent Walmart. During the morning, attendees learned about the company – facts, figures, policies and protocols – as well as company history, company corporate culture, the history and culture specific to the law department, diversity and inclusion programs within the law department, and the company's collaboration with other diversity-focused organizations such as NAMWOLF. They learned how cases are assigned and how the company's supplier diversity program works. After lunch, that included a panel of legal department vice presidents, attendees had the opportunity to network with Walmart lawyers based upon practice areas, such as Employment, Torts, Class Actions, Regulatory, and Intellectual Property. In this way, the Walmart attorneys who practice in those areas and who would be involved in selecting outside counsel to handle matters in those areas would have a chance to get to know potential diverse outside counsel who practice in the same areas. Three months after the program, approximately 25% of the outside counsel who participated either received an assignment or saw an expansion of work assigned from Walmart. Walmart was pleased with

the results and a second Walmart Ready program is scheduled for fall, 2016. Walmart is also considering the pros and cons of scaling the program up to a more intensive agenda, but for fewer attendees to give each more attention; that could involve a home office tour, a distribution center tour, or possibly a concentrated pitch program.

For more information, please contact Alan Bryan, Senior Associate General Counsel - Legal Operations and Outside Counsel Management, at outsidecounsel.mgmt@walmartlegal.com.

Columbus Bar Association's Managing Partners' Diversity Initiative

In 2001, the Columbus legal community made a historic public pledge to significantly increase the racial diversity of its ranks. Twenty of the city's largest law firms joined the Columbus Bar Association, the John Mercer Langston Bar Association, which is comprised primarily of African American attorneys, and the two area law schools, the Ohio State University Moritz College of Law and Capital University Law School. The project was known as the Columbus Managing Partners' Diversity Initiative (MPDI). Together, they signed a five-year commitment to attract minority law candidates to the city, increase the number of minorities hired out of law school, and create an atmosphere that encourages minority attorneys to advance in their firms and ultimately become partners. Since the inception of the program, the MPDI has retained the original members and added the Asian Pacific American Bar Association of Central Ohio, the central Ohio chapter of the Hispanic National Bar Association, the Columbus City Attorney's Office, and the Ohio Attorney General.

The Managing Partner's Diversity Initiative is based on a detailed five-year plan. When participating organizations sign the plan, they commit to taking specific action steps to improve and report on diversity in their group.

The first five-year plan, from 2001-2006, was especially successful helping firms improve recruitment of minority attorneys. For example, recruitment action steps included: review hiring criteria to ensure it does not disproportionately screen out minority candidates; actively recruit at law schools with significant numbers of minority law students; monitor the number of minority candidates interviewed.

The second five-year plan, from 2006-2011, built on the experience of the first five years. It identified four focus areas: retention, recruitment, law firm culture, and infrastructure for inclusion and incorporated a comprehensive menu of best practices addressing each of those focus areas. Firms also agree to donate program fees, and they contributed $85,000 earmarked for the focus areas.

The third five-year plan, from 2011 - 2016 identified retention as the primary objective in order to maintain the progress gained through practices implemented the first ten years. Retaining talent is a function of understanding the drivers of attrition and the reasons for "regretted-losses" (voluntary departures of attorneys the firm would have liked to retain) and then creating strategies to eliminate them. A study commissioned in 2011 interviewed Columbus attorneys of color departed from law firms and identified mentoring, firm culture and insensitivity as areas to target. The Managing Partners' Diversity Initiative is currently developing the fourth five-year plan. The focus is on the future while preserving the accomplishments of the previous plans.

An Advisory Committee, a subcommittee of the MPDI, leads the program. Members of the advisory committee are managing partners, law school leaders, presidents of local minority bar associations, and representatives from two government employers. The Advisory Committee works closely with bar association staff to develop the five-year plans. Quarterly meetings are held to generate action plans, compile speaker lists, and create strategies for fundraising and recruiting signatories.

The MPDI Advisory Committee is comprised of 15 members – managing partners, law school deans, and bar association leaders. Several hundred attorneys and law students have participated during the life of the program as partners, associates, and summer associates at the participating firms.

MPDI and related programs have a budget of approximately $85,000 over a five-year period. This number

fluctuates based on contributions from participating firms and funds required to carry out each plan.

Participating law firms and employers contribute based on firm size (i.e., the more attorneys in the firm, the greater the financial commitment of the participant). The funds are used to retain dynamic speakers who are subject matter experts, organize events, and sponsor continuing legal education programs focused on diversity and inclusion in the legal profession. The Columbus Bar Association provides staff support to facilitate the programming, conduct annual surveys, manage the Minority Clerkship Program, and supply additional resources to support the participants.

In addition, employers have generously contributed more than $4.8 million in salaries, employing more than 600 summer clerks through the Minority Clerkship Program. Several firms also host Law and Leadership Institute Students during their summer career exploration.

One Columbus Bar Association employee allocates approximately 40% of her time during the year to diversity initiative programming. She is assisted by association members and other volunteers.

Since the inception of this program, the number of minority partners at central Ohio firms has doubled. The MPDI conducts a survey of participating firms and distributes the data at its annual meeting. The survey tracks the number of diverse attorneys in several categories including partner, associate, and of counsel. Also recorded in the survey are attrition rates for diverse attorneys compared to overall attrition. Local data is compared to national statistics provided by agencies like the National Association for Law Placement and the U.S. Bureau of Labor Statistics.

An organization trying to replicate this program should reasonably expect challenges with time. Creating a diversity program requires a considerable amount of bar association resources in the form of staff and volunteer hours and the initial monetary investment. Organizations should expect lag time between the inception of the program and realizing measurable results. It is essential to set aside frustration and forge ahead.

Another obstacle is convening enough firm leaders and volunteers to start the program. The organization or group leading the effort should carefully select individuals who are committed to cultivating diversity in their legal community.

For more information, please contact Jocelyn M. Armstrong at 614-340-2051 or jocelyn@cbalaw.org.

Abercrombie & Fitch's 10% Program

Much of the legal profession's diversity and inclusion efforts are driven by corporate clients. That, however, presupposes that the corporate clients have the maps they need to know not only the destination but the best available routes to get there. Abercrombie & Fitch's 10% Program is a viable strategy that gets everyone into the car, prepared to discuss merits of the fastest route versus the more scenic or the one with the best rest stops.

The Abercrombie & Fitch 10% Program starts with the law department's performance reviews. 50% of one's review is based upon performance objectives. Performance objectives can number anywhere between one and five. 10% of the performance objectives are required to be a diversity and inclusion objective. That allows just 40% for other substantive work assessments.

Everyone in Abercrombie & Fitch's law department is reviewed this way: the 20+ lawyers and the professional and support staff. This fosters an enhanced sense of value for diversity and inclusion throughout the law department because everyone is expected to be part of the overall effort. People are encouraged to attend outside diversity programs and conferences, participate in local community organizations and events, and take steps to become better educated about diversity and inclusion. They are encouraged to bring back information they can share with the rest of the law department. The point of this effort is to

reinforce the message that everyone in the law department can do something to push diversity and inclusion efforts. At Abercrombie & Fitch, diversity and inclusion is just as important a part of one's job as the specific job responsibilities for which one was hired.

The response to the program has been very positive. It has not required significant additional budgetary outlays. This is a program that can be easily replicated and that should have meaningful impact. It has the potential to create even more routes to greater diversity and inclusion.

For additional information, please contact Stacia Jones at Stacia_Jones@anfcorp.com.

The Association of Legal Administrators ("ALA") Committee on *Diversity and Inclusion, Diversity and Inclusion, 60 Tips in 75 Minutes ("60 Tips")*

This lecture and PowerPoint Presentation is about why diversity and inclusion is important and how we can do a better job bringing diversity and inclusion into the workplace and specifically, law firms and corporate legal departments. Beginning with a fundamental understanding of diversity and its many dimensions, participants will achieve greater comprehension of the types and layers of diversity, beyond those as defined by the EEOC.

The presentation follows a broad and quick progression overview of the many areas in which firms could consider changing their approaches and improve diversity and inclusion in the workplace. The goals are to first educate on the evolution of the concept of diversity to include the concept of inclusion and second, to give a high level overview of current approaches to improve diversity and inclusion.

For more information on the 60 Tips in 75 Minutes presentation, please contact Jenniffer Brown at (212) 213-1220 or jbrown@wmmblawfirm.com

Brown, Goldstein & Levy LLP Disability Rights Fellowship

The Brown, Goldstein and Levy Disability Rights Fellowship offers a talented and committed new attorney with a disability the opportunity to litigate cutting-edge disability rights cases under the mentorship of experienced practitioners at the firm's office in downtown Baltimore. The BGL Disability Rights Fellowship is as one-to-two-year Fellowship for a new attorney with a disability. We define new attorney as one with up to three years of legal experience. The recipient of the Fellowship litigates cases with a focus on disability rights law.

People with disabilities, including attorneys, continue to face many barriers to employment. A major goal of the Fellowship is to provide mentoring to a new generation of lawyers with disabilities as they enter the workplace. The Fellowship recipient has the opportunity to participate in every aspect of the litigation process, from legal research, interviewing clients and brainstorming strategy, to drafting pleadings, taking depositions, and appearing in court (contingent on bar admission). Whether a landmark legal decision or a small settlement on behalf of a single client, this is an opportunity to gain experience while truly making a difference in the lives of individuals with disabilities. As a result, the firm has developed young attorneys who move on to other organizations with a strong background in disability rights and robust training in litigation. The knowledge and experience the Fellows gain through this program helps to lay a solid foundation for their careers.

For more information about the Disability Rights Fellowship, please contact Brown, Goldstein & Levy Managing Partner Sharon Krevor-Weisbaum at (410) 962-1030 or skw@browngold.com

National Native American Bar Association, "The Pursuit of Inclusion: An In-Depth Exploration of the Experiences and Perspectives of Native American Attorneys in the Legal Profession."

This National Native American Bar Association (NNABA) project began as an effort to create the first formal, in-depth study on the experiences and trajectories of Native American attorneys. The report presents findings from the study and strategies for creating greater diversity and inclusion in the legal profession. For the purposes of this study, every participant self-identified as American Indian, Alaska Native, or Native Hawaiian.

While there have been many studies on diversity in the profession, Native Americans are typically left out or relegated to a footnote because the population is not "statistically significant." This report represents a first meaningful attempt to include both quantitative and qualitative data on Native American attorneys within the larger discussion of diversity and inclusion in the profession. The report has two research components, a quantitative survey involving over 500 Native American attorneys and a qualitative component involving a large focus group discussion followed by 54 one-on-one phone interviews.

The largest benefit from this study and resulting report is obvious, yet meaningful. This is the first time there is comprehensive statistical information on Native American attorneys in the United States. Now, NNABA can pursue diversity and inclusion efforts within the profession with an understanding of the experience of Native American attorneys and the issues they face.

For questions on the study, please contact: adminassistant@nativeamericanbar.org

Women's Bar Association of Illinois Women's Leadership Institute

The Women's Leadership Institute provides all members with leadership opportunities and leadership training, including service on our more than 50 committees. Annual events that support our mission include: workshops and continuing legal education covering a variety of topics, recognition of top Illinois women lawyers with our prestigious Top Women Lawyers in Leadership Award; the Women in the Law Symposium addressing the status of women lawyers and providing useful practice tips from Judges; community outreach and pro bono programming; Women's Bar Foundation scholarship program, and our first annual Leadership Institute to provide professional development, promote leadership skills, and equality through leadership training.

The Institute had been a long-standing vision of the WBAI President and Judge Jessica O'Brien. The vision was inspired by a leadership program that was focused on developing leaders by educating them on the varied issues that are evident in the different sectors of our community, namely health, education, crime and punishment, labor, and finance. In meetings with past presidents of a national organization (ABA), as well as statewide and citywide organizations, it became evident to her that the WBAI could benefit from an Institute that focused on women's issues.

For more information regarding the Leadership Institute, please contact Judge Jessica O'Brien at jarongobrien@sbcglobal.net or 312-965-9604 (mobile) or 312-603-6493 (chambers) or Andrea Kramer at andie.s.kramer@gmail.com.

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