



AMERICAN BAR ASSOCIATION • PRESIDENTIAL DIVERSITY INITIATIVE
DIVERSITY IN THE LEGAL PROFESSION

THE NEXT STEPS



REPORT AND RECOMMENDATIONS

Race and Ethnicity
Gender
Sexual Orientation
Disabilities

*ABA Presidential Initiative
Commission on Diversity
(2009-2010)*

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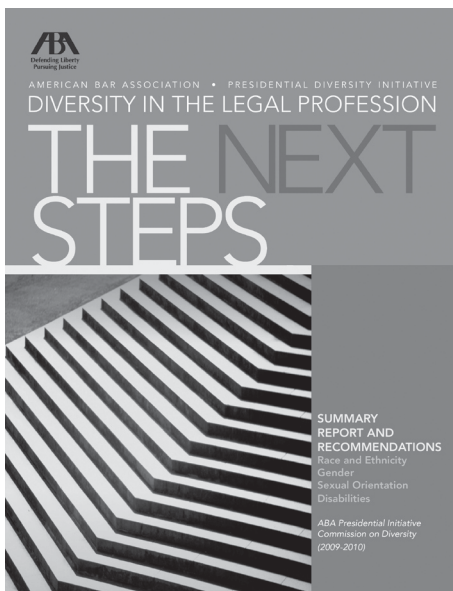
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SUMMARY REPORT AND RECOMMENDATIONS

FROM 2009 ABA STUDY OF THE STATE OF DIVERSITY IN THE LEGAL PROFESSION, EXAMINING
Race and Ethnicity ♦ Gender ♦ Sexual Orientation ♦ Disabilities

FOCUSING ON

Law Schools ♦ Law Firms/Corporate Law Departments
Government/Judiciary ♦ Bar Associations



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THE UPSTANDING AND DEDICATED LAWYERS OF THE AMERICAN BAR ASSOCIATION WHOSE VISION AND FORESIGHT LED TO THE ADOPTION OF ABA'S GOAL III, WHICH IS TO:

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Report & Recommendations

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Report & Recommendations

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Special acknowledgement to YOU—the readers—for reviewing this Summary Report and Recommendations, and taking responsibility for doing your part to enhance diversity in the legal profession. Thank you.

Several racial and ethnic groups, sexual and gender minorities, and lawyers with disabilities continue to be vastly underrepresented in the legal profession. From a racial/ethnic perspective, Whites constitute about 70% of working people over age 16, yet they represent 89% of all lawyers and 90% of all judges, according to 2009 census data. Each year, the numbers of lawyers with disabilities and openly lesbian, gay, bisexual or transgendered (LGBT) lawyers increase slightly, but their respective representation remains less than 1%. For example, in 2009 NALP (Directory of Legal Employers) reported that only about 47% of reporting law offices had even one openly LGBT lawyer, and most are clustered in just four large coastal cities. Most law offices do not collect data on disabilities, but the 18% that do report data (about 110,000 lawyers) identified only 255 lawyers with a disability.

This Report devotes its pages to specific recommendations for increasing diversity in the different sectors of the profession, namely law firms and corporations, the judiciary and government, law schools and the academy, and bar associations. The Report's recommendations reflect and incorporate the multiple experiences, false starts, insights, frustrations and new beginnings that represent the many different ways that diversity works within the different sectors of the legal profession. Each page incorporates the input of dozens of voices and localities; each page summarizes and synthesizes this multi-vocal and multigenerational dialogue about transforming the legal profession by making it more inclusive. This Report is the product of numerous surveys, hearings, summits, and workshops the ABA held throughout the country over the last year. It could not exist without the contributions of hundreds of individuals who joined together to advance this crucial project.

The overarching message is that a diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes. To provide a conceptual and normative context, the Report articulates and re-emphasizes four rationales for creating greater diversity within the legal profession and draws attention to similar diversity efforts and reporting in the medical profession. Compelling arguments for diversity in the legal profession include:

The Democracy Argument: Lawyers and judges have a unique responsibility for sustaining a political system with broad participation by all its citizens. A diverse bar and bench create greater trust in the mechanisms of government and the rule of law.

The Business Argument: Business entities are rapidly responding to the needs of global customers, suppliers, and competitors by creating workforces from many different backgrounds, perspectives, skill sets, and tastes. Ever more frequently, clients expect and sometimes demand lawyers who are culturally and linguistically proficient.

The Leadership Argument. Individuals with law degrees often possess the communication and interpersonal skills and the social networks to rise into civic leadership positions, both in and out of politics. Justice Sandra Day O'Connor recognized this when she noted in *Grutter v. Bollinger* that law schools serve as the training ground for such leadership and therefore access to the profession must be broadly inclusive.

The Demographic Argument. The U.S. is becoming diverse along many dimensions and we expect (and hope) that the profile of GLBT lawyers and lawyers with disabilities will increase more rapidly. With respect to the nation's racial/ethnic populations, the Census Bureau projects that by 2042 the U.S. will be a "majority minority" country.

In February, 2010, the *Journal of Academic Medicine* issued a major report by Drs. Louis W. Sullivan and Ilana Suez Mittman on the state of diversity in the health professions. Typically, the rationales for diversity in medicine have emphasized that minorities are more likely to provide service to minority communities; that minorities improve communication, comfort level, trust, and decision making in the patient-practitioner relationship; and they improve the quality of advocacy in health policy reform. The evidence is compelling that a diverse medical profession contributes to greater equity and the elimination of health disparities.

Drs. Sullivan and Mittman observe, however, that traditionally the medical profession has defined the role for health professionals from underrepresented groups as a narrow and circumscribed one that focuses almost entirely on the needs of minority communities. They urge that future efforts re-frame the arguments and re-envision opportunities for minority health professionals to excel and to lead within the larger profession and society. This Report's recommendations share that aspiration and are grounded in the conviction that benefits from diversity flow to the entire society.

Emerging Issues: The Report includes a set of Emerging Issues, identified collaboratively by the scholars and the Practitioner Working Group members from the myriad issues raised during the information gathering process. These ten issues provide short descriptions of new developments that will affect the ways in which the legal profession responds to the challenges posed by understandable demands for inclusion, complex personal and group identities, and a society under stress from increasing inequalities and international competition.

This Report is not prescriptive and is not a checklist of to-do's for the profession. The Report is a tool to challenge assumptions, provoke curiosity, generate conversations, enable dissenting voices, and encourage new partnerships and coalitions. To echo President Obama, our task is to "form a more perfect union." This Report documents the most recent step taken by the American Bar Association to do so.

Carolyn B. Lamm
President

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Dear Colleagues:

It is with great pleasure that I accept this impressive report from the ABA Presidential Initiative Commission on Diversity.

Last bar year, then-ABA President H. Thomas Wells Jr. launched a comprehensive initiative to assess the “State of Diversity in the Legal Profession.” The ABA conducted a qualitative survey, held four regional hearings with testimony from representatives of all sectors of the profession, held an invitational summit in June with more than 200 participants, and conducted a summit follow-up program at the 2009 ABA Annual Meeting. A team of legal scholars prepared summary reports of each stage from this year-long process. We thank Past President Wells for his dedication to and support of this important effort.

As ABA president, I commissioned the scholars to analyze the extensive information gathered last bar year and develop a substantive report and recommendations. Our goal was to produce a practical, well-designed report that the ABA and others can use as a functional roadmap for advancing diversity in the legal profession, and I believe we have succeeded. I wish to thank the sponsors of the project, LexisNexis and Walmart, for their support.

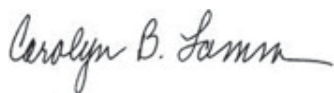
ABA leadership is fully committed to this process. I hope you share that commitment because much more needs to be done to make the legal profession fully reflect the communities we serve.

I invite you to read this report and use it as an ongoing tool to increase diversity in your area of the legal profession.

Building a more diverse profession is not a quick-fix, short-term goal. It is an ongoing campaign, one in which the ABA has been engaged for decades. We are committed to continue it as long as it takes. We are committed to see a bench that reflects our population and a profession in which every lawyer has the opportunity to achieve all of which they are capable.

Many thanks to Judge Ellen F. Rosenblum, chair of the Presidential Commission on Diversity, and to the commission members, scholars, working group, staff, sponsors, and others who helped produce this useful report.

Sincerely,



Carolyn B. Lamm

Dear Colleagues:

As a participant in the June 2009 ABA Presidential Diversity Summit, I was encouraged by the energy, expertise and enthusiasm of the presenters and attendees. They demonstrated a genuine commitment to taking a candid look at the state of diversity in the legal profession and exploring how we must proceed to gain real advancement. From their diligent discourse and feedback from countless others throughout the year-long information gathering process, we now present this final report and recommendations on *The Next Steps for Diversity in the Legal Profession*.

The publication you now hold represents a compilation and analysis of a massive amount of information: transcripts from four regional hearings, extensive responses to a qualitative survey, exhaustive notes from the Summit's breakout sessions, and a volume of comments captured at the Annual Meeting roundtable discussions. The Herculean task of sifting through and making sense of it all was masterfully managed by our team of legal scholars, led by Professor Margaret Montoya from the University of New Mexico. I extend sincere thanks to Professors Montoya, Tucker Culbertson, and Marc-Tizoc González.

To ensure that the report reflects a broad range of perspectives from all aspects of our profession, a select group of diversity and legal practitioners worked closely with the Legal Scholar Team. The input of these practitioners has been invaluable and deserves our heartfelt appreciation. I would also like to thank the members and commend the staff of the ABA Presidential Initiative Commission on Diversity, Cie Armstead, Katy Englehart and Veronica Munoz, who not only coordinate this project but also manage the ABA Presidential Diversity Program Series: *Strategies for Success*, which is a series of CLE programs designed to help diverse lawyers advance their legal careers.

Most importantly, I thank you for taking time to review this report—and take action. After you have read the report, if you wish to make comments, please provide them to the ABA Center for Racial and Ethnic Diversity for inclusion in our online version comment section.

In the 21st century, the legal profession faces no greater challenge than the imperative to advance diversity throughout our ranks. It is incumbent upon each one of us to do something that will make a real difference. Use this report and recommendations to motivate yourself and encourage others, both within and outside the ABA, to take the *next steps towards a more diverse and inclusive legal profession*.

Sincerely,



Ellen F. Rosenblum
Chair, Presidential Commission on Diversity

In August 2008, then-ABA President H. Thomas Wells, Jr., launched an examination of the State of Diversity in the Legal Profession. The Commission he established—chaired by Hon. James A. Wynn, Jr., and Eduardo R. Rodriguez—set out to ask: Where are we with diversity in the legal profession and what are the next steps we need to take to gain real advancement? After a year of posing those questions to a wide range of stakeholders throughout the profession, we now have answers and recommendations.

GATHERING THE INFORMATION

This Report and Recommendations reflect information presented and discussed throughout the year-long information gathering process, particularly addressing diversity from a race, ethnicity, gender, sexual orientation, and disability perspective. The process included four major phases.

Regional Hearings—A total of 58 legal professionals provided testimony in four regional hearings:

February 2009: Boston, MA, at the ABA Midyear Meeting

March 2009: Atlanta, GA, co-sponsored by **The State Bar of Georgia**

March 2009: San Francisco, CA, co-sponsored by **The Bar Association of San Francisco** and **The State Bar of California**

April 2009: Columbus, OH, co-sponsored by **The Ohio State Bar Association**

Qualitative Surveys—During a six-month period, we heard from over 150 representatives from bar associations, legal employers (private, public, non-profit), courts, legal academy, corporate legal department, and others who completed an online State of Diversity survey.

Diversity Summit—Held in June 2009, this event brought together 200 thought-leaders and decision-makers in the legal community who have a commitment to sustaining the relevance and viability of diversity in our profession.

Diversity Roundtables—At the ABA Annual Meeting in August 2009, we conducted eight roundtable discussion using topics gleaned from the Diversity Summit. Over 80 participants contributed to these thought-provoking, courageous conversations. Summary Reports of each phase of the process are available on the ABA Diversity Center’s website: <http://new.abanet.org/centers/diversity/Pages/presidentialdiversityinitiative.aspx>.

USING THE INFORMATION

Continuing the commitment, current ABA President Carolyn B. Lamm appointed Hon. Ellen Rosenblum to lead the next phase of the project. The project’s Legal Scholar Team and Practitioner Working Group analyzed the Summary Reports to produce this final Report and Recommendations. Modeling the structure of the Regional Hearings and Summit, this Report focuses on four categories of the profession:

- ❖ Law Schools and the Academy
- ❖ Law Firms & Corporate Law Departments
- ❖ Government and the Judiciary
- ❖ Bar Associations

In distilling this immense mountain of information, the reviewers recognized the challenge of summarizing and prioritizing the multiple—often competing—voices on such a complex topic as diversity. Their task was exacerbated by the wide-ranging nature of the audience that will use this Report. For example, consider how different readers will review the Report based on their familiarity with diversity issues. Laden with diversity fatigue, some seasoned campaigners for the cause may carp: “We tried these same recommendations back in 1993, and they didn’t work.” Those same recommendations may elicit motivating excitement from diversity newcomers.

Whatever your diversity experience or perspectives, this Report offers something that will help you determine your next steps for promoting diversity in the legal profession. Individuals and organizations are encouraged to identify the recommendations that align with their own interests and resources. These recommendations are not designed to be exhaustive or comprehensive. They do, however, offer strategic starting points for taking actions that will move the legal profession closer to being fully diverse and inclusive.

TAKING THE NEXT STEPS

This Report represents a strategic point on a continuum, not a culmination of a project. ABA leadership maintains its support of this ongoing process. The ABA and its constituent entities will carefully review these recommendations to identify which ones we can implement.

Share the Report. Direct colleagues to the online version, accessible from the ABA Diversity Center’s website (<http://new.abanet.org/centers/diversity>). A limited number of printed editions will also be available upon request to the ABA Diversity Center (diversity@staff.abanet.org).

Give us your feedback. The Diversity Center’s Website will feature a special Comment Page to post readers comments about the Report. The Report is designed to spark candid dialogue and debate about what directions the legal profession should take now and in the future to advance diversity.

Inform us of existing programs and initiatives that address any of these recommendations. Contact the ABA Diversity Center so we can tell others about these programs and encourage replication of the successful ones.

THE FOLLOWING OUTLINE SUMMARIZES KEY POINTS FROM BREAKOUT SESSIONS AT THE ABA JUNE 2009 DIVERSITY SUMMIT. AS INTENDED, THOSE DISCUSSIONS GENERATED MORE QUESTIONS THAN ANSWERS. UTILIZE THIS SUMMARY TO CONTINUE THE DIVERSITY DIALOGUE THAT WILL STIMULATE ACTION STEPS.

LEGAL ORGANIZATION'S SELF-REFLECTION

How is the organization modeling diversity in its leadership and actions?

- ❖ How can the organization's conferences and programs advance diversity in the profession?
- ❖ Does the organization's leadership, including internal subgroups, reflect diversity commitments and goals?
- ❖ Does the organization's budget, when considered as a moral document, reflect its values and priorities? Where does the organization commit its resources (money, time, clout)?
- ❖ What are the organization's demographics? How do they compare with the entire profession and that of specific states and regions?
- ❖ Can larger or national bar associations, such as the ABA, shift their focus from large firms to include small firms, partnerships, and solo practitioners that reportedly constitute 80% of American lawyers?
- ❖ Can larger or national bar associations, such as the ABA, work more closely with the specialty bar associations where most diverse attorneys are affiliated?

A PARADIGM SHIFT FOR THE LEGAL PROFESSION

What forces are causing the profession to change?

- ❖ The US recession amidst a global economic crisis.
- ❖ The new racial/ethnic and gender demographics of the workforce, as well as the emerging diversity groups—LGBT and the disabled.
- ❖ "Post-affirmative action" and "post-racial" generations of law students and new lawyers.

PIPELINE PROJECTS

Aligning projects to ensure educational inclusion and excellence from grade school to high school, college, law school, bar exam and into the profession.

How can larger bar associations, corporations and nationwide-entities best use their national or broader infrastructure?

- ❖ As a champion and voice for diversity, disseminating rationales and data that support diversity, access and success.
- ❖ As a lobbyist at federal and state levels for effective educational reform and investment to create equal opportunity.
- ❖ As a repository for best practices to "plug the leaks" and "clear the clogs."
- ❖ As a clearinghouse of data, research, projects and information.
- ❖ As a promoter of innovations.

REPLICATING SUCCESS AND LINKING SCHOLARSHIP TO SUCCESS “ON THE STREETS”

How can larger organizations, including academia, help develop valid metrics and evaluation methods to measure the effectiveness of diversity work in various locales?

- ❖ What resources exist to inventory and propagate the efforts of large law firms and corporations that have already developed in-house diversity metrics?
- ❖ Which diversity entities could serve as collaborative partners with national bar associations—such as, research centers like the CUNY Center for Diversity in the Legal Profession; Berkeley Warren Institute on Race, Diversity and Ethnicity; or Stanford Center on the Legal Profession?
- ❖ How can the larger or national bar associations better collaborate with law professor organizations that are dedicated to social justice research and teaching with a focus on diversity in the legal profession, like LatCrit, Inc. or SALT (Society of American Law Teachers)?
- ❖ What concrete possibilities exist for joint research ventures with dedicated fundraising plans, e.g., conducting a comprehensive literature review of diversity legal scholarship?
- ❖ How should diversity be taught? What is the curriculum? How has it already been included in some core courses, e.g., 1L writing courses, elective courses or seminars?

FRAGMENTATION AND REINVENTING THE WHEEL

- ❖ How can we minimize the impact of fragmentation of diversity projects and continual re-learning, which wastes efforts and resources?
- ❖ Is there a model that bridges the chasms between legal practice, theory, teaching, and research? If not, can the ABA (and/or another national organization) develop such a model?
- ❖ What diversity “lessons” can the ABA and the legal profession glean from and share with other professions, such as medicine?
 - » For example, clinical psychologists have espoused both scientist-practitioner and scholar-practitioner models.

DIVERSITY NETWORK

Can the ABA (and/or another national organization) design and implement a diversity-conscious network of diversity partners with defined roles or resources for diversifying the profession? Network partners can include:

- ❖ Law firms and corporations—employers of diverse attorneys.
- ❖ Law schools—educators, where diversity norms, knowledge and skills are inculcated.
- ❖ Minority/specialty bar associations—large pools of diverse lawyers.
- ❖ Professors—experts on issues of identity and diversity; scholars of color; and women, LGBT, and disability advocates.
- ❖ Other professions with analogous methods and approaches to diversity.
- ❖ Public and private schools—settings for pipeline projects.

THE STARTING POINT: WHAT IS DIVERSITY? WHY IS IT A PRESSING PRIORITY FOR THE LEGAL PROFESSION?

When we talk about increasing diversity in the profession, we are addressing a history of laws, practices, and employment decisions that excluded broad sectors from participation in the political, economic, and social activities and benefits of this society. Since the early 1980s, the ABA has played a leadership role in fashioning efforts to fully incorporate members of the affected groups into the legal profession, starting with law students and extending to lawyers engaged in all types of legal work, including judges at the federal, state, local, and tribal levels. The specific groups that fall within ABA diversity programs and policies include racial and ethnic minorities, women, persons with disabilities, and the LGBT (lesbian, gay, bisexual, and transgender) community.

The Democracy Rationale

Democracy is a political arrangement that must be conceived, taught, defended, extended and painstakingly implemented. In our country's 233-year history, lawyers and their clients have been in the vanguard of these political, constitutional, and legislative struggles.

The United States occupies a special place among the nations of the world because of its commitment to equality, broad political participation, social mobility, and political representation of groups that lack political clout and/or ancestral power.

Diversity is the term used to describe the set of policies, practices, and programs that change the rhetoric of inclusion into empirically measurable change. Civil society, and especially professional organizations such as the ABA, occupies a crucial role in legitimizing, facilitating, and instantiating the changes that are implicit in diversifying the larger society and its professions. Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice.

The Business Case

The rapid movement of people, financial instruments, culture, technology, and political change across international borders places new expectations on the ability of lawyers, law firms, corporations, and legal institutions to respond and adapt to the multinational and cross-cultural dimensions of legal issues.

A diverse workforce within legal and judicial offices exhibits different perspectives, life experiences, linguistic and cultural skills, and knowledge about international markets, legal regimes, different geographies, and current events.

In many instances, corporations are ahead of the legal profession in diversifying their professional and technological workforces. It makes good business sense to hire lawyers who reflect the diversity of citizens, clients, and customers from around the globe. Indeed, corporate clients increasingly require lawyer diversity and will take their business elsewhere if it is not provided.

The Leadership Argument

As Justice O'Connor reminded us in her opinion in the Grutter case, this society draws its leaders from the ranks of the legal profession and that is one reason why diversity is a constitutionally protected principle and practice.

EMERGING ISSUES

COMPLEXITY AND DIVERSITY: BOLD NAÏVETÉ AND FATIGUED EXPERIENCE

As many more decision-makers—in and outside of the legal profession—act to increase diversity, the approaches, rationales and perspectives necessarily become more varied.

Managing diversity requires adapting to this evolving environment. Compounding this environmental change, for the first time in American culture, four generations co-exist in the workplace. In the diversity arena, these generational differences are often competing and divisive.

Besides differences based on age, those who have worked on diversity issues for years can come into conflict with those who are relatively new to this arena. The former group may complain of diversity fatigue as a response to the continual recycling of issues that had seemingly already been discussed and resolved. The latter group—novice diversity champions—may appear naïve in their lack of a nuanced analysis of the issues and an inability to sometimes concede that compromise and ambiguity can be positive outcomes.

The nation's demographic profile is changing to expand the proportion of women, racial/ethnic minorities, LGBT, and the disabled who now have the credentials, experience, and expectations of rising to the highest levels of leadership.

TRENDS

- ❖ While law firms have increasingly come to recognize that diverse corporate clients and international markets often require lawyer diversity, ***the recession is drying up monies for diversity initiatives and creating downsizing and cutbacks*** that may disproportionately and negatively affect lawyer diversity—thereby undoing the gains of past decades.
- ❖ Similarly, the increasing cost of legal education makes attending law school and the ***debt burden*** exceedingly difficult for poor and working class people. Because income and wealth converge disproportionately with race, ethnicity, gender, sexuality and disability, the cost of legal education in our current economy must be a central site for advocacy in the interest of a diverse legal profession.
- ❖ Nevertheless, legal institutions tend to acknowledge ***the need for comprehensive diversity strategies***.
 - » Some bar associations have incorporated diversity goals in their strategic plans or are reviewing past diversity efforts in order to recommit themselves to diversify the profession.
 - » Some firms incorporate diversity goals into their annual employee evaluations and prepare regular accountability reports with empirically substantiated data on lawyer diversity. Other firms have hired full-time diversity professionals as part of the management team with budgets and oversight of key functions.
 - » Law schools in collaboration with the LSAC are becoming more adept at using the LSAT as one part of admissions programs that recruit, evaluate and enroll a diverse applicant pool. Some law schools have established diversity-oriented centers or offices to focus resources on increasing the enrollment of diverse students and to engage in outreach to students earlier in the educational pipeline.
- ❖ ***Consensus on the need for the legal profession to help dramatically improve the P-20 (pre-school through advanced degree) pipeline appears to exist.*** Students, lawyers, judges, and clients are increasingly involved in pipeline activities, which emphasize law and civic engagement, aim to keep diverse students in school, facilitate the involvement of students' families, and help all students improve their academic performance to pursue higher education.
- ❖ Effective models exist for ***meaningful mentoring and leadership training*** to enhance the skills of diverse attorneys. ***Robust models of diversity training*** have also been developed on bias (which is often implicit), discrimination (which is often unconscious,) and attitudinal and cultural opposition to diversity.
- ❖ Relatively well-established diversity bar associations have now accumulated enough resources to institutionalize their programmatic work. Conversely, relatively newer diversity organizations operate on shoestring budgets, over-rely on individual charismatic volunteer leaders, or find it difficult to access collaborations with majority bar associations. Similarly, small local bar associations, especially those in rural locales, tend to lack the resources to engage diversity initiatives beyond the efforts of exceptional individuals.

DISAPPOINTMENTS

- ❖ Despite decades of reports, task forces, and goals, ***in 2000 the legal profession remained about 90% Caucasian***, with the national population at that time being about 70% Caucasian. Demographic projections for the legal profession for 2010 are not suggesting that much progress has been achieved.
- ❖ The legal profession is less racially diverse than most other professions, and racial diversity has slowed considerably since 1995.
- ❖ Diversity programs may sometimes be little more than box checking on forms or seem like costly and time-wasting training sessions.
- ❖ ***Even when diversity efforts were successful at recruitment, they often failed to improve the retention of diverse attorneys***, as documented in the 2006 ABA Commission on Women in the Profession's report, *Visible Invisibility: Women of Color in Law Firms*.
- ❖ Few linkages, bridges, or collaborations exist between the diversity work of the legal academy and that of legal practitioners.
- ❖ While some firms and law schools now empirically review the results of their diversity programs, for many years such programs lacked theoretically grounded ways to measure their goals and effects, and today ***relatively few diversity programs are designed with self-assessment mechanisms***.
- ❖ There is no one convenient location for finding up-to-date statistical data on the topic of diversity in the profession. The data that exist are pigeonholed into different categories, e.g., students, judges, women.
- ❖ Law schools and law firms still tend to chase the top part of the diverse applicant pool rather than focus on increasing the size of the pool.
- ❖ While the legal profession has achieved some diversity in the "lower ranks," diversity remains thin in the "higher ranks" of law firm managing and equity partners, general counsels, state or federal appellate judges, and tenured law professors.
- ❖ ***By presuming the centrality of law firms, the legal profession has failed to address the reality that the majority of lawyers are in solo practices or very small partnerships***; hence diversity efforts have been significantly stymied.
- ❖ The unique challenges and profound exclusion faced by American Indians cannot be adequately addressed by conventional inquiries regarding racial diversity. For example, there is still not one American Indian federal judge.
- ❖ Diversity programs are unsuccessful if the definitions used in, and the norms underlying, those programs are not made clear to an organization's members, incorporated into the core mission of the organization, and energetically owned by members—especially those who are senior and/or in leadership positions.
- ❖ All pertinent stakeholders agree that it is crucial to establish quantitative measures with which we can assess our progress and assign accountability. However, we must define these quantitative measures in a sophisticated manner that takes into account the multidimensionality and locality of identities. Moreover, quantitative measures alone are insufficient if they are not coupled with qualitative data drawn from direct communication with applicants, employees, and clients.

NEW DIRECTIONS

- ❖ Understanding diversity work as ongoing and evolving rather than static allows for a different approach to programming which may circumvent **diversity fatigue**. Even as some forms of exclusion are ameliorated, others will persist, and new forms will emerge. If we understand equal access and inclusion as tasks uniquely charged to the legal profession throughout U.S. culture and history, diversity work is less likely to be viewed as incriminating and hostile, and more likely to be viewed as a core function of the profession itself.
 - » Moreover, the legal profession increasingly recognizes that: (1) **diversity encompasses identities beyond race and gender**, and (2) race and gender cannot be addressed adequately under rubrics of “white/non-white” and “male/female.”
 - » Recognizing a more expansive and sophisticated conception of diversity may also incite greater suspicion and fatigue among those who are either opposed to or not sold on prioritizing diversity within the legal profession. We must develop and deploy a persuasive and accessible theoretical framework which identifies the logical and historical connections among irreducibly distinct forms of identity discrimination.
- ❖ **Different types of law firms need different types of diversity programs and policies.** Large law firms and corporate general counsel offices have different opportunities and challenges than small firms and solo practitioners. Minority owned firms, as well as women-, LGBT-, and disabled attorney-owned firms also face unique opportunities and challenges in advancing diversity.
- ❖ State bars and bar associations are beginning to **realize the need for a paradigm shift along the educational pipeline**. Diversity programs that “take the long view,” such as law-oriented pipeline programs focused on high school, college or even middle school are following other professions with robust pipeline programs, such as math and science curricula developed by engineering schools.
- ❖ Training programs for prospective judges beginning five and ten years prior to their actual pursuit of a judgeship exist and should be supported.
- ❖ Indeed, diversity programs that create partnerships among legal professionals, their business clients, foundations, community organizations, and schools generate mutual support and productive pressure among partners in the interest of diversity.
- ❖ Some researchers—such as, Professor Marjorie Shultz and her collaborators at UC Berkeley—are in the process of developing new ways of **evaluating law school applicants by identifying the wide range of skills and capacities needed to be an effective lawyer**.
- ❖ Similarly, some law schools’ diversity efforts include tried and tested **conditional admissions programs** that provide opportunities to students whose LSAT scores would normally prevent their admission; those students’ academic success have defied their predicted grades.
- ❖ Some law schools are developing alliances with other professional schools and adapting their diversity programs. **Cultural competence education** in medical schools is a notable example.

- ❖ Some law schools and bar associations offer insights about *the different meanings and possibilities of diversity contingent on regional differences and differences between metropolitan areas and rural communities or small cities.*
- ❖ Some law offices and judges have developed diversity initiative advisory committees. Some elder lawyers suggest the legal profession needs President Obama to call on lawyers to diversify and commit to pro bono activities as President Clinton did in 1999.
- ❖ Such partners have recognized that *retaining diverse lawyers means actually changing the way of doing business*, which could improve the workplace environment for all attorneys but is feared to be less profitable.
- ❖ Indeed, some law firms have begun to tie employees' compensation to their demonstrated commitment to diversity in recruiting, mentoring, and work assignments.
- ❖ Majority and minority bar associations are realizing the need to collaborate in ways that do not undercut the membership of either bar association while recognizing their different access to resources.
- ❖ Legal professionals can benefit from implementing and supporting the practices of many businesses and corporations, whose commitments to diversity have been more energetic and effective.
- ❖ It is productive to forge and foreground alliances among different affinity groups within the profession, whose needs and interests are distinct but convergent. For example, *primary caregivers (who are most often women) and lawyers with certain disabilities share an interest in flexible scheduling, telecommuting, and sabbaticals.* Similarly, poor people and primary caregivers share an interest in law schools that provide part-time and evening class options.
- ❖ Web-based databanks and social networking sites could become an invaluable asset for diversity work across the country, allowing individuals and organizations to share effective models, strategies, and structures. Similarly, *not only "best practices" but also "preferred partners" could be publicized, thereby spreading "the best of the best" work on diversity informed by visitors' unique professional, geographical, cultural, and demographical identities.*
- ❖ Can, or should, the bar exam evaluate the skills necessary to deliver services in diverse legal environments?
- ❖ How should hiring officials or committees consider diversity activities shown on resumes or reported through the media?
- ❖ Should the legal profession's unique role in advancing democracy and promoting equality become a central component of professional responsibility curricula in law schools?

EMERGING ISSUES

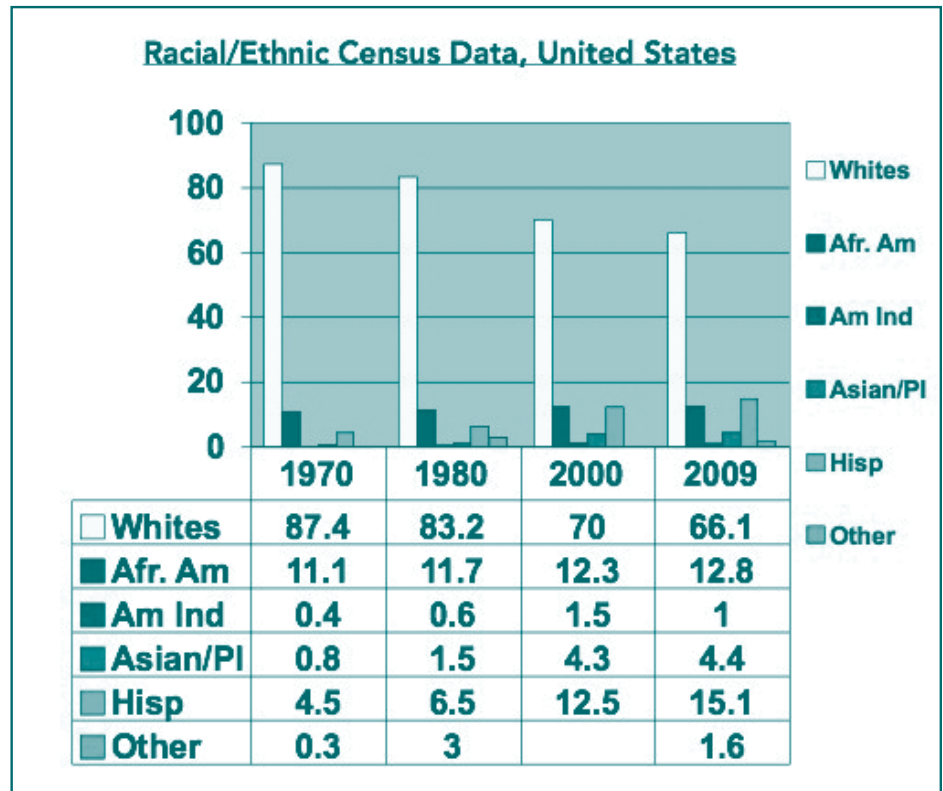
EMPLOYMENT DISCRIMINATION AND FIREFIGHTER CASES

Two recent cases have sparked more questions than answers on what steps employers may take where avoidance of discrimination against one group may mean perceived discrimination against another group.

During the confirmation hearings for Justice Sonia Sotomayor, the Second Circuit decision in *Ricci v. DeStefano* loomed large. J. Sotomayor joined the majority in deciding that City of New Haven could lawfully disregard the results of a written test in which white firefighters has scored higher than most minorities because the City claimed it was responding to the requirements of Title VII. In 2009, the Supreme Court overturned the decision by raising the evidentiary requirements for employers that seek protection within Title VII when creating a diverse workforce.

In another firefighter case, on January 21, 2010, a federal district court ordered New York City to hire 293 Black and Hispanic firefighters with retroactive backpay and other damages after concluding that the City had intentionally violated Title VII by using discriminatory written entrance exams.

DATA

*The Demographic Rationale for Diversity*

Changing U.S. Demographics: Getting older and more diverse.

An aging population:

38.7 million: Number of U.S. residents 65 and over in 2008

88.5 million: Projected number of U.S. residents 65 and over in 2050

A more ethnically and racially diverse population:

46.7 million: Number of Hispanics residing in the U.S. in 2008

132.8 million: Projected number of Hispanics residing in the U.S. in 2050

41.1 million: Number of black residents of the U.S. in 2008

65.7 million: Projected number of black residents of the U.S. in 2050

15.5 million: Number of Asians residing in the U.S. in 2008

40.6 million: Projected number of Asian residents of the U.S. in 2050

Source: U.S. Census Bureau

<http://www.usnews.com/articles/opinion/2008/08/18/data-points-changing-us-demographics.html>

Recommendations for LAW SCHOOLS AND THE ACADEMY

Law schools play a particularly important role in advancing the value of diversity in the legal profession. Law schools identify the faculty talent that educates and produces new scholarship and the student talent that continually renews the profession. Law schools also choose the knowledge, skills, and values that form the legal canon and create an identity for lawyers and other legal professionals by transmitting a set of normative behaviors, ethics, and narratives. In short, law schools occupy a central role in forming and transforming the intellectual capital, the group identity, and culture of the profession. For this reason, law schools are crucial to the project of making the profession more diverse.

Law schools contribute to the ongoing transformation of the profession from one that has historically been dominated by white men from the upper classes to one that is inclusive of persons from many different backgrounds with different perspectives, cultures, abilities, worldviews, and tastes. Diversity in law schools, as in other institutions, affects all areas of activity. Consequently, a few law schools have taken innovative action to diversify across all areas—student admissions, hiring, promotion and tenure, curriculum, staff development, mission and vision statements, pipeline programs and partnerships—as well as across many axes of difference, such as gender, race, ethnicity, sexual orientation, and disability. Other law schools have focused primarily on student admissions. Diversity in law schools entails changes along many dimensions supported by leadership from faculty, administration, staff, students, alums and other outside constituents.

As law schools enact a diversity agenda, they can strengthen the consensus about the value of diversity to the profession and the larger society using oral and written messages but, most importantly, through educational and management practices, such as the appointment of a full time Chief Diversity Officer, that reflect equity and inclusion. Specifically, law schools can change perceptions, challenge stereotypes and reduce unconscious bias when they hire, promote and tenure a broadly diverse faculty and staff to teach and mentor broadly diverse student bodies. By creating a diverse learning environment, law schools can model how to create a work force with the skills that will be needed by a more international, pluralistic and mobile client base. The society has already come to expect that lawyers are culturally proficient and able to communicate easily with people from many different backgrounds and life experiences.

Lawyers and judges play a special leadership role within our vibrant democracy. In *Grutter v. Bollinger*, the 2003 Supreme Court decision on affirmative action, Justice O'Connor acknowledged the need for a diverse and representative legal profession because of its leadership role within the society. This is increasingly urgent because the United States is changing rapidly in its demographics, and law schools must respond by educating lawyers that mirror that diversity. Thus, law schools must advocate for greater inclusion, equity, and diversity as well as transform their pedagogical, scholarly and management practices and policies to accelerate the pace of change. Listed below are some of the actions that can be taken by law schools to enhance their existing diversity programs.

RECOMMENDATIONS

Culture: Building Consensus / Creating Accountability

- ❖ Encourage law schools to make commitment to diversity an integral part of their mission and educational philosophy; explore ways law schools can be held accountable for their diversity efforts.
- ❖ Disseminate different rationales for diversity: such as, the democracy argument, the business case, a demographics rationale, and Justice O'Connor's leadership analysis.

EMERGING ISSUES

MATHEMATICAL MODELS OF DIVERSITY

One of the persistent myths is that creating a diverse workforce is at odds with high quality outcomes. What if someone told you that he could unequivocally disprove this myth? Or, in other words, precise mathematical models could prove that in many instances diversity trumps “smarts” and produces better results? That is what University of Michigan Professor Scott E. Page has accomplished and what he explains in his book, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton University Press).

As Page stated in a 2008 interview in the NY Times, “What the model showed was that diverse groups of problem solvers outperformed the groups of the best individuals at solving problems. The reason: the diverse groups got stuck less often than the smart individuals, who tended to think similarly. The other thing we did was to show in mathematical terms how when making predictions, a group’s errors depend in equal parts on the ability of its members to predict and their diversity. This second theorem can be expressed as an equation: collective accuracy = average accuracy + diversity.” www.nytimes.com/2008/01/08/science/08conv.html

- ❖ Follow the lead of the medical profession, which analyzed racial and ethnic health disparities based on a Congressional mandate with funding, and analyze the justice disparities caused by a legal profession that is not diverse.
- ❖ Create greater respect for dissenting voices and cultural and stylistic differences so that diverse faculty, students, and attorneys do not feel the need to assimilate thereby diluting the benefits of diversity
- ❖ Commit to diversity beyond simply adopting a diversity statement. Law school leaders (i.e., dean, faculty) must take a visible role in diversity efforts and be in attendance at diversity events.
- ❖ Define diversity beyond racial, ethnic and gender diversity. Educate law schools that mental and physical disability is a crucial component of diversity within law schools and the legal profession and reasonable accommodations, in many instances, are not cost prohibitive.
- ❖ Require law schools to teach diversity courses in a problem-solving format, comparable to how ethics is taught.
- ❖ Disseminate information on creating inclusive learning and work environments, for example, by using materials on privilege and unconscious bias.
- ❖ Follow the law firm and general counsel “Call to Action” model to develop an effective means of holding law schools more accountable for diversity results
- ❖ Give a clear message to law schools about the importance of diversity in the classroom, emphasizing that it is NOT a ‘sidebar’ issue, but a crucial part of what lawyers should be learning.
- ❖ Require training for students dealing with diversity in the legal context as well as for older faculty, lawyers and judges who may have less exposure to diverse professionals.
- ❖ Use the term “diverse” rather than “minority,” as the latter is not as inclusive and may have a more negative connotation than the former.
- ❖ Assist law schools in understanding what they can do to promote diversity through the ABA, such as working with the Section on Legal Education and Admissions to the Bar.

COLORADO CAMPAIGN FOR INCLUSIVE EXCELLENCE

In 2006, Deans Beto Juárez (U-Denver) and David Getches (U-Colorado) formed the Deans’ Diversity Council and convened a group of leaders from all sectors of the legal profession to improve the recruitment and retention of diverse attorneys. An emphasis was placed on mentoring diverse attorneys based on such research findings as:

- The cost of a lost associate will be at least \$500,000.
- Many law firms resist mentoring despite its proven benefits.
- Two types of mentors are needed: Career development and psychosocial
- Mentoring is strengthened by peer networks.

For more information, see www.colegaldiversity.org.

Planning

- ❖ Plan, design, and create comprehensive diversity strategies for legal institutions, including law schools, that differ in cultural and institutional norms, populations, goals, etc. (i.e., a “one size fits all strategy” will be ineffective).

- ❖ Educate law school applicants about planning for the financial aspects of a legal education, including the risks associated with mortgaging their futures (*i.e.*, acquiring excessive student loans) and that they are not guaranteed to secure employment with a \$150,000 a year salary.
- ❖ Work with expert consultants to plan, design and implement diversity education programs that can be used for pipeline outreach efforts by the bench and bar.

A DISTURBING TREND IN LAW SCHOOL ADMISSIONS

In 2009, Columbia Law School's Lawyering in the Digital Age Clinic, in collaboration with Society of American Law Teachers (SALT), completed its revision of "A Disturbing Trend in Law School Admissions." They found a 7.5% drop in the representation of African-American students entering the class of 2008 compared to 1993, with an 11.7% decline in Mexican-American students during that period. This trend is especially disturbing because the number of applicants held relatively constant and average undergraduate grade-point averages and LSAT scores improved over the 15-year period. For more information, visit <http://blogs.law.columbia.edu/salt/>.

Accountability

- ❖ Strengthen the AALS Membership Review process so that it evaluates all aspects of diversity in law schools.
- ❖ Strengthen the diversity components and promote the proper use of the *U.S. News and World Report* rankings.
- ❖ Conduct regular and detailed review of the effectiveness of pipeline programs in order to encourage collaborations among colleges, secondary schools, school districts, bar associations, student groups, and community organizations to develop programs for students, especially those before middle school, through which law schools can demonstrate their capacity to amplify the critical thinking, reading, and writing skills for students at different levels of the pipeline.

Diverse Faculty: Hiring and Retention

- ❖ Create a Blue Ribbon task force to examine the differential rates of tenure for diverse faculty, and implement effective strategies to improve retention and promotion rates based on its findings.
- ❖ Give diversity activities credit as an academic activity; and support scholarship, research, and publications in this area, including using financial incentives for diversity work as part of faculty pay.
- ❖ Expand the desired skill set requested for faculty candidates in order to attract and identify diverse faculty candidates. For example, schools should consider recruiting practitioners rather than candidates with the traditional law review, clerkship, and minimal practice skill set.
- ❖ Convince law school deans and, where necessary, university presidents to support financial incentives for law school faculty engaged in diversity-related work even when faced with budget cuts and/or other initiatives competing for funding; and tap diverse faculty expertise on diversity issues
- ❖ Expand recruitment efforts beyond the small number of select schools from which 75% to 80% of faculty matriculate.

PRE-LAW SUMMER INSTITUTE

The Pre-Law Summer Institute for Native Americans and Alaskan Natives (PLSI) is an intensive two-month program which prepares American Indian and Alaska Native individuals for the rigors of law school. PLSI essentially replicates the first semester of law school. Likened to boot camp by many former participants, PLSI concentrates its content into eight weeks of instruction, research and study, teaching students the unique methods of law school research, analysis, and writing.

The success of PLSI in providing a nationally respected pre-law orientation can be traced to its original and continuing intent — that it be based on sound legal education principles, and not function as a philosophical, political, or cultural training ground. For more than two decades, the American Indian Law Center has remained dedicated to providing valid training in the skills required for the study of law.

The PLSI program has been running for over 40 years and around one thousand students have passed through it. It has been the most successful program of its kind in the country and has spawned a few other programs, some of which have also become important, like the LSAC PLUS programs.

For more information, visit the PLSI website: <http://www.ailec-inc.org/PLSI.htm>

- ❖ Prioritize diversity by making more monetary incentives available to law school faculty who are doing diversity-related work.
- ❖ Build effective pipelines for future diverse law professors: identify women and diverse students who possess those characteristics that would make them successful in academia, and, for interested students, assist in mapping out a career path.
- ❖ Support diverse candidates in interviewing, hiring, and tenure processes.

Educational Practices: Admissions, Law School Debt

- ❖ Use the American Medical Association publication “Roadmap to Diversity” as a model for creating toolkits for improving law school admissions for diverse students (Coleman AL, Palmer SR, Winnick SY. *Roadmap to Diversity: Key Legal and Educational Policy Foundations for Medical Schools*. Washington, DC: Association of American Medical Colleges; 2008).
- ❖ Take a more holistic approach to reviewing applicants, not only considering LSAT scores and undergraduate GPAs, but also other factors that can help predict success in law school.
- ❖ Promote proper use of LSAT scores based on the Law School Admission Council guidelines published in its “Cautionary Policies Concerning LSAT Scores” at <http://lsacnet.lsac.org/publications/CautionaryPolicies.pdf>.
- ❖ Provide funding for the LSAT prep courses and preparatory materials to diverse law school applicants who cannot afford them.
- ❖ Create or encourage the creation of supplemental bar examination workshops; and create or encourage the creation of academic support programs to work with students of color and address nonacademic factors.
- ❖ Encourage collaborations among law firms, bar associations and the corporate sector to fund scholarship/mentoring programs that would guarantee payment for three years of college, payment for three years of law school, or a job upon graduation from law school.
- ❖ Encourage law school career service professionals to inform diverse students about career opportunities as well as the importance of federal clerkships, law review, moot court, and maintaining a high GPA.

- ❖ Encourage law schools to develop a series of professional development workshops for 3L students from underrepresented groups, such as “crash courses” on how to survive and thrive at work, developing resumes, and interview coaching.
- ❖ Fund studies on how law school costs can be reduced.
- ❖ Restructure inappropriate practices regarding lending for legal education, such as cutting off legal education credit or redlining students who will be least able to pay back debt.
- ❖ Encourage government to provide subsidies to address the situation of rising law school costs and increased debt burdens.
- ❖ Innovate to lower law school indebtedness: create alternative delivery systems (distance learning), reduce the length of law school, and create tax incentives, such as treating a law degree as a capital asset.

Data Collection, Law School Rankings

- ❖ Identify the data that already exists (e.g., LSAC data); coordinate the data bases (NALP, NCBE, ABA); and identify the portals/sources that need to be connected.
- ❖ De-emphasize national *U.S. News and World Report* rankings because of the adverse impact upon applicants of color.

DIVERSIFYING THE LEGAL PROFESSION: 40+ YEARS

CLEO: The Council on Legal Educational Opportunity is committed to diversifying the legal profession by expanding legal education opportunities to minority, low-income and disadvantaged groups. Since its inception, more than 8,000 students have participated in CLEO's pre-law and law school academic support programs, successfully matriculated through law school, passed the bar exam and joined the legal profession. CLEO alumni, many who had less than traditional academic indicators of success, yet were given an opportunity to attend law school, are represented in every area of society, including: private law firms and corporations, law schools, federal and state judiciaries, and legislatures across the country. For more information, visit <http://www.cleoscholars.com/>.

- ❖ Educate the public regarding the *U.S. News and World Report* rankings: what they mean and do not mean.
- ❖ Educate employers (law firms, judges) on the deleterious effect of using rankings or LSAT scores to identify potential interviewees; explore ways to hold them accountable for misuse of such data.
- ❖ Explore the use of a supplement to the LSAT, like the test of “lawyer effectiveness” being developed at UC-Berkeley by Prof. Margery Schultz and her collaborators.

Pipeline Practices

- ❖ Promote broader use of pipeline diversity databases (e.g., ABA/LSAC Pipeline Diversity Directory), listing the different programs and the contact person; encourage development of tool kits, best practices, and funding opportunities.
- ❖ Establish a blog, video conferencing, electronic bulletin board or other virtual resource for people to post concerns, issues, solutions, and success stories regarding diversity and pipeline programs.

EMERGING ISSUES

CAN YOU BRING YOUR WHOLE SELF TO WORK?

Advancing diversity and inclusion does include increasing the numerical representation of underrepresented groups within a workforce. True advancement, however, involves more than increased numbers. The culture of the workplace must actively allow and respect diverse ways of being, speaking, dressing and interacting.

All too often, attorneys whose race, ethnicity, gender, sexual orientation, or abilities place them in the minority at their workplace are compelled—explicitly or covertly—to try and perform socially in a way that erases the affective dimensions of their identities. Such compulsion undermines inclusion and leads to attrition. Countering these covert, often unintentional, forms of exclusion requires active acceptance of not only different identities in the abstract, but also different and perhaps seemingly unconventional ways of being.

- ❖ Develop pre-law school boot camps, like the HBCUs.
- ❖ Create a long-term mentoring program that links a diverse professional to every child who says he or she wants to be a lawyer or judge.
- ❖ Add programs such as Street Law to law school curricula to promote pipeline outreach.
- ❖ Connect the effects of low educational attainment (high dropout rates and low graduation rates) on professional education; gain support from the legal profession for public school educational reform.
- ❖ Connect law students and law schools with practitioners on pipeline initiatives in underrepresented communities in the early secondary school stages.
- ❖ Urge law schools, law firms, and all individuals in the profession to donate and direct financial and other resources to expand civic education and service learning.

Career Enhancement

- ❖ Forge strong ties between affinity bar associations and law schools in order to create opportunities for diverse students. Incentivize attorney members of the bar to participate in law school activities for diverse students, such as mentoring programs.
- ❖ Take an active role in getting diverse law students to become involved in the national and local bar associations while in law school (rather than waiting until they are into practice) and championing diversity issues. If membership fees are cost prohibitive for students, perhaps law firms or corporations could assist in paying fees.
- ❖ Develop a professional development system for new attorneys who recently passed the bar to teach law practice realities and skills for success, such as how to bill, how to manage time, and how to practice.
- ❖ Encourage law schools to gather employment data for their graduates based on diversity characteristics.
- ❖ Require law firms to report diversity data as part of the interviewing process.
- ❖ Encourage law students from under-represented groups to seek government employment.
- ❖ Partner with bar associations and the ABA Section on Legal Education and Admissions to the Bar to define diversity problems and identify solutions.
- ❖ Partner with bar associations to do mentoring and also encourage the schools to offer training in mentoring and follow-up with mentors and protégés.
- ❖ Improve the pipeline to a more diverse judiciary, such as encouraging judges to reach out and mentor law students.
- ❖ Facilitate better communication between employers and law schools regarding diversity issues and diversity research.

Recommendations for LAW FIRMS AND CORPORATE LAW DEPARTMENTS

Attorneys in private practice—especially those in management positions and those with seniority—are in a unique position to advance diversity in the legal profession. Given the large percentage of the legal profession employed in private practice, and the powerful appeal of private practice for aspiring lawyers, the ways in which private practitioners advance or ignore diversity issues have a massive impact on the perception and reality of the profession as a whole.

Many in private practice have recognized that a multi-dimensionally diverse workforce is crucial for commercial success and competitive edge. Given the steady globalization of markets and changing demographics of the United States, private practitioners must retain diverse workforces in order to most effectively serve and appeal to their diverse clients. This state of affairs grounds the “business case for diversity,” which alone is sufficient impetus to prioritize diversity programming.

There are other grounds, though, for private practitioners, like all legal professionals, to recommit to energetic and innovative efforts to make our profession more diverse and inclusive. The legal profession has historically held a unique cultural position in American society, not only administering but reflecting ideals of fairness and justice. Also, the profession has historically provided access to income and wealth commensurate with the “American Dream.” Historically, racial and ethnic groups, women and other marginalized groups have recognized that a law degree accelerates their social and economic mobility. If any part of our profession—especially the vast and powerful fields of private practice—fails to be diverse and inclusive, we are sending meaningful symbolic messages to members of underrepresented groups, especially those of lower socioeconomic status.

The current economic downturn has made it exceedingly difficult for private practitioners to support their clients, employees, and programs. As such, this call to invigorate and expand diversity programming may seem to present a profound financial challenge. Many of the recommendations herein, however, involve altering and addressing existing practices and cultures in the workplace, and may not necessitate significant financial commitments. Nonetheless, financial commitment is crucial for diversity work, despite—and because of—this economic downturn. These pecuniary considerations underlie several of the recommendations, such as: the assignment of deferred or furloughed associates to diversity programming; and the cultivation of alliances with bar associations, non-profit organizations, and schools that have existing pipeline diversity programs in need of financial support to stay afloat.

Addressing another critical issue will help conserve financial resources: advancement and retention of diverse lawyers. Employers must undertake serious efforts to render work cultures more sensitive and inclusive. Taking effective steps to prevent the systemic and shameful attrition of attorneys from underrepresented groups—especially women attorneys of color—will improve the workplace for everyone and curb an expensive loss for any organization. Many corporate clients have initiated diversity programs and standards for themselves and their preferred legal partners. These initiatives, and many others, demonstrate not only the importance but also the viability and the value to private practice of undertaking systemic and serious re-orientations of “business as usual” in the interest of diversity and inclusion.

The following recommendations are meant to serve a wide range of legal professionals: large and small firms, corporate counsel, and solo practitioners. These recommendations are also designed to serve those organizations that have already established diversity programs as well as those that have not. These recommendations are suggestive and not exhaustive, and must be interpreted and applied according to each individual organization’s needs and resources.

EMERGING ISSUES

TRIBAL COURTS & NATIVE AMERICANS

Judicial and government employees at all levels must solicit training and research on tribal law and Native cultures. Interactions among tribal, state, and federal courts are changing rapidly in multiple fields involving business, property, and crime. Tribal courts have continuously developed sophisticated and particularized approaches to the interests and injuries of Native individuals.

Cultural competence and sensitivity regarding Native cultures are imperative, and must be undertaken in particular, local ways based on the Native constituencies in a given area. Moreover, state and federal judicial and government organizations can learn from, and model best practices of, tribal courts that have designed innovative legal approaches to violence, illegal drug use, and other matters in ways that best reflect tribal values and thus best serve Native peoples.

RECOMMENDATIONS

Planning

- ❖ For existing firm/law department diversity programs:
 - » Re-examine prior diversity goals and programs.
 - » Gather new quantitative and qualitative data on numerical representation and work culture.
 - » Update goals and programs in light of this data, the organization's specific challenges and resources, and this report's general recommendations on "rethinking diversity."
 - » Draft, publicize, and implement an updated diversity and inclusion action plan, which includes measureable goals and mechanisms for regular assessment and meaningful accountability.
- ❖ Tie compensation to advancement of diversity goals.
- ❖ Using recent reports and research, develop persuasive arguments to present the tangible benefits of diversity to decision-makers (e.g., assignment partners, practice group leaders).
- ❖ Retain diversity experts as consultants or professional staff to achieve and maintain diversity and inclusion goals and accountability.
- ❖ Formalize a succession plan for diversity at all levels of the organization.
- ❖ Develop and disseminate rebuttals to inaccurate assertions that commitments to diversity amount to impermissible reverse discrimination. Emphasize that holistic, multidimensional diversity programming differs profoundly from—and thus avoids the alleged harms of—policies aimed at superficial, one-dimensional demographic representation.

Culture

- ❖ Sponsor regular trainings on multiple dimensions of diversity and inclusion—especially for leaders charged with ensuring accountability within the organization.
- ❖ Ensure that diversity programming investigates and addresses work cultures that inhibit inclusion and retention (e.g., those which involve implicit bias, unconscious discrimination, micro-aggressions, micro-inequities, or covert opposition to diversity and inclusion).
- ❖ Create affinity groups—internal to the organization or in collaboration with other organizations and bar associations—for employees from underrepresented groups.
- ❖ Encourage alliances among affinity groups to address common issues.
- ❖ Host or participate in town halls, retreats, and other events for attorneys from underrepresented groups.
- ❖ Coordinate and prioritize diversity programming with assignment, business development, and client relationship management systems.
- ❖ Examine and, where necessary, alter all policies to ensure they are inclusive of LGBT and other employees (e.g., single parents and those caring for relatives other than spouses and children) whose families and obligations differ from those of "nuclear" heterosexual families (e.g., domestic partner benefits, adoption leave, etc.).

- ❖ Explore viable ways to engage heterosexual, white men as vocal and visible champions of diversity efforts.
- ❖ Meaningfully address work/life balance by exploring how to expand part-time and work-at-home arrangements.
- ❖ Address legacy systems that function as glass ceilings for billing credits for attorneys from underrepresented groups.
- ❖ Diversify client relationship leadership.

Assessment and Accountability

- ❖ Develop and standardize surveys or other devices that can particularly help smaller law departments and law firms assess the success of diversity programming.
- ❖ Regularly assess the state of diversity in the work environment, such as through biennial employee surveys, interviews and focus groups that address not only numerical representation, but also cultural receptivity to difference.
- ❖ Build self-assessment mechanisms into all diversity and professional development programs, featuring both qualitative and quantitative measures of success.
- ❖ Develop a diversity committee structure with an institution-wide oversight group.
- ❖ Develop office and departmental diversity committees for local implementation and information gathering.
- ❖ Provide senior leadership support by having the Diversity Committee chair report directly to Firm Chairman, Managing Partner, or other comparable level position. Assign each affinity group a management committee sponsor of a different demographic group.
- ❖ Regularly provide diversity metrics to management committee, office heads, and practice groups.
- ❖ Implement confidential, anonymous “exit interviews” to determine the causes of—and develop programs to prevent—attrition by attorneys from underrepresented groups.
- ❖ Tie compensation to achievement of diversity goals.
- ❖ Make diversity contributions and services by associates and partners compensable (e.g., through revenue generating or billable hours mechanisms).
- ❖ Incorporate diversity into preferred provider criteria and electronic billing systems.
- ❖ Hold provider law firms accountable for their diversity efforts, as Microsoft and Walmart have done.
- ❖ Establish and regularly revise processes for analyzing data on diversity programming relevant to recruiting, retention, assignments, and promotion.

Hiring, Retention and Advancement

- ❖ Develop interviewing and hiring models that enable assessment of talent beyond the highest levels of the diverse applicant pool.
- ❖ Create programs where attorneys from underrepresented groups receive access to high-profile client assignments.
- ❖ Implement secondment programs or rotational assignment programs that allow attorneys from underrepresented groups to work directly with or at the client for development of substantive relationship-building, rainmaking and other skills.
- ❖ Provide business development training targeted to income partners from underrepresented groups.

- ❖ Focus on mentoring across difference and provide skill building and accountability mechanisms to foster an energetic mentoring culture.
- ❖ Retain diversity experts to facilitate discussions between management and employees from underrepresented groups.
- ❖ Partner with law schools to create and implement “third-year residencies” for law students to increase the likelihood of success and retention.

Outreach

- ❖ Host annual diversity summits for preferred provider law firms.
- ❖ Communicate personally and regularly with external partners about the value and importance of diversity and inclusion.
- ❖ Partner with, and provide financial and personnel support for, pipeline programs run by bar associations, schools, and other groups for primary, secondary, college and law school students.
- ❖ Sponsor and participate in externship and scholarship programs for law students from underrepresented groups.
- ❖ Explore strategic ways to use social media technology to deliver and support diversity programming.
- ❖ Promote disability accessible websites in the legal profession, as noted in the ABA’s August 2007 resolution.
- ❖ Develop and implement initiatives to allow furloughed or deferred associates to work on diversity initiatives.
- ❖ Collaborate to conduct and issue a diversity report to President Obama comparable to the “Bar None” report issued to President Clinton in 2000 by Lawyers for One America.
- ❖ Provide, and encourage clients to request, evidence of the firm’s or law department’s commitment to diversity through diversity data on recruitment, retention, assignments, and promotion.

EMERGING ISSUES

COGNITIVE PSYCHOLOGY AND UNCONSCIOUS BIAS

The intersection of unconscious bias and social justice is gaining popularity as a panel, program or research topic in the legal profession. Since 2003, the Equal Justice Society (EJS) has studied this issue. Its website explains:

Our signature project on this issue is the collaboration with the California Teachers Association (CTA) to assess racial bias in the classroom and school environment and its impact on student achievement.

“Implicit (unconscious) bias and stereotyping are gaining increasing attention as a possible explanation of unequal treatment in a number of settings including education, employment, health care and law,” said Dr. James Outtz, an industrial and organizational psychologist, who leads the research team on behalf of EJS and CTA. Unconscious bias has been defined as “implicit attitudes, actions or judgments that are controlled by automatic evaluation without a person’s awareness.”

Research indicates that we use the cognitive process of “categorization” to simplify and make more efficient our internal processes for perceiving others (e.g. sex, race, or age). This process, however, often results in application of stereotypes that unconsciously influence how we think and what we do relative to persons different from ourselves. In the context of social power relationships, this type of categorization frequently has a detrimental impact on members of diverse groups. How to recognize and counter this unconscious bias warrants additional study.

Recommendations for GOVERNMENT AND JUDICIARY

Advancing diversity and inclusion in the judiciary and government is especially important. These fields not only administer, but also represent democratic rule of law in our multicultural society. The absence of diversity and inclusion in the judiciary and government can malign the legitimacy of not only lawyers, but also of the law itself. Consequently, increasing the number of attorneys and other employees from underrepresented groups within the judiciary and government is of the utmost importance.

Throughout the regional hearings from which this report has been developed, commenters gave numerous accounts of total, or near total, exclusions of persons from underrepresented groups—especially people of color—from judicial benches of all sorts. They also reported open hostility to untraditional gender performance by female attorneys. For example, women are urged to appear “feminine” through clothing styles or makeup, and women of color are counseled to tone down such racial and ethnic markers as braided hair or ethnically distinctive jewelry.

Thus, despite the high visibility of President Barack Obama’s election and Justice Sonia Sotomayor’s appointment, the actual state of diversity among judicial and government offices remains woefully inadequate. Addressing these problems requires internal institutional work, alliance with those outside the judiciary and government, and proactive professional development of future colleagues. Institutionally, it is imperative to advocate on behalf of processes that make the appointment and election of judges and government officials more transparent and equitable.

Institutionally, it is crucial actively and continually to develop cultural competence as regards the unique experiences and injuries that affect individuals based on their race, color, ethnicity, language, economic status, sex, gender, sexual orientation, age, and abilities. This entails securing knowledge about the history and narratives of under-represented groups within the locality. Communication and linguistic skills necessary to interact effectively with persons from different backgrounds, worldviews and educational levels will also improve cultural competence.

Externally, members of the judiciary and government should partner with bar associations, community organizations, and schools at all levels to discuss and advance diversity and inclusion within their fields. Members of the judiciary and government must communicate that the aspirations of attorneys from underrepresented groups to join the judiciary and government are possible. Subsequently, they can mentor and develop those aspiring attorneys, such that their success becomes probable.

The following recommendations are intended to guide members of the judiciary and government as they seek to diversify their workforces, address the needs of their diverse clients, and defend the legitimacy of our public institutions.

RECOMMENDATIONS: JUDICIARY

Culture, Assessment and Accountability

- ❖ Develop, implement, and evaluate initiatives to increase the number of judges from underrepresented groups on the state and federal bench.
- ❖ Advocate transparency in the process of selecting judges, appointments, and influential government employees; and stress that a diverse and inclusive bench is required for institutional credibility.
- ❖ Modify the criteria and questions for judicial candidates to make them more inclusive (e.g., extend emphases beyond trial experience).

- ❖ Advocate the adoption of rules requiring judges to engage in continuing legal education, such as two hours every two years on: pro se and indigent litigants; pro bono representation; and the impact of race, ethnicity, gender, sexual orientation, disability, and language on litigants and litigation.
- ❖ Seek out and regularly conduct trainings on the importance of diversity on the bench, as well as among judicial clerks and staff.
- ❖ Establish teams to assist judicial candidates from underrepresented groups with their applications, write letters of recommendation to the governor's judicial appointments secretary, and interact with the media.
- ❖ Ensure that judges from underrepresented groups get meaningful assignments and opportunities to advance.
- ❖ Address the political appointment processes from within to make diversity important to the players by appealing to self-interest as well as the greater good.
- ❖ Identify, and promote reforms of, state judicial systems that hinder diversity on the bench.
- ❖ Advocate public financing of judicial elections.
- ❖ Hire staff specifically to address access to justice and fairness in the courts, including pro se and indigent litigant representation, pro bono activities, racial, ethnic, and gender fairness, and matters of disability, and foreign language interpretation.

Hiring, Retention, and Advancement

- ❖ Organize events discussing the value of diversity and inclusion for judicial and government offices, recognizing that this value may differ from that expressed by the "business case" for diversity in private practice.
- ❖ Partner with bar associations to host events in which judges and members of nominating commissions demystify the process of applying for judicial positions.
- ❖ Speak out on diversity within the profession by participating in minority bar association programs, community meetings, and law school events.
- ❖ Encourage the participation of lawyers from underrepresented groups in local and state bar associations' judiciary committees.
- ❖ Assist bar associations in hosting purely social events where diverse members can mingle informally with judges, thereby enhancing the lawyers' interest and confidence in becoming judges.
- ❖ Identify, mentor and coach potential candidates to the bench long before they are actually viable candidates; this may include assisting with applications and conducting mock interviews.
- ❖ Collaborate with diverse bar associations to identify candidates for judicial employment at all levels, and to assess and address matters involving recruitment, retention, and advancement.
- ❖ Review the attorney evaluation process to ensure that it is free of implicit bias.

RECOMMENDATIONS: GOVERNMENT

Culture, Assessment and Accountability

- ❖ Gather data, establish goals, and propose reforms of the selection processes for the judiciary at the state, federal, and local levels.

- ❖ Advocate transparency in the process of selecting judges, governmental appointments, and influential government employees; and emphasize that diversity and inclusion throughout all levels of government are required for institutional credibility.
- ❖ Address the income disparity between public and private practice.

Hiring, Retention, and Advancement

- ❖ Encourage federal and state governments to implement loan forgiveness programs for law school graduates who agree to serve in government positions.
- ❖ Organize events discussing the value of diversity and inclusion for government offices, recognizing that this value may differ from that expressed by the “business case” for diversity in private practice.
- ❖ Identify and reach out to segments of government that are not already convinced of the importance of diversity.
- ❖ Collaborate with bar associations in hosting purely social events where members can mingle informally with government attorneys, meet potential mentors, and develop connections.
- ❖ Establish mentoring programs matching government attorneys with law students, college students, and younger attorneys.
- ❖ Work with minority bar associations to identify candidates for government employment at all levels, and to assess and address matters involving recruiting, retention, and advancement.
- ❖ Institute a leadership academy to help attorneys from underrepresented groups seek and attain, and advance in, government work.

EMERGING ISSUES

CROSS-DISCIPLINARY INSIGHTS: CULTURAL COMPETENCE

Can the legal profession’s diversity efforts benefit from the medical profession’s experiences with cultural competence? How can we collaborate across disciplines?

Nowhere are the divisions of race, ethnicity and culture more sharply drawn than in the health of the people in the United States. Despite recent progress in overall national health, there are continuing disparities in the incidence of illness and death among African Americans, Latino/Hispanic Americans, Native Americans, Asian Americans, Alaskan Natives and Pacific Islanders as compared with the US population as a whole. What similarities exist between approaches to address health disparities and how justice disparities should be addressed?

The delivery of high-quality primary health care that is accessible, effective and cost efficient requires health care practitioners to have a deeper understanding of the socio-cultural background of patients, their families and the environments in which they live. Culturally competent primary health services facilitate clinical encounters with more favorable outcomes, enhance the potential for a more rewarding interpersonal experience and increase the satisfaction the individual receiving health care services. Both the Joint Commission on the Accreditation of Healthcare Organizations, which accredits hospitals and other health care institutions, and the National Committee for Quality Assurance, which accredits managed care organizations and behavioral health managed care organizations, support standards that require cultural and linguistic competence in health care. Would the legal profession and its clients benefit from requiring legal practitioners to have cultural and linguistic competence?

As organizations comprised primarily by lawyers (though also encompassing judges, law students, law professors and other legal workers), bar associations play a central role in advancing the value and reality of diversity—understood broadly as a multidimensional concept—in the legal profession.

At the national, state, regional and local level, bar associations help shape the norms of the profession regarding the value of diversity to the legal profession. When bar associations prioritize diversity, new lawyers are introduced to a milieu that values the presence and distinctive skills of people across race/ethnicity, gender, sexual orientation, disability and other dimensions of social identity, culture, privilege and power. When bar associations do not prioritize diversity, then new lawyers are introduced to milieus that exclude or marginalize those who do not already constitute the numerical majorities of the legal profession, which often leads to alienation, dissatisfaction, a dearth of potential mentors to socially diverse law students and a paucity of diverse law firm partners, corporate counsel, tenure-track law professors, appointed government attorneys and judges.

In other words, the public good of a critical mass of socially diverse lawyers in the dawning twenty-first century United States is substantially advanced.

Note: This section includes a set of recommendations specifically targeted to the American Bar Association, which may be implemented by the ABA overall and/or its individual Sections, Divisions, Forums, and other pertinent subgroups.

RECOMMENDATIONS

Culture: Building Consensus, Establishing Common Definitions and Understanding

- ❖ Develop explicit definitions about particular kinds of diversity and ensure they are consistent with the self-identification standards of each community of interest.
- ❖ Make bar association diversity statements and initiatives open-ended rather than limited to fixed categories so not to omit, exclude or elide forms of diversity that are slowly gaining social recognition, such as transgender identification.
- ❖ Target special diversity efforts to social groups that are historically underrepresented within the profession's diversity efforts, such as disabled, LGBT and Native American lawyers.
- ❖ Develop programming, initiatives and research that address the intersectionality of identity, or how diversity crosses categories of difference, e.g., disabled or LGBT lawyers amongst Native American nations or racial/ethnic minority groups.
- ❖ Encourage and support collaboration between and amongst mainstream bar associations and diverse affinity bar associations. Beyond such linkages, consider developing internal affinity groups for specific populations of diverse lawyers.
- ❖ Work to help change the culture of the legal profession so that more lawyers feel free to overcome fears of publicly identifying as having a disability or being LGBT. Beyond accessibility, bar associations should promote welcoming inclusiveness for all diverse attorneys.
- ❖ Institute continuing legal education, as part of regular bar association programming, on the elimination of bias and affirmative training on diversity in the profession (including making “service learning” qualify for CLE credit) to socialize new lawyers toward valuing diversity in the profession.

EMERGING ISSUES

INTERSECTIONALITY: OUR PLURAL IDENTITIES

It is crucial to recognize that none of our identities is singular. Our race, ethnicity, color, sex, gender, sexuality, ability, age, accent and other attributes coexist. Consequently, we must consider the various particular intersections of identities and recognize the unique circumstances that attend such intersections. For example, a lesbian African-American associate may have particular concerns and face particular harms that cannot be addressed by programming aimed at sexual orientation, race, or gender in isolation. Moreover, many individuals identify as members of multiple racial, ethnic, national, gender, and other groups. Engagements with and characterizations of identity must make room for these multi-faceted identifications.

- ❖ As to disability in particular, educate leaders and members on how to avoid impermissible inquiries and assumptions about what a person with disabilities can or cannot do, and the potential affirmative obligation (similar to religious accommodations) to make reasonable accommodations for people with disabilities—even if this involves reasonably different treatment than for individuals without disabilities.

Planning: Assessment & Accountability

- ❖ Develop diversity data, programming, and initiatives targeted to sectors of the legal profession outside of large law firms and corporate legal departments; focus on government, public interest, and small and solo practitioners, which account for the majority of private practice attorneys nationwide.
- ❖ Adopt formal diversity statements and establish formal diversity plans that commit the bar association to make measurable progress on diversity based on defined performance criteria and established timetables, including metrics on LGBT and disabled attorneys. (See Bar Association of San Francisco for reference).
- ❖ Include in bar association diversity plans measures to ensure diverse representation throughout the leadership, presidencies, executive committees, committee chairs, membership, speakers, program attendees and administrative staff of the association.
- ❖ Ensure that diversity planning adequately includes the oft-forgotten dimension of disability.
- ❖ Educate bar association leaders and members in the considerable *abilities* (which are often underutilized) of attorneys with disabilities.
- ❖ Emphasize the importance of and resources regarding disability literacy and etiquette; lack of understanding and/or insensitivity undermines efforts to increase accessibility and welcoming inclusiveness.
- ❖ Prepare bar association leaders on dealing with and reasonably minimizing costs and liability concerns potentially associated with providing accessibility and welcoming inclusion to attorneys with disabilities.
- ❖ Promote disability access, as far as practicable and beyond minimal required levels, to all bar association programs and resources, including websites and other electronic media.
- ❖ Develop comprehensive public relations and communication strategies consistent with the bar association's diversity plans to ensure broad dissemination to all quarters of the legal profession and all other stakeholder groups in diversity efforts—utilizing various media, including social media platforms and traditional print media.

Pipeline Practices: Outreach & Mentoring

- ❖ Develop and implement mechanisms to equip bar associations to serve as public education advocates. Fundamental changes in American education are necessary in order to develop a critical mass of diverse law applicants, law students, lawyers and leaders of the legal profession.
- ❖ Continue to support, fund, and expand the development of pipeline programs that help diverse youth imagine and work toward joining the legal profession—as early as elementary or middle school, and particularly in high school and college.

EMERGING ISSUES

DIVERSITY DEFENSE: INCLUSIVE MULTI- DIMENSIONAL DEFINITIONS

Properly designed approaches to diversity and inclusion do not run afoul of contemporary jurisprudence on colorblindness, gender-blindness, or reverse discrimination. Courts have frequently found that considerations of identity – and commitments to diversity – are permissible so long as they do not one-dimensionally and categorically equate a single, overbroad definition of identity (e.g., non-white) with a particular outcome.

Diversity proponents must research and prepare clear statements on how their diversity initiatives consider race, ethnicity, color, sex, gender, sexuality, age, ability, accent, and economic status among other factors in holistic, multi-dimensional ways that differ fundamentally from the forms of affirmative action (e.g., quotas and set-asides) which courts have prohibited.

- ❖ Collaborate and encourage development of systems and protocols to track the operation and success of pipeline diversity programs over time to ensure efficacy and sustainability. See, e.g., CSIRE (continuity, sustainability, impact, replicability and evaluation) criteria developed by The State Bar of California's Diversity Pipeline Task Force.
- ❖ Seek opportunities to incorporate into diversity programs targeted efforts to increase the ranks of self-identifying attorneys with disabilities (which will depend in part on societal progress in encouraging self-identification, admitting to the bar, and employing individuals with disabilities).
- ❖ Partner with local high schools, university student organizations and advocacy organizations to support the aspirations of diverse students to become lawyers. (See, e.g., For People of Color, Inc., <http://www.forpeopleofcolor.org>.)
- ❖ Encourage development of mechanisms to define and require diversity curriculum in accredited law schools; collaborate to support these efforts.

Leadership Development: Networking and Mentoring within the Legal Profession

- ❖ Encourage all members—younger and mature generations—to use emerging technologies of networking to truly integrate and knit together the entire legal community (including bar-association leadership, many of which tend to use new technologies less often).
- ❖ Facilitate the use of mentoring circles as a means of expanding access to the limited number of senior diverse lawyers who can serve as role models within the profession.
- ❖ Ensure that mentoring programs provide opportunities to integrate into substantive programs, committee work and the social fabric of bar associations those attorneys with disabilities, less experience, or who otherwise may feel unwelcome.
- ❖ Collaborate to develop national and regional leadership academies to identify, develop, and place diverse lawyers in positions of leadership throughout national, state and local bar associations.
- ❖ Explore the feasibility of including on the governing boards of large national and state bar associations representation from constituent affinity bars.
- ❖ Develop collaborative relationships amongst and between national, regional, state and affinity bar organizations to maximize impact, coordinate resources and ensure the continuity of messaging, data, and programming regarding the collective diversity efforts within the geographic legal communities they serve.
- ❖ Coordinate efforts among relevant national and regional affinity bar organizations to promote diversity on the bench by supporting diverse judicial candidates and assisting with the development of programs that groom diverse lawyers for judicial service.

Recommendations for the American Bar Association

- ❖ Establish an Association-wide diversity plan and encourage each pertinent entity (e.g., Section/Division/Forum) to have its own functional diversity plan that assigns responsibility for diversity directly to entity leadership.
- ❖ Coordinate the development of a Diversity Impact Statement (comparable to an Environmental Impact Statement) to shape the dialogue and provide continuity of efforts around diversity within the profession.

- ❖ In collaboration with relevant national and regional affinity bar organizations, coordinate efforts to centralize data collection and reporting about diverse populations within the legal profession.
- ❖ Design, administer, and report on—in consultation with disability-rights organizations—a comprehensive survey in which attorneys identify (with appropriate confidentiality) their disabilities and their needs, wishes, and experiences related to being attorneys with various disabilities.
- ❖ Promote and encourage broader use of the ABA Diversity Center website, which includes a central calendar of diversity events sponsored by ABA groups and other organizations.
- ❖ Promote and encourage broader use of the ABA/LSAC Pipeline Diversity Directory, an online searchable database of law-related pipeline programs nationwide.
- ❖ Work collaboratively to develop a standardized diversity index for law schools.
- ❖ Serve as a clearinghouse for information and resources relating to the development, implementation and results of successful legal internship and clerkship programs.
- ❖ Collaborate with the legal academy to explore more effective diversity-minded recruiting practices that place appropriate reliance on all relevant qualifications for admission, rather than the presently over reliance on LSAT scores and the UGPA.
- ❖ Collaborate with the American Bar Foundation to ensure diversity-related research and scholarship receive funding and publication priority.

EMERGING ISSUES

DIVERSITY: A JOURNEY (NOT A DESTINATION)

How we view our efforts to improve diversity in the legal profession must evolve to reflect changes in society. Today, diversity must be seen as an ongoing practice, and not an end-state. It requires sustained long-term commitment, leadership, innovation, and continuous financing. Like financial planning, marketing, and client relations, diversity must hold a permanent position within legal organizations' standard operations. National and international demographics, constituencies of legal organizations, and social conditions influencing inclusion and opportunity are continually changing. Such regular change requires us to evaluate, modify, and improve our work on diversity—perpetually. Diversity is not a destination but a journey.



Walmart Drives Diversity Within its Legal Department and Beyond

– Walmart’s Commitment to Diversity Reflects Its Respect for Its Associates and Customers –

Walmart believes that a diverse and multicultural workforce is the foundation for excellence. Diversity is also the foundation for an inclusive and sustainable business. The Legal Department has advanced diversity initiatives internally and externally with the same focus – striving for excellence in its legal representation.

Walmart Legal Department’s Dedication to Internal Diversity:

- In 2002, Walmart’s Legal Department began its journey toward building a more effective legal department by recognizing that it would reach its highest potential by identifying and recruiting the finest diverse attorneys. Walmart pinpointed not only diversity, but also integrity, experience, academic credentials, and the ability to produce results, as keys to building and maintaining a world class legal department.
- The Walmart Legal Department is widely credited with attracting some of the nation’s best legal talent, and in the process, created one of the most diverse and effective legal departments in corporate America.
- Today, of the more than 150 lawyers that comprise Walmart’s legal department; 42 percent are women and 34 percent are attorneys of color.
- Walmart’s Legal Department has a strong record of promoting women and minorities to management positions within the department and for supporting its associates as they are promoted into the company’s business units.

In addition to its in-house legal team, Walmart’s Legal Department strongly advocates for diversity across the legal profession. Walmart’s efforts are seen in three key areas: partnering with a significant number of bar associations, trade organizations, non-profits, NGOs and other entities to raise awareness about diversity and inclusion and advance opportunities for their members, partnering with outside counsel that not only support diversity in the profession but take action to achieve it, and supporting pipeline programs that open the profession to greater participation by all interested, talented individuals.

Walmart Legal Department’s External Diversity Leadership:

- Walmart’s Legal Department was an early signatory to the “Call to Action”, a corporate commitment by Fortune 500 companies to advance diversity in the legal profession and is an active member of the Leadership Council on Legal Diversity.
- Walmart evaluates outside counsel on three criteria: performance, cost-effectiveness and diversity.
- Walmart’s Legal Department encourages its outside counsel to integrate diversity as a key component of their business model and requires that law firms assign diverse attorneys to work on Walmart matters.
- Walmart’s Legal Department also works to increase the diversity of the legal profession by supporting programs whose primary purpose is to increase the number of diverse students in the legal education pipeline.

Recent Accolades:

- Founding Sponsor Award, Hispanic National Bar Foundation, 2008
- President’s Award, National Asian Pacific American Bar Association, 2009
- Corporation of the Year Award, National Bar Association Commercial Law Section, 2010

LexisNexis is committed to diversity and inclusion

As a global organization, we value people of all cultures, races, religions, nationalities and ethnicities, regardless of gender, gender identity and/or expression, age, disability or sexual orientation. We are committed to promoting a diverse workforce and strive to create a work environment that respects individuals and their contributions, and fosters innovation.

- LexisNexis is a major supporter of the American Bar Association, Judicial Clerkship Program. JCP brings minority law students, judges and former law clerks together in an effort to introduce the clerkship experience. LexisNexis, a participating partner of this effort from the beginning of the program, will join JCP in celebrating the program's 10th anniversary at the 2010 ABA Midyear Meeting.
- Achieved the top rating of one hundred percent in the Human Rights Campaign (HRC) Foundation 2010 Corporate Equality Index and Best Places to Work survey on lesbian, gay, bisexual and transgender (LGBT) equality in corporate America. This recognition is based on the latest HRC survey and independent research. The HRC Foundation is the nation's largest lesbian, gay, bisexual and transgender civil rights organization.
- Sponsor of The Minority Corporate Counsel Association (MCCA) 10th Annual Creating Pathways to Diversity® Conference.
- Partnered with the MCCA to celebrate the launch of the MCCA Community on LexisNexis® Martindale-Hubbell® Connected by offering two special LexisNexis Martindale-Hubbell Connected Fellowship Awards. The MCCA and LexisNexis Martindale-Hubbell selected two recipients who received a \$15,000 fellowship funded by LexisNexis Martindale-Hubbell to assist in furthering the educational and professional objectives of two, third-year law students who anticipate graduating from law school in 2010.
- The LexisNexis® Diversity Supplier Program provides a means of fostering economic growth within the business community and brings more diversity entrepreneurs into the mainstream of the American free enterprise system. The objective of the LexisNexis Diversity Supplier Program is to expand purchasing relationship with small, minority-owned, women-owned, disabled veteran-owned, veteran-owned and Hubzone business concerns.
- LexisNexis has a number of affinity groups that advance community, helping drive diversity initiatives and mentoring. The groups include but are not limited to LexisNexis Women Connected, The African American Network, Gay & Lesbian Alliance, a Multicultural Group and a Veterans Group.
- LexisNexis is committed to giving low-income people access to justice through pro bono work. We donate our services to lawyers who share our commitment—lawyers working for firms, corporations and nonprofit legal services organizations around the globe—and mobilize our own attorneys to volunteer for pro bono work. We are a corporate sponsor of Probono.net (www.probono.net), an innovative nonprofit organization that works to ensure access to legal services for those who cannot afford a lawyer. The Probono.net site has helped more than 50,000 attorneys find pro bono opportunities, training events, mentors and resources that allow them to provide legal assistance to low- and moderate-income people. Probono.net also helps in excess of three million people each year with questions about their legal rights and helps them find free legal aid in their communities.
- In 2008 LexisNexis sponsored the American Bar Association's National Training Institute on Civil Remedies for Human Trafficking Victims, training approximately 100 pro bono attorneys on remedies for victims.
- In July 2008, LexisNexis sponsored the first World Justice Forum in Vienna, during which over 450 governmental and non-governmental leaders from all parts of the world assembled to develop collaborative actions to strengthen the Rule of Law. In conjunction with this event, LexisNexis launched the Rule of Law Resource Center. This free online community connects those working to advance the Rule of Law by providing relevant information, expert commentary and other resources. The Center has enjoyed nearly 20,000 visits since its inaugural months in 2008 and continues to be a key global initiative for LexisNexis.



LEGAL SCHOLAR TEAM

TUCKER CULBERTSON is an Assistant Professor at Syracuse University College of Law, where he is also an affiliated faculty member with both the Institute on National Security and Counterterrorism and the LGBT Studies Program. Professor Culbertson was a Fellow with the Center for the Study of Law and Culture at Columbia Law School and a Lecturer in Political Science at San Francisco State University and the University of California at Berkeley. His research and writing focus on equal protection, fundamental rights, war, and family. Recent and forthcoming work appears in *Washington University Law Review*, *Stanford Journal of Civil Rights and Civil Liberties*, *University of Miami Law Review*, *Journal of Animal Law*, *Women's Studies Quarterly*, and two anthologies on race, gender, and sexuality.

MARC-TIZOC GONZÁLEZ is a Lecturer at University of California Berkeley Ethnic Studies Department, where he teaches Chicano/Latino Studies. He is also a staff attorney at the Alameda County Homeless Action Center. He is the president of the East Bay La Raza Lawyers Association and the secretary of LatCrit, Inc., the organization of Latina & Latino Critical Legal Theory. He also serves on the board of directors of the Berkeley Law Foundation, Centro Legal de la Raza and the National Lawyers Guild - San Francisco Bay Area Chapter, and the alumni advisory boards of the *Berkeley La Raza Law Journal* and National Latina/o Law Student Association. As co-chair of TUPOCC (The United People of Color Caucus), he serves on the National Lawyers Guild's National Executive Committee.

MARGARET MONTOYA, the lead scholar for this project, is a Professor of Law at University of New Mexico (UNM) School of Law & Senior Advisor to UNM Executive Vice-President in the Health Sciences Center. At UNM, she has taught constitutional rights, torts, contracts, clinical law, and employment law courses. In her seminars, she examines issues of race, ethnicity, gender, culture, and language. She is also the Senior Advisor to the Executive Vice-President in UNM Health Sciences Center. She has been a member of the UNM School of Medicine's admission committee for its Combined BA/MD Degree program. Recently, Professor Montoya has been working to create P-20 pipeline partnerships with the N.M. Hispanic Bar Association, the public schools, the judiciary, non-profits and policymakers. Professor Montoya has received countless recognitions for her work, including: current holder of the Haywood Burns Chair in Civil Rights at CUNY School of Law; recipient of the prestigious Clyde Ferguson Award, given annually by law professors of color for accomplishments in scholarship, teaching, and service; lifetime achievement awards from both the National Latina/o Law Students Association and UNM's Graduate and Professional Students of Color; and the Kate Stoneman Award from Albany Law School for expanding opportunities for women.

DIVERSITY PRACTITIONER WORKING GROUP

RAOUL G. CANTERO, III, is a partner at White & Case LLP. Mr. Cantero leads the Miami Appellate Practice, in addition to focusing on cross-border disputes relating to Latin America. Before joining White & Case, from 2002 to 2008, he was a justice on the Florida Supreme Court. Mr. Cantero was the first justice of Hispanic descent and one of the youngest ever to sit on the court. As justice, he also chaired the Florida Supreme Court's Commission on Professionalism for six years and was an adjunct professor at Florida State University College of Law. He is an active member of the Cuban American Bar Association.

VICKY DIPROVA is the Executive Director of the National Association of Women Lawyers (NAWL). Prior to joining NAWL, Ms. DiProva served as Executive Director for several organizations, including Rape Victim Advocates (one of the largest and oldest rape crisis centers in the country), Alternative Health Partners, and the Lesbian Community Cancer Project. During this time she provided anti-racism and privilege/oppression training to a variety of audiences including the criminal justice, healthcare, academic and legal communities. Ms. DiProva also has experience as a commercial and educational video producer. She received her Masters of Arts from the School of Social Service Administration at the University of Chicago.

LOREN GESINSKY spearheads the New York City employment-law practice of Gibbons P.C., where he represents employers on discrimination, harassment, wage and hour, restrictive-covenant, and other employment-law matters. He is Co-Chair of the Events Committee of the Gibbons Diversity Initiative, a founding participant in the New York City Bar Association's Committee to Enhance Diversity in the Profession, and an advocate for greater focus upon people with disabilities and others potentially less recognized in diversity initiatives. Recognition of his professional accomplishments includes his designation as a Super Lawyer for New York and in Best Lawyers in America, his selection for mayoral appointment to the New York City Commission on Human Rights, and his appointment to Chair the New York City Bar Association's Committees on State Affairs and Legal Issues Affecting People with Disabilities.

STACYL. HAWKINS is an independent diversity consultant to law firms, corporations, professional associations, educational institutions, non-profits, and other organizations. She provides comprehensive diversity management, training and educational services. In addition, she is an Adjunct Professor at the Rutgers School of Law at Camden. She serves on the Philadelphia Diversity Law Group and for the past two years, as Co-Chair of the Pennsylvania Bar Association's Commission on Women in the Profession Diversity Task Force. Previously, she was the Director of Diversity for Ballard Spahr Andrews & Ingersoll, LLP, the first person to hold that position. Ms. Hawkins has also been a senior labor and employment attorney with Holland & Knight, LLP, and served as Co-Chair of its Corporate Diversity Counseling practice group.

SUPRIA B. KUPPUSWAMY is the Manager of Diversity Initiatives at Chadbourne & Parke LLP in New York. She previously served as Associate Director of Career Services at Emory University School of Law, where her responsibilities included Chair of the Southeastern Minority Job Fair. She also assisted in planning Emory Law's symposium, "No More Early Exits," which addressed the issue of attrition of women of color in law firms. She served as a panelist at The Leadership Academy for Women of Color Attorneys, Inc., conference and at the 2009 National Asian Pacific American Law Student Association Convention. She is a member of the Association of Law Firm Diversity Professionals and NALP: The Association for Legal Career Professionals. Before her work at Emory Law, Ms. Kuppuswamy was a litigation associate at two Atlanta law firms.

KELLY MCNEIL LEGIER is the Director of Member Outreach and Diversity for the Louisiana State Bar Association (LSBA). Previously, Ms. Legier worked in the Staff Attorney's Office of the United States Fifth Circuit Court of Appeals, and clerked in the U.S. Fifth Circuit Court of Appeals and U.S District Court for the Eastern District of Louisiana. She also spent several years in private practice in the area of ERISA, employment law and commercial litigation. Ms. Legier is a past Chair of the LSBA Minority Involvement Section. She has been an instructor for the National Institute of Trial Advocacy and Louisiana State University Trial Advocacy Program. She also is a past president of the Greater New Orleans Louis A. Martinet Legal Society, Inc. (a National Bar Association affiliate).

MEREDITH MOORE is Director of Global Diversity at Weil, Gotshal & Manges LLP, where she is responsible for overseeing the firm's diversity initiatives globally including diversity education and training, affinity groups, and supplier diversity programs. Prior to joining the firm, Ms. Moore launched the Office for Diversity at the New York City Bar Association. She 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. Ms. Moore is currently an adjunct assistant professor at New York University's Wagner School and was previously an adjunct professor at Columbia University's School of International and Public Affairs.

MARY B. RICHARDSON-LOWRY is a partner at Mayer Brown LLP in Chicago, where she is a member of its Government and Global Trade Group. She is also Chairperson of the firm's Committee on Diversity and Inclusion and a member of the firm's Lateral Hiring Committee. Her practice focuses on commercial transactions and government relations. Formerly, in the public sector, she served as Commissioner of Chicago's Department of Buildings, managing regulatory issues related to structures in the city of Chicago. Her practice includes a broad range of corporate interest and civic activities. Her numerous honors include: Crain Business' 100 Most Influential Women, Chicago United Business Leaders of Color Award Recipient, and Harvard University, John F. Kennedy School of Government Innovations Award.

MIGUEL R. RIVERA, SR., serves as Associate General Counsel, Litigation Division at the Walmart Legal Department, where he is responsible for a case load of more than 400 products liability and premises liability cases in fifteen states. Prior to moving to the Litigation Division, Mr. Rivera was Section Head of Legal Administration; served as Associate General Counsel in the Class Action Division; and served as Associate General Counsel for Outside Counsel Management in the Administration and External Relations Division of the Walmart Legal Department. Mr. Rivera is a well recognized expert in the area of outside counsel management and diversity and regularly speaks around the country on these issues.

JUDY TOYER is Senior Counsel with Eastman Kodak Company, where she is a member of its Employment Law Legal Staff and serves as employment counsel for a number of Kodak organizations, including the Global Diversity and Community Affairs Office/Chief Diversity Officer. She counsels Kodak business units and staff functions on a broad range of personnel matters, including affirmative action and diversity, and manages litigation. In 2006, she served as Director, Human Resources, for Kodak's Global Functions. Ms. Toyer ABA activities include serving as a member of the ABA House of Delegates, Fellows of the American Bar Foundation, Standing Committee on Group and Prepaid Legal Services, and the Editorial Board of *GPSolo* Magazine. Ms. Toyer is a former Chair, Diversity Committee of the Monroe County (New York) Bar Association.

SIMONE WU is senior vice president and general counsel of XO Holdings. In this role, she oversees the company's legal affairs, which include commercial, corporate, employment, and intellectual property matters, as well as the litigation in which the company is involved. Prior to joining XO in 2001, Ms. Wu held business and legal positions at MCI and AOL and practiced domestic and international transactional and communications law at Skadden, Arps, Slate, Meagher & Flom. She is a member of the board of directors of the Minority Corporate Counsel and is active in the National Asian Pacific American Bar Association.

AMERICAN BAR ASSOCIATION DIVERSITY GROUPS

THE ABA CENTER FOR RACIAL AND ETHNIC DIVERSITY (www.new.abanet.org/centers/diversity/) provides the framework for effective utilization of ABA resources committed to diversity; improves coordination and collaboration of diversity efforts throughout the Association; and helps to maintain racial and ethnic diversity as a priority issue for the Association, in support of ABA's Goal III. The Center is comprised of three racial and ethnic diversity entities.

ABA Commission on Racial and Ethnic Diversity in the Profession provides services for racially and ethnically diverse lawyers, judges, and others who are in the legal profession. The Commission's projects include: Minority Counsel Program; Spirit of Excellence Award; and, Goal III Report.

ABA Coalition on Racial and Ethnic Justice addresses and provides services on social justice matters related to racial and ethnic bias in the justice system. COREJ's projects include: Overrepresentation of Juveniles of Color in Juvenile Justice Project; Natural Disaster Response & Social Justice Strategies Initiative; and, Election Protection.

ABA Council for Racial and Ethnic Diversity in the Educational Pipeline provides services to increase diversity among students in the educational pipeline to the legal profession. The Pipeline Council's projects include: ABA/LSAC Pipeline Diversity Directory; Judicial Clerkship Program; and, Regional Pipeline Diversity Roundtables and Workshops.

THE COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW

(<http://www.abanet.org/disability>) promotes the ABA's commitment to justice and the rule of law for persons with mental, physical, and sensory disabilities; and, to promote their full and equal participation in the legal profession. Its current projects include National Law School Disability Programs Directory (online), National Mentor Program for Lawyers and Law Students and with Disabilities, and the Paul G. Hearne Award, which is given annually to an individual or organization that has performed exemplary service in furthering the rights, dignity, and access to justice for people with disabilities.

THE COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY

(<http://new.abanet.org/sogi/Pages/default.aspx>) works to secure equal treatment of persons in the ABA, the legal profession and the justice system, and to remove barriers to professional advancement without regard to sexual orientation or gender identity. SOGI has been working on ways to increase LGBT attorney membership in the ABA. It has also worked with American Bar Endowment to expand coverage to include domestic partners and American Bar Insurance to expand their coverage to LGBT attorneys and their domestic partners.

THE COMMISSION ON WOMEN IN THE PROFESSION (<http://www.abanet.org/women>) is committed to secure the full and equal participation of women in the ABA, the legal profession, and the justice system. One of its major projects is the Women of Color Research Initiative, which examines the professional trajectory of women of color. The first phase of this project explored diversity and inclusion in the experiences of lawyers in law firms. The second phase will study the experiences of lawyers in the government sector; and the third research phase will focus on the perspectives of lawyers in the Fortune 500 legal departments. Another highly respected Commission project is its annual ABA Margaret Brent Women Lawyers of Achievement Awards.

DIVERSITY AT THE ABA

1973	Commission on Mental and Physical Disability Law created to promote the rule of law for persons with mental, physical, and sensory disabilities and their full and equal participation in the legal profession.
1980	ABA President calls for "a better understanding of the concerns and problems of minority lawyers" to determine constructive and meaningful ways to address these problems.
1986	Goal IX— <i>To promote Full and Equal Participation in the Profession by Minorities and Women</i> —adopted.
1986	Commission on Opportunities for Minorities in the Profession created; later becomes the Commission on Racial and Ethnic Diversity in the Profession.
1987	Commission on Women in the Profession created to assess the status of women in the legal profession, and identify barriers to advancement.
1992	Presidential Task Force on Minorities in the Justice System created; later becomes the Coalition on Racial and Ethnic Justice.
1995	Spirit of Excellence Award established to recognize individuals who have contributed to the advancement of racial and ethnic diversity in the profession.
1999	ABA Presidential Advisory Council on Diversity created to focus on improving diversity in the pipeline to the profession; later becomes the Council for Racial and Ethnic Diversity in the Educational Pipeline.
2000	ABA Legal Opportunity Scholarship Fund created to encourage racial and ethnic minority students to attend law school and to provide financial assistance to those in need.
2001	ABA Center for Racial and Ethnic Diversity created as coordinating body for diversity efforts throughout the ABA.
2007	Commission on Sexual Orientation and Gender Identity created to secure equal treatment of persons in the ABA, the legal profession and the justice system.
2008	ABA restructured its Mission & Goals, and identified diversity as one of only four Association priorities. The new Goal III is to: "ELIMINATE BIAS AND ENHANCE DIVERSITY" with the following objectives: Promote full and equal participation in the association, our profession, and the justice system by all persons. Eliminate bias in the legal profession and the justice system.
2009	ABA Presidential Diversity Summit - Diversity in the Legal Profession: The Next Steps?
2010	Release of "ABA Presidential Diversity Initiative - Diversity in the Legal Profession: Next Steps" Report and Recommendations.

