

IILP Review 2011: The State of Diversity and Inclusion in the Legal Profession



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IILP Review 2011: The State of Diversity and Inclusion in the Legal Profession



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September, 2011

Dear Colleagues,

Recently, the Institute for Inclusion in the Legal Profession (“IILP”) published “The Business Case for Diversity 2011: Reality of Wishful Thinking?” I am pleased that the level of interest in the report has exceeded the large amount of work that went into assembling the data it presented. It’s now my privilege to share IILP’s inaugural review of the state of diversity and inclusion in the legal profession.

As with the report on the Business Case, this IILP Review: The State of Diversity and Inclusion in the Legal Profession reflects IILP’s desire to dig into the facts and to provide a forum for candid discussion about individual experiences. The Review contains comprehensive data – some encouraging; some troubling – on representation and other key measures. A shared understanding of these data and a continued focus on the facts and figures is essential to finding and fixing problems.

The IILP Review also includes a series of eleven essays that evoke any number of adjectives – heartfelt, insightful, surprising, important. Along with the statistical information with which the review begins, I believe the essays are a “must read.” Taken together, the essays show not only the common elements in diversity and inclusion but also the important differences and particular challenges across groups – a point that has not received a great deal of attention.

As Elizabeth Chambliss points out in her introduction that follows, there is plenty to read on the topic of diversity and inclusion. In publishing this report, therefore, the IILP aimed to cover old topics in a new way and, in some instances, cover new topics for the first time. I hope you’ll take the time to read the review and join me in thanking all the contributors for their indefatigable quest to ensure that our profession does not lag but leads in diversity and inclusion.



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

September, 2011

Dear Readers,

The U.S. legal profession justifiably has devoted a great deal of attention to issues of diversity and inclusion within its membership. The academic literature is voluminous. Researchers have spent countless hours gathering and interpreting data. Law firm and law department managers have spent thousands of hours—and dollars—developing diversity programs; and government agencies, bar associations, and non-profit organizations have instituted scores of initiatives to speed integration within the profession. All of these efforts are important. Lack of diversity is a significant challenge for our profession and resolving it will require sustained efforts on multiple fronts.

What has been missing, however, is communication and coordination. Academic research gets too little attention from law firm managers and practicing lawyers. Law firm and law department efforts may get a fleeting media mention but rarely get systematic assessment or follow-up coverage. Public sector initiatives often go unnoticed. Bar association programs are developed in isolation from each other and without reference to the most recent data and research. Even groups that focus specifically on diversity within the profession tend to operate in isolation from each other and over time to narrow their focus to particular groups and challenges. As a result, a shared conversation about diversity and inclusion has been difficult to sustain.

The Institute for Inclusion in the Legal Profession (IILP) aims to address this. The *IILP Review: The State of Diversity and Inclusion in the Legal Profession* is intended to make it easier for busy lawyers, judges, law professors, students, employers and diversity professionals to stay up-to-date on a wide range of thinking, research, programs and challenges related to diversity and inclusion in the profession. The *IILP Review* brings together a statistical summary of the most recent demographic data on the profession, thought leadership essays exploring particular diversity issues and challenges, and a round-up of the most promising and successful initiatives by law firms, corporations, law schools, bar associations, and government—all in an accessible, readable format.

This is the inaugural issue of an annual publication. We hope that you will find it informative and useful, and that you will consider contributing an article to a future issue of the *IILP Review*.



Elizabeth Chambliss
Editor-in-Chief



THE CLARO GROUP
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Dear Participant:

Thanks for attending today's symposium. The Claro Group ("Claro") is a proud sponsor of today's event and we hope that everyone will take tangible, actionable and valuable ideas back to your respective organizations. At Claro, we believe in the principle that an organization should be a reflection of the multicultural society in which we live. Pursuing this goal provides for a stronger and more effective organization. We have not completely achieved this vision, although we have improved and are progressing. One of the reasons for our sponsorship is self serving; we hope to learn as well.

The topic of diversity has been part of the lexicon of the professional services market for my entire 30 year career. To us, the concept of inclusion is important. Diversity is recognizing differences while inclusion is incorporating and integrating everyone's individual experiences into the fabric of the organization. One needs to understand the current state and take tangible steps to make improvements. "IILP Review 2011: The State of Diversity and Inclusion" is a wealth of information and data. Plus, the essays add depth to the data. While Claro has its own initiatives to improve inclusion, we are interested in observing and participating in the dialog today. We can do more.

Again, thank you for attending and we look forward to learning with you.

Sincerely,

Mark C. Hargis
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About IILP

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

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

The IILP Review features the most current data about the state of diversity in the legal profession. The Review features compelling essays that explore the nuances and important subtleties at play in regard to diversity and inclusion for lawyers, along with current research from academic experts. As such, the Review brings together insights on programs and strategies to address diversity generally, and in regard to the legal profession, specifically to examine the different challenges that difference brings to those seeking to survive and thrive as law students, lawyers, judges, and leaders.

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

If you are interested in submitting an article for a future edition of the “IILP Review: The State of Diversity and Inclusion in the Legal Profession,” please visit www.TheIILP.com for more information and to download the Call for Papers.

The Demographics of the Profession

Elizabeth Chambliss

Professor of Law and Co-Director, Center for Professional Values and Practice, New York Law School

An executive summary of the most current demographic data on the legal profession by Professor Elizabeth Chambliss, author of the ABA report, "Miles to Go: Progress of Minorities In the Profession (2004)."

The Institute for Inclusion in the Legal Profession (IILP) was created in 2010 to promote demographic and cultural diversity and inclusion in the U.S. legal profession. As part of this effort, the IILP Review will publish an annual statistical summary regarding the status of traditionally underrepresented groups within the profession. Such data are critical for assessing the profession's progress toward greater diversity and inclusion.

This inaugural summary takes stock of the profession's progress as of December, 2010. Its goal is to provide a current, comprehensive picture of the demographics of the profession and to use this information to help the profession set an agenda for effective future action.

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

The main substantive findings of the 2010 demographic summary are as follows:

- Minority* representation in the legal profession has increased slightly since 2000, from 9.7 percent (based on 2000 U.S. Census data) to 11.6 percent in 2009 (based on data from the Bureau of Labor Statistics) (see Table 1). Minority representation in the legal profession is significantly lower than in most other professions, however. Minority representation among lawyers was 11.6 percent in 2009, compared to 24.6 percent among accountants and auditors, 28.4 percent among physicians and surgeons, and 21.9 percent within the management and professional labor force as a whole (see Table 2).
- Women's representation among lawyers increased from 28.7 percent in 2000 to 32.4 percent in 2009 (see Table 1). Women's representation among lawyers is higher than women's representation in some other professions, including architects (25.3 percent), clergy (17.0 percent), computer scientists (26.9 percent), and engineers (see Table 2). Women's representation among lawyers is significantly lower than their representation among accountants (61.8 percent), news analysts (42.8 percent), postsecondary teachers (49.2 percent), and psychologists (68.8 percent).

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

- Women continue to be underrepresented in top-level jobs within the legal profession, such as law firm partner (19.4 percent, see Table 16), federal appellate judge (26.8 percent, see Table 19) and law school dean (20.6 percent, see Table 21). Minority women, in particular, are underrepresented in top-level jobs. As of 2010, minority women comprised only 2 percent of all (income and equity) partners nationwide (see Table 16).
- Nationally, African Americans are the best represented minority group among lawyers (4.7 percent), followed by Asian Americans (4.1 percent) (see Table 1). This represents a change since 2000, when Hispanics were the second largest minority group among lawyers.
- The pace of African American entry into the profession has slowed in recent years. In 2008-09, African Americans made up only 6.9 percent of law students, compared to 7.5 percent in 2000-01 (see Table 5). Asian American representation among law students also has dropped slightly in recent years, after decades of steady gains. Hispanic representation among law students has increased gradually, from 5.8 percent in 2000-01 to 6.2 percent in 2008-09. Native American representation has been flat since the mid-1990s, with Native Americans comprising less than 1 percent of all law students.
- Total minority representation among law graduates has dropped slightly in recent years, from 22.4 percent in 2005 to 22.0 percent in 2008 (see Table 4). The representation of women among law graduates also has dropped, from a high of 49.5 percent in 2004 to 47.1 percent in 2008.
- Initial employment patterns for white and minority law graduates have converged since the late 1990s, except for judicial clerkship rates, where divergence has increased (see Table 6). This overall convergence masks significant differences between racial and ethnic groups, however. For instance, African Americans and Native Americans continue to be significantly less likely than other groups to enter private practice, whereas Asian Americans are more likely than other groups, including whites, to do so (see Table 8).
- Women's initial employment continues to differ from men's among both white and minority law graduates (see Table 7). Women are less likely than men to enter private practice and business, and more likely to begin their careers in public interest jobs. Women also are more likely than men to have judicial clerkships. These patterns have remained relatively consistent since the mid-1990s.
- The initial employment of lawyers with disabilities differs somewhat from that of other groups (see Table 9). Lawyers with disabilities are less likely than most other groups to enter private practice and significantly more likely to enter public interest jobs.
- There are no recent national data on the distribution of practicing lawyers by type of employment, beyond initial employment. As of 2000, 74 percent of all lawyers were employed in private practice, and 8 percent were in business; thus, 83 percent of all lawyers were employed in the for-profit sector (see Table 10). Women were slightly less likely than men to be in private practice and more likely to be in government or public interest jobs (see Table 11). Regional data suggest that employment patterns also may differ by race and ethnicity (see Table 12). The lack of detailed demographic data makes more systematic assessment impossible, however.
- There also are no national data on the employment of lawyers with disabilities, or LGBT lawyers, beyond initial employment. The National Association for Law Placement (NALP) began collecting such data from law firms in 2004. These data show that the percentage of lawyers with disabilities in law firms is miniscule at both the associate and partner levels, although it has

increased slightly over the period for which data are available (see Table 13). The percentage of LGBT lawyers likewise is extremely small, but increasing (see Table 14). More data are needed to place these figures in perspective, including data from other employment settings, occupations, and regions.

- Based on the data that are available, women's representation is highest among law firm associates (45.4 percent in 2010, see Table 15), corporate counsel (39 percent in 2006, see Table 17), and entry-level law faculty (53.4 percent in 2008-09, see Table 21), and lowest among law partners (19.4 percent in 2010, see Table 16) and deans (20.6 percent in 2008-09, see Table 21).
- Minority representation is highest among entry-level law faculty (25.1 percent in 2008-09, see Table 21), law firm associates (19.5 percent in 2010, see Table 15), federal government attorneys (17.6 percent in 2006, see Table 18), and federal appellate judges (16.2 percent in 2010, see Table 19), and lowest among law partners (6.2 percent in 2010, see Table 16) and corporate counsel (11.0 percent in 2006, see Table 17).
- Better data are needed to advance the analysis beyond these very general comparisons. Outside of law firms, the profession currently lacks even basic gender and ethnic breakdowns by employment category, not to mention more detailed breakdowns by title, seniority and region, and more inclusive efforts covering sexual orientation and disability status. The profession also lacks demographic data on lawyer compensation, satisfaction, and public service. Gathering such data requires a sustained commitment by the entire profession, including bar associations, employers, law schools, and public service groups. Contributing to this effort is a chief goal of the IILP Review.

Table 1 - Minority Representation in the U.S. Legal Profession¹

1990	Lawyers (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	747,077 (100.0)	25,670 (3.4)	18,612 (2.5)	10,720 (1.4)	1,502 (0.2)	56,397 (7.6)
M	564,332 (75.5)	14,360 (1.9)	12,330 (1.7)	6,744 (0.9)	1,029 (0.1)	34,463 (4.6)
F	182,745 (24.5)	11,310 (1.5)	6,282 (0.8)	3,897 (0.5)	445 (0.1)	21,934 (2.9)
	Judges (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	32,394 (100.0)	2,278 (7.0)	1,098 (3.4)	342 (1.1)	191 (0.6)	3,909 (12.1)
M	24,994 (77.2)	1,407 (4.3)	800 (2.5)	216 (0.7)	117 (0.4)	2,540 (7.8)
F	7,400 (22.8)	871 (2.7)	298 (0.9)	126 (0.4)	74 (0.2)	1,369 (4.2)
2000	Lawyers (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	871,115 (100.0)	33,865 (3.9)	28,630 (3.3)	20,160 (2.3)	1,730 (0.2)	84,385 (9.7)
M	621,315 (71.3)	17,450 (2.0)	17,835 (2.0)	11,020 (1.3)	975 (0.1)	47,280 (5.4)
F	249,805 (28.7)	16,415 (1.9)	10,795 (1.2)	9,140 (1.0)	755 (0.1)	37,105 (4.3)
	Judges (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	58,355 (100.0)	5,155 (8.8)	2,650 (4.5)	1,000 (1.7)	465 (0.8)	9,270 (15.9)
M	36,565 (62.7)	2,285 (3.9)	1,440 (2.5)	605 (1.0)	260 (0.4)	4,590 (7.9)
F	21,795 (37.3)	2,870 (4.9)	1,210 (2.1)	395 (0.7)	205 (0.4)	4,680 (8.0)
2009	Lawyers (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	1,043,000 (100.0)	49,021 (4.7)	29,204 (2.8)	42,763 (4.1)	n/a	120,988 (11.6)
M	705,068 (67.6)					
F	337,932 (32.4)					
	Judges (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	73,000 (100.0)	3,504 (4.8)	5,110 (7.0)	2,336 (3.2)	n/a	10,950 (15.0)
M	40,734 (55.8)					
F	32,266 (44.2)					

1. U.S. CENSUS BUREAU, CENSUS 2000 EEO DATA TOOL, *available at* <http://www.census.gov/eo2000/index.html> (for 1990 and 2000 data); *see also* U.S. DEP'T OF LABOR, EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY (2009), *available at* <http://www.bls.gov/cps/cpsaat11.pdf> (for 2009 data). Figures for African Americans include Blacks and African Americans. Figures for Hispanics include Hispanics and Latinos. Figures for Asian Americans include Native Hawaiians and Pacific Islanders. 2009 data for Native Americans are not available. 2010 U.S. Census data were not available as of the date of printing.



Latinas make up 7 percent of the U.S. population but only 1.4 percent of all U.S. lawyers.

See "Los Puentes y Las Barreras: Latinas in the Legal Profession," by Melinda Molina, p. 42.

Table 2 - Minority Representation Among U.S. Professionals (2009) ²					
	Af Am.	Hisp.	As Am.	Minority	Female
Civilian Labor Force	10.7%	14.0	4.7	29.4	47.3
Mgmt./Professional	8.4	7.3	6.2	21.9	51.4
Accts./Auditors	8.0	6.3	10.3	24.6	61.8
Architects	2.5	6.9	4.8	14.2	25.3
Chief Executives	2.9	4.6	4.2	9.1	25.0
Civil Engineers	4.1	7.3	10.6	22.0	7.1
Clergy	12.4	5.3	4.0	21.7	17.0
Computer Scientists	7.5	6.1	14.7	28.3	26.9
Dentists	1.4	7.9	10.8	20.1	30.2
Lawyers	4.7	2.8	4.1	11.6	32.4
Mech. Engineers	4.0	5.8	10.1	19.9	5.9
News Analysts/Reporters	1.8	4.0	0.9	6.7	42.8
Physicians/Surgeons	5.7	6.3	16.4	28.4	32.2
Postsecondary Teachers	5.3	4.6	11.3	21.2	49.2
Psychologists	6.3	6.2	3.2	15.7	68.8

2. U.S. CENSUS BUREAU, *Table 615 Employed Civilians by Occupation, Sex, Race, and Hispanic Origin: 2009*, available at <http://www.census.gov/compendia/statab/2011/tables/11s0615.pdf>. Data for Native Americans are not available.

Table 3 - Law School Enrollment by Gender and Minority Status³

	Total	Female (%)	Minority (%)
1976-77	112,401	29,343 (26.1)	9,589 (8.5)
1977-78	113,080	31,650 (28.0)	9,580 (8.5)
1978-79	116,150	35,775 (30.8)	9,952 (8.6)
1979-80	117,297	37,534 (32.0)	10,013 (8.5)
1980-81	119,501	40,834 (34.2)	10,575 (8.8)
1981-82	120,879	43,245 (35.8)	11,134 (9.2)
1982-83	121,791	45,539 (37.4)	11,611 (9.5)
1983-84	121,201	46,361 (38.2)	11,866 (9.8)
1984-85	119,847	46,897 (39.1)	11,917 (9.9)
1985-86	118,700	47,486 (40.0)	12,357 (10.4)
1986-87	117,813	47,920 (40.7)	12,550 (10.7)
1987-88	117,997	48,920 (41.5)	13,250 (11.2)
1988-89	120,694	50,932 (42.2)	14,295 (11.8)
1989-90	124,471	53,113 (42.7)	15,720 (12.6)
1990-91	127,261	54,097 (42.5)	17,330 (13.6)
1991-92	129,580	55,110 (42.5)	19,410 (15.0)
1992-93	128,212	54,644 (42.6)	21,266 (16.6)
1993-94	127,802	55,134 (43.1)	22,799 (17.8)
1994-95	128,989	55,808 (43.3)	24,611 (19.1)
1995-96	129,397	56,961 (44.0)	25,554 (19.7)
1996-97	128,623	57,123 (44.4)	25,279 (19.7)
1997-98	125,886	56,915 (45.2)	24,685 (19.6)
1998-99	125,627	57,952 (46.1)	25,266 (20.1)
1999-00	125,184	59,362 (47.4)	25,253 (20.2)
2000-01	125,173	60,633 (48.4)	25,753 (20.6)
2001-02	127,610	62,476 (49.0)	26,257 (20.6)
2002-03	132,885	65,179 (49.0)	27,175 (20.5)
2003-04	137,676	67,027 (48.7)	28,325 (20.6)
2004-05	140,376	67,438 (48.0)	29,489 (21.0)
2005-06	140,298	66,613 (47.5)	29,768 (21.2)
2006-07	141,031	66,085 (46.9)	30,557 (21.6)
2007-08	141,719	66,196 (46.7)	30,657 (21.6)
2008-09	142,922	66,968 (46.9)	31,368 (21.9)

3. *Sec. Of Legal Educ. and Admissions to the Bar, Legal Education Statistics from A.B.A. Approved Law Schools, A.B.A.*, <http://www.abanet.org/legaled/statistics/stats.html>. Some figures differ slightly from those previously reported by the ABA.

Table 4 - JDs Awarded by Gender and Minority Status⁴

	Total	Female (%)	Minority (%)
1984	36,687	13,586 (37.0)	3,169 (8.6)
1985	36,829	14,119 (38.3)	3,150 (8.6)
1986	36,121	13,980 (38.7)	3,348 (9.3)
1987	35,478	14,206 (40.0)	3,450 (9.7)
1988	35,701	14,595 (40.9)	3,516 (9.8)
1989	35,520	14,553 (41.0)	3,809 (10.7)
1990	36,385	15,345 (42.2)	4,128 (11.3)
1991	38,800	16,580 (42.7)	4,585 (11.8)
1992	39,425	16,680 (42.3)	4,976 (12.6)
1993	40,213	16,972 (42.2)	5,653 (14.1)
1994	39,710	16,997 (42.8)	6,099 (15.4)
1995	39,191	16,790 (42.8)	6,802 (17.4)
1996	39,920	17,366 (43.5)	7,152 (17.9)
1997	40,114	17,552 (43.8)	7,611 (19.0)
1998	39,455	17,662 (44.8)	7,754 (19.7)
1999	39,071	17,516 (44.8)	7,532 (19.3)
2000	38,157	17,713 (46.4)	7,391 (19.4)
2001	37,909	18,006 (47.5)	7,443 (19.6)
2002	38,576	18,644 (48.3)	7,780 (20.2)
2003	38,863	19,133 (49.2)	8,233 (21.2)
2004	40,018	19,818 (49.5)	8,367 (20.9)
2005	42,673	20,804 (48.8)	9,568 (22.4)
2006	43,883	21,074 (48.0)	9,564 (21.8)
2007	43,518	20,669 (47.5)	9,820 (22.5)
2008	43,588	20,537 (47.1)	9,631 (22.0)

4. *Id.* Some figures are slightly inconsistent between charts currently reported on the ABA website.

Table 5 - Law School Enrollment by Race/Ethnicity⁵

	Total	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
1976-77	112,401	5,303 (4.7)	2,461 (2.2)	1,324 (1.2)	301 (0.3)	9,389 (8.4)
1977-78	113,080	5,304 (4.7)	2,531 (2.2)	1,382 (1.2)	363 (0.3)	9,580 (8.5)
1978-79	116,150	5,350 (4.6)	2,788 (2.4)	1,424 (1.2)	390 (0.3)	9,952 (8.6)
1979-80	117,297	5,257 (4.5)	2,816 (2.4)	1,547 (1.3)	392 (0.3)	10,012 (8.5)
1980-81	119,501	5,505 (4.6)	3,014 (2.5)	1,641 (1.4)	415 (0.3)	10,575 (8.8)
1981-82	120,879	5,789 (4.8)	3,189 (2.6)	1,755 (1.5)	402 (0.3)	11,135 (9.2)
1982-83	121,791	5,852 (4.8)	3,349 (2.6)	1,947 (1.6)	406 (0.3)	11,554 (9.5)
1983-84	121,201	5,455 (4.5)	3,496 (2.9)	1,962 (1.6)	441 (0.4)	11,354 (9.4)
1984-85	119,847	5,476 (4.6)	3,507 (2.9)	2,026 (1.7)	429 (0.4)	11,438 (9.5)
1985-86	118,700	5,669 (4.8)	3,679 (3.1)	2,153 (1.8)	463 (0.4)	11,964 (10.1)
1986-87	117,813	5,894 (5.0)	3,865 (3.3)	2,303 (2.0)	488 (0.4)	12,550 (10.7)
1987-88	117,997	6,028 (5.1)	4,074 (3.5)	2,656 (2.3)	492 (0.4)	13,250 (11.2)
1988-89	120,694	6,321 (5.2)	4,342 (3.6)	3,133 (2.6)	499 (0.4)	14,295 (11.8)
1989-90	124,471	6,791 (5.5)	4,733 (3.8)	3,676 (3.0)	527 (0.4)	15,727 (12.6)
1990-91	127,261	7,432 (5.8)	5,038 (4.0)	4,306 (3.4)	554 (0.4)	17,330 (13.6)
1991-92	129,580	8,149 (6.3)	5,541 (4.3)	5,028 (3.9)	692 (0.5)	19,410 (15.0)
1992-93	128,212	8,638 (6.7)	5,969 (4.7)	5,823 (4.5)	776 (0.6)	21,206 (16.5)
1993-94	127,802	9,156(7.2)	6,312 (4.9)	6,458 (5.1)	873 (0.7)	22,799 (17.8)
1994-95	128,989	9,681 (7.5)	6,772 (5.3)	7,196 (5.6)	962 (0.7)	24,611 (19.1)
1995-96	129,397	9,779 (7.6)	6,970 (5.4)	7,719 (6.0)	1,085 (0.8)	25,553 (19.7)
1996-97	128,623	9,542 (7.4)	6,915 (5.4)	7,706 (6.0)	1,116 (0.9)	25,279 (19.7)
1997-98	125,886	9,132 (7.3)	6,869 (5.5)	7,599 (6.0)	1,085 (0.9)	24,685 (19.6)
1998-99	125,627	9,271 (7.4)	7,054 (5.6)	7,877 (6.3)	1,064 (0.8)	25,266 (20.1)
1999-00	125,184	9,272 (7.4)	7,120 (5.7)	7,883 (6.3)	978 (0.8)	25,253 (20.2)
2000-01	125,173	9,354 (7.5)	7,274 (5.8)	8,173 (6.5)	952 (0.8)	25,753 (20.6)
2001-02	127,610	9,412 (7.4)	7,434 (5.8)	8,421 (6.6)	990 (0.8)	26,257 (20.6)
2002-03	132,885	9,436 (7.1)	7,539 (5.7)	9,179 (6.9)	1,021 (0.8)	27,175 (20.5)
2003-04	137,676	9,437 (6.9)	7,814 (5.7)	10,042 (7.3)	1,048 (0.8)	28,341 (20.6)
2004-05	140,376	9,488 (6.8)	8,068 (5.7)	10,856 (7.6)	1,106 (0.8)	29,518 (21.0)
2005-06	140,298	9,126 (6.5)	8,248 (5.9)	11,252 (8.0)	1,142 (0.8)	29,768 (21.2)
2006-07	141,031	9,529 (6.8)	8,564 (6.1)	11,306 (8.0)	1,158 (0.8)	30,557 (21.7)
2007-08	141,719	9,483 (6.7)	8,782 (6.2)	11,176 (7.9)	1,216 (0.9)	30,657 (21.6)
2008-09	141,922	9,822 (6.9)	8,834 (6.2)	11,244 (7.9)	1,198 (0.8)	31,098 (21.9)

5. *Id.* Includes all JD candidates enrolled at ABA-approved law schools, excluding Puerto Rican law schools. Figures for Hispanics represent the combined total for Mexican Americans, Puerto Ricans, and Other Hispanics. Figures for minorities represent the combined total for African Americans, Mexican Americans, Puerto Ricans, Other Hispanics, Asian and Pacific Islanders, and Native Americans. See also <http://www.abanet.org/legaled/statistics/minstats.html>. Some figures do not match those provided on the ABA website.



The number of Native Americans enrolled in law schools, while miniscule, may actually overstate the number entering the profession because law school applicants may falsely represent themselves as Native American to gain admission.

For a comparison of the number of Native American law graduates versus lawyers, see "American Indians and the 'Box Checker' Phenomenon," by Lawrence R. Baca, p. 70.

Table 6 - Initial Employment by Minority Status⁶

	1998 Graduates		2003 Graduates		2009 Graduates	
	White	Minority	White	Minority	White	Minority
Private Practice	57.1	49.5	60.5	53.5	59.8	57.5
Business/Industry	12.9	15.2	9.7	12.9	11.6	12.4
Government	13.0	17.1	12.6	15.3	11.4	13.0
Judicial Clerkships	12.4	10.2	12.3	9.4	10.5	7.3
Public Interest	2.2	4.3	2.5	4.8	4.6	6.8
Academic	1.0	1.7	1.1	2.1	1.6	2.2
Unknown	1.5	2.0	1.3	2.0	0.5	0.8

6. NAT'L ASS'N LAW PLACEMENT ("NALP"), JOBS AND JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 1998 48 (1999) (for 1998 figures). NALP, JOBS AND JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2003 52 (2004) (for 2003 figures). NALP, JOBS AND JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2009 52 (2010) (for 2009 figures). The category "business/industry" includes non-legal as well as legal jobs. 2009 figures include only full-time jobs.

Table 7 - Initial Employment by Minority Status and Gender⁷

1996	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	59.5%	54.2	57.3	52.8	47.0	49.8
Business/Industry	13.9	12.2	13.2	16.9	13.3	15.1
Government	11.7	12.6	12.1	16.5	17.2	16.8
Judicial Clerkships	11.1	15.1	12.7	8.2	12.5	10.4
Public Interest	1.4	3.1	2.1	2.2	6.0	4.2
Academic	0.8	1.4	1.0	1.4	1.6	1.5
Unknown	1.6	1.5	1.5	2.0	2.4	2.2
1998	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	59.4	53.9	57.1	52.8	46.5	49.5
Business/Industry	13.5	12.0	12.9	16.0	14.5	15.2
Government	12.6	13.4	13.0	16.4	17.7	17.1
Judicial Clerkships	10.7	14.8	12.4	8.7	11.5	10.2
Public Interest	1.3	3.5	2.2	2.5	5.9	4.3
Academic	0.9	1.0	1.0	1.4	2.0	1.7
Unknown	1.7	1.4	1.5	2.1	1.9	2.0
2003	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	62.1	58.8	60.5	53.0	53.9	53.5
Business/Industry	10.6	8.8	9.7	15.3	11.1	12.9
Government	12.7	12.4	12.6	15.6	15.2	15.3
Judicial Clerkships	10.7	14.1	12.3	8.1	10.4	9.4
Public Interest	1.5	3.5	2.5	3.3	5.7	4.8
Academic	1.0	1.3	1.1	2.1	2.1	2.1
Unknown	1.4	1.1	1.3	2.6	1.5	2.0
2009	White			Minority		
	Male	Female	Total	Male	Female	Total
Private Practice	61.5	57.7	59.8	59.2	56.2	57.5
Business/Industry	12.4	10.5	11.6	14.8	10.4	12.4
Government	11.5	11.2	11.4	12.6	13.4	13.0
Judicial Clerkships	9.4	11.9	10.5	5.4	8.8	7.3
Public Interest	3.3	6.4	4.6	5.4	7.8	6.8
Academic	1.4	1.8	1.6	1.7	2.7	2.2
Unknown	0.5	0.4	0.5	0.9	0.7	0.8

7. NALP, SELECTED CLASS OF 1996 ERSS FINDINGS 69 (1997) (for 1996 figures). NALP, JOBS AND JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 1998 48 (1999) (for 1998 figures). NALP, JOBS AND JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2003 52 (2004) (for 2003 figures). NALP, JOBS AND JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2009 52 (2010) (for 2009 figures). The category "business/industry" includes non-legal as well as legal jobs. 2009 figures include only full-time jobs.

Table 8 - Initial Employment by Race/Ethnicity⁸

1996	White	Af Am.	Hisp.	As Am.	Na Am.	
Private Practice	57.3%	42.1	55.2	55.2	44.1	
Business/Industry	13.2	16.4	11.2	17.0	14.3	
Government	12.1	20.1	16.7	12.0	24.2	
Judicial Clerkships	12.7	11.9	8.3	11.1	6.2	
Public Interest	2.1	4.3	4.6	3.0	6.7	
Academic	1.0	2.1	1.3	0.8	1.9	
Unknown	1.5	3.1	2.6	0.9	0.6	
1998	White	Af Am.	Hisp.	As Am.	Na Am.	
Private Practice	57.1	40.1	55.2	55.8	46.6	
Business/ Industry	12.9	16.7	11.6	15.9	19.4	
Government	13.0	21.5	17.7	11.9	16.2	
Judicial Clerkships	12.4	11.1	7.5	11.4	8.9	
Public Interest	2.2	5.1	5.1	2.6	6.3	
Academic	1.0	2.6	1.6	1.0	0.5	
Unknown	1.5	2.8	1.4	1.6	2.1	
2003	White	Af Am.	Hisp.	As Am.	Na Am.	Latino
Private Practice	60.5	46.3	55.8	59.4	46.4	54.3
Business/Industry	9.7	14.6	12.2	12.5	10.2	11.8
Government	12.6	19.1	14.7	10.7	21.7	17.2
Judicial Clerkships	12.3	10.3	6.5	10.3	10.8	7.1
Public Interest	2.5	4.1	6.9	4.1	6.0	6.2
Academic	1.1	3.4	0.9	1.3	2.4	2.2
Unknown	1.3	2.2	3.0	1.7	2.4	1.2
2009	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	59.8	50.1	59.9	62.3	47.1	58.6
Business/Industry	11.6	13.6	10.3	13.6	12.2	7.9
Government	11.4	16.1	12.8	9.5	26.2	15.0
Judicial Clerkships	10.5	8.4	6.6	6.7	4.6	9.7
Public Interest	4.6	8.1	7.5	5.2	5.2	7.3
Academic	1.6	2.7	2.3	1.9	3.5	1.2
Unknown	0.5	1.0	0.6	0.8	1.2	0.3

8. *Id.* 2003 figures for Hispanics do not include Latinos, and thus are not directly comparable to those reported for Hispanics in previous years. NALP defines the category “Latino” as Mexican, Puerto Rican, or Cuban. No separate data are provided in 2009 for Latinos. 2009 figures for Asian/Pacific Islanders (n=2,268) include 395 East Indian/Pakistani graduates.



The Burton Blatt Institute (BBI) at Syracuse University is leading a research consortium on how employers can improve their disability culture. So far the consortium has conducted six case studies of companies ranging in size from 38 to 38,000 employees.

See "So You've Hired a Lawyer with a Disability ... Now What?," by Eve Hill, p. 90.

Table 9 - Initial Employment of 2009 Graduates with Disabilities⁹

Private Practice	55.0%
Business/Industry	11.6
Government	12.9
Judicial Clerkships	9.8
Public Interest	8.0
Academic	2.3

9. NALP, JOBS AND JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2009 54 (2010) Figures are for full-time jobs only. The category for "unknown" employer is not included.

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

	1960	1970	1980	1991	2000
Private Practice	76.2%	72.7	68.0	73.0	74.0
Business	10.2	11.3	10.0	9.0	8.0
Government	10.2	11.1	10.0	9.0	7.0
Judiciary	3.2	3.2	4.0	3.0	3.0
Pub. Int./Education	0.7	1.1	3.0	2.0	2.0
Private Association			1.0	1.0	1.0
Retired or Inactive			5.0	5.0	5.0

10. CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000 6 (2004) (for 1980, 1991, and 2000 figures); see also Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 391 (1994) (for 1960 and 1970 figures). These are the most current data available on the distribution of lawyers by employment type.

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

	1980		1991		2000	
	Male	Female	Male	Female	Male	Female
Private Practice	73.3%	58.9	77.6	71.9	75.0	71.0
Business	10.7	9.7	9.5	8.5	8.0	9.0
Government	9.1	18.2	7.7	8.5	7.0	10.0
Judiciary	3.8	4.0	2.8	2.8	3.0	3.0
Pub. Int./Education	3.2	9.2	2.4	4.9	2.0	4.0
Private Association					1.0	1.0
Retired/Inactive					6.0	3.0

11. Lewis A. Kornhauser & Richard Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender and Educational Debt*, 70 N.Y.U. L. REV. 829, 850 (1995) (for 1980 data); CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000* 9 (2004) (for 1991 and 2000 data).

Table 12 - Distribution of Texas Lawyers by Race/Ethnicity (2003)¹²

	White	Af Am.	Hisp.	As Am.	Na Am.	Women
Private Practice	68.0%	60.0	69.0	68.0	69.0	59.0
In-House Counsel	10.0	9.0	5.0	11.0	6.0	10.0
Government	10.0	19.0	16.0	11.0	13.0	17.0
Judiciary	2.0	2.0	3.0	1.0	1.0	2.0
Law Faculty	1.0	1.0	1.0	<1.0	<1.0	1.0
Retired/Not Working	3.0	2.0	1.0	3.0	4.0	4.0
Other	6.0	6.0	5.0	6.0	5.0	7.0

12. Nils Greger Olsson & Dustin Kim, *Annual Report on the Status of Women and Racial/Ethnic Minorities in the State Bar of Texas (2005-06)*, at 2, 10-11, STATE BAR OF TEXAS DEP'T OF RESEARCH AND ANALYSIS, available at <http://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=11446>. Figures are based on state bar membership records (n=77,056 in 2005).



There are no recent national data about the racial or ethnic distribution of lawyers by type of employment, beyond initial employment. Texas is one of the few states to collect such data on a systematic basis.

Table 13 - Representation of Lawyers with Disabilities in Law Firms¹³

2004	Partners	Associates
Nationwide	0.16%	0.10
100 or fewer lawyer firms	0.16	0.11
101-250 lawyer firms	0.19	0.09
251-500 lawyer firms	0.21	0.09
501+ lawyer firms	0.10	0.11
2007	Partners	Associates
Nationwide	0.19	0.14
100 or fewer lawyer firms	0.16	0.13
101-250 lawyer firms	0.21	0.15
251-500 lawyer firms	0.18	0.06
501+ lawyer firms	0.30	0.25
701+ lawyer firms	0.13	0.13
2009	Partners	Associates
Nationwide	0.25	0.17
100 or fewer lawyer firms	0.20	0.04
101-250 lawyer firms	0.25	0.11
251-500 lawyer firms	0.27	0.24
501-700 lawyer firms	0.33	0.12
701+ lawyer firms	0.26	0.20

13. NALP Bulletin, *Few Openly Gay or Disabled Lawyers Reported in NALP Directory of Legal Employers* (June, 2005), <http://www.nalp.org/2005junfewopenlyglbtdisabled> (for 2004 data); NALP Bulletin, *Although Most Firms Collect GLBT Lawyer Information, Overall Numbers Remain Low* (December, 2007), <http://www.nalp.org/2007decglbtlawyerinformation> (for 2007 data); NALP Bulletin, *Reported Number of Lawyers with Disabilities Remains Small* (December, 2009), <http://nalp.org/dec09disabled> (for 2009 data).

Table 14 - Representation of Openly LGBT Lawyers in Law Firms¹⁴

	Partners	Associates
2004		
Nationwide	0.79%	1.33
100 or fewer lawyers firms	0.60	0.71
101-250 lawyer firms	0.65	0.90
251-500 lawyer firms	0.77	1.19
501-700 lawyer firms	1.02	1.67
2007		
Nationwide	1.19	1.89
100 or fewer lawyers firms	0.88	1.07
101-250 lawyer firms	0.91	1.24
251-500 lawyer firms	1.04	1.56
501-700 lawyer firms	1.37	2.95
701+ lawyer firms	1.67	2.16
2009		
Nationwide	1.36	2.29
100 or fewer lawyers firms	0.63	1.44
101-250 lawyer firms	1.05	1.54
251-500 lawyer firms	1.30	1.91
501-700 lawyer firms	1.11	2.28
701+ lawyer firms	1.82	2.78
2010		
Nationwide	1.47	2.35
100 or fewer lawyers firms	1.17	1.42
101-250 lawyer firms	0.99	1.63
251-500 lawyer firms	1.42	2.10
501-700 lawyer firms	1.18	2.50
701+ lawyer firms	2.02	2.78

14. *Id.*; NALP Bulletin, *Most Firms Collect LGBT Lawyer Information – LGBT Representation Up Slightly* (December 2010), <http://nalp.org/dec10lgbt> (for 2010 data).



Law firms increasingly are establishing affinity groups for LGBT lawyers and affinity groups are beginning to network to discuss programming, goals and obstacles.

See "Combatting Isolation for LGBT Affinity Groups," Diversity and Inclusion Roundups, p. 132.

Meanwhile, many LGBT lawyers may not feel comfortable being open about their sexual orientation, and may even "go back in the closet" between law school and practice.

See "Why Aren't More LGBT Lawyers 'Out' and Why Should Their Firms Care," by Sarah Olson, p. 86.

Table 15: Law Firm Diversity by City: Associates¹⁵

	2003			2010			
	Total	Min. (%)	Female (%)	Total	Min. (%)	Female (%)	Min. F (%)
Nationwide	62,722	14.6	43.0	56,249	19.5	45.4	10.9
<100 lawyer firms	6,232	10.8	40.8	4,160	15.0	42.8	8.7
101-250 lawyer firms	12,773	11.7	43.1	9,147	15.0	45.0	8.2
251-500 lawyer firms	13,790	13.6	43.5	10,612	17.7	45.1	9.5
501-700 lawyer firms	29,927	17.2	43.2	6,299	19.3	45.4	10.8
701+ lawyer firms				26,031	22.7	46.1	12.8

Table 15: Law Firm Diversity by City: Associates¹⁵

Atlanta	1,913	13.0	43.6	1,319	16.7	48.1	11.4
Baltimore	365	5.8	46.9	308	12.0	45.5	6.2
Birmingham	264	4.6	37.5	147	7.5	39.5	5.4
Boston	2,479	10.7	45.3	2,019	14.9	47.4	8.6
Charlotte	451	7.3	38.1	433	11.1	37.9	6.5
Chicago	3,713	11.8	41.5	3,331	17.3	43.9	9.8
Cleveland	723	6.0	41.6	498	6.8	45.8	3.8
Columbus	512	9.0	37.9	347	12.1	44.7	6.9
Dallas	1,796	11.5	39.6	1,415	16.7	38.9	8.1
Denver	474	12.5	48.5	464	12.7	47.8	6.0
Detroit	567	10.9	43.0	431	10.9	42.7	7.2
Houston	1,445	21.5	39.6	1,158	20.5	42.7	10.6
Kansas City	588	7.0	43.2	449	12.5	43.4	6.7
Los Angeles	3,334	21.0	46.7	2,747	28.7	48.3	16.1
Miami	530	38.1	47.7	448	38.0	46.0	20.1
Milwaukee	498	8.2	37.4	418	11.7	45.9	6.5
Minn./St. Paul	903	9.4	45.0	850	13.4	46.7	7.3
New York City	13,890	18.7	42.6	13,445	23.3	45.0	13.0
Orange Cty, CA	623	16.7	38.4	677	25.3	35.6	10.8
Philadelphia	1,775	8.1	44.4	1,046	13.3	45.8	7.5
Phoenix	529	12.3	41.2	511	14.9	40.9	8.0
Pittsburgh	660	5.3	40.3	399	10.5	47.1	7.8
Portland, OR	360	8.1	42.2	320	13.8	50.9	9.1
San Francisco	2,146	20.8	48.8	1,801	27.9	51.3	16.4
San Jose	1,560	25.6	40.1	1,429	36.8	45.1	17.7
Seattle	785	14.5	44.7	640	21.6	48.6	11.4
St. Louis	477	9.2	44.2	512	11.5	42.0	5.3
Washington DC	6,409	15.5	42.9	6,287	20.8	46.3	12.0

15. NALP, <http://www.nalp.org/nalpresearch/mw03sum.htm>; *Women and Attorneys of Color Continue to Make Small Gains at Large Law Firms*, NALP (November, 2003), <http://www.nalp.org/2003womenandattorneyscolor> (for 2003 figures); NALP, *Law Firm Diversity Among Associates Erodes in 2010* (November, 2010), <http://www.nalp.org/2010lawfirmdiversity> (for 2010 figures). Figures are based on statistics provided by firms in the 2003-2004 NALP Directory of Legal Employers and 2010-2011 NALP Directory of Legal Employers. Figures for firms with foreign offices may include foreign lawyers, which may inflate the percentage of minority lawyers. For multi-office firms that reported only firm-wide figures, the information was attributed to the reporting city if at least 60% of the firm's lawyers are in that city.



The percentage of female partners and associates at the NLJ 250 dropped to 29.2 percent in 2010, representing a five-year low.

See "Number of Women Attorneys at NLJ 250 Firms at 5-Year Low," Diversity and Inclusion Roundups, p. 121.

The economic recession was especially hard on female and minority lawyers. Data for a sample of 83 New York City law firms in found that the percentage of female attorneys declined by 5% between 2009 and 2010, and the percentage of minority attorneys declined by 12%, compared to a decline of 4% among attorneys overall.

See "New York City Bar's 2010 Diversity Benchmarking Study," Diversity and Inclusion Roundups, p. 123

Table 16 - Law Firm Diversity by City: Partners¹⁶

	2003			2010			
	Total	(%) Min.	(%) Female	Total	(%) Min.	(%) Female	(%) Min. F
Nationwide	52,958	4.0	16.8	58,753	6.2	19.4	2.0
<100 lawyer firms	7,989	3.9	16.2	6,781	5.9	19.7	2.1
101-250 lawyer firms	14,163	3.3	16.4	14,244	4.2	19.2	1.2
251-500 lawyer firms	12,800	3.7	17.3	12,625	6.0	19.6	2.0
501-700 lawyer firms	18,006	5.0	17.2	6,284	6.5	19.9	1.9
701+ lawyer firms				18,839	7.7	19.3	2.4

Table 16 - Law Firm Diversity by City: Partners¹⁶

	2003			2010			
	Total	(%) Min.	(%) Female	Total	(%) Min	(%) Female	(%) Min. F
Atlanta	1,531	3.9	16.6	1,502	6.7	18.2	2.2
Baltimore	493	3.5	17.4	622	3.7	19.5	0.8
Birmingham	394	1.5	10.2	291	2.4	19.6	1.4
Boston	1,821	3.0	20.8	1,828	3.2	20.2	1.2
Charlotte	474	2.5	11.2	512	4.5	15.0	1.2
Chicago	3,992	3.4	17.6	4,036	6.0	19.9	2.0
Cleveland	694	3.3	14.8	680	3.2	20.0	1.2
Columbus	595	3.9	14.8	570	3.7	17.0	0.2
Dallas	1,549	3.9	17.1	1,342	6.0	17.0	1.3
Denver	537	3.9	23.8	580	5.7	23.8	1.9
Detroit	913	4.1	17.6	882	4.1	20.0	1.1
Houston	1,213	4.8	16.7	1,096	7.6	17.2	2.0
Kansas City	647	1.7	13.0	770	2.2	17.5	0.5
Los Angeles	2,363	7.0	18.2	2,314	12.1	20.0	3.7
Miami	639	19.4	19.7	653	24.0	22.5	6.7
Milwaukee	675	1.0	16.3	730	3.2	19.7	1.1
Minn./St. Paul	1,109	1.5	18.0	1,342	2.4	21.2	0.7
New York City	6,257	4.0	14.1	7,150	6.3	17.0	2.1
Orange County, CA	453	3.3	13.3	560	10.4	14.8	2.9
Philadelphia	1,627	2.2	16.9	1,082	4.0	19.0	1.4
Phoenix	613	3.4	16.8	779	5.7	20.3	1.8
Pittsburgh	670	1.3	16.6	531	1.5	19.4	0.4
Portland, OR	506	2.2	17.8	579	1.5	20.9	1.6
San Francisco	1,535	6.2	21.4	1,568	11.0	24.2	3.8
San Jose	700	8.1	18.1	904	15.2	19.7	4.2
Seattle	1,008	5.3	18.5	1,041	8.4	23.0	3.0
St. Louis	593	2.0	16.5	820	3.7	20.4	1.1
Washington DC	4,935	4.4	17.2	5,755	7.0	20.0	2.5

16. *Id.*



Merck lawyers are partnering with NJ high schools to introduce inner-city students to career opportunities in the legal profession.

See "Merck's Street Law Program," Diversity and Inclusion Roundups, p. 126.

Table 17 - Minority Representation Among Corporate Counsel¹⁷

	Median Base Salary	% Minority	% Female
2001			
All Respondents	\$119,000	12.5	31.5
General Counsel	\$152,600	9.1	21.8
Deputy General Counsel	\$143,130	2.7	21.0
Division Counsel	\$131,310	7.6	31.6
Managing Attorney	\$131,310	0.5	80.8
Assistant General Counsel	\$113,930	26.2	29.9
Senior Attorney	\$110,620	12.0	34.2
Staff Attorney	\$93,180	16.4	48.8
2006			
All Respondents	Avg. Base Salary	% Minority	% Female
	\$165,000	11.0	39.0

17. *Census of U.S. In-House Counsel*, ASS'N OF CORPORATE COUNSEL (December, 2001), <http://www.acca.com/Surveys/census01> (for 2001 figures); *Profile of In-House Counsel*, ASS'N OF CORPORATE COUNSEL (December, 2006), <http://www.acc.com/v1/public/Surveys/loader.cfm?csModule=security/getfile&pageid=16297> (for 2006 figures). 2001 figures are based on a survey of 12,674 in-house lawyers, with 929 (7.3 percent) responding. 2006 figures are based on a survey of 49,259 in-house lawyers, with 3,426 (7.0 percent) responding.

**Table 18 - Federal Government Lawyers
by Race/Ethnicity and Gender¹⁸**

2002	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	26 (9.4)	21 (7.6)	28 (10.1)	2 (0.7)	77 (27.9)
Male	12 (4.3)	6 (2.2)	9 (3.3)	1 (0.4)	28 (10.1)
Female	14 (5.1)	15 (5.4)	19 (6.9)	1 (0.4)	49 (17.8)
General Attorneys	2,461 (8.7)	1,141 (4.0)	1,013 (3.6)	144 (0.5)	4,759 (16.9)
Male	977 (3.5)	593 (2.1)	443 (1.6)	74 (0.3)	2,087 (7.4)
Female	1,484 (5.3)	548 (1.9)	570 (2.0)	70 (0.2)	2,672 (9.5)
Admin. Law Judges	54 (4.1)	51 (3.8)	11 (0.8)	16 (1.2)	132 (9.9)
Male	39 (2.9)	45 (3.4)	8 (0.6)	12 (0.9)	104 (7.8)
Female	15 (1.1)	6 (0.5)	3 (0.2)	4 (0.3)	28 (2.1)
Patent Attorneys	11 (4.7)	1 (0.4)	8 (3.4)	1 (0.4)	21 (8.9)
Male	9 (3.8)	1 (0.4)	7 (3.0)	1 (0.4)	18 (7.7)
Female	2 (0.9)	0 (0.0)	1 (0.4)	0 (0.0)	3 (1.3)
2006	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	29 (9.4)	11 (3.6)	24 (7.8)	4 (1.3)	69 (22.5)
Male	7 (2.3)	8 (2.6)	10 (2.3)	2 (0.7)	28 (9.1)
Female	22 (7.2)	3 (1.0)	14 (4.6)	2 (0.7)	41 (13.4)
General Attorneys	2,570 (8.7)	1,218 (4.1)	1,292 (4.4)	145 (0.5)	5,237 (17.6)
Male	935 (3.2)	624 (2.1)	548 (1.8)	66 (0.2)	2,179 (7.3)
Female	1,635 (5.5)	594 (2.0)	743 (2.5)	79 (0.3)	3,058 (10.3)
Admin. Law Judges	67 (4.8)	54 (3.9)	8 (0.6)	17 (1.2)	147 (10.5)
Male	44 (3.1)	49 (3.5)	6 (0.4)	11 (0.8)	111 (7.9)
Female	23 (1.6)	5 (0.4)	2 (0.1)	6 (0.4)	36 (2.6)
Patent Attorneys	14 (5.9)	5 (2.1)	14 (5.9)	0 (0.0)	33 (13.9)
Male	11 (4.6)	4 (1.7)	10 (4.2)	0 (0.0)	25 (10.5)
Female	3 (1.3)	1 (0.4)	4 (1.7)	0 (0.0)	8 (3.4)

18. U.S. OFFICE OF PERSONNEL MGMT., *Demographic Profile of the Federal Workforce* (2002), <http://www.opm.gov/feddata/demograp/02demo.pdf> (for 2002 figures); U.S. OFFICE OF PERSONNEL MGMT., *Demographic Profile of the Federal Workforce* (2006), <http://www.opm.gov/feddata/demograp/table3mw.pdf> (for 2006 figures).

Table 19 - Federal Courts of Appeals Judges by Race/Ethnicity and Gender¹⁹

2004	Total (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	164 (100.0)	13 (7.9)	13 (7.9)	0 (0.0)	0 (0.0)	26 (15.9)
M	123 (75.0)	9 (5.5)	9 (5.5)	0 (0.0)	0 (0.0)	18 (11.0)
F	41 (25.0)	4 (2.4)	4 (2.4)	0 (0.0)	0 (0.0)	8 (4.9)
2010	Total (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Total	179 (100.0)	17 (9.5)	11 (6.1)	1 (0.6)		29 (16.2)
M	131 (73.2)					
F	48 (26.8)					

19. *Demographic Overview of the Federal Judiciary*, ALLIANCE FOR JUSTICE, http://www.allianceforjustice.org/judicial/judicial_selection_resources (for 2004 figures); *The State of the Judiciary: The Obama Administration - The First 20 Months*, ALLIANCE FOR JUSTICE, <http://www.afj.org/judicial-selection/afj-report-state-of-the-judiciary-obama-at-20-months.pdf>, at 7 (for 2010 figures). 2004 figures are based on the total number of federal judges in active service on courts of general jurisdiction. Figures for Native Americans are not reported in 2010.

Table 20 - Federal Judicial Appointments by Race/Ethnicity and Gender²⁰

	Total	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Min. (%)	Fem. (%)
Nixon (1969-74)	227	6 (2.6)	2 (0.9)	1 (0.4)	0 (0.0)	10 (4.4)	
Ford (1974-76)	65	3 (4.6)	1 (1.5)	2 (3.1)	0 (0.0)	6 (9.2)	
Carter (1977-80)	259	37 (14.3)	16 (6.2)	3 (1.2)	1 (0.4)	57 (22.0)	40 (15.4)
Reagan (1981-88)	376	7 (1.9)	14 (3.7)	2 (0.5)	0 (0.0)	23 (10.9)	31 (8.2)
Bush I (1989-92)	192	13 (6.8)	8 (4.2)	0 (0.0)	0 (0.0)	21 (10.9)	36 (18.8)
Clinton (1993-00)	372	61 (16.4)	25 (6.7)	5 (1.3)	1 (0.3)	92 (24.7)	109 (29.3)
Bush II (2001-08)	322	23 (7.1)	29 (9.0)	4 (1.2)	0 (0.0)	56 (17.4)	71 (22.0)
Obama (2009-10)	40	11 (27.5)	1 (2.5)	4 (10.0)	0 (0.0)	16 (40.0)	19 (47.5)

20. *Judicial Selection Project 2001-02 Biennial Report*, ALLIANCE FOR JUSTICE (2003), http://www.allianceforjustice.org/judicial/research_publications/index.html, at 7, 10-11 (for 1969-1976 data); *The State of the Judiciary: The Obama Administration - The First 20 Months*, ALLIANCE FOR JUSTICE, <http://www.afj.org/judicial-selection/afj-report-state-of-the-judiciary-obama-at-20-months.pdf>, at 14 (for 1977-2010 data). Figures for female judicial appointments were not available prior to 1977.

**Table 21 - Minority and Female Representation
Among Law Faculty²¹**

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

21. Richard A. White, *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions* (2001-02), Table 2B, ASS'N OF AM. LAW SCHOOLS, <http://www.aals.org/statistics/2002statspage2.htm> (for 1990-91, 1995-96, and 2000-01 data); Richard A. White, *Statistical Report on Law School Faculty* (2005-06), Tables 2A and 2B, ASS'N OF AM. LAW SCHOOLS, http://www.aals.org/statistics/0506/0506_T2A_tit4_8yr.html (for 2005-06 data); ASS'N OF AM. LAW SCHOOLS, *Statistical Report on Law School Faculty* (2008-09), <http://www.aals.org/statistics/2009dlt/titles.html> (for 2008-09 data). Figures are based on all full-time faculty listed in the AALS *Directory of Law Teachers* for whom race/ethnicity is known. Some figures differ slightly from those previously available.



Although the number has grown, the percentage of minorities among entry-level law faculty has dropped since the mid-1990s, from 28.7 percent of assistant professors in 1995-96 to 25.1 percent in 2008-09 (see Table 21), St. John's School of Law has instituted a pipeline initiative to increase the number of attorneys of color in legal academia.

See "St. John's School of Law Ronald H. Brown Center Programs," *Diversity and Inclusion Roundups*, p. 136.

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ACTING WHITE

By Stuart Buck

Distinguished Doctoral Fellow, Department of Education Reform, University of Arkansas

*Why does our profession have a pipeline problem when it comes to attracting more African Americans? Many excellent and inspiring programs address this problem, but to what extent do they rely on intuition rather than a deeper, more empirical understanding of causes and possible solutions? Based upon the research that led to his groundbreaking book, *Acting White: The Ironic Legacy of Desegregation*, Buck offers a comprehensive explanation for the so-called African American/White achievement gap and provides the profession with a long-awaited and much-needed framework within which to more constructively understand and thus address its pipeline challenge.*

For decades, the legal profession has found itself in the unenviable position of being one of the least diverse professions in American society. The more recent phenomenon of declining numbers of African Americans, as well as Native Americans and Hispanic males, entering law school presents a troubling forecast for the future of diversity and inclusion within the legal profession. That, in turn, bodes ill for everyone who recognizes that if any profession needs to reflect the society it serves, the legal profession may be chief among them.

Lawyers, judges and scholars across the country have exerted tremendous effort in trying to redress what has come to be known as “the pipeline” problem within our profession. Scholarships, mentoring programs, bridge programs and a host of other excellent endeavors have been developed.

But the problem remains. Its daunting nature may sometimes seem insurmountable due to the many underlying societal ills – poverty, crime, breakdown in the nuclear family structure, lack of role models, and poor quality education – that are acknowledged as contributing factors to the most insidious obstacle to reversing the trend of declining enrollment of African Americans in law school: the so-called Black-White achievement gap.

This achievement gap sometimes encourages a myth of African American intellectual inferiority. My research, however, shows that myth for the fallacy it is and provides a framework within which those who are concerned about the achievement gap can begin to understand how it developed and what might be done to redress it.

In writing my book, *Acting White*,¹ I found that while school desegregation was an overall benefit, it had one unfortunate side effect: it caused some black kids to think of education as “acting white.” This contention – which I explain more fully below – is ultimately based on the fact that after desegregation, the world of school became seen as controlled and dominated by whites, and black students may sometimes take a defensive posture in such a circumstance.

My thesis is not merely of academic or historical interest. At the most basic level, anything – whether poverty, bad schools, or “acting white” – that hurts black academic performance at the K-12 level will ultimately frustrate efforts to improve diversity in the legal profession. Black males are particularly disadvantaged: in the vast majority of states, fewer than 60% of black males even graduate from high school, a figure that drops to 32% in New York City and even lower in some other cities (according to

1. STUART BUCK, *ACTING WHITE: THE IRONIC LEGACY OF DESEGREGATION* (2010).



While white students' popularity steadily increased along with their grade-point-average, black children experienced a drop-off in popularity as their grade-point-average rose above 3.5.

a 2008 report from the Schott Foundation).² Students who drop out of high school are not going on to college, let alone law school. As a result, any attempt to diversify the legal profession should include efforts to improve K-12 education, including the attitudes that students themselves bring to the table.

* * *

It is somewhat controversial to suggest that the “acting white” phenomenon exists at all. But the most solid evidence in support of the “acting white” thesis comes from a study by Harvard economist Roland Fryer, Jr., a 30-something black man who has already published a ream of important articles on race in America.³ Fryer looked at a national database of some 90,000 students nationwide who entered high school in the mid-1990s. Students were asked to provide a list of their closest male and female friends. Fryer then counted “how often each student’s name appeared on peers’ lists.”⁴ The results were striking. While white students’ popularity steadily increased along with their grade-point-average (such that the most accomplished white children were the most popular), black children experienced a drop-off in popularity as their grade-point-average rose above 3.5. In Fryer’s words, “A black student with a 4.0 has, on average, 1.5 fewer friends of the same ethnicity than a white student with the same GPA. Put differently, a black student with straight As is no more popular than a black student with a 2.9 GPA, but high-achieving whites are at the top of the popularity pyramid.”⁵

Fryer found that the “acting white” criticism is “unique” to integrated schools, while in predominantly black schools, there is “no evidence at all that getting good grades adversely affects students’ popularity.”⁶ What’s more, when Fryer looked at schools with greater levels of “internal integration” — that is, more friendships between different races in general — he found much higher levels of the “acting white” effect. In Fryer’s words, “Black males in such schools fare the worst, penalized seven times as harshly as my estimate of the average effect of acting white on all black students!”⁷ He then suggests that this effect may be because “racially integrated settings only reinforce pressures to toe the ethnic line.”⁸

2. See Schott Foundation, GIVEN HALF A CHANCE: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 2, 6 (2008) available at <http://www.blackboysreport.org/files/schott50statereport-execsummary.pdf>.

3. Roland G. Fryer, *Acting White*, EDUC. NEXT (Jan. 2006), available at http://media.hoover.org/documents/ednext20061_52.pdf (quoting from the short version of the study.)

4. *Id.* at 55.

5. *Id.* at 54.

6. *Id.* at 57.

7. *Id.* at 58.

8. *Id.*



[Under segregation]...black schools had been immeasurably important to the black community... There was a real sense of community.

Indeed, the first academic study that found “acting white” was a 1970 book about a desegregated school. In that study, sociologists found many examples of the “acting white” criticism. One student was asked, “What pressures do you feel from the fact that you attend a desegregated school?” He responded, “Well, I participate in speech; I’m the only Negro in the whole group. . . . The Negroes accuse me of thinking I’m white. . . . I think it’s this kind of pressure from the other Negro kids which causes me the greatest concern.”⁹

So we see in the best and most recent evidence that “acting white” – broadly defined as the drop in popularity experienced by smart black children – shows up mainly in integrated schools.

Why would this be the case? Why would desegregation have led to the “acting white” phenomenon? To understand why this happened, we first need to step back and consider what black schools were like under segregation.

At that time, of course, black schools were horribly deprived. We are all familiar with the tales of how black schools through most of the Jim Crow era were starved for resources.¹⁰ Black schools often consisted of dilapidated clapboard shacks, with perhaps a pot-bellied stove for heat in the winter. An elderly teacher from Atlanta recalls, “That school was in such bad shape you could study botany through the floorboards, astronomy through the roof and the weather through the walls.”¹¹

Even so, black schools had been immeasurably important to the black community. One Alabama resident wistfully recalled: “There was a real sense of community. I mean the school being the centerpiece of the . . . small black community. And there were churches, four consecutive blocks there were churches. . . . And you felt connected to the people who were there, with the older people, younger people, generations of people that lived there.”¹² A North Carolina resident said, “You knew you better behave in school. If you didn’t do your work, you knew what was waiting for you when you came home.”¹³ A Florida resident recalls, “The teachers we had in those days, they knew you personally. . . . It was like having your dad at school all day.”¹⁴ An elderly black woman from North Carolina says, “It was like a family. You knew all the children. You knew their parents, and they all had gone to the same school. We didn’t have the same resources that the white students had, but we had teachers who made sure you did the very best you could with what you had.”¹⁵

I spoke with an older black man from Gulfport, Mississippi who fondly recalled the teachers from

9. FRANK A. PETRONI, ERNEST HIRSCH, AND C. LILLIAN PETRONI, 2, 4, 6, 8: WHEN YOU GONNA INTEGRATE? 8, 9 (1970).

10. See e.g., ADAM FAIRCLOUGH, TEACHING EQUALITY: BLACK SCHOOLS IN THE AGE OF JIM CROW (2001).

11. Scott Henry, *Segregated, Again: Brown v. Board of Education Hasn’t Delivered Integrated Schools, But That Doesn’t Mean It Failed*, CREATIVE LOAFING (May 13, 2004), available at <http://atlanta.creativeloafing.com/gyrobase/Content?imageIndex=3&oid=oid%3A15606>.

12. VIVIAN GUNN MORRIS AND DAVID L. MORRIS, THE PRICE THEY PAID: DESEGREGATION IN AN AFRICAN AMERICAN COMMUNITY 7 (2002).

13. Maike Philipsen, Values-Spoken and Values-Lived: Female African Americans’ Educational Experiences in Rural North Carolina, 62 J. NEGRO EDUC. 422 (1993).

14. Bakari McClendon, *Graduates Remember Dunbar; Old All-Black School Brings Back Memories*, FLA. TIMES-UNION, July 26, 2000, at M1.

15. *All Things Considered: Teachers Weigh the Impact of Brown Decision*, NATIONAL PUBLIC RADIO (Dec. 13, 2003) (audio available at <http://www.npr.org/templates/story/story.php?storyId=1547570>).

his segregated school, such as the English teacher who made him memorize a new line from Shakespeare every day. In his words, “Back then, education was a source of pride for black people. We had teachers who had pride and who were determined that we were going to succeed. We didn’t want to miss a day of school.”

I spoke to another woman who, as a child, had been the first to desegregate a public school in New Orleans. When she started reminiscing about her segregated school, she said, “I felt that I was in an environment where I was accepted for who I was. Teachers really cared about me academically. They always made sure I did the best that I could do. I felt loved, not only from teachers but my principal as well. . . . If I could do it all over again, I would stay in the black environment.”

The principals and teachers were seen as academic role models for black children. As a black school board member from Maryland said to me, “Before desegregation, you were expected to be like the black role models. That’s one thing that is absolutely lost.” On the 50th anniversary of *Brown*, a principal at Topeka High School – in the very city that gave rise to the *Brown* case – said this: “In the old days, black students had a built-in support system. They were in constant contact with people they could identify with — teachers, parents, pastors — who were working together to help them succeed.”¹⁶

For all of their deprivation and inadequacies, black schools were often able to inculcate a sense of pride and accomplishment in black youth. A woman from West Virginia says, “Our segregated schools were wonderful. Whatever we were given book-wise we used, and we had the most wonderful teachers. They made you realize that no matter what, you had to excel. The teachers taught us not only from our books, but they taught us about living. They wanted you to be the best you could be.”¹⁷ Charles Harris, who was one of the first blacks to integrate a Virginia school, said, “There were some advantages to segregated schools at the time. Our black matriarch teachers really instilled in you that you could be as good as anybody. You were on a mission to be the best you could be.”¹⁸

What then happened with desegregation? In brief, desegregation, as actually implemented, meant that black schoolchildren lost the comfortable environment of a black school with black role models, and then were brought into schools that were often hostile to their presence, that were controlled mostly by white teachers and principals, and in which the advanced classes were often dominated by white students.

Desegregation was implemented mostly by white-controlled local school boards, who had no desire to uproot their own children and send them to a black school, particularly given that black schools had been so long seen as inferior. Thus, they often desegregated by closing or even demolishing black schools. They fired or demoted black principals, who had been crucial academic role models in the lives of many black students (in North Carolina, for example, the number of black principals dropped from 226 in 1963 to a mere 15 in 1973).¹⁹ I talked to a West Virginia school board member (himself black) who said, “I don’t know of a black school in the state that was kept open for white kids to attend. The irony of it was that we had extremely good teachers.”

Thus, as black students were moved into white schools, they began to feel alienated and detached. One black girl who desegregated a school in Georgia said, “it wasn’t really our school. Like we had lost our own school, you know, and all we had now was the whites’ school.”²⁰ A North Carolinian writes, “Being snatched from the comfort of our own environment was unreal. It was like a

16. Michael Dobbs, *Progress Made in City’s Schools, But More to Go*, WASH. POST, May 13, 2004, at A1.

17. Carlos Vega, *Telling it Like it Was*, CHARLESTON GAZETTE, Feb. 18, 2000, at D1.

18. Jeff Zeigler, *Trailblazers*, VIRGINIAN-PILOT, Feb. 25, 1996, at 12.

19. Buck, *ACTING WHITE*, *supra* note 1, at 73.

20. DAVID R. GOLDFIELD, *BLACK, WHITE, AND SOUTHERN: RACE RELATIONS AND SOUTHERN CULTURE, 1940 TO THE PRESENT* 268 (1990).



[W]hen black schools were closed or converted to integrated schools, the new schools often destroyed or replaced the school symbols that had united the black school and the community.

nightmare . . . unwarranted and unjust. We lost the bond between school, parents and teachers.”²¹ A school board member in Maryland said to me, “We’ve been supposedly desegregated for a long time. It looks as if all the teachers are white, blond, young females. Principal is white. Text is European, nobody wants to talk about contributions of blacks. That has an impact, I’m sure, on whether students identify with school. Before desegregation, you were expected to be like the black role models. That’s one thing that is absolutely lost.”

For example, in Wilmington, North Carolina, the Williston High School was closed in a desegregation plan in 1968. A local newspaper points out, “when Linda Pearce of the Class of 1963 hears the Williston school song, it still makes her cry,” because the “loss to the black community was immeasurable” when that school was closed; it was like a “death in the family.” Another former student says, “When integration came, it was devastating because we were so used to having our own school. It was heartbreaking.”²² One alumnus writes, “Being snatched from the comfort of our own environment was unreal. It was like a nightmare . . . unwarranted and unjust. We lost the bond between school, parents and teachers.”²³

Moreover, when black schools were closed or converted to integrated schools, the new schools often destroyed or replaced the school symbols that had united the black school and the community. A 1970 report noted that out of “321 black schools integrated under the new integration plans, 188 had their names changed. School trophies, colors, mascots, and symbols frequently disappeared. In some areas black schools were integrated only after insulting efforts to ‘deniggrize’ the school were carried out (replacement of all toilet seats, fumigation of the school, etc.).”²⁴ As one former student from North Carolina puts it, “Essentially everything about Lincoln High School was erased. And now that I think about [it], it’s almost comparable to the whole slave trade actually during the middle passage particularly in North America. The purpose was to erase people’s connections to Africa.”²⁵

A student from the former Booker T. Washington school in Reidsville, North Carolina (which was converted into an integrated school) says, “We lost the name of the school, the name of the newspaper, . . . the name of the football team, we lost school colors, we lost everything that was associated with Black History. Everything was lost because of integration.”²⁶ Similarly, in Greenville, Mississippi, a “historically Black high school was not only converted to a junior high school, but all symbols

21. Elizabeth Wright, *The Greatest School Under the Sun*, ISSUES & VIEWS (Winter 1994), available at <http://www.issues-views.com/index.php/sect/1000/article/1017>.

22. C. J. Clemmons, *Flashback to School: Alumni Remember an Educational Experience as Special to Them as it Was Important to the Community*, WILMINGTON STAR-NEWS, Feb. 25, 2001, at D1.

23. Elizabeth Wright, *supra* note 21.

24. HARRELL R. RODGERS, JR. AND CHARLES S. BULLOCK, III, *LAW AND SOCIAL CHANGE: CIVIL RIGHTS LAWS AND THEIR CONSEQUENCES* 94 (1972).

25. Oral History Interview with Fran Jackson, Interview K-0208, Southern Oral History Program Collection (#4007), U. N. C. (March 23, 2001), available at <http://docsouth.unc.edu/sohp/K-0208/K-0208.xml>.

26. Interview with Stanley Harley, *The Way We Were: Oral Histories of Four Former All-Black Public Schools in Two North Carolina Counties* Afro-American Genealogy and History Society (1991).

of its Black heritage were also removed and eliminated. These symbols included class pictures hung on the walls, plaques, citations and trophies. All that represented Black school pride and accomplishments was wiped out.”²⁷

In Austin, Texas, the closing of the black school “was devastating to the Black community,” because that school had represented “something more than just a high school” — it was a “symbol of achievement and a symbol of accomplishment for the community.”²⁸ A black administrator later said, “Yes, it was kind of a sad moment because of all the admiration and all of the love that many members of the community had had for Anderson High School, which had been a great high school and had been, for them, the institution of greatness that they had experienced. They felt that they were good, and they had a lot of pride in Anderson High School, a tremendous amount of pride.”²⁹ A former student said, “when it was closed down it was a shock to us, and we were very angry, we were very resentful, we were very rebellious, we were very upset that it seems like the doors were just shut down and we were just shipped off to the other schools.”³⁰

These sentiments recall a famous 1935 article in which W.E.B. Du Bois wrote that “a separate Negro school, where children are treated like human beings, trained by teachers of their own race, who know what it means to be black in the year of salvation 1935, is infinitely better than making our boys and girls doormats to be spit and trampled upon.”³¹ Similarly, Roy Brooks, a black law professor at the University of San Diego, is very skeptical of integration in his book *Integration or Separation*. He begins with the claim that “integrated elementary and secondary schools may in fact be doing more harm than good to the very group they intended to help most—African American children.”³² He points out that an “integrated context may actually lead to stronger feelings of inferiority,” because black students can’t “protect their self-image from the damage receive in an integrated school.”³³ Instead, he proposes a policy of “limited separation,” in which blacks would have the option of “sending their children either to integrated or to separate (or predominantly African American) publicly financed schools,”³⁴ and in which “defenseless African American children would not be used for liberal educational experimentation.”³⁵

Another famed civil rights activist — Samuel DeWitt Proctor — expressed similar misgivings in his memoir: “These segregated schools were ours. Black teachers, principals, choir directors, and coaches made their schools a refuge from an ugly world that constantly looked down on their pupils. . . . It’s ironic that at the time that school integration began, its enemies had no idea we would end up the victims of our major achievement. Today, forty years later, all big-city school systems are largely black and failing; whites and middle class blacks have fled to the suburbs or private schools. . . . Instead of attending warm and dynamic schools where they are sponsored and affirmed, black students today are educationally crippled, too often abandoned in urban, drug-infested, violent, crime-ridden holding pens and dealt with like cattle.”³⁶

27. Alvis Adair, *DESEGREGATION: THE ILLUSION OF BLACK PROGRESS* 93-94 (1984); see also Lanita Withers, *Black Piedmont High School Alumni Hope to Reclaim its Legacy*, ASSOCIATED PRESS, Sept. 29 2004.

28. ANNA VICTORIA WILSON AND WILLIAM E. SEGALL, OH, DO I REMEMBER! EXPERIENCES OF TEACHERS DURING THE DESEGREGATION OF AUSTIN’S SCHOOLS, 1964-1971 104 (2001).

29. Interview with William C. Akins, Texas Council for the Humanities, (2001), available at http://humanitiestexas.org/initiatives/parallel_int_at.htm.

30. Interview with Cynthia Sauls Houston, Texas Council for the Humanities (2001), available at http://humanitiestexas.org/initiatives/parallel_int_cs.htm.

31. W.E.B. DuBois, *Does the Negro Need Separate Schools?*, 4 J. OF NEGRO EDUC. 335 (1935).

32. ROY L. BROOKS, *INTEGRATION OR SEPARATION? A STRATEGY FOR RACIAL EQUALITY* 5 (1996).

33. *Id.* at 24.

34. *Id.* at 214.

35. *Id.* at 190.

36. SAMUEL DEWITT PROCTOR, *THE SUBSTANCE OF THINGS HOPED FOR: A MEMOIR OF AFRICAN-AMERICAN FAITH* 67-68 (1995).

Indeed, Derrick Bell – the first black professor at Harvard Law School -- later reconsidered the value of his own desegregation litigation with the NAACP: “What did it mean? Why was I trying to get these children admitted to schools where they were not wanted?”³⁷ While he had lavished attention on a few success stories at the time, he now says that he “paid far less attention to all those students less able to overcome the hostility and the sense of alienation they faced in mainly white schools. . . . Truly, these were the real victims of the great school desegregation campaign.”³⁸ Similarly, Bell wrote in a 1980 essay that he would actually prefer for his own children to attend an all-black school: “There is a subtle but real harassment faced by students in mainly white schools that is manifested by a low academic expectation from at least some teachers, and a general sense of minority subordination to white interest.”³⁹

* * *

Many black people recall that they were first accused of “acting white” or “trying to be white” during desegregation. Among many examples, Bernice McNair Barnett recalls that she was “isolated and cut off from the world of my former Black peers (who saw my school desegregation choice as ‘trying to be White’) as well as my new White peers (who were both hate filled bullies and otherwise good hearted but silent bystanders).”⁴⁰ A Florida woman who had been the first to desegregate a local school as a child told me, “In my opinion, [‘acting white’] didn’t start until desegregation. There were no whites to ‘act like’ before desegregation.”

Ron Kirk, who later became the first black mayor of Dallas, was one of the first black kids to integrate a junior high school in Austin, Texas. As he puts it, “The curious thing was this: After a day of all of us struggling to make this whole desegregation thing work, we would walk home and run into neighborhood friends, and they would ridicule us and want to fight us because we were going to school with white kids. So in the course of a single day we might get beat up because we were black, then get beat up again because we weren’t black enough!”⁴¹

An early study of a desegregated school found that “many blacks wished access to the college preparatory curriculum, and those who desired such access ‘understood’ that their success required ‘acting white.’”⁴² Students “who were relegated to the basic, or standard, curriculum . . . chided their more successful peers for ‘acting white.’”⁴³ Yet another in-depth study of a school before and after desegregation noted that “middle-class blacks were ostracized as ‘oreos’” if they declined to go along with “militants” and “cut off” their “white friends,” that one black “honor student” was called a “Tom” for having too many white friends, and that “during the early years of desegregation, when militant blacks drew a hard separatist line, they mocked studious blacks who did their homework like ‘whitey.’”⁴⁴

* * *

37. DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* 105 (2004).

38. *Id.* at 105, 121.

39. DERRICK BELL, *A Model Alternative Desegregation Plan*, in *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* 138 (Derrick Bell ed., 1980).

40. Bernice McNair Barnett, *Race, Gender, & Class in the Personal-Political Struggles of African Americans: Reclaiming Voice*, in *RACE, GENDER, AND CLASS IN SOCIOLOGY: TOWARD AN INCLUSIVE CURRICULUM* 36 (Jean Ait Amber Belkhir & Bernice McNair Barnett eds., 1999).

41. JUAN WILLIAMS, *MY SOUL LOOKS BACK IN WONDER: VOICES OF THE CIVIL RIGHTS EXPERIENCE* 103 (2005).

42. GEORGE W. NOBLIT, *PARTICULARITIES: COLLECTED ESSAYS ON ETHNOGRAPHY AND EDUCATION* 131-133 (1999).

43. *Id.* at 133; see also Thomas W. Collins, *From Courtrooms to Classrooms: Managing School Desegregation in a Deep South High School*, in *DESEGREGATED SCHOOLS: APPRAISALS OF AN AMERICAN EXPERIMENT* 113 (Ray C. Rist ed., 1979) (noting that blacks who “modified their style of dress, speech, and general deportment” were viewed as “acting white”).

44. GERALD GRANT, *THE WORLD WE CREATED AT HAMILTON HIGH* 35, 59, 104 (1988).



On average, roughly 200,000 new teachers are hired a year in America—and just 4,500 of them are black males. It is not good for any of our country's children that only one in 50 teachers is a black man.

As we have seen, the “acting white” criticism arose in part because some black children consciously or subconsciously resented the disappearance of black authority figures in the schools. This problem continues to the current day. The U.S. Secretary of Education Arne Duncan recently said, “It is especially troubling that less than two percent of our nation’s 3.2 million teachers are African-American males. On average, roughly 200,000 new teachers are hired a year in America—and just 4,500 of them are black males. It is not good for any of our country’s children that only one in 50 teachers is a black man.” Duncan added, “When I was CEO of the Chicago Public Schools, I visited too many elementary schools that did not have a single black male teacher, though most of the students were black and grew up in single-parent families. How can that be a good thing for young children, especially boys?”⁴⁵

In other words, the lack of black role models in schools may be one of the factors preventing some black children from rising into leadership positions themselves. We may also need to consider whether a somewhat similar phenomenon plays out in the world of law firms. Perhaps a vicious cycle is created by the lack of black authority figures in some law firms, which causes some younger black lawyers not to feel at home in those firms, which in turns leads those young lawyers to move elsewhere before attaining partnership.

The upshot from all of this seems to be 1) legal profession pipeline efforts need to recognize and redress the systemic and institutional foundation that underlies the acting white paradigm through coordinated efforts that move beyond “one-off” programs; 2) the legal profession needs to work with educators and community groups to candidly discuss, explore, and, if need be, address shortcomings applications in the ways desegregation was instituted; and 3) the legal profession should explore whether its own efforts at diversity and inclusion might have parallels to some of the misguided or misapplied efforts at school desegregation that have resulted in our own professional version of an “acting white” phenomenon. ■

45. See *Changing the HBCU Narrative: From Corrective Action to Creative Investment – Remarks by Secretary Arne Duncan at the HBCU Symposium at the North Carolina Central University Centennial*, U.S. DEP'T OF EDUC. (June 3, 2010), <http://www.ed.gov/news/speeches/changing-hbcu-narrative>.

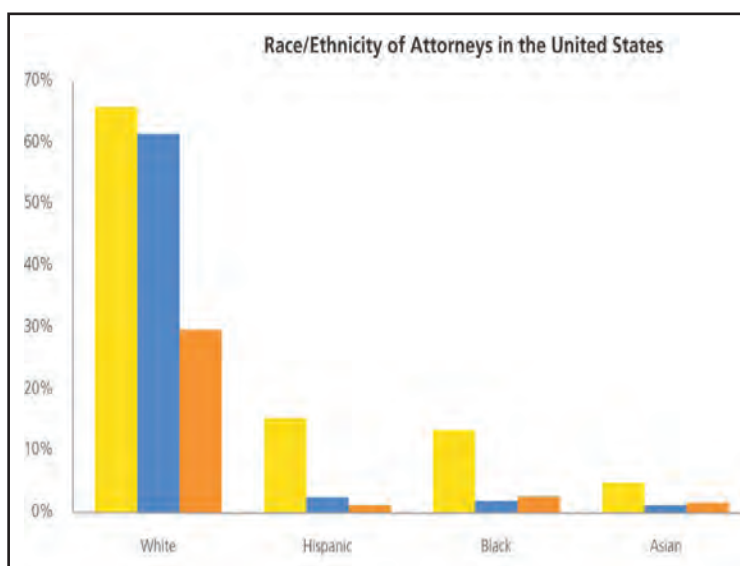
Los Puentes y Las Barreras: Latinas in the Legal Profession

By Melinda S. Molina

Assistant Professor of Law, Capital University Law School

Despite being part of the largest and fastest-growing ethnic group, Latinas, who constitute 7% of the total U.S. population represent only 1.4% of the nation's lawyers. Molina, a co-author of the first and only nationwide study exploring the underrepresentation of Latinas in the legal profession, puts the data into context, offers insights into the social and cultural issues that underlie it, and provides suggestions to meaningfully address it.

The dearth of Latina attorneys is startling. Latinas—who constitute 7% of the total U.S. population and are part of the largest and fastest-growing ethnic group—represent only 1.4% of the nation's lawyers.¹ The low number of Latina lawyers has severe repercussions for the recruitment, retention, and professional career advancement of Latina lawyers.



Not surprisingly, this under-representation spans all sectors of the legal profession. According to the National Association of Legal Placement, Latinas make up only 2% of the associates and 0.4% of the partners in law firms, the lowest rate for any racial or ethnic group.² A recent Minority Corporate Counsel Association general counsel survey found that Latinas make up only 0.6% of the general counsels within the *Fortune* 500.³

Increasing the number of Latina lawyers can have a profound impact on the ability of Latinos/as to advocate and participate in national and local politics, and it can provide vital access to legal services in Latino communities.

Their severe under-representation challenges our legal and business institutions to implement strategies of inclusion and retention for Latinas and for all women of color.

To address this challenge, the Hispanic National Bar Association Commission on Latinas in the Legal Profession commissioned two nationwide studies on Latina lawyers in 2008 and 2009. The first study explores and analyzes the dearth of Latinas in the legal profession: *Few and Far Between: The*

1. See Jill L. Cruz, Melinda S. Molina, & Jenny Rivera, *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest Sector* 14 N.Y. CITY L. REV. (forthcoming 2011) (citing Dep't of Labor, Bureau of Labor Statistics, *Employment Status of the Hispanic or Latino Population by Sex, Age and Detailed Ethnic Group*, 2010, available at <http://www.bls.gov/cps/cpsaat6.pdf>); see also Bureau of Labor Statistics, *Current Population Survey* (unpublished Table 1: Employed and experienced unemployed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, Annual Average 2009, on file with authors) (note: these estimates may be subject to sampling and nonsampling errors).

2. Jill L. Cruz & Melinda S. Molina, *Few and Far Between: The Reality of Latina Lawyers*, 37 PEPP. L. REV. 971 (2010).

3. See NALP Bulletin, *Women and Minorities in Law Firms by Race and Ethnicity* (Jan. 2010), http://www.nalp.org/race_ethn_jan2010 (comparing Latinas to White, Asian, and Black women partners and associates).



According to the National Association of Legal Placement, Latinas make up only 2% of the associates and 0.4% of the partners in law firms, the lowest rate for any racial or ethnic group.

*Reality of Latina Lawyers.*⁴ The second study explores and analyzes the experiences and perceptions of Latina attorneys working in the public interest sector: *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest Sector.*⁵

These studies are two of the most comprehensive examinations of Latinas in the legal profession. They are the first studies to provide both qualitative and quantitative data on the entry, retention, and advancement of more than 900 Latina lawyers across all major legal sectors. Each of the studies was conducted in two distinct phases over a two-year period: a series of focus groups across several U.S. cities followed by a national survey.

This essay sets forth some of the key findings from both studies in an attempt to shed light on the formative and career-related experiences of Latina attorneys, experiences that serve as both bridges and barriers to Latinas in the legal profession.

Los Puentes y Las Barreras: Factors Influencing Educational Achievement and Career Choice

What factors influence young Latinas to aspire to and consider becoming part of the legal profession? The ability of the studies' participants to defy the odds and attain high levels of educational and occupational achievement was related in part to their formative experiences. For most of the participants, the high value their parents placed on education as a means to a "better life" and self-reliance served as a catalyst for them to excel academically and to pursue a career as an attorney. One woman from the *Few and Far Between Study* commented: "My parents always said, 'You have to have a better life than we do and the way you get there, you get educated.'"

Many Latinas in both studies especially acknowledged their mothers for providing the necessary encouragement to pursue and achieve their educational and career-related goals. One participant from the *Few and Far Between Study* shared the following comment:

My mother is a very strong and independent person. And so I knew I could do whatever I wanted. I could be a lawyer. I could be a doctor. I think when I was six I told my mother I was going to be President of the United States. My mother said, "And you will be, not you can be."

4. 2010 *Survey of Fortune 500 Women General Counsel*, MINORITY CORPORATE COUNSEL ASS'N, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=2107>.

5. O Cruz & Molina, *supra* note 2.

Faced with linguistic and cultural barriers, many of the Latinas in the studies viewed themselves as advocates because of the roles they played early in life as interpreters or representatives for their families and communities. Their early-life role would later influence their decision to become an attorney as a way to help others who could not adequately represent themselves. One participant from the *Few and Far Between Study* commented, “I grew up interpreting for my parents. It seemed like a very natural progression to then become a lawyer who interprets the law for clients or litigants.”

Many of the studies’ participants experienced various forms of marginalization and discrimination in their families and communities. These experiences would later help form their view that becoming a lawyer would help empower under-served communities, especially Latino communities. For Latina public interest attorneys, the desire to promote social and economic justice was a driving force in their decision to become a public interest attorney.

My conviction to become a public interest/civil rights lawyer stems from my family’s experiences as immigrants and the community where I was raised. I witnessed and experienced many inequities that angered me. I felt that I had to do something to address some of the problems facing my community, so I decided to be a lawyer at age 12.

The vast majority of Latinas in both studies were not exposed to attorneys when they were growing up. As a result, many did not consider becoming an attorney until they were in college, or later. The relatively few Latinas who had access to attorneys during their formative years emphasized that this early exposure to attorney role models positively influenced their decision to pursue a legal career, by inspiring and serving as an example of what they could achieve. “She was a Latina woman who was a lawyer. . . and so it made sense. If she does that, I could do that. . . .”

What are some of the challenges young Latinas face in pursuing their educational and career-related goals? The most salient barriers to Latinas obtaining higher levels of education are scant finances and limited educational opportunities and preparation. These barriers in the educational pipeline prevent many Latinas from entering the legal profession.⁶ The crisis in the educational pipeline, which impedes the educational attainment of Latinos/as, continues to be a significant barrier for Latinas in the legal profession. This crisis has been well documented. One study revealed the following statistics: “Among 100 Latinas/os who begin elementary school, a little more than half will graduate from high school and only about 10 will complete a college degree. Eventually, less than 1 of the original 100 Latinas/os who enrolled in elementary school will complete a doctoral degree.”⁷

Many of the women in the *Few and Far Between Study* reported further challenges along the educational pathway to the legal profession. These challenges included teachers and guidance counselors who tried to deter them from pursuing their educational objectives by telling them they would be unsuccessful and by advising them to attend less competitive schools, which some participants believe perpetuated Latinas’ educational underachievement. One woman explained, “These institutions still have this notion that we can’t do whatever it is we set out to do.” These notions persisted throughout law school. Many participants believed that because there are so few Latina professors or deans, there are few role models or mentors within academia to counter these notions, which leads to feelings of isolation and unpreparedness for many Latinas facing the rigors of law school. One woman from the *Few and Far Between Study* commented, “We’re not doing anything to support them. Or we’re doing very little. It’s hard enough to get students into law school, but then to lose them is a crime.”

6. Cruz, Molina & Rivera, *supra* note 1.

7. *Listening to Latinas: Barriers to High School Graduation*, NAT’L WOMEN’S LAW CTR. & MEXICAN AMERICAN LEGAL DEF. FUND (2009), <http://www.maldef.org/assets/pdf/ListeningtoLatinas.pdf>.



Latinas experience systemic obstacles to their advancement and retention in the legal profession that are attributable to the intersection of their race, ethnicity, and gender, which acts as a “triple threat” to their careers.

Los Puentes y Las Barreras: The Reality of Being a Latina Lawyer

Do Latinas find their careers as lawyers rewarding? What aspects of their careers do Latinas find rewarding? Overall, the participants in both studies reported that they were generally satisfied with their careers. Interestingly, many of the Latinas in the *La Voz Study* attributed their high rate of satisfaction to their ability to advocate on behalf of vulnerable and under-served communities, despite traditionally lower compensation levels and limited opportunities for advancement.

Many participants in the studies found it especially rewarding to use their bilingual and bicultural skills to better represent and relate to their clients. One participant from the *Few and Far Between Study* described it this way. “It’s really fascinating for me when I do the Spanish language training. There is a connection there, and I think there’s a level of credibility that perhaps other attorneys may not have.” Many of the *La Voz Study* participants derived a great deal of personal and professional satisfaction from being able to provide legal services to their Spanish-speaking clientele, an under-served constituency.

In the public interest world, Latinas are in demand because of the growing number of Latinos in our society. We need more . . . qualified lawyers that have not only the training, [but also the] cultural competency, language capacity, and the consciousness to rally for justice.

Although Latinas in the studies are generally satisfied with their careers and find many aspects rewarding, many face considerable obstacles that hinder their ability to succeed in the legal profession. Latinas experience systemic obstacles to their advancement and retention in the legal profession that are attributable to the intersection of their race, ethnicity, and gender, which acts as a “triple threat” to their careers. This can range from overt sexism and racism to lack of influential mentors and often having their accomplishments and qualifications as attorneys devalued and questioned.

For example, the vast majority of women had the shared experience of being mistaken for the translator or defendant by other attorneys, judges, and court personnel. Some believed that others in their workplace viewed their educational and career-related accomplishments as merely an aberration or a benefit of an unfair affirmative action, rather than as an achievement based on the woman’s own merit. One Latina from the *La Voz Study* recounted a situation where a colleague asked whether “Yale had a good affirmative action program” after seeing her law school diploma. The women in the studies viewed this misidentification and devaluation of their accomplishments as directly questioning the legitimacy of their presence in the legal profession.

Several Latinas in the *La Voz Study* reported that their colleagues commented on how well they “spoke English” or how they spoke English “almost without an accent.” Others reported that judges and opposing counsel misidentified them or confused them with other Latinos. “I can’t tell you just how many times I was called Fernandez, Rodriguez, or Perez.” The women viewed these types of derogatory comments and interchangeability with other Latinos as examples of their colleagues’ ethnically-gendered perceptions of what a Latina is or should be:

It’s really insulting because I don’t know any other heritage that gets that kind of treatment. They put Hispanics in a box. They wrap the bow around it and this is where we belong. We almost have to excuse ourselves if we break out of the box. I’m sorry I do not fit into your little expectation of me.

The women in the *La Voz Study* described the continued need to address workplace gender, racial, and ethnic disparities, despite the public interest sector’s commitment to equality and social justice. Many attributed the questioning of their competence to the marginalization of the public interest sector by their private sector colleagues and the general public. In particular, the women attributed this marginalization to the erroneous belief that the public sector is composed of lawyers who did not make it or could not make it in the private sector. Thus the obstacles that these women face are twofold: first, as women of color, they are marginalized in the legal profession; this is intertwined with working in a legal sector that is generally marginalized by the legal profession.

Many of the women reported that they were the only Latina in their organization. In the *La Voz Study*, the majority of Latinas surveyed reported that women of color attorneys constituted five or fewer members of the staff. This often led to feelings of isolation and “otherness” because no one else within their workplace mirrored their own cultural values or norms. This lack of commonality made it difficult for many of the Latina attorneys in the study to build professional relationships because they lacked access to role models, mentors, and informal networks in their places of employment or legal communities.

For others, the ability (or inability) to build professional relationships depended largely on the individual’s phenotype. For example, many participants in the *Few and Far Between Study* who believed that they can “pass as white” recognized that they are afforded better treatment and more opportunities for advancement in the legal profession than dark-complexioned Latinas. This belief led some to adjust their appearance or behavior in order to fit in or establish credibility within the dominant culture of their workplaces. One participant from the *Few and Far Between Study* poignantly commented, “It’s what you have to do to be successful at a large law firm. You have to bridge that gap and make them almost forget you’re Hispanic. . . .”



Thus the obstacles that these women face are twofold: first, as women of color, they are marginalized in the legal profession; this is intertwined with working in a legal sector that is generally marginalized by the legal profession.



Female attorneys need female mentors, and those who are mothers need mentors who are mothers.

Latinas also believe there are too few opportunities for their professional development and advancement in the legal profession. This was evident in both studies, where Latina attorneys were poorly represented in leadership positions across all major legal sectors. For example, in the *La Voz Study*, the majority of Latinas surveyed held non-supervisory positions. This under-representation was attributed to the fact that there are so few Latina lawyer role models or mentors who could help facilitate their professional and personal growth as attorneys. One Latina from the *Few and Far Between Study* explained:

Female attorneys need female mentors, and those who are mothers need mentors who are mothers. I performed much better in law school and in employment when I had a trusted mentor who understood me, my circumstances, my background, and my perspective. I was able to trust and confide in that person and ask important questions. When I lacked that resource, I didn't ask and therefore was not informed.

This challenge is especially salient for Latina public interest attorneys who, given the scarce resources and hierarchical structure of most of their organizations, have very few opportunities for promotion and professional advancement.

Recommendations

What should be done to overcome the under-representation of Latina lawyers? The HNBA Studies provide institutions within and outside the legal profession with information to better understand and appreciate the unique issues and barriers that both limit and enhance Latinas' educational and career achievements. This information should be used to develop and implement strategies to remove the barriers and build bridges, so that Latinas will aspire to and consider careers in the legal profession.

Educate Latina Youth and Provide Visible Role Models: A first and vital step is to expose and educate young Latinas about the various career opportunities that are available to them in the legal profession. The next crucial step is providing encouragement and guidance on the educational pathway to becoming a lawyer. This outreach can be done in a number of ways. For example, legal and business leaders should support and participate in educational pipeline programs servicing Latino communities. Likewise, they should identify Latina role models within their organizations who are willing to do community outreach about the legal profession and its various opportunities. Employers should in turn value and provide appropriate work credit to Latinas who engage in community outreach.

Create and Improve Upon Existing Mentoring Opportunities: The need for mentoring programs at various levels of Latinas' educational and career development is enormous. Many Latinas believed



The legal profession must foster opportunities for Latinas to network with and develop relationships with other women of color, especially other Latinas.

that without this critical relationship, their educational and career goals flounder. Mentors can help provide the necessary guidance and support to help younger Latinas more effectively navigate and reach their educational and professional goals. Legal and business organizations must create and develop mentoring opportunities by sponsoring and hosting networking programs and events that provide opportunities for Latinas to develop mentoring relationships. Legal and business organizations should also critically examine their current mentoring programs to determine their effectiveness. These programs and initiatives must be monitored regularly and consistently to ensure their success.

Cultivate Latina Networking and Support Systems: Related to the need for mentors, many of the studies' participants believed that in order to combat the feelings of otherness and to ease some of the collective challenges they often face in their workplaces, the legal profession must foster opportunities for Latinas to network with and develop relationships with other women of color, especially other Latinas.

Encourage Continued Research: The HNBA Studies provide much-needed insight into the status and experiences of Latina attorneys, but more needs to be done. As the Latino population continues to grow, so does the need for legal and business institutions to serve and work within Latino communities. In order to capture this growing market, the legal profession and businesses must identify and communicate best practices for attracting, retaining, and advancing Latinas in the profession. In order to do so, further research is needed to provide a better roadmap for developing and adjusting diversity goals and initiatives. ■

8. Daniel G. Solorzano, Octavio Villalpando & Leticia Oseguera, *Educational Inequities and Latina/o Undergraduate Students in the United States: A Critical Race Analysis of Their Educational Progress*, 4 J. OF HISPANIC HIGHER EDUC. 272 (2005), available at <http://jhh.sagepub.com/content/4/3/272>.

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“Inclusion Means Including Us, Too”—Disability and Diversity in Law Schools

By Kathleen Dillon Narko

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When the legal profession talks about diversity, lawyers with disabilities are often mentioned, but are they really included? Given that nearly one out of five Americans has a disability, if lawyers with disabilities are not being included in the profession with the same zealousness given to other types of diversity, the ramifications are serious. In explaining why, Narko addresses how this can be accomplished, beginning with our law schools.

Nearly one out of five Americans has a disability.¹ Accordingly, people with disabilities comprise the largest minority group in the United States. The group is exceptionally diverse in its interests and needs, and members may join the group at any point in life. Many people overlook disability as a part of diversity. A truly diverse population, however, includes people with a range of disabilities. People with disabilities continue to be underrepresented in the legal profession. They face physical and technological barriers that prevent them from performing their work and attitudinal barriers that make performing their work more difficult. It is hard to participate in a meeting when you cannot open the door, and it is hard to show what you can do if you are not given the opportunity.

This article will explore why disability should be included in ideas of diversity and inclusion as well as the barriers people with disabilities face. I will focus on those preparing to enter the legal profession—law students. The following piece by Eve L. Hill, Senior Vice President at the Burton Blatt Institute, will focus on how employers can create a culture of inclusion for people with disabilities in the profession.

Why should disability be included in diversity?

Are people with disabilities diverse? Through their actions and attitudes, many people seem to answer “No.” Important rationales exist, however, for people with disabilities to be part of true inclusion in the profession.

People with disabilities “have to be represented,” according to William Phelan of the American Bar Association’s Commission on Mental and Physical Disability Law. “Many are unemployed, or disenfranchised. They do have to be represented in diversity.” Phelan gives several reasons. First, the legal profession needs to promote diversity in general to instill faith in the legal system. “People want to see diverse leaders.” If not, they may wonder if leaders have the best interests of persons with disabilities in mind, according to Phelan. Second, law firms want and need to respond to their clients’ requests for more diversity in lawyers handling their matters. Finally, as a practical matter, including disability within diversity brings more ideas to the table. One can imagine, for example, employment

1. See generally *ABA Disability Statistics Report 2010*, <http://new.abanet.org/disability/PublicDocuments/ABADisabilityStatisticsReport.pdf> (compiling statistics from various sources, as cited in this paragraph).

disputes regarding disability accommodations handled by a lawyer with a disability. This lawyer would bring a new point of view to the litigation team.

In writing this article I sought out the views of current law students and recent graduates with disabilities. Anna Scholin, president of the National Association for Law Students with Disabilities (NALSWD), underscores the above points by stressing that disability is “yet another way people are different.” She also adds, “Lots of people with disabilities are really smart. [Excluding them] would be cutting off a lot of human talent.” NALSWD board member, Greg Oguss, states, “If diversity is good generally, then adding more diverse groups is even better.”

What barriers do law students with disabilities face?

Law students face some barriers in common with all people with disabilities and some barriers unique to law schools. One law student with whom I spoke said the professor of her anti-discrimination law class failed to cover disability rights. When asked why, he said there was no discrimination against people with disabilities since the Americans with Disabilities Act (ADA) was enacted 20 years earlier. The professor’s comments highlight how disability discrimination is viewed differently from other forms of discrimination. For many law students with whom I spoke, this professor’s statement is far from the truth of their experience.

• Physical Access

Law students, along with others with disabilities, must often navigate physical barriers at their schools. Doors with ADA-compliant handles may be so heavily weighted that they are impossible for someone in a wheelchair to open. Or automatic door openers may be inoperable, barring access to areas of the school. Elevators may break down, stranding students on upper floors. Extra-curricular events may take place in locations outside the law school that are not accessible. Similarly, volunteer opportunities for public service may not be in physically accessible locations.



It is hard to participate in a meeting when you cannot open the door, and it is hard to show what you can do if you are not given the opportunity.

Students with disabilities must ask for help to open the heavy doors, thus reducing their independence. For extracurricular events, they have the choice of either not attending or asking the group to move the event to a more accessible location. The latter may not be possible and at the very least, places the student in an uncomfortable position. No one wants to be seen as the constant complainer. Further, it takes extra effort and time for a law student to raise these issues—commodities in short supply for all law students. Instead, law schools should anticipate accessibility issues and eliminate them in all aspects of student life. A law school should not be content with complying with the minimum legal requirements for accessibility. The standard for law schools should not be literal compliance with the letter of the law. Rather, law schools should embrace the spirit of the law and show others how to achieve compliance and inclusion. Law schools should be leaders in promoting inclusion and welcoming future members of our profession.

• Testing Accommodations

Many law students with disabilities need accommodations during exams, such as additional time to complete exams or the use of adaptive equipment. Students with vision impairments may require computer screen readers and extra time to record their answers. For students with neuropathy in their fingers, typing nonstop for three hours may be a painful ordeal. They need breaks every hour. Time-and-a-half is a common accommodation, according to Stephanie Enyart, one of the founders of NALSWD. University accessibility offices generally handle this fairly well, according to students with physical disabilities.

Students with non-physical disabilities, such as learning disabilities, ADD, or ADHD, often have more difficulty receiving testing accommodations, according to Jo Anne Simon, an attorney who represents many students in this area. Many faculty and staff do not understand these disabilities and hence, do not perceive them as real. Instead, according to Simon, they view students with these disabilities as “trying to game the system.” Many students never receive information about how to get accommodations or face many hurdles to obtain them. The “prosecutor mentality” of many law schools deters students from seeking accommodations, says Simon; the students suffer academically as a result.

Even students who receive widely accepted accommodations may run into snags. One student described how his university lost all his disability documentation as well as the confirmation of his accommodations during the summer between his acceptance into law school and his arrival on campus in the fall. This student also had the experience of an accommodation being revoked the Friday before his exams were scheduled to begin the following Monday. The decision was later reversed, and he did receive his accommodation, but not without a great deal of stress as well as time and energy spent trying to reinstate his accommodation. “Accommodations are our lifeline,” said the student on condition of anonymity. “If there are no accommodations, there can be no success at any level.” The experience drove home for him that “people don’t understand disabilities.” Consistent, knowledgeable accommodations should be the rule. Accommodations merely level the playing field, rather than providing an advantage to anyone.

Two areas where students continue to face uneven playing fields are areas critical to the success of law students: the LSAT and the bar exam. The ABA’s Phelan describes a situation where a law student with vision impairment asked for accommodations to take the LSAT. His request



Stephanie Enyart sued the National Conference of Bar Examiners to be able to use a computerized screen reader as well as a text magnifier. The U.S. Court of Appeals for the Ninth Circuit recently ruled in her favor.

for a computer screen reader was denied, and he was told that he would have a person read the questions aloud to him. On the day of the test the trained reader did not appear, and an untrained volunteer agreed to read instead. The untrained reader had difficulty pronouncing many of the words, and the prospective law student had difficulty understanding him and completing the exam. This student was then faced with a dilemma: take his chances with his scores based on a faulty reader or cancel his test results and postpone his application to law school for a year.

Similar difficulties arise with accommodations for the bar exam. Stephanie Enyart sued the National Conference of Bar Examiners to be able to use a computerized screen reader as well as a text magnifier. The U.S. Court of Appeals for the Ninth Circuit recently ruled in her favor.² Students face roadblocks at their entrance to law school as well as their exit. If they are unable to score well on these examinations, they may never become lawyers. Admission to law school or passing the bar should turn on a student's knowledge and abilities, rather than the type of accommodation allowed.

· Technology Accommodations

Enyart states that common challenge for students with vision and other impairments is getting textbooks in an accessible format. Usually, this requires the law school or the publisher to provide an electronic version of the textbook. Although the process varies from school to school, some students receive their books six-to-eight weeks after the start of classes. For many, this makes it almost impossible to catch up on reading. In addition to textbooks, many students often cannot obtain access to the study guides that most law students take for granted. It is hard to imagine going through law school without at least one commercial outline.

Phelan concurs technology accommodations are a significant issue for students with vision or hearing impairments. Many websites are not accessible. They include images without explanatory text, so that a computer screen reader will simply say "image" instead of describing

2. *Enyart v. National Conference of Bar Examiners, Inc.*, --- F.3d ---, 2011 WL 9735 (9th Cir. 2011) (Nos. 10-15286, 10-16392).



Law school career placement offices need more education on how to place students with disabilities. Some students have been told they should only consider jobs with the government, that only the government would accommodate their needs and provide adequate benefits.

the picture. Or a video may have no subtitles for someone with a hearing impairment. With instruction becoming increasingly web-based, law schools should again anticipate this opportunity to allow students to learn on equal footing with their peers.

In addition, students who are deaf or hard of hearing depend on communication to learn. They can benefit from Communication Access Realtime Translation (CART), live transcription of spoken words by a court reporter, according to Michael Schwartz, Associate Professor of Law and Director of the Disability Rights Clinic at Syracuse University College of Law. The transcription can then be projected on a screen in the classroom. Schwartz, who is deaf, says CART can enable students who are deaf to follow speech that may be too fast-paced for sign-language interpreters. Schwartz prefers to receive information through CART and express himself through a sign language interpreter, noting that it is “exhausting” to follow an interpreter for extended period. Law schools need to be aware of assistive technology and offer it when needed.

· Career Placement

Another common complaint that Scholin and Enyart have heard is that law school career placement offices need more education on how to place students with disabilities. Some students have been told they should only consider jobs with the government, that only the government would accommodate their needs and provide adequate benefits. The perception among many law students with disabilities, according to Enyart, is that career placement offices, although well-meaning, “don’t know what to do with differences.”

According to the ABA’s Phelan, concerns about how employees with disabilities will perform in the workplace are misplaced. Many employers fear that attorneys cannot meet billable hour requirements. If lawyers “have accommodations, they can do it, especially ones who have had [the disability] for years.” Carrie Griffin Basas, Visiting Assistant Professor at the University of North Carolina School of Law and disability law specialist, notes, “We all have special needs and crises. To decide one population has more problems than others is wrong.”

Phelan notes that an attorney “would not have gotten through law school and the bar exam if they couldn’t do it.” These attorneys with disabilities are “used to dealing with tough situations.” They are often “excellent advocates and industrious.” Recent graduate and former NALSWD board member, Rebecca Williford, echoes Phelan’s statements. “People with disabilities are survivors, and it’s going to take a lot to derail them. It’s not the job of law school administration to make the decision that a person can’t work in a firm.” Law schools should inform students with disabilities about all employment options.

What should law schools do?

What should law schools do to accommodate students with disabilities and ease their way into the legal profession? According to Enyart, law schools should reach out to students with disabilities and seek their opinions on how to improve technology and accessibility. NALSWD has issued a best practices guide for law schools that may help foster communication between law schools and their students. Without law schools reaching out to students with disabilities, the students have to ask for every accommodation. One student notes he feels alienated from his classmates because of his very different experience. This feeling of isolation is the opposite of inclusion. Our profession should do more, starting at the law school level, if not before.

Attorney Simon agrees, stating, “Law schools should set a tone of inclusion and acceptance of a diverse student population in all its manifestations.” Syracuse’s Michael Schwartz stresses that law schools should do more than meet minimum ADA requirements at the lowest cost possible. “They’re the deaf ones,” Schwartz says of law schools. “They’re not listening” to the needs of students (while stressing his university is an exception). Schwartz says law schools should ask, “What can we do to make it welcoming?”

Many of the law students interviewed describe themselves as members of “the ADA Generation.” That is, they have gone through school with “the ADA protecting us,” says Enyart. “We have very similar challenges to other communities” within diversity, says Enyart. The other law school groups within the diversity community realize this, according to Scholin, embracing disability as another diverse group. Scholin states that disability is “yet another way people are different,” and “we want to be accepted despite our differences.” As Enyart summed it up, “Inclusion means including us too.” ■



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LGBT Attorneys of Color in the Legal Profession: A Discourse on Inclusion

By Takeia R. Johnson

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Traditionally, diverse lawyers are women or racial/ethnic minorities or have disabilities or are LGBT. Lawyers who fit more than one of these categories have been expected to “be” essentially one or the other. While these lawyers can “be” more than one of these at different times, little provision has been made to address them as whole people who might embody more than one type of diversity. Johnson explores the particular barriers to inclusion and challenges to “coming out” that LGBT attorneys of color may encounter.

Introduction

Attorneys of color have multiple stigmatized identities that the legal profession has yet to comprehensively address. For instance, the specific groups that fall within the American Bar Association’s (“ABA”), as well as other organizations’ diversity programs and policies, include racial and ethnic minorities, women, persons with disabilities, and individuals who identify as lesbian, gay, bisexual, and transgender (“LGBT”). As seen from an organization as comprehensive as the ABA, the unique considerations of LGBT persons of color is not siphoned out and explored, perhaps leaving this group to question their exclusion, or to attempt to silence the mutable characteristics of their diversity—their “queerness.” This lack of attention to multiple identities presented by attorneys of color is also evidenced by the lack of written materials on the subject. Research tends to focus on either persons of color, or LGBT attorneys, but rarely both. Similarly, diversity and inclusion efforts have taken the approach of singling out personal characteristics and addressing those characteristics on an individualized basis. For instance, most bar associations and law firms have committees or affinity groups dedicated to racial and ethnic diversity, gender inclusion, and/or sexual orientation. Rarely do these multiple identities intersect in their own affinity group.

Although significant progress has been made in the American legal profession to advance the case of diversity and inclusion of attorneys of color and LGBT attorneys, more must be done. The 2010 overall count of 2,137 LGBT lawyers is lower than it was in 2009.¹ Among the offices/firms reporting counts in 2010, almost half reported at least one openly LGBT lawyer and 13% of offices reported at least one openly LGBT summer associate.² The presence of LGBT lawyers continues to be highest among associates, at 2.35%, and is up a bit from the figure of 2.29% reported in 2009.³ Openly LGBT associates are also better-represented at large law firms, with firms of 701+ lawyers reporting 2.78% openly LGBT associates.⁴ NALP also reports that “among all employers listed in the 2009-2010 NALP

1. See NALP Bulletin, *Most Firms Collect LGBT Lawyer Information — LGBT Representation Up Slightly* (December 2010), <http://www.nalp.org/dec10lgbt> (note: in 2009, NALP reported 2,200 openly gay lawyers; although overall percentage of LGBT lawyers reported in the NALP Directory of Legal Employers (“NDLE”) in 2010 increase compared to 2009, this increase is misleading because the total number of lawyers included in the NDLE analysis was smaller compared with 2009).

2. *Id.*

3. *Id.*

4. *Id.*

Directory of Legal Employers, just over 6% of partners were minorities and 1.88% of partners were minority women, and yet many offices report no minority partners at all.⁵ NALP's statistics do not measure the number of LGBT attorneys of color.

In this article, I will explore the barriers to inclusion of LGBT attorneys of color, including explaining how an essentialist approach to diversity has resulted in a narrow view of diversity by focusing efforts on specific groups, such as racial and ethnic diversity, gender diversity, disability, and sexual orientation diversity, rather than addressing the overlap that occurs within these groups. I will continue by exploring "coming out" for LGBT attorneys of color. Finally, this article provides recommendations that law firms can utilize to improve the attraction, advancement, and retention of LGBT attorneys of color.

Barriers to Inclusion

While the research on LGBT attorneys of colors is scant, some available research is helpful in framing the issues. A small number of researchers studying the legal profession have reported that heterosexuals have witnessed discrimination against their LGBT peers:⁶

- In a survey of heterosexual attorneys in Minnesota law firms, 23% believed that LGBT attorneys were treated differently, with an additional 32% stating that they could not be certain of this.
- New Jersey Court system employees reported observing sexual orientation discrimination: 7% reported witnessing discrimination in hiring, 10% witnessed verbal abuse or harassment of LGBT coworkers, and 6% reported witnessing discrimination in the distribution of work assignments.
- 30% of the judges and attorneys surveyed in Arizona believed that lesbians and gays were discriminated against in the legal profession.
- 12% to 14% of heterosexual political scientists reported witnessing antigay discrimination in academic employment decisions, such as hiring and tenure decisions.
- In Los Angeles, 24% of female heterosexual lawyers and 17% of male heterosexual lawyers reported either having experienced or witnessed anti-gay discrimination.

A survey of the research revealed that while attorneys of color and LGBT attorneys in the legal profession have been examined as distinct groups within the legal profession, there is not much research or analysis in the way of combining these groups. Indeed, this lack of available research makes

5. See NALP Bulletin, *Women and Minorities in Law Firms by Race and Ethnicity* (January 2010), http://nalp.org/race_ethn_jan2010.

6. See M.V. Lee Badgett, Brad Sears, Holning Lau, and Deborah Ho, *Symposium: The Evolution of Academic Discourse on Sexual Orientation and the Law: A Festschrift in Honor of Jeffrey Sherman: Article: Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*. 84 CHI. – KENT L. REV. 559, 568-69 (2009) (note study limitations: many of the studies only surveyed individuals in a particular geographic region, occupation, or population group; almost all were convenience samples, rather than random or probability samples; individuals who have been subject to discrimination may have been more likely to respond; peoples' perceptions of discrimination may not be accurate measures of actual discrimination perhaps because individuals may misperceive motives behind employment decisions, or employers may conceal their discriminatory motives and as a result, less discrimination is perceived than actually exists. *Id.* at 569. Finally, many of the cited studies used vague definitions of discrimination, such as denials of promotions and receiving "hard stares." *Id.* Despite these limitations, the studies are helpful in identifying some of the barriers to inclusion that LGBT attorneys face, including LGBT attorneys of color).



[The] legal profession will stall if it continues to fail to see how race and sexual orientation intersect and address this intersection.

evident that LGBT attorneys of color must identify with one group or the other, regardless of whether these attorneys fit comfortably within either.⁷ Without adequately studying the issues, the legal profession stands at a disadvantage when approaching how to improve inclusion of LGBT attorneys of color. Professor Kimberlé Crenshaw advocated in her pioneering law review article, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, that Americans will not understand the full extent of racism and sexism until they investigate the lives of women of color.⁸ Similarly, the legal profession will stall if it continues to fail to see how race and sexual orientation intersect and address this intersection.

To build the nexus between race, ethnicity, sexual orientation, and gender identity in diversity and inclusion efforts, members of the legal profession must first understand what factors have prevented the inclusion of these groups in past diversity and inclusion efforts.

Essentialism

Essentialism is the theory that there is a single woman's, Asian American, lesbian, or any other group's experience that can be described independently from other aspects of the person – that there is an “essence” to that experience.⁹ “[T]he result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: ‘racism + sexism = straight black women’s experience,’ or ‘racism + sexism + homophobia = black lesbian experience.’”¹⁰ LGBT attorneys of color have multiple stigmatized identities yes, thus far, the focus has been on a “single issue,” “disregarding the impact of intersections of oppression and the diversity of experiences within marginalized communities.”¹¹

Former Seattle City Councilwoman Sherry Harris, the first black lesbian elected to public office in the United States, described her experience with essentialism as follows: “To make matters more challenging, the gay community demanded that I present myself only as “gay” and focus my

7. See Jeffrey C. Mingo, *More Colors Than the Rainbow: Gay Men of Color Speak About Their Identities and Legal Choices*, 8 LAW & SEX 561, 562 (1998).

8. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1252 (1993).

9. Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S J. 16-22, 24-30 (1995).

10. Jefferson, *supra* note 27, at 266.

11. Gabriel Arkles, Pooja Gehi and Elana Redfield, *Transgender Issues and the Law: The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change*, 8 SEATTLE J. SOC. JUST. 579, 602-03 (Spring/Summer 2010).

attention on the gay community. The black community demanded I present myself only as “black” and focus exclusively on issues of concern to African Americans. I am more than my race, more than my gender and more than my sexual orientation.”¹² Two paradigms of the legal profession further evidence Councilwoman Harris’ experience: (1) “various characteristics of one’s identity, such as sexual orientation, gender, and race, are always disconnected; and the various aspects of one’s identity may be ranked so that one aspect takes precedence over another.”¹³ For example, in the law firm setting, race may take precedence over sexual orientation, or gender may be prioritized over status as a parent.

Since “there is no monolithic ‘Black community nor are there monolithic lesbian or Black lesbian communities,”¹⁴ members of the legal profession should consciously seek to learn about the various components that make up diverse identities such as LGBT persons of color. Members of the legal community should combat the ease and convenience in essentialism because that convenience ultimately results in diverse attorneys of color being left out of inclusion efforts, with concerns and considerations specific to their group being minimized or ignored altogether. This minimizing and ignorance contributes to the lack of out LGBT attorneys of color in the profession, which ultimately serves as a hindrance to diversity and inclusion.

A person’s identity is rarely limited to a single characteristic and when efforts are made to account for and include these various characteristics, the business of the firm will improve, as more and more, clients are looking for their attorneys to represent the communities they serve. The experience of the firm on the whole and of attorneys individually will also improve as an inclusive environment creates a more functional and collaborative work community. Indeed, as Councilwoman Harris pronounced, “[w]e are not a homogeneous species—each human is complex and multifaceted.”¹⁵

Coming Out

For many, sexual orientation is an invisible characteristic that requires disclosure for others to be aware.¹⁶ LGBT persons often have to navigate that process of disclosure, “coming out,” repeatedly, deciding when to come out, to whom, and how, all while considering the impact that coming out may have on their careers and relationships. Many LGBT attorneys remain silent about their personal lives:

“Non-gay people announce their sexual orientation whenever they mention a date, a spouse, or a child. But these normal conversations can be fraught with tension for lesbians and gay men. If they decide to remain silent about their personal lives, the word ‘we’ is banished from their vocabularies, along with talk about weekends, homes, Thanksgiving plans, theater subscriptions, and in-laws. It’s a silence that can often be interpreted by colleagues as distant and cold.”¹⁷

The problem with remaining closeted is that “[t]o remain closeted, one has to become somewhat aloof. And successful lawyers tend to be gregarious and friendly and open.”¹⁸ Further, the intersection of race and sexual orientation presents a common problematic perception:

12. Sherry Harris, *Essay for Out and Elected in the U.S.A.*, OUTHISTORY (January 8, 2011), available at http://www.outhistory.org/wiki/Sherry_Harris.

13. Elvia R. Arriola, *Gendered Inequality*, in *THE CUTTING EDGE: CRITICAL RACE THEORY* (2nd ed., Richard Delgado & Jean Stefancic, eds, 322-324, 2000).

14. *Id.*

15. Harris, *supra* note 12.

16. See Christine Silva and Anika K. Warren, *Building LGBT-Inclusive Workplaces: Engaging Organizations and Individuals in Change*, CATALYST 11 (June 2009).

17. *Creating Pathways to Diversity: Perspectives from the Invisible Bar—Gay & Lesbian Attorneys in the Profession*, 8-11 (hereinafter “Pathways to Diversity”) (MCCA 2003).

18. *Id.*



It is imperative that members of the legal profession realize that one identity, whether based on race, ethnicity, sexual orientation, or gender identity, does not take precedence over another, and instead acknowledge that the issue is more complex.

[T]hat people of color truly experience oppression by the majority, whereas gay men and lesbians merely experience ‘normal’ people’s discomfort with their sexuality and openness about it....racism remains a constant and expected experience. Unfortunately, homophobic and heterosexist people often make statements ...that ‘seeing’ race somehow means that people of color merit certain protections, whereas gay men and lesbians ‘choose’ to come out, when they can remain invisible and should do so anyway.”¹⁹

It is imperative that members of the legal profession realize that one identity, whether based on race, ethnicity, sexual orientation, or gender identity, does not take precedence over another, and instead acknowledge that the issue is more complex. Additionally, the legal community should move beyond this acknowledgment and commit to doing the work to understand the complexities of identity, which is necessary in improving inclusion of LGBT attorneys of color in the legal profession.

Recommendations for Inclusion of LGBT Attorneys of Color:

Diversity and inclusion generate a number of benefits, including increasing profitability by expanding an ability to market and advertise to diverse clients, leveraging a workforce’s cultural difference to create a broad base of expertise that leads to the development of new ideas, reducing attrition within legal businesses by embracing difference rather than creating a culture in which diverse individuals feel as though they are outsiders, and strengthening the core societal values that ‘diversity should be accepted, encouraged and appreciated.’²⁰ To achieve these benefits and more, firms should consider and implement the following recommendations to improve the attraction, retention, and advancement of LGBT attorneys of color:

- **Think expansively:** Law firms should think expansively about what constitutes diversity.²¹ Moving away from essentialism will promote a more inclusive environment by encouraging the

19. Mingo, *supra* note 7, at 592.

20. Joseph M. Hanna and Nikia A. O’Neal, *Moving Beyond Rhetoric—Fostering Diversity in the Legal Profession*, FOR THE DEFENSE 6 (May 2007).

21. See Denis P. Riva, Jr. and Rebecca S. Herbig, *Embracing “Phase II:” A Diversity Primer for Young Lawyers*, FOR THE DEFENSE 40 (April 2010).

acknowledgment that individuals' identities are comprised of various characteristics and are not singular. Thinking expansively about what makes up individuals' identities will encourage LGBT attorneys to not "pick one or the other"—we can be both persons of color *and* LGBT, in addition to the many other facets of our identities.

- **Implement Training:** A formal diversity-training program that is mandatory for all employees at every level helps to ensure an inclusive environment. Building awareness and creating a common language regarding LGBT attorneys of color, as well as other diverse characteristics, promotes understanding within the profession. Trainings should address multiple dimensions of diversity and inclusion, including, but not limited to, attorneys of color, women attorneys, and LGBT attorneys. Defining key terms such as LGBT, and promoting acceptance and understanding of attorneys' revelation of their sexual orientation and gender identity should be included in training. Training should also encourage attorneys to express the intersection of the multiple components of their identities, rather than suppress these aspects of their identities. Working with consultants and other experts who specialize in diversity training would help to identify areas that are particular to the legal organization and the market in which the organization operates. For instance, a diversity consultant may help the law firm shape a diversity training program that addresses the particular needs of being an LGBT attorney of color in a small town versus in a big city, or in minority-owned firm, women-owned, LGBT-owned, or disabled attorney-owned firms. Moreover, large law firms and general counsel offices encounter different challenges and opportunities than small firms and solo practitioners. Training should also consider and address factors that may inhibit inclusion and retention, such as explicit and implicit bias, unconscious discrimination, and overt and covert opposition to diversity and inclusion.²²
- **Serve and Promote the Community:** Law firms can provide information and materials regarding community organizations and affinity groups to attorneys who are openly LGBT, particularly for those attorneys who are new to the city in which the firm is located, which occurs fairly often, especially in the case of summer associates. Law firms can provide lists of affinity groups and bar associations, sponsor activities, or even serve as pro bono counsel for the groups. If the firm is already doing these things, then the firm should be sure to highlight its efforts to the firm, including its diverse attorneys, and to the community at large, as this information will emphasize the firm's commitment to inclusion and will promote the retention of diverse attorneys.
- **Avoid Stereotypes:** Stigmatization and stereotyping play a role in job satisfaction and retention and firms should be sensitive to this. Indeed, "[a]ll forms of oppression involve taking a trait, x, often with attached cultural meaning, and using x to make some group the *other*, reducing their entitlements and powers."²³ Firms should avoid assumptions about which a lawyer is understood to be and avoid the perpetuation of such stereotypes and the denial of opportunities based upon those stereotypes.²⁴ Many lawyers of color feel they have to work twice as hard in order to prove themselves, and female lawyers of color feel there is a double bias against them.²⁵ Attorneys are not immune from the lingering effects of historical stereotypes. Thus, firms should recognize that conscious and unconscious stereotyping occurs and avoid reaching conclusions about attorneys' work ethic based on gender, cultural/ethnic and/or racial stereotypes or based upon a single event or mistake.

22. See American Bar Association's Presidential Diversity Initiative—Diversity in the Legal Profession: The Next Steps ("ABA Report") at 27 (April 2010), available at new.abanet.org/centers/diversity/.../Diversity_Summary_Report.pdf.

23. Mari J. Matsuda, *Standing Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, in *WHERE IS YOUR BODY?* 63-64 (1996) (emphasis added).

24. *The DRI Law Firm Diversity Retention Manual* at 13 (2005), available at <http://www.dri.org/open/Committees.aspx?com=0440>.

25. *Id.*



If a firm can meet and exceed its own expectations in measuring its progress towards diversity and inclusion, this success will inevitably be reflected in the profession as a whole.

- **Strategic planning:** Include diversity and inclusion in the firm's strategic plan and have the firm's management announce and explain the strategic plan so that diverse attorneys will see a "top down" commitment.
- **Measure your success (or failure):** NALP has been collecting demographic information on LGBT lawyers since 1996. During that time, the number of firms that give their LGBT lawyers an opportunity to self-identify has risen to almost 90%. While 90% is a solid A-minus, law firms should strive for the often-elusive A-plus in self-reporting. If a firm can meet and exceed its own expectations in measuring its progress towards diversity and inclusion, this success will inevitably be reflected in the profession as a whole. A written plan for inclusion is essential to measuring the firm's success and shortcomings. Firms must evaluate where they stand to determine goals and their strategic planning. Plans should include goals, assign responsibility, specify a timeline, and include accountability. Where possible, the firm's plan should be circulated throughout the firm, similar to the way in which firms share their strategic plan on an annual basis. LGBT attorneys should be a part of this evaluation process.
- Inclusion efforts should always consider the public policy behind antidiscrimination law when developing their efforts: respect for one's total identity, including gender, race, age, religion, ethnicity, and sexuality. None of these traits are permissible justifications for discrimination (as found in various federal, state, and local laws), yet all of these traits should be considered and accounted for in inclusion efforts, in addition to other identifiers.

A final recommendation for inclusion is that law firms should consider the rationales behind achieving diversity and inclusion when shaping plans to move forward on these fronts. The American Bar Association's Presidential Diversity Initiative's *Diversity in the Legal Profession: The Next Steps* ("ABA Report")²⁶ articulates four rationales for creating a more diverse legal profession:

The Democracy Rationale: 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. 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.

26. ABA Report, *supra* note 22, at 5-9.

The Business Rationale: 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. 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.

The Leadership Rationale: 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*²⁷ that law schools serve as the training ground for such leadership and therefore access to the profession must be broadly inclusive.

The Demographic Rationale: Our country is becoming diverse along many dimensions and we expect that the profile of LGBT 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 United States will be a "majority minority" country.

Understanding and incorporating these rationales will lead to attracting, advancing, and retaining diverse attorneys, including LGBT attorneys of color, as these rationales promote a more holistic approach to diversity and inclusion that moves beyond the business case.

IV. Conclusion

Attorneys, researchers, taskforces, and commissions on diversity alike should begin to move away from the notion that only a single diverse experience can be considered at a time. Considering the overlap of multiple identities and experiences will make for a more robust and representative profession and is "more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes."²⁸ ■



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and judicial offices exhibits different
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different geographies, and current events.

27. *Grutter v. Bollinger*, 539 U.S. 306, 308 (2003).

28. Ellen F. Rosenblum, Chair, Presidential Commission on Diversity, *supra* note 22, at 4.

Micro-Targeted Diversity: The Case of Black African Immigrants

By David M. Bamlango

Associate, DLA Piper

Who are African Americans today? Traditionally, African Americans have been understood to be those whose African ancestors experienced slavery. Today, however, there is a growing group of Black African immigrants whose histories, cultures, experiences, and reference points can differ dramatically from African Americans descended from 17th, 18th, and 19th Century American slaves. Bamlango discusses the concept of micro-targeting, in this case understanding and valuing the diversity that Black Africans, who are 20th and 21st Century immigrant Americans, bring to the broader African American community and the legal profession.

Introduction

Diversity in the workplace means that employees of the relevant organization hail from various but identifiable segments of the population. The most readily identifiable markers of diversity are race, gender and age. Other pointers of diversity include ethnicity, educational background, marital status, income, religion, sexual orientation, parental status, physical attributes, and work experience.

In a country such as the United States where racial discrimination and segregation were official policies and where women were systematically absent from the ranks of many professions, diversity in the legal profession is not a natural occurrence that should be taken for granted. In order to have a truly diverse legal profession, legal employers must be deliberate and intentional about diversifying the makeup of their workforce. Meaningful diversity in the legal profession cannot happen by chance or simply result from the workings of the labor market.

The efforts to proactively build a diverse workforce should involve actively reaching out to potential candidates coming from segments of the population that are the least, or not at all, represented, recruiting qualified candidates from such groups, and developing within the organization an environment that is conducive to retaining them.

Diversity is generally credited with enhancing creativity and innovation in the organization, improving the organization's problem solving capabilities, allowing it to attract and retain the best available talents, and creating a favorable brand image. Law firms and other legal employers who are seeking to maximize these benefits of diversity need, initially, to acknowledge the heterogeneity that exists within the larger groupings commonly used to refer to populations under-represented in the legal profession, such as, with respect to racial diversity, Latinos, Asians, and Blacks or African-Americans. Acknowledging the diversity that exists within these groups should allow legal employers to target qualified candidates from segments of such groups who may be better suited for specific business needs of the organization and, generally, in order to increase the diversity of their workforce.

For ease of reference, we will refer to the targeting of sub-groups within under-represented groups as "micro-targeted diversity." After elaborating on the advantages and risks of micro-targeted



Micro-targeted diversity is necessary in part because the population of the United States, like that of most other developed countries, is projected to grow ever more diverse.

diversity, we will describe one specific sub-group within the Black population, Black African immigrants, with a particular focus on the traits that, when taken together, are most likely to distinguish them from other Blacks. This essay will show that the benefits of micro-targeted diversity outweigh the additional challenges that may follow its adoption and, in the particular case of Black African immigrants lawyers, micro-targeting can introduce legal employers to qualified employees having a unique combination of skills and experiences that are critical for business success in a globalized economy.

Micro-Targeted Diversity

The concept of micro-targeting is borrowed from the world of political campaigns and direct marketing. It involves splitting a larger population into smaller segments that can be easily targeted for purposes of conveying political messages or for marketing a product. Every outreach effort supposes a certain degree of customization of the outreach strategy and the message. Micro-targeting under-represented populations by going after distinct sub-groups of larger groups would require legal employers to tailor their outreach approaches even more.

Like a market segment, a sub-group of an under-represented group must be sufficiently distinct from other sub-groups and sufficiently homogenous in order to be identifiable and reachable. If a sub-group cannot be clearly distinguished from other parts of the larger group, targeting may not be possible. Also, if the needs of the various members of the sub-group are completely different among members, targeting efforts may not be effective because the members of the group would be unlikely to respond to the same or similar offers.

Micro-targeted diversity is necessary in part because the population of the United States, like that of most other developed countries, is projected to grow ever more diverse. According to the United Nations, during 2010-2050, the net number of international migrants settling in the most developed regions of the world is projected to be 96 million.¹ With a net average of 1.1 million international migrants arriving annually during that period, the United States is projected to be the primary destination of international migrants, followed by Canada with a net average of 214,000 international migrants arriving annually.² This constant flow of migrants to the United States will bring even more diversity in the workforce, which will flow into law school classrooms.

1. *United Nations' World Population Prospects: The 2008 Revision, Highlights* (January 26, 2011), http://esa.un.org/unpd/wpp2008/pdf/WPP2008_Highlights.pdf.

2 *Id.*

With such a heavily diversified pool of candidates, legal employers that want their workforce to be a reflection of the country in which they function will need to look beyond the general categories (e.g., Blacks, Latinos, Asians) and consider their sub-groups (e.g., African-Americans, Black African immigrants, Mexican immigrants, Brazilian immigrants, native Latinos, Arabs, Indians, South-East Asians, Chinese, Japanese, etc.). For instance, legal employers should ensure that they are hiring natives as well as immigrants, even though they may all be Latinos, Blacks, or Asians. The experiences and background that an immigrant brings to a team are bound to be substantially distinct to enrich diversity in any organization. Black Brazilian immigrants, Black African immigrants, and native African-Americans may all be Blacks, but they each carry distinct backgrounds, cultural sensibilities, and probably linguistic abilities that a potential employer focused on their shared “blackness” would fail to identify.

Although micro-targeted diversity offers the advantage of magnifying the benefits of diversity described above, it also presents the risk of magnifying the challenges usually associated with any heterogeneous environment. Many of the challenges that arise in a diverse environment are traced to communication difficulties. In a heterogeneous workplace, cross-cultural sensitivities are essential to the maintenance of a productive and collaborative environment. The lack of cross-cultural sensitivities, in addition to the difficulty of coping with changes generally, may cause anxieties among employees in a diverse workplace, not knowing how to best relate to one another. The anxiety, in turn, is likely to degenerate into open or latent conflicts. The greater the diversity in a given organization, the more amplified these challenges and the resulting conflicts will be.

Any diversity initiative, therefore, especially one that casts a broad net like micro-targeted diversity, should be accompanied with purposeful and intentional steps aimed at easing any tension that may result from further diversifying the workforce. Failure to manage those inherent challenges may unfairly taint the diversity efforts of an organization and deprive the organization of the significant benefits that should have flowed from more diversity.

Black African Immigrants: Ready for Micro-Targeting

One category of lawyers that is ripe for micro-targeting consists of Black African immigrants. For purposes of this essay, the term “Black African immigrant” is used loosely to designate any Black person who emigrated from sub-Saharan Africa as an adult. In the United States, Black African immigrants are considered a component of the broader Black or African-American community. The author’s personal observations have led him to identify certain traits and characteristics that Black African immigrant lawyers are most likely to exhibit and which may be of most interest to legal employers. These traits and characteristics are not universal among Black African immigrant lawyers and they are definitely not unique to them. Rather, it is very likely that Black African immigrant lawyers share them with other Africans or other immigrants. Although it is also true that the same traits and characteristics can be found in members of other groups within the Black community, they are most likely to be found aggregated in Black African immigrants.

Competency in Numerous Languages.

Black African immigrant lawyers are very likely to be fluent in multiple languages. Because of the colonial past of sub-Saharan Africa, Black African immigrants are typically fluent in at least one European language, usually the language of the former colonial power, typically English, French, or Portuguese. In addition, they likely speak several other African languages, some used as lingua francas across many regions (e.g., Afrikaans, Amharic, Hausa, Lingala, Sango, Swahili, and Wolof) and others as mother tongues for particular ethnic groups. It is therefore not unusual to find Black African immigrants who are fluent in four, five or six different languages.



Any diversity initiative, therefore, especially one that casts a broad net like micro-targeted diversity, should be accompanied with purposeful and intentional steps aimed at easing any tension that may result from further diversifying the workforce.

Foreign Legal Education

Lawyers from the Black African immigrant community are very likely to have studied law in another country, typically their native country, prior to studying law in the United States. The challenges that any law school aspirant has to overcome in order to become an American lawyer (*e.g.*, high cost, years of education, and highly competitive job market) are often too high for an immigrant of a certain age who has never encountered legal education before to attempt to overcome. Oftentimes, the exigencies of the life of a settling immigrant do not allow the adult immigrant to contemplate a career in the legal profession. Therefore, adult immigrants who succeed in the legal profession tend to be those who immigrated after having completed some prior legal education and who are committed to a career in the legal profession.

Prior Domestic and Foreign Work Experiences

Prior to entering the American legal profession, Black African immigrant lawyers are likely to have accumulated work experiences in Africa prior to their immigration and in the United States as part of the process of settling in a new country. While their African professional experiences are likely to have been in line with their educational pedigree, the jobs held in the United States would have varied significantly and would have included, especially in the earlier years after immigration, entry-level jobs in factories and in the service industry for which they were greatly overqualified.

Active Professional Networks in Africa and in the Diaspora

Desirous of always having a foothold on the African continent, Black African immigrant lawyers are often in constant contact with networks of Africa-based professionals. Some are active in African business and professional associations and others in civil society organizations. They also tend to be very active in national and pan-African organizations of the African diaspora.

The experience of Dapo Otunla, previously a senior associate at Mayer Brown LLP in Chicago, mirrors that of many Black African immigrant lawyers. He immigrated to the United States after studying law in Sierra Leone and practicing in Lagos, Nigeria. In the United States, he earned a Master of



[T]he characteristics and traits of Black African immigrant lawyers described... is a potential diversity asset.

Laws (LL.M) degree and was admitted to practice in New York, Massachusetts, Washington, D.C., and Illinois. He continued to be a member in good standing of the Bars of the Federal Republic of Nigeria. Undoubtedly, his international experiences and network of contacts were valuable assets in his practice representing various clients in complex cross-border finance transactions. Today, Dapo Otunla is the General Counsel of Notore Chemical Industries Limited, the only nitrogen-based fertilizer producer in sub-Saharan Africa.

Another illustration is provided by the author of this essay. He studied law in France and in the Democratic Republic of the Congo (DRC) prior to earning a *Juris Doctor* degree in the United States and launching his American legal career in the Finance Practice of Mayer Brown LLP in Chicago. In the DRC, he worked for a local human rights organization. Today, he relies on his connections in the civil society throughout many African countries to gain business intelligence and develop an informed understanding of political risks in many African countries. His cross-border practice has been greatly enriched by the fact that he is fluent in many languages, including French and Swahili, and is familiar with the legal systems of the civil law tradition.

Each of the characteristics and traits of Black African immigrant lawyers described above is a potential diversity asset, depending on the needs of the particular organization. It is easy to envision how a global law firm or a global corporation may potentially benefit from the foreign language skills, the familiarity with foreign legal systems and foreign cultures, and the professional networks that a Black African immigrant lawyer may bring to the organization, especially now that Africa is increasingly attracting growing flows of foreign investments.

As the world increasingly becomes an integrated place where the limitations of distance are constantly being eradicated, the ability to be involved in international transactions and alliances is also on the increase. If each Black African immigrant individual with the right intellectual capabilities is perceived as a connection or bridge to an entirely new and different network base, a law firm's or corporation's business and client base may also increase as a result.

Strategies for Micro-Targeted Diversity

Given that Black African immigrants in the United States do not yet represent a large portion of the general population, legal employers seeking to recruit from among them must be deliberate about their efforts. They must seek them out, micro-target them. A passive diversity initiative, one that is not integrated with the organization's overall business goals but is simply a public relations front, is less likely to spot, attract and retain the best qualified talents from diversity sub-groups like Black African immigrants or other immigrant groups that may go unnoticed when included in the statistics of the larger diversity groups. Additionally, without some awareness about the unique backgrounds

and experiences of members of those sub-groups, even organizations that have succeeded in hiring them are likely to fail to capitalize on their full potential.

One way of micro-targeting Black African immigrants can consist of outreach to Africa-centric student organizations such as the African Law Association at New York University School of Law, the Georgetown Law African Students Society at Georgetown University Law Center, the Africa Law and Policy Association at Yale Law School, and the Harvard African Law Association at Harvard Law School. Legal employers can also reach Black African immigrants by sponsoring events organized by community organizations of African immigrants, such as the United African Organization (www.uniteafricans.org) based in Chicago, Illinois.

Legal employers who choose to micro-target Black African immigrant lawyers or, more generally, immigrant candidates in order to deepen their organizations' diversity should recognize the fact that they may have to sensitize their recruiting staff to the fact that the resumes or academic trajectories of certain immigrant applicants may not be similar to those of the prototypical law school graduate. For example, an immigrant applicant who studied law before immigrating to the United States is likely to list "law" as his or her undergraduate major, unlike a typical non-immigrant applicant who could not have majored in law as an undergraduate student. That would be because in many foreign countries, the law degree required for the practice of law is a bachelor's degree and not a professional doctorate degree like the *Juris Doctor*. It is also possible that the immigrant lawyer earned his *Juris Doctor* degree in less time than the non-immigrant candidate, having been granted admission with advanced standing in recognition of his or her prior legal studies.

Human resource departments also need to be cognizant of the fact that Black African immigrant candidates are coming from different backgrounds. For example, without diminishing the quality of the recruiting process, an understanding of the candidate's background may explain away what may appear to be a typographical error on the candidate's cover letter or resume as actually being the correct spelling in British English (*e.g.*, *favor or favour*, *securitization or securitisation*).

Legal employers should also ensure that their recruiting personnel does not espouse the mistaken view that immigrants are likely to lack the dedication to hold a position for a long period of time due to their presumed attachment to the idea of one day returning to their country of origin. Although it is true that there are immigrants who, for a variety of reasons, choose to pursue their professional careers in their country of origin following the completion of their studies in the United States, from an employer's perspective, the risk of relocation posed by an immigrant employee is not greater than that posed by a non-immigrant employee whose family roots are in a different state. Given the challenges of relocating internationally and the opportunities that life in the United States offers to an immigrant and his or her family, an immigrant employee is, in fact, less likely to return to his or her country of origin, compared to the likelihood of a non-immigrant employee relocating to be closer to his or her relatives in another state. The fear of relocation should therefore not be a barrier to recruiting immigrant lawyers.

Conclusion

Any law firm or legal department that is determined to align its diversity efforts with its broader business goals should consider embracing micro-targeted diversity. Although micro-targeting is likely to increase the immediate costs of the organization's diversity initiatives, the benefits likely to ensue from the resulting greater diversity should outweigh such incremental costs. Black African immigrant lawyers and law students constitute one of the many sub-groups of under-represented populations that is ready to be micro-targeted. ■

American Indians and the “Box Checker” Phenomenon

By Lawrence R. Baca

Former President, National Native American Bar Association

Who is Native American? When those who knowingly are not claim to be Native American to enhance their applications to college and law school, what, if anything can or should be done? Whose responsibility is it to address the falsification and what should the ramifications be? Does it matter? Baca's analysis suggests that the problem may be far more widespread than might be imagined.

In 1953, the year before *Brown v. Board of Education*, 347 U.S. 483 (1954), the great scholar and grandfather of federal Indian law, Felix S. Cohen, wrote:

“It is a pity that so many Americans today think of the Indian as a romantic or comic figure in American History without contemporary significance. In fact, the Indian plays much the same role in our American society that the Jews played in Germany. Like the miner’s canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith.”

What Cohen wrote in 1953 is still true today. American Indians are different than any other racial or ethnic minority group in America, and are treated differently. Native peoples in America remain the open wound in the psyche of America. The land on which the 48 connected states and Alaska rest was Indian land first. America has not come to grips with what it did to American Indians to acquire that land nor the residual effects of what it did on Indians today. A difference between African-Americans and Indians is that one is a group of people taken from their home and their culture, the other is a group who had their home and their culture taken from them. At a time when African-Americans were kept in an apartheid of segregation, American Indians were being forced by federal policies into a dichotomous role: being compelled into becoming white men in reddish-brown skins and yet held at bay by the same racial prohibitions that confronted African-Americans.

American Indians are less than 2.0% of the national population. We have the least voting influence of any racial group in America and we are the easiest to be overlooked in the racial diversity discourse. While we have many diversity issues in common with other racial and ethnic minorities, there is one diversity issue in higher education that is ours and ours alone. For affirmative action purposes we are the race non-minorities are more likely to claim they are. Non-minorities may lie about their race to get admitted to college and law school and the race they are most likely to choose to lie about being is American Indian.

As a matter of law, American Indians are different. American Indians are the only race of people mentioned in the Constitution by race (see Article I, Section 8, Clause 2 and Article I, Section 2, Paragraph 3). Title 25 of the United States Code is “Indians.” No other racial group in America has their own title to the United States Code. American Indians are both a racial group for all of the protections of the civil rights laws and a political group to encompass the special relationship between the federal government and federally recognized tribes. Indian tribes have lands. There is no other land-based

racial or ethnic minority group in America. Indian tribes have governments with powers over their lands and their members. The governments of Indian tribes are recognized in the federal constitution but were not created by the Constitution. Those governments are sovereigns with power over their people and their reservations. The powers of Indian tribes are from inherent sovereignty, not powers created or delegated by the United States. Tribes have a government-to-government relationship with the national government. Tribes have treaties with the federal government. Indian treaties with the United States are the equal of treaties with foreign nations. These factors separate Indians from any other racial or ethnic minority group in America in defining their relationship to the federal government. The relationship between American Indians and the United States has always been *sui generis*. As a result, we find ourselves in federal court more often than any other racial group and yet there are today no sitting federal judges who are American Indian. While cases involving federal Indian law get to the Supreme Court at a rate higher than any other unique area of law there has never been an American Indian justice on that court. In fact, no Supreme Court Justice has even hired a single American Indian clerk.



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When I say “Box Checker,” I’m talking about students who have absolutely no belief that they have Indian heritage but check the Native American box on the application because they believe that someone else is getting a break that they don’t deserve.

There are two aspects to the phenomenon of non-Indians claiming to be Indians, a social aspect and a diversity aspect. The well-known and respected American Indian, Vine Deloria Jr., in his book Custer Died For Your Sins (New York: Macmillan Publishing Company, 1969), commented on meeting hundreds of people whom he believed to be White but who were anxious to tell him of their Indian heritage. He wrote of a common phenomenon in that the overwhelming majority of people who claimed to be Indian said they were Cherokee and their ancestor was always a “princess.” He expressed concern that three generations back there were no Indian men among the Cherokee. Every Indian I know is familiar with this phenomenon: you are at a social function, you might be wearing Indian jewelry, and someone approaches; they appear Anglo and they ask, “You’re Indian, right? I’m part Cherokee. My great-grandmother was a Cherokee princess.” This is not something that happens to any other racial or ethnic minority group. I’ve asked many of my professional minority friends. No African-American person has ever had someone who looked White come up to them at a social function and say, “You’re Black, right? I’m part Black. My grandmother was a Waziri princess.” It simply doesn’t happen, nor does it happen to Hispanic or Asian individuals.

The same thing is true in college and law school applications. At colleges and universities there is no American Indian student group that doesn’t have a running debate with the admissions office about how many Native students are actually on campus. We always get numbers from the admissions office that do not comport with the realities of who we see on campus. With respect to college and graduate school admissions we call them Wannabes, Clorox Indians or “Box Checkers.” Let me be very clear. I’m not talking about someone who is mixed race and whose Indian ancestor is pretty far removed. I’m not talking about someone who genuinely believes that he or she has some Indian ancestry no matter how far back. When I say “Box Checker,” I’m talking about students who have absolutely no belief that they have Indian heritage but check the Native American box on the application because they believe that someone else is getting a break that they don’t deserve.

In 1968, when I started college at the University of California, San Diego (UCSD) I ran into another Indian student in the cafeteria. This was at the time when there was a rise in student activist groups. In the late 1960s there was for the first time a critical mass of students of color on campuses to start race-and ethnicity-based student organizations. And, before those pesky student right to privacy laws were passed, schools would give the minority student organizations information about who checked the race box for your group so you could contact them. The theory was that the incoming minority students would want to meet the other members of their race or ethnicity at the school. So my newfound friend and I asked the admissions office at UCSD for a list of all of the other Indian students and they gave it to us. There were twenty-six names on the list. When we visited each of them to say we were starting an Indian student organization, twenty-one told us they really weren’t

Indian. They had checked the box by accident or as a joke or because they thought they might maybe have an Indian ancestor but really didn't think of themselves personally as an Indian. Eighty percent of the "Indian students" on campus weren't really Indians. If there is a purpose served by having a diverse student body in college or law school, faux Indians do not serve that purpose.

While I have a great anecdotal tale from 40 years ago, can I prove the existence of the "Box Checker" phenomenon today? For law schools, I think I can. I am going to use law school and Census statistics as my example to prove that the "Box Checker" exists. I'm going to compare law school graduation rates by race with the growth of lawyers by race as shown by the United States Bureau of the Census. It isn't an exact science, but it will give you a shocking picture that I think makes my case. Let's look at the numbers.

The Census reports showed 1,502 American Indian lawyers in 1990.¹ That number increases to 1,730 for the 2000 Census.² That is an increase in American Indian lawyers of only 228 in ten years. That is an over-all growth of 15%. What makes the +228 most interesting is when you compare it to graduation statistics. A few years ago the American Bar Association (ABA) printed dis-aggregated statistics of JDs granted by race for all accredited law schools in America. According to those reports, between 1990 and 2000, ABA-accredited law schools reported giving JDs to 2,497 American Indians.³ **Let me repeat, Indian lawyers increased by 228 between 1990 and 2000 while law schools reported graduating 2,497 American Indian students.** Using these numbers I have created what I call the graduation-to-growth rate. When you divide the number of new lawyers by the number of reported graduates you get a ratio that allows cross-race comparisons. For American Indians, the ratio of new lawyers to reported law graduates is 9.13%. Certainly, you can't just take the two numbers from 1990 and 2000 and subtract one from the other. Some of the 1,502 Indians who told the Census Bureau that they were lawyers in 1990 weren't still lawyers in 2000. Some changed jobs, some joined their ancestors, some simply retired. But, we can look at the numbers for other racial and ethnic minority races for whom these things should also be true and see how American Indians compare. The chart below shows Census numbers for lawyers by race from 1990 and 2000. Column four is the total growth in the number of lawyers by race. Percentage growth is simply the percentage that total growth represents compared to the previous census report. Total graduates represents the total number of JDs granted by race of ABA accredited law schools as reported to the ABA. Finally, if you divide the total growth by the total graduates you get the graduates-to-growth rate for African Americans, Asian Americans, Hispanic Americans, White Americans and American Indians."

Group	1990	2000	Total Growth	Percentage Growth	Total Graduates	Graduates To Growth Rate
Af. Am.	25,670	33,865	8,195	31.9%	26,215	<u>31.26%</u>
As. Am.	10,720	20,160	9,440	88.1%	18,376	<u>51.37%</u>
Hisp. Am.	18,612	28,630	10,018	53.8%	19,051	<u>52.58%</u>
White Am.	747,077	871,115	96,050	13.91%	329,216	<u>29.17%</u>
Am. Ind.	1,502	1,730	228	15.17%	2,497	<u>9.13%</u>

1. Elizabeth Chambliss, *Miles to Go 2000: Progress of Minorities in the Legal Profession*, A.B.A. COMM'N ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION (2000).

2. *Statistics about Minorities in the Profession from the Census*, A.B.A. COMM'N ON RACIAL & ETHNIC DIVERSITY IN THE PROFESSION, www.abanet.org/minorities/links/2000census.html.

3. *Minority Degrees Awarded (by ethnic group)*, A.B.A., www.abanet.org/legaled/statistics/mindegrees.html.

For American Indians the graduates-to-growth rate is one-third that of the lowest of all other groups. It is one-fifth that of Hispanics and Asians. If every Indian lawyer who was in practice in 1990 vanished by 2000 and only 80% of the Indians who received JDs passed the bar by the year 2000 there would have been 1,998 American Indian lawyers. There were 1,730. If our graduates-to-growth rate was the same as Whites, there would have been 2,231 Indian lawyers. If we had the growth rate of Hispanics, there would have been 2,815 American Indian lawyers, or 61.5% more than we had in the year 2000.

How do we explain these numbers, and where do Indians fit in? The African-American lawyer graduates-to-growth rate compares pretty closely to White lawyers. I think the answer is in their ages within the profession. The African American bar is much closer to the White bar as a whole than any of the other minority groups in terms of the age of its members, so death and retirement have a comparable effect on the graduates-to-growth rate. The ages of the Hispanic and Asian bar members are much younger. The Native American bar is much closer in age to the Hispanic and Asian bars, so by age the American Indian graduates-to-growth rate should, in fact, be much closer to the numbers of younger bars.

The American Indian disparity between the numbers of graduates and the number of practicing lawyers cannot be explained away by death, retirement and bar passage rate. It can only be explained by my assertion that half of all the Indian law students nationally aren't actually Indians - they are "box checkers." Of course, if you look at the statistics closely, I could be wrong. It might be that 65% of all those law students who claim to be Indian are not Indian.

Diversity in the practice of law is imperative; in *Grutter v Bollinger*, 539 U.S. 306 (2003), the Supreme Court said so. If we don't have diversity in our law school student populations today, we cannot have diversity in our judiciary tomorrow. With respect to American Indians - the time for law schools to act was yesterday. If a student is willing to lie about race to get into law school, what will that individual be willing to lie about as a practicing attorney? Checking the wrong box is simply the first ethical violation of that person's career as an attorney. Law schools should care about that too. ■



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Asian American Lawyers: Differences Abound¹

By Mona Mehta Stone

Of Counsel, Greenberg Traurig LLP

Asian Pacific Americans are the fastest growing racial minority group within the legal profession. They are also among the most diverse, encompassing ancestry and cultures that stretch from Japan to Turkey; family histories ranging from sojourners to immigrants to refugees; and degrees of acculturation spanning new arrivals to sixth generation Americans. Stone explains the diversity challenges among Asian Pacific Americans.

Asia is the largest and most populous continent on Earth, covering almost one-third of the planet's total surface area. Asia is so vast that it stretches from Japan in the east all the way through Russia in the west. It is understandable then, that Asians speak numerous languages, practice an abundance of distinct religions, and follow a multitude of customs.

What is hard to comprehend, however, is why people from Asia are often called "Asians" as a whole, especially when the continent has so many unique cultures and characteristics. Chinese customs vary greatly from those in India, and life in Turkey certainly differs from life in Pakistan. The term "Asian" implies a likeness among all people from Asia, which simply is not accurate.

Moreover, Asian Pacific Americans in particular often are grouped together as one, homogeneous group. In the legal profession, Asian Pacific American ("APA") attorneys especially are often characterized as one "identity" or one subset of diversity. Lawyers and law students are often cast under a broad umbrella of Asian American groups, such as chapters of the Asian American Bar Association (AABA), as opposed to more specific memberships, such as the North American South Asian Bar Association (NAPABA). Even within these specific groups, however, Asian Americans could be classified more distinctly (e.g., the Indian American Bar Association (IABA)).

Perhaps the broad categorization is attributable to the fact that there are so few Asian American lawyers. According to the American Bar Association, the number of Asian American attorneys in 2000 accounted for only 2.2% of the total number of lawyers in the United States.² Whatever the reason, the purpose of this article is to highlight some of the distinctions among Asian Pacific American citizens within the legal field.

Common Misconceptions about Asian American Lawyers

• Overview of Asian American Ethnicities

The Asian population in the United States is comprised of many different groups who speak different dialects and observe diverse traditions. Asian Americans are not all alike, but misclassifications have existed for years. Despite the various ethnic groups that comprise Asian Americans, broad and generic terms are used to describe them.

1. The views expressed by the individuals in this article or by the author do not necessarily reflect the views shared by the companies or firms they are employed by, or their clients, or the agencies, companies or firms mentioned in this article.

2. *Lawyer Demographics*, A.B.A. (2009), http://new.abanet.org/marketresearch/PublicDocuments/Lawyer_Demographics.pdf.

The “Asian American” group is defined as people having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.³ According to the 2008 Census Bureau population estimate, there are 15.5 million Asian Americans living in the United States.⁴ Asian Americans account for almost 5% of the nation’s population.⁵ In 2008, the following states had the largest Asian American populations: California, New York, Hawaii, Texas, New Jersey and Illinois.⁶

More specifically, “Asian Pacific American” is a term that was used by the U.S. Census Bureau from 1990 to 2000 to include both Asian Americans and Americans of Pacific Islander America. Based on how members of these two groups self-identified themselves, however, the U.S. Census Bureau divided these two groups after 2000.⁷ Now, Asian Americans and Pacific Islanders are two separate groups on the Census.

The term “Asian Pacific Islander” is currently defined by the U.S. Department of Labor, Office of Federal Contract Compliance Programs, as “[a] person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Republic and Samoa; and on the Indian Subcontinent, includes India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.”⁸

According to the United States 2000 Census, among the 10 million Asians in the United States, the five groups that had more than 1 million members in their populations were Chinese, Filipino, Asian Indian, Vietnamese and Korean.⁹ When completing your United States 2010 Census form, you may remember questions asking about race. The first three groups listed were “White,” “Black, African American, or Negro,” and then “American Indian or Alaska Native.” The categories that followed reflect the growing recognition of differences among the Asian Pacific American population:

Asian Indian

Japanese

Native Hawaiian

Chinese

Korean

Gamanian or Chamorro

Filipino

Vietnamese

Samoaan

Other Asian (e.g., Hmong, Loatian, Thai, Pakistani, Cambodian, etc.)

Other Pacific Islander (e.g., Fijan, Tongan, etc.)

3. *Id.* at 2.

4. Asian American/Pacific Islander Profile, HHS, <http://minorityhealth.hhs.gov/templates/content.aspx?ID=3005>.

5. *Id.*; U.S. CENSUS BUREAU, *State and County QuickFacts*, <http://quickfacts.census.gov/qfd/states/00000.html>.

6. See *Asian American/Pacific Islander Profile supra* note 4; U.S. Census Bureau, *U.S. Census Bureau Facts for Features: Asian/Pacific American Heritage Month: May 2010*, PR NEWswire, <http://www.prnewswire.com/news-releases/us-census-bureau-facts-for-features--asianpacific-american-heritage-month-may-2010-86012507.html>.

7. See U.S. CENSUS BUREAU, *Overview of Race and Hispanic Origin* (March, 2001), <http://www.census.gov/prod/2001pubs/cenbr01-1.pdf>.

8. DEP’T OF LABOR, *Federal Contract Compliance Manual*, <http://www.dol.gov/ofccp/regs/compliance/fccm/ofcpch1.htm>

9. U.S. Census Bureau, *We the People: Asians in the United States, Census 2000 Special Reports at 4*, DEP’T OF COMMERCE, ECONOMICS AND STATISTICS ADMIN. (2004).

• Demographic Factors that Differentiate Asian Americans

Demographics play an important role in defining Asian Americans. There are key differences in language, education and economics. Within the APA classification itself, there are marked disparities in these categories.¹⁰

Language Fluency: According to the Office of Minority Health at the U.S. Department of Health and Human Services, the percentage of people 5 years or older who do not speak English at home varies among Asian American groups: 62% of Vietnamese, 50% of Chinese, 24% of Filipinos and 23% of Asian Indians are not fluent in English.¹¹ Of a total 894,063 Korean speakers, 264,420 indicated their English-speaking level was “not well” or “not at all”.¹² By comparison, out of 477,997 Japanese speakers, 89,677 rated their English-speaking ability as “not well” or “not at all.”¹³

Educational Attainment: According to the 2007 U.S. Census data, roughly 86% of both all Asians and all people in the United States 25 and older had at least a high school diploma. However, 50% of Asian Americans versus 28% of the total U.S. population had earned at least a bachelor’s degree. Among Asian subgroups, Asian Indians had the highest percentage of bachelor’s degree attainment at 64%. With respect to employment, about 45% of Asian Americans were employed in management, professional and related occupations, as compared to 34% of the total United States population. Of note, the proportions employed in high-skilled and managerial sectors varied from 13% for Laotians to 60% for Asian Indians.¹⁴

Economics: In 2007, the U.S. Census reported that the median family income of Asian American families is \$15,600 higher than the national median income for all households.¹⁵ This aggregation of data contributes to the “model minority” myth discussed below, making it harder for Asian Americans living in poverty to be identified.

• The Identity of Asian Pacific American Attorneys

As noted above, there is a very small percentage of Asian American attorneys as a whole in the United States. Asian Pacific American bar organizations and affinity groups exist to promote the general goals of APA attorneys by pooling resources and making programs available to a broader audience. But what about the unique interests of South Asian attorneys, East Asian attorneys, North Asian attorneys, etc.? How should divergent interests be represented within the legal community?

“In Arizona, we are having discussions on whether breaking the APA groups apart dilutes the strength of the Asian Bar as a whole, especially in terms of seeking resources at the State Bar level,” comments Melissa Ho, a Chinese-American associate at Polsinelli Shughart PC in Phoenix and a District 4 Representative of the Arizona Bar Young Lawyers Division. As an active member of several legal and civic organizations, including the State Bar of Arizona and Arizona Asian American Bar Association, she notes the conflict between a “strength in numbers” approach for the general Asian Bar groups, versus the ability of distinct Asian Pacific American groups being able to address issues, political involvement, or activities unique to their specific agendas.

10. See U.S. CENSUS BUREAU, *The Asian Alone Population in the United States: 2009*, <http://www.census.gov/population/www/socdemo/race/pp1-aa09.html>.

11. Asian American/Pacific Islander Profile, *supra* note 4.

12. U.S. CENSUS BUREAU DEP’T OF COMMERCE, ECON. AND STATISTICS ADMIN., *Language Use and English-Speaking Ability: 2000* 4 (Oct. 2003).

13. *Id.*

14. Asian American/Pacific Islander Profile *supra* note 4 (note: these statistics may not be representative of children of Asian refugees, however, by categorizing all people of Asian ancestry as one group, the educational achievement data does not distinguish between refugee children and over-achieving 5th generation Chinese and Japanese American students who skew the data making it harder for the children of Asian refugees to have their educational needs addressed).

15. U.S. CENSUS BUREAU, *Income, Poverty, and Health Insurance Coverage in the United States* (2007).



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Sharon Hwang, a Chinese-American Shareholder at McAndrews Held & Malloy Ltd. in Chicago, comments that, while the numbers of APA attorneys in Chicago is growing, “[W]e are still lacking significant numbers in partnerships and management positions. We have a disproportionately small number of APA judges (federal and state). APAs were also disproportionately affected by the recession in terms of lay-offs.”

She goes on to note that, “Even within the Chinese community, there seems to be a big difference between mainland Chinese, Taiwanese, Singaporeans, Hong Kong natives, etc. When you factor in other nationalities, such as Koreans, Japanese, Filipinos, and Indians, all of whom each have their own unique cultures and heritages, it is actually ridiculous and somewhat demeaning that all APAs are clumped together. However, given the present demographics in this country, APAs can and should unite around common causes because our numbers are otherwise too small to be heard.”

“It is important that Asian American attorneys seek out opportunities to not only highlight commonalities between the Asian American community, on the one hand, and the mainstream community, on the other hand, but also educate others about unique aspects of our culture,” notes Ajay Mago, an Indian-American associate at the Chicago office of Jones Day. “Many, if not all, communities have stereotypes that tend to set the context, and in some cases, define the community to outsiders. It is important that we all do our part to invite people into our homes and learn more about what makes us unique.” He has personally found that non-Asians have become very interested in the Indian subcontinent and go away feeling that they have learned something valuable.

Overall, there is a desire to validate the need of those APA lawyers who desire opportunities to bond with others from their same ethnic group, but also foster the notion of a pan-APA legal community that has already shown that it is essential, for example, in securing nominations for more federal judges of APA ancestry.

Stereotypes of Asian Pacific American Attorneys

As noted above, Asian Pacific American attorneys as a whole are underrepresented in the practice of law. Melissa Ho attributes the low statistics to the fact that Asians historically have been counseled by their parents to enter the fields of medicine or engineering, and only in recent years have the enrollments of Asian Pacific American students in law schools increased. She notes, however, that there still is an incorrect perception that most Asian lawyers are transactional or IP attorneys.

Asian American attorneys are often stereotyped as the “model minority.” When asked how they view Asian American lawyers within their firms or legal communities, non-Asian attorneys interviewed for this article overwhelmingly responded that they regard them as having a strong work ethic and being very hard working. On the whole, Asian American lawyers were described as obedient, rule-abiding citizens of their firms or organizations. The image of the Asian Pacific American attorney is someone who was raised to be conservative, respectful and traditional. Additionally, supporting this image is the fact that family values were ranked as a high priority among APA lawyers.

While these may be positive traits in and of themselves, there seems to be an unspoken opinion that Asian Pacific American lawyers may be more timid and more afraid to take risks than their non-Asian counterparts. The problem is that they are viewed as less assertive and perhaps less creative, which could mean that supervising attorneys and clients are less likely to use them. An opinion that an APA lawyer is not career-driven, of course, will sabotage chances for long-term success. Ajay Mago finds that “people in the past tended to interpret reserved as being too meek” when dealing with APA attorneys.

Physical attributes and body language also play a role. One Indian-American partner in New York notes that Asian Pacific American females, for instance, tend to be petite and demure -- not something people generally associate with an aggressive litigator. She remarks, “I was told by colleagues and clients that when they first met me, they thought I was shy and reserved; only once they got to know me did they realize that I am an outgoing, skilled and forceful advocate. Over time, I learned to become more assertive right out of the box.”



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Many Asian Pacific American attorneys in current in-house positions admitted that they felt it was “up or out” for them in terms of career advancement, driving them to seek alternate positions. “There are a lot of government and corporate in-house lawyers that are Asian American. Of course, some seek those positions voluntarily, but some of us are ‘forced’ into seeking non-law firm jobs because we do not see long term success at the firm as a viable option,” observes a Chinese American attorney who works for an international telecommunications company.

When asked if ethnicity plays a role in this trend, another Asian Pacific American corporate lawyer who works for a construction company answers, “True, there are not many highly successful Asian American law firm managing partners. But it’s not a question of conformity or assimilation; to me, it is a question of contributing to the bottom line of an organization. In law firms, that means having a lucrative book of business. In in-house or government jobs, it means accomplishing top results on time and within budget.”

A Korean American attorney who works in the legal department for a non-profit organization in Miami offers a dissimilar view. “I think ethnicity is a factor, because you have to impress clients. At a law firm, clients include external clients and your managing attorneys. Unless you adapt to their work style and ingratiate yourself, you will not be getting business or billable hours, which translates into no future at the firm. In my current job, I feel more connected to my peers and clients. I think my minority clients identify with me, even if they are not exactly like me.”

One senior non-Asian Pacific in-house attorney even candidly reported, “the Asian lawyers I’ve met at social work functions don’t really drink because they can’t handle alcohol.” Though it is one isolated comment, this remark is fascinating but troubling for several reasons. For instance, it suggests an even greater stigma against Asian American attorneys as being anti-social and introverted. It also suggests an opinion that *all* Asian American lawyers are teetotalers. Moreover, it indicates that social drinking may be expected in order to be part of the “in” group.

Conversely, Asian Pacific American attorneys who were interviewed for this piece projected a different image of themselves. Most acknowledged that they are hard workers, but noted that any successful lawyer, regardless of nationality, is willing to go the extra mile. When questioned about family values, APA attorneys said they seek a healthy work/life balance, just like other attorneys. Asian Pacific American lawyers are cognizant of the lack of role models and managing partners who look like them, but not all were discouraged about their prospects for advancement in their careers.

A third-year Korean attorney in St. Louis comments, “Just because my managing partner is Caucasian does not mean that firm leadership is turning a blind eye towards me. Success at my firm is based on a variety of factors ... I think I have a good shot at making it here.” He did admit, however, to being the only minority -- let alone Asian American -- in the room during many firm and client meetings. According to one lawyer, “It can be isolating to be only a handful of minorities at my [branch] office, but it is even more isolating to be the only Bangladeshi in the entire firm. There just aren’t enough lawyers like me yet.”

Yet, others were not so optimistic. A female Korean-American attorney at a smaller firm in Dallas observes, “All the lawyers above me are white men. They exclude me from most firm outings, and I do not receive the type of coaching and one-on-one training that I expected at a boutique firm.” A junior Japanese-American lawyer in Houston opines, “Soft tasks like scheduling meetings get pushed on me, while my Caucasian classmates are handling substantive projects.” Admittedly, there may be other underlying circumstances contributing to these situations, but how should these Asian Pacific American attorneys tackle these perceived obstacles? Without a trusted mentor at the firm, it may be more difficult for them to voice their concerns. What can the legal community as a whole do to foster and encourage dialogues about these issues?

Building Relationships

“I think that it is important for APA attorneys to get out there and to be involved in the legal community and the community at large. As people get used to seeing more APAs in leadership positions and get to know more APAs through various bar organizations and events, we will have a better opportunity to educate people about our various cultures and our beliefs – thus enriching our community,” advises Sharon Hwang.

Tarun Chandran, an associate of Indian origin at the Chicago office of Paul Hastings, agrees. He suggests that, in an effort to educate others about the differences within the Asian community, Asian Pacific American lawyers “be visible and active members of their local bars, and not just minority bars. I think that the best way of combating stereotypes is by replacing those stereotypes with positive examples.”



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dialogues about these issues?



Asian Pacific American attorneys generally responded that they do not view it as offensive to inquire about their ethnicity, so long as it is appropriate.

There are successful Asian American partners in big law firms, and “[t]hose individuals are helping to pave a path for rising associates by both educating the community at large about our culture and also by assimilating and becoming involved in many mainstream causes and activities (i.e., serving on boards of local hospitals, museums, etc.),” notes Ajay Mago.

An Indian-American associate considers it best to be direct and clear if an issue concerning nationality or ethnicity is raised. “There is a difference between X and Y communities/nationalities. When we brush little things aside, it sends the message that grouping together is okay.” Helen Din, a Chinese American associate at Locke Lord Bissell & Liddell in Chicago suggests, “I’ve noticed that Asian Americans are typically regarded as highly proficient with the technical sciences but not the humanities. In the field of law, some presuppose that Asian Americans are not as good at writing. My writing has helped me overcome those biases.”

What You Say and How You Say it Matter

Being aware of differences among Asian Americans is critical in forming bonds with colleagues and clients. When asked what might prevent them from asking about an Asian Pacific American’s nationality, some non-APA attorneys stated that they were worried about offending someone or being intrusive. Asian Pacific American attorneys generally responded that they do not view it as offensive to inquire about their ethnicity, so long as it is appropriate (for instance, not during a job interview). “It is important that you are inquiring for the right reasons and at the right time (i.e., after you have gotten to know more about the person, as opposed to any initial introductions or meetings),” recommends Ajay Mago. One APA attorney maintains, however, “They should not inquire at all, since in a professional environment the issue is irrelevant.”

An associate of Indian descent gave the following example: “I once went to lunch with two senior level partners. This was relatively early in my first year. And one of the first questions that was asked of me out of nowhere was whether I watch Bollywood films.... I didn’t think it was a big deal, but highlighted the fact in my mind that when partners see me, they don’t see a young associate, they see a young associate of color who is different from [them].”

Many APA attorneys relayed a desire that people not automatically assume they are of one Asian descent without asking first. “Diplomacy can go a long way in asking me about my ethnicity,”



“I once told my [non-APA] mentor I felt accepted at my firm. She answered, ‘It’s because you don’t look Indian.’ I did not even know what to say to that! What does that even mean?”

advises one biracial attorney from Los Angeles who is Filipino and Korean. An Indian-American attorney who has been mistaken for Pakistani comments, “I don’t really mind, I correct them. I would suggest, if you are curious and want to raise the issue, to ask [someone’s] nationality instead of assuming. What I would never ask is ‘where are you from’ or ‘where are you really from.’ I don’t think anything is quite as offensive to me as saying that.”

Helen Din discloses, “Often people like to ‘guess’ my ethnicity. I’ve gotten everything from Hawaiian to Native American. I just correct them and note that I couldn’t ‘tell’ a person’s ethnicity by merely looking at that person.” Another assumption made of Asian Pacific Attorneys is multi-lingual skills. While many Asian Americans (whether born overseas or not) speak more than one language, many do not. “It has been assumed that I am bilingual or trilingual -- which I wish was true but is not,” declares a Chinese American associate.

Many of the Asian Pacific Americans interviewed for this article relayed instances where they were mistaken for another ethnicity or nationality. While all agreed that the “they all look alike to me” syndrome is prevalent, generational differences may play a role in how it is received and addressed. Some of the senior APA attorneys were not as incensed by misidentifications as some of the junior lawyers. “I have seen enough and heard enough to know that people are just confused. It may be intentional bias in some cases, but I think it is more a matter of educating people so they become aware of differences within the Asian subgroups,” notes one senior Japanese American lawyer.

Shareholder Sharon Hwang says that she is not offended when people ask about her background and ask her what her nationality is. “I am clearly not white, and I am proud to be a Chinese-American. I also enjoy learning about the ethnic backgrounds of people that I encounter, whites or non-whites included. However, I do think it is ignorant when people tell me that I speak very good English, ask me whether I speak English, or tell me that all Asians look alike.”

Is ignorance an excuse? A junior Pakistani attorney in Atlanta does not think so. “It’s like me saying all blond-haired, blue-eyed people all look the same to me. Or saying everybody in Kentucky is married to a blood relative. It’s prejudice and it’s just not right ... people need to be sensitive in how they ask about my background and heritage.”

“When discussing diversity, I once told my [non-APA] mentor I felt accepted at my firm. She answered, ‘It’s because you don’t *look* Indian,’” confides one second-year lawyer. “I did not even know what to say to that! What does that even mean?”

Another third-year Chinese American attorney feels frustrated in his inability to discuss issues openly. “[Race] is a very touchy topic.” He believes his supervising attorneys would be put off by a discussion on ethnicity and the differences within the Asian American community. “Why would I go out of my way to make them uncomfortable?”

Perhaps the time has come for APA and non-APA attorneys to get out of our comfort zones in order to meaningfully appreciate one another and build upon our respective talents. The sense of an APA identity, while in many ways an artificial political construct, nevertheless has practical applications and may even be the first of many steps to move toward a model of inclusion beyond diversity. By moving beyond stereotypes and looking at hard data from NALP, the fact remains that APAs are the only racial minority group whose numbers entering and graduating from law schools is growing. As reported in the 2004 *Miles to Go Report*, APA lawyers are the minority group most likely to enter private practice directly out of law school. Yet, the number of APA attorneys who advance to partnership in their firms remains relatively small. How does the APA legal community translate these anecdotes of stereotypes into an understanding of the resultant issues?

Asim Bhansali, an Indian American partner at Keker & Van Nest LLP in San Francisco, recognizes that there is no particular answer that readily accounts for these statistics, but notes two issues might factor into the analysis. First, cultural attributes of APA attorneys may play a role in their appreciation of time and flexibility concerns. He relays that Indians, for example, tend to have a heightened sense of familial obligations, sometimes making it hard for them to excel professionally in the private law firm setting. “It is not an unwillingness to work hard,” he notes, but rather that some Asian American lawyers may have a more difficult time balancing extended family expectations -- which often includes parents, not just children.

Second, he observes that some APA attorneys might hit the proverbial glass ceiling because they enter firms with a specialized competency that does not translate easily into other skill sets in law. As an example, he has seen Asian American attorneys at other firms who come in with strong technical skills such as in the patent field, but for whatever reason -- whether ones of external perception or lack of skills training -- cannot translate that technical ability to stand-up courtroom or deposition skills. Ultimately, those stand-up skills are required to excel in a litigation practice, even a technically oriented one.

There are palpable differences within the legal community, and there is no doubt that the profession of law (whether as an attorney in a private firm, in-house counsel for a corporation, or a government lawyer in a non-profit setting, etc.) is a demanding one. Adding to the challenge of the profession is maintaining the identity of each unique individual, while at the same time fostering integration within the career setting. Until more APA attorneys represent a larger share of the lawyer population, another difficulty is how to maximize the value of the APA membership as a whole within the legal community. Hopefully, recognizing the differences among Asian Pacific American attorneys can play a role in overcoming these challenges. ■

Why Aren't More LGBT Lawyers "Out" and Why Should Their Firms Care?

Sarah L. Olson

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It may not be difficult to understand why some LGBT lawyers choose not to reveal themselves as being LGBT. There are plenty of stories about the backlash those who come "out" may be forced to endure. Olson offers a unique analysis exploring the negative impact not being "out" may have on the LGBT lawyer's career and explains why it is incumbent upon law firms to encourage their LGBT lawyers to feel comfortable as openly LGBT attorneys.

When I began practicing law almost 25 years ago, openly lesbian, gay, bisexual or transgender (LGBT) lawyers were unheard of outside of specialty and solo practices. My few openly LGBT law school classmates went to firms that filled the legal needs of the LGBT community. I was the only LGBT student I knew going into a large Midwestern law firm.

As my career progressed, I met LGBT lawyers from California and New York, some open and some not. I met a few LGBT lawyers in larger Chicago law firms, all in the closet. Those of us who were not "out" navigated the difficulties of personal non-disclosure as best we could. One early role model was a gay lawyer from a leading New York firm who died of AIDS at a time when he still could not be fully out to colleagues and clients. As I became a partner, I realized that it was in my firm's best interests, as well as my own individual best interests, to be open about the fact that I am a lesbian.

The law firm partnership model is based on hiring young lawyers and helping them to develop into great practitioners, as well as sustained business generators. Firms are therefore motivated to recruit young lawyers they believe are the "best and brightest" available, from which the future generations of firm partners will emerge. Some percentage of these young lawyers is LGBT, although accurate numbers are hard to verify because most LGBT lawyers are still not open about their sexual orientation in their professional lives.

Why does this make a difference to a law firm? Surely, any individual lawyer's sexual orientation is no one else's business. Yet, over almost 25 years of law firm practice, I have realized that being in the closet stunts professional relationships and undermines the individual lawyer's business generation efforts. By failing to communicate their support for their LGBT lawyers, law firms are failing, at least in part, to fulfill their business model, to their own long-term detriment.

Lawyers Go Back Into The Closet

Research on the numbers of LGBT people in law school and law firms is sparse, but existing data shows a disturbing trend. The 2010 National Survey of Sexual Health and Behavior reports that around 5-8% of respondents in a general, random sample self-identify as lesbian, gay or bisexual. http://eorder.sheridan.com/3_0/display/index.php?flashprint=726. Consistent with this finding, research also shows that between 4 and 5% of law students are openly LGBT. Strader, K., et

al., An Assessment of the Law School Climate for GLBT Students, 58 J. Legal Educ. 214 (2008). However, Vault/MCCA's Law Firm Diversity Survey, the gold standard of law firm diversity demographics, shows that only 1.72% of attorneys employed at the surveyed law firms were openly gay, lesbian, bisexual or transgender – as of December 31, 2009! See <http://www.suite101.com/content/statistics-for-gay-lesbian-bisexual-or-transgender-attorneys-a301923>. A more specific, but narrower, survey reports that only two firms surveyed from a sample of the AmLaw 100 have 5% or more openly LGBT lawyers, roughly proportional to the general population. <http://www.businessinsider.com/where-are-the-gay-attorneys-a-look-at-firms-numbers-2010-3>.

Clearly, a lot of young attorneys are opting to go back “into the closet” between law school and practice – and for many, there is good reason. Openly LGBT law students report being the targets of significant negative and discriminatory behavior during law school. See, Strader, K., et al. They therefore have reason to fear that their professional paths will be affected negatively if they disclose their sexual orientation during the interview process or once they are hired by a law firm.

These experiences create a classic “Catch 22”. Students who disclose their LGBT status fear that they will have more difficulty getting hired than their non-LGBT peers. But students who are hired without disclosing their sexual orientation will find it very difficult to come out as young lawyers, whose professional lives are highly scrutinized for partnership potential. Closeted LGBT lawyers can feel that their natural instinct toward privacy and self-protection will be viewed as dishonesty – a fatal flaw in a profession that prides itself in integrity. For many, this conundrum leads to a professional life in the closet.

The Price of A Closet

There is a price to pay for being in the closet professionally, which is borne both by the individual and their law firm. Withholding such a significant piece of information about one's persona creates obstacles to forming valuable professional relationships and developing business from clients. Ironically, while LGBT lawyers may fear negative repercussions from being “out”, being “in the closet” is guaranteed to produce them.

Over the last ten years, social scientists have launched the study of “social signaling,” the phenomenon by which human beings form first – and lasting – impressions about one another. At MIT's Human Dynamics Laboratory, a group of researchers has identified non-content-based signaling mechanisms that are “major factors in human decision making in everything from job interviews to first dates.” <http://hd.media.mit.edu/>. Body language, facial expression, tone of voice, vocal activity level, conversational engagement, turn-taking, mirroring and other factors are important social signals that can reportedly predict up to 30-40% of the outcome in negotiations and small group interactions. http://groupmedia.media.mit.edu/datasets/Social_Signaling_in_Decision_Making.pdf.

Silence and, specifically, “hesitation silence (typically due to difficulty and embarrassment)” is one of these important social signals. <http://people.ict.usc.edu/~gratch/CSCI534/Social%20signal%20processing.pdf>. Silence or hesitation at times when group engagement is expected is one of the factors important in the establishment or lack of rapport, which is an initial building block in any kind of relationship. Id.

These kinds of social signals can have negative power in professional settings. Social signals are read and processed extremely quickly, “in fleeting glimpses of expressive behavior.” <http://ase.tufts.edu/psychology/ambady/pubs/1992Ambady.pdf>. Within minutes, impressions are



[C]loseted LGBT lawyers find themselves walking a fine line of non-disclosure without misrepresentation.

formed upon which people decide whether or not to pursue a further relationship. Anything that disrupts the transmission of open, engaging social signals hinders the development of future social and professional relationships.

Common sense suggests that people who are withholding an important piece of information about their sexual orientation may hesitate or be silent when conversation turns to families, weekend plans, vacations and other staples of professional socializing. In my experience, closeted LGBT lawyers find themselves walking a fine line of non-disclosure without misrepresentation. This takes enormous energy, creativity and persistence and often requires thought before speaking. Those momentary hesitations in answering basic questions about one's self can make a difference. People can feel something being withheld and the unspoken discomfort that the effort to maintain secrecy produces in the LGBT lawyer.

This phenomenon can prolong the process of developing the trust that allows a potential client to hire an attorney for the first time. Indeed, it can prevent LGBT lawyers from developing their own books of business which, in turn, precludes them from rising into leadership at their firms. This obstacle has direct, bottom line consequences for the law firm, as well as the individual.

Coming Out In The Workplace: A Different Kind of Social Signal

What encouraged me to self-identify as a lesbian was another kind of social signal, from my firm. In the late 1990's, my firm chose to extend health, life and other insurance benefits to domestic partners even though no one had requested such coverage. This was the first of a number of signals that my firm supported the LGBT lawyers in its midst. Taking these signals at face value, over the course of about a year I came out, first to individuals, then to subgroups within the firm, and finally to the firm as a whole. True to the signals it had sent, the firm handled its first openly gay partner well, promoting me into leadership roles. This, in turn, increased my credibility and salability as an individual lawyer. I have since been joined by many other openly LGBT partners, associates and staff people.

There are a number of ways that firms can signal their support for LGBT lawyers and staff that will help individuals to feel comfortable about self-identifying as such – to the firm's ultimate benefit. Firms can:

- Host LGBT-supportive events, such as Citywide Pride, an Out & Equal educational event, a speaker on the law of same-sex marriage, or some other, and encourage everyone in the firm, particularly leadership, to attend.

- Interview at LGBT job fairs, such as Lavendar Law.
- Offer domestic partner benefits and, as a few firms are now doing, offset the additional income taxes paid by same-sex couples because of their inability to legally marry in most states.
- Include sexual orientation and gender identity in statements of equal opportunity.
- Form an LGBT/non-LGBT alliance or an LGBT affinity group.
- Include sexual orientation as a form of diversity in recruiting, client, and internal materials.
- Revise employment handbooks and policies to remove heterosexist biases and terminology.
- Extend adoption and parental leave benefits to same-sex couples, as well as heterosexual couples.

The formation of an LGBT affinity group can be a powerful signal that a firm is open to LGBT lawyers, but a fair number of firms of all sizes have yet to take that step. Recently, openly LGBT lawyers from three firms convened a roundtable for leaders of LGBT affinity groups at law firms with offices in Chicago. Thirty two people from seventeen of Chicago's largest firms met to discuss the status, direction, and needs of LGBT affinity groups. Only half of those in attendance came from firms where LGBT affinity groups existed; the others were considering whether to form such a group.

Perhaps firms have delayed forming such groups because they are not certain whether there is any "demand" for them. But because of the Catch 22 nature of LGBT invisibility, unless an affinity group is formed, the "demand" may never be identified. By making the first move, a firm can signal to its existing non-disclosed LGBT personnel that disclosure may be possible.

Closing Thoughts

The subtle, non-verbal and verbal cues that regulate whether and how we relate to one another may be biologically mediated processes "evolved from ancient primate signaling mechanisms." <http://www.landesbioscience.com/curie/chapter/4925/>. Whatever their origin, these signals seem to play a deep-rooted, often unconscious role in developing lasting relationships, whether social or professional. Socially-imposed disruptions of successful social signaling – whether based on the silence of being in the closet or concepts like race – can negatively impact how individuals bond.

The implications for sales and service-oriented professions should be obvious. Law firms rely on partners who can develop solid professional relationships that bring in new clients, expand work from existing clients, and create solid working teams. The sense that one is not getting the whole picture, that something remains hidden about a co-worker or potential service provider, creates additional obstacles to the already-daunting task of business generation.

There will probably always be a client who will not hire a lawyer because they are lesbian, gay, bisexual or transgender. But far and away, it is more likely that an LGBT lawyer in the closet will fail to be hired because of the inevitable pauses, silences, and gaps in shared information that burden their efforts to develop professional relationships. Law firms that seek to develop new lawyers into partners and partners into rainmakers cannot afford to allow five percent of their lawyers to be hampered in developing solid relationships with clients. It is in a firm's long-term business interest to signal support for their LGBT lawyers in order to help create the conditions in which those lawyers can leave the professional closet behind. ■

So You've Hired a Lawyer with a Disability ... Now What?

Eve L. Hill

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Despite including lawyers with disabilities in lists of the types of diversity many employers seek to support, lawyers with disabilities continue to be underrepresented in many practice settings, especially large law firms and corporate law departments. Employers are missing opportunities to hire talented lawyers as a result of their own unfamiliarity with, or ignorance about, disability and accommodation issues. Hill walks her readers through the steps needed to create an employment environment that will include lawyers with disabilities.

People with disabilities, including lawyers, can be successful, productive, and loyal employees. Or, like nondisabled employees, they can be frustrated, unproductive, and short-term. What makes the difference? A firm's "culture" makes a major difference in the success, productivity, and loyalty of all employees. A firm's disability culture makes a major difference for employees with and without disabilities.

The Burton Blatt Institute (BBI) at Syracuse University is leading a consortium of researchers conducting case study research of corporate disability culture, assessing its impact and how companies can improve their disability culture.¹ The research so far has studied six companies ranging in size from 38 to 38,000 employees, in a variety of fields. The companies chosen have demonstrated success in hiring and retaining employees with disabilities. BBI analyzed what makes up a company's disability culture, how culture affects satisfaction, productivity, and loyalty of employees with and without disabilities, and what businesses can do to create a corporate culture that maximizes satisfaction, productivity, and loyalty of employees with and without disabilities.² BBI's corporate culture research is ongoing.

Creating an Inclusive Corporate Culture

Recruitment

Inclusive corporate disability culture begins with recruitment of people with disabilities. A firm cannot simply assume that their general recruitment efforts will result in a pool of applicants that includes lawyers with disabilities. Several targeted recruitment mechanisms are available, including the IMPACT Career Fair for law students with disabilities (<http://www.law.arizona.edu/Career/Impact/welcome.cfm>) and the National Association of Law Students with Disabilities (<http://www.nalswd.org/>). Use a variety of recruiting mechanisms to reach the widest pool of qualified applicants, rather than relying on candidates to find you or colleagues to make referrals. Law students with disabilities may not have the connections necessary to find you. Using a variety of hiring methods (e.g., resumes, telephone interviews, in-person interviews) also helps get the best candidates, including candidates with disabilities.

1. This research is funded by the U.S. Department of Labor Office of Disability Employment Policy, grant/contract #E-9-4-6-0107. The opinions contained in this publication are those of the author and do not necessarily reflect those of the U. S. Department of Labor.

2. Data from the study, as well as additional publications and findings, are available by contacting the author (ehill@law.syr.edu) or Meera Adya, Research Director, BBI, at madya@law.syr.edu. For more information, see <http://bbi.syr.edu/projects/corpculture/>



Firms should train partners and senior attorneys about disability issues, including disability awareness and accommodations. Even if the firm has a centralized accommodations mechanism, firm leaders should understand it and be able to explain it and contribute to it.

It is also essential to ensure that your recruitment methods and processes are accessible. Application forms and firm resumes should be available in accessible formats (e.g., large print, CD). Websites should be accessible to people with vision impairments who use screen reading software as well as to people with hearing impairments (e.g., pictures and other graphics should have text equivalents, videos should be captioned). For more information, see <http://www.w3.org/WAI/quicktips/>. Interview locations should be wheelchair-accessible. Thinking these issues through before an applicant with a disability shows up will make the process run smoothly and demonstrate the firm's commitment to including people with disabilities.

Internships can be a way to support diversity efforts. Accepting interns from diverse (including disability) communities can introduce the firm to candidates who may not have been hired based solely on their resumes.³

On the Job

BBI's research so far indicates that companies' commitment to making their training and other opportunities fully accessible is highly effective at creating an inclusive corporate culture, as reflected in positive employee attitudes and perceptions and commitment, engagement in organizational activities (including organizational "citizenship" behaviors), and intention to stay with their employers. Therefore, firms should ensure that firm events (including social events), trainings, and other activities are fully accessible, in terms of location, activities, materials, communication, etc., even if you don't know whether any of your employees (or their guests) need accessibility. If an event can't be made accessible, don't hold it. This effort should include meetings (depositions, client meetings, meetings with opposing counsel, etc.).

BBI's research indicates that companies found manager training on disability subjects to be very effective at achieving an inclusive corporate culture. Firms should train partners and senior attorneys about disability issues, including disability awareness and accommodations. Even if the firm has a centralized accommodations mechanism, firm leaders should understand it and be able to explain it and contribute to it.

Equitable access to mentoring and coaching opportunities was also found in BBI's research to be effective at achieving an inclusive corporate culture. Many firms expect mentoring/coaching relationships to evolve naturally. However, senior attorneys without disabilities may be uncomfortable

3. See L. Sandler & P. Blanck, *Accessibility As a Corporate Article of Faith at Microsoft: Case Study of Corporate Culture and Human Resource Dimensions*, 23 BEHAV. SCI. & L. 39 (2005).



By taking the approach that accommodations can increase the productivity of all employees, rather than reserving accommodations for individuals for whom they are legally required, firms can demonstrate their commitment to their employees, while, at the same time, increasing productivity.

interacting with junior lawyers with disabilities and, therefore, may not seek them out for mentoring. Assigning mentors, along with disability awareness training, may help overcome that reluctance and give lawyers with disabilities access to perhaps one of the most important elements of professional success.

Research indicates that centralizing funding for accommodations can be an effective way to support inclusive corporate culture. Centralized funding can increase consistency of accommodations across departments, ensure greater confidentiality of employees' disabilities, reduce accommodation costs, and avoid departmental resistance to spending department funds on accommodations. However, the effectiveness of centralized accommodations may be tempered by the often increased formality and bureaucracy of centralized accommodation processes, and potential departmental perceptions that their employees' needs are unimportant or someone else's problem and resistance to outside mandates and interference. Centralized accommodations also may not adequately understand and respond to the needs of the employee's department, coworkers, and supervisors, leading to resentment and lack of "fit." Ideally, a balance should be struck between centralized funding and decentralized decision-making about accommodations.

According to BBI's research, allowance of accommodations for *all* employees, not just those with disabilities, is an important factor in an inclusive corporate culture. By taking the approach that accommodations can increase the productivity of all employees, rather than reserving accommodations for individuals for whom they are legally required, firms can demonstrate their commitment to their employees, while, at the same time, increasing productivity. Examples of accommodations that can benefit both employees with and without disabilities include flexible work schedules, telework, speech recognition software, and accessible print materials.

Perceived "fit" between a person's abilities and his/her job is another factor that is found to be highly predictive of job satisfaction and loyalty. Therefore, firms should consider assigning tasks based on employees' strengths, rather than requiring every attorney to be good at every aspect of the work. This approach is similar to "customized employment," which has been found effective in the vocational rehabilitation system for improving employment outcomes for people with significant disabilities,⁴ but it is adaptable to all levels of disability.

4. National Center on Workforce and Disability / Adult, *Customized Employment Employers and Workers: Creating a Competitive Edge; Summary Report on Customized Employment Grants and Workforce Action Grants*, DEPT. OF LABOR, available at www.dol.gov/odep.

Communicating Inclusive Corporate Culture

Using a combination of surveys, focus groups, and interviews, BBI's case study research has so far indicated that good disability culture improves satisfaction, productivity, and loyalty of all employees – with and without disabilities. Employees' perceptions of a company's culture (including openness, flexibility, fairness, commitment to diversity, valuing of employees, etc.) affect their level of engagement with the company (satisfaction, commitment to the company, engagement in organizational citizenship, and intent to stay with the company). The level of positive impact was similar for employees both with and without disabilities. Moreover, perceptions of corporate culture by nondisabled employees directly affect the experiences of employees with disabilities. The more nondisabled employees understand disability policies and understand the reasons for those policies and the fairness of those policies, the more those employees contribute to improving the employment experience of employees with disabilities.

Because employee perceptions of corporate disability culture are a key factor, it is essential that corporate disability policies and commitments not only actually be in place, but that they be communicated effectively to all employees. Disability inclusion commitments and accommodation policies that are unknown and unavailable to employees with and without disabilities lead to confusion, suspicion, and perceptions of unfairness among employees with and without disabilities.

Supervisor attitudes and approaches to disability issues affect all employees' perceptions of the inclusiveness and fairness of corporate disability policies. Often, firms will assign disability issues to a centralized department (disability office or human resources office), thus leaving supervisors out of the process. This may be perceived by employees as indicating that disability is not important to firm leadership. It may also leave supervisors without understanding of the company's disability policies, making it difficult for them to project the company's inclusive culture to their employees. Ensuring that partners and supervisors understand, and have positive attitudes toward disability, diversity, and accommodation can reduce employees' perceptions of unfairness, prejudice, and discrimination.

Firm diversity statements and goals often do not include disability. Visible, explicit commitments to inclusion of disability in diversity efforts are effective at communicating corporate disability culture. Moreover, including disability in a firm's tracking of diversity progress and outcomes is an important way of ensuring that the disability diversity commitment is taken seriously and is visible to all employees. It is acceptable to "count" employees with disabilities, as long as it is clear that the information collected is for purposes of diversity/affirmative action, participation is voluntary, and the information is kept strictly confidential. In addition, firms may consider having their disability culture "benchmarked." Such benchmarking will both contribute to the ongoing research and provide firms an assessment of their culture, comparison to other firms and companies in terms of what works and what doesn't, and identification of areas for improvement.⁵

Openness about accommodation policies and procedures reduces confusion, suspicion, and perceptions of unfairness. In addition, provision of "accommodations" in the form of flexible practices for all employees is another way of communicating corporate culture. Rather than telling employees about disability and accommodation policies only if the employee indicates that s/he has a disability or if s/he requests the information, disability and accommodation policies should be provided to all employees. Ideally, accommodations that increase productivity and effectiveness should be available to all employees. Such an open policy evidences a firm commitment to supporting the productivity of all employees, rather than a closed policy that provides "special" benefits only when legally required. ■

5. For more information on how BBI includes firms in its case studies, contact Meera Adya, Research Director, BBI, at 315-443-7346 or madya@law.syr.edu.

Intergenerational Diversity and the African American Community

By Jacob H. Herring

CEO, Creative Cultural Changes, LLC

Like all communities, the African American community is evolving. Many of the experiences that shaped this community and its leaders, are part of a history that younger leaders may have learned about without actually experiencing themselves. Herring explores some of the generational diversity within today's African American community and its impact upon diversity and inclusion issues in the legal profession.

Managing and valuing workforce diversity is a complex and ever-changing challenge. This article is an attempt to look at some of those changes and the challenges it poses to both black professionals and to law firms, and possibly other sectors of the economy as well. The forces focused upon here have implications for other groups (women, other people of color, as well as people of European descent, or white people), but the main focus of this article is black people in general, and black lawyers and professionals, in particular.

Black Americans, a group that was once fairly well defined and identifiable with fairly strong bonds of cohesion and unity, have become increasingly much less well defined, identifiable or cohesive. Over the past several decades the definition of who is black and what does it mean to be black has been changing. The most important part of that change for purposes of this article is what these changes mean for how black people, across the social and economic spectrum, relate to each other and in particular, what these changes mean for black lawyers and the diversification of the legal profession, especially in the corporate law firm environment.

"The Family"

Managing and valuing diversity have become an accepted part of doing business in America. This is true to varying degrees in every sector of the economy: all levels of government, the military, corporations, professions and the non-profit sector. The legal profession was among the last sectors to address the issue of workforce diversity. According to at least one presenter at the ABA's Annual Convention this past summer in San Francisco, it is only second from the bottom of all professions in America when it comes to progress in this area. (According to this presenter, veterinarians are the only professional group that trail lawyers when it comes to diversity.)

There is considerable controversy as to whether corporations have been much more successful at making the concept and goals of diversity a reality than corporate law firms. However, regardless of how one evaluates the relative success of the two sectors, I doubt anyone can deny that law firms have devoted considerably more money, time, effort and lip-service to this issue in the last 10 to 15 years than at any time before. Yet, progress has been painfully slow, to say the least. This article focuses upon the issue of deteriorating social and cultural cohesion among black professionals that may be a further contributing factor helping to retard the progress of racial diversity within law firms and other settings.

What do I mean by social, cultural cohesion? I mean a sense of *family*. There was a time in America

when most, if not nearly all, black people viewed each other as *related* (not by blood, necessarily, but by common history and position of oppression), part of a “family:” thus the basis for calling one another “brother” and/or “sister.” Among other things this might be manifested by “schooling,” new entrants to the workplace – i.e., informally giving a new hire information as to how to be successful in one’s office or letting them know what the informal as well as the published formal organization chart looked like. It also meant not criticizing another black peer or senior, in public, but providing that person, in private, feedback as to how their behavior struck the observer. Hopefully, this would be done in a supportive and relationship-enhancing manner, though that hope was not always realized in practice. This “familial” attitude might also be expressed by a number of invitations to social events away from work, as well as in the context of work, and introductions to other black people and white people who might be of assistance in helping the “new-kid-on-the-block” make a successful adjustment or transition to the organization, the community, etc.

This cohesion and these practices still exist and are carried on to varying degrees, to this day. However, it is not what it used to be, in part, because over time, the institutions that supported, allowed or necessitated that cohesion and those practices have been altered, eroded and in various ways, diminished.

But, a word of caution should be inserted here: while there was a time in America when black people had a familial attitude toward each other, this attitude was not without contradictions and complexities. It simply was better than what is evolving as the alternative.

Due primarily to our history in America, first the traumatic experiences involved in slavery and the 100 years of Jim Crow that followed it, we were never as cohesive as some groups appear (e.g., the Jews, Chinese, Irish). Some key points of that history, which we don’t have space to dwell on in this article, are:

- 1.) Imported African slaves were from different tribes and their members were deliberately split up even to the level of family and mixed with those from other tribes and families – people of different languages, religions and customs -- thus making them easier to control on any given plantation (see the Lynch, W., **The Willie Lynch Letter & The Making of a Slave**, 2009, Classic Books America, NY, NY.). Their ability to unite, form alliances and give a coherent resistance to their oppressors was severely diminished. Some scholars believe these strains are still exerting influence on black Americans to this day.
- 2.) Likewise, there were and are class and regional differences. There are the “Jack & Jill” (the upper-middle class and above) set as well as those who are skilled and unskilled blue-collar workers (see Frasier, E. F., **The Black Bourgeoisie: The Rise of a New Middle Class**, 1957, a classic study of black social stratification that still has relevance today). For the longest time, though much less so today, regional differences impeded black cohesion: Northern blacks and Southern blacks eyed each other with suspicion and sometimes hostility.
- 3.) Related to the above, and a probable consequence, is the sheer ambivalence about membership in this group – i.e., black Americans – until the middle 1960s. To this day, such ambivalence still exists for some, while the phenomenon is in no way as great, intense or pervasive today as it was in the pre-Civil Rights Era. The prodigious murders in black communities across America, by black people (e.g., Watts, Chicago, Philadelphia, etc.) is *prima facie* evidence of the continued existence of this phenomenon, even in the post-Civil Rights Era. (For a much more in-depth discussion of black rage and its consequences for black people at the individual level as well as the societal level see Cobbs, P. M., MD & Grier, Wm. H., MD, **Black Rage**, New York: Basic Books, Inc. 1968.)



The challenge for black people in general and black professionals in particular is to find a way to create the same social, cultural cohesion developed in the 1960s, without relying on all of the same social conditions that created and supported it.

But with all of the above, black people were able to hue out a comparatively cohesive sub-culture and society with institutions that sustained them as individuals, as families and as a group – some have even argued, a community. A very significant factor in the process that led to that outcome was the Civil Rights Movement of the 1950s, 1960s and 1970s. By coming together as a group, blacks from all classes and all regions of the country, as well as religions, (along with their white allies) came to view each other as a group that faced the same limiting life-chances and challenges and saw the need to develop and sustain unity on a scale never before seen in this country among that group of citizens.

The challenge for black people in general and black professionals in particular is to find a way to create the same social, cultural cohesion developed in the 1960s, without relying on all of the same social conditions that created and supported it.

Before we look at how we might approach the challenge of doing the above, let's take a look at some of what has led us to where we are.

First, the changes that I describe above are the result of several societal forces, most notably the changes in racism in America over time, which are accompanied by: 1.) Inter-generational diversity; 2.) Intra-racial or ethnic diversity; 3.) Technological changes (or advances?), specifically the computer and everything that follows from it – the Internet, Social media networking, like Facebook & Twitter, etc.

Generations

Inter-generational diversity is part and parcel to the issues described above: the current workforce generations of black people are different, in part, due to the amount and type of racism faced by black people who were born at different times. Currently, there are roughly four different and distinct generations in the workforce. The generally agreed upon four generations are:

- 1.) **Traditionalists** (made up of two generations that are enough alike that at least one pair of experts – see Lancaster, L.C & Stillman, D., **When Generations Collide**, Collins Business, 2002 -- classify them as one group) were born between 1900 and 1945. In some ways it could be argued that they faced the most virulent racism since the time of slavery and its aftermath.

- 2.) **Baby Boomers**, born 1946 to 1964, who along with Traditionalists essentially made up the Civil Rights Movement.
- 3.) **Generation X**, born 1965 to 1980, the smallest of the generational cohorts, overall, and probably the group that first began to experience both changing attitudes toward blacks in the society (e.g., comparatively wide black presence on TV, in politics, etc.), as well as both the zenith of and the beginning of the weakening of black social and cultural cohesion.
- 4.) The **Millennial Generation**, born 1981 to 2000, is the most recent group to enter the legal profession and the group which has had the most varied of experiences with racism. This is the group in which one is most likely to meet those middle and upper middle class black people who could say in all honesty that they've never knowingly experienced racism and those who would claim they've experienced racism as bad as any of their forefathers short of physical violence and those who would claim even that, especially at the hands of the police.

Generational diversity cuts across all the diversity categories (e.g., white men and women, people of color, gays and lesbians, the disabled, etc.). At the same time, these four generations constitute a diversity force in and of themselves. That is, some portion of workplace friction and synergy is a consequence of how members of these four groups relate to each other and the different approaches the groups take to the challenges confronting all of them each day at work. Thus making an already complex and seemingly intractable challenge that much more difficult to effectively drive toward the desired outcome(s).

It's important to point out that in no way, am I trying to make any generation right or wrong. They are all simply different. They could not help but be different: they spent their formative years facing different and distinct realities – what psychologist might call “contingencies.” They see the world the way they do because of the “mental maps” they developed in and/or were provided by the times during which they came of age.

Part of the generational difference among blacks is the type and amount of racism faced by each group. I contend that racism over the past three to four decades has changed considerably and to varying degrees, depending upon the region of the country in which one focuses at any given time, has decreased. This is not to say racism no longer exists or to reinforce a popular concept, bandied about since the presidential candidacy of President Barack Obama, that we now live in a *post-racial-society*.

Racism certainly does exist. Simply look at the statistics on the differential incarceration rates of people of color (particularly blacks and Latinos) versus white people (see Alexander, M., **The New Jim Crow**, The New Press, 2010). Or look at the differential arrests rates for use of illegal drugs or the rates of victimization of so-called predatory home loans of the past decade. One can also look at employment rates and income levels (far too often, whites with a high school diploma are more likely to be employed and at a higher income than blacks or Latinos with a college degree), education levels, dropout rates, graduation rates, college attendance, and on, and on.

I've contended for years that blacks leave large law firms at higher rates, because they perceived, at various levels of consciousness, that they are not welcome. Some, still to this day, report overt acts of racism perpetrated against them by white lawyers and staff, even in environments such as law firms, where one would assume that with the high levels of education, income and obvious affluence such behavior would not be experienced or tolerated.

But, the above notwithstanding, racism today, overall, is much less and more subtle than it was two to three decades ago. This has some obvious upsides, namely that more black people are “at-the-table.” More of us have an opportunity to have our voices heard and to represent the thoughts, feelings and perspectives of those of us who will never get an opportunity to have our voices heard. More of our ideas with proper attribution are presented and in some cases are accepted. Clearly, while not at the most desired destination, the nation as a whole and law firms in particular have made noticeable, if meager progress.

However, at the same time, there is at least one troubling downside: a weakening of the bonds of cohesion that exist between black Americans across generations, regions of the country, class, religion and most any dimension one observes. While there are a number of factors that contribute to this weakening of bonds, one of them has to be the changes in American racism, both personal and institutional.

Starting in the late 1960s and early 1970s, after the passage of the Fair Housing Laws (both nationally and in many states and local communities), blacks began to move in a trickle, then a stream, and finally a flood into what had once been white suburbs or mostly white parts of town – e.g., in Philadelphia places like Germantown, Mt. Airy or Levittowns on the East coast. Increasingly, black children were in *white schools* in *their neighborhoods* and/or were bused into white neighborhood schools from the inner city and over time – a decade or so – began to “fit-in.” They had not only white classmates, but over time, many if not most of them, had white friends. One consequence of this is that increasingly there were black people at all levels of the socio-economic structure who were more comfortable in mostly, if not entirely, white settings than in similar black settings.

At the same time, these previously white-majority neighborhoods were increasingly populated with black parents who had attended elite white schools and who had jobs and educations that were previously known primarily to white people (e.g., managers in large corporations, heads of departments in large, primarily white, private hospitals, etc.). These highly educated, middle and upper-middle class black parents and in increasing numbers, mixed race parents(i.e., black-white, black-Asian/Latino, etc.), unlike their own parents, often were reluctant to raise their own children in much the same way, racially speaking, as they themselves were raised. These parents, of the late ‘70s, ‘80s and ‘90s, were much less rigorous in telling their children “how-it-is,” or was, as it relates to race. On the one hand, they wanted to protect their children from the harsh racial experiences they themselves had had or their parents had known (remember: many of these parents were themselves on the front lines of the Civil Rights Movement – or their relatives and friends had been). Also, given what they were able to provide for their kids – homes in clean, safe neighborhoods, good schools, often private schools and good post-secondary educations – they weren’t sure what kind of racial barriers their children might, in fact, face. They didn’t want to “program” their kids to see racism where it might not exist. A tough, thin tightrope to walk: try to tell your privileged offspring enough about race in America, so they have the emotional wherewithal to protect themselves when they encounter it and, at the same time, don’t encourage them to have higher internal defense mechanisms than they are ever likely to need, thus programming them to miss or avoid opportunities they might otherwise take advantage of.

Consequently, by the time this current generation of “novice” black attorneys (i.e., the end of the Xers and the beginning of the Millennials) arrives on the scene, black lawyers are beginning to look more and more like white lawyers(i.e., enormously varied, hard to generalize about when it comes to racial attitudes). No one who has experiences with many of the current group of new black attorneys (those who have arrived and stayed at the major law firms in the past decade) can feel safe or comfortable making assumptions about them, when it comes to matters of race or racial attitudes. Unless you know something about the specific individual(s) with whom you’re dealing, you are taking



There was a time when one could assume that if you had a black partner at the firm, he or she would more or less automatically mentor black associates and other associates of color. Now, you can no longer assume that will happen from either side.

major risks to assume what kinds of experiences they may have had with race or racism, how much they trust more senior black attorneys at their firm vs. white attorneys of the same generation, etc.

Back in the day when one could predict the behavior or safely assume certain commonalities between oneself and other black people, especially in a mostly white setting, it automatically led to some degree of trust between you and the other black person, especially black professionals. Psychologists would describe the experience as “instant or near instant rapport.” Others might refer to it as a “consciousness of kind.” This is a normal human reaction to being in what is perceived or experienced as an alien or hostile environment. If you have any question about the validity of this, think of how you may have felt when you were in a foreign country (e.g., some place in Europe, or Asia, or African, or, for that matter, even parts of Canada) for a period of time, long enough for the *brand-newness* of being there to wear off somewhat and you hear someone nearby speaking American English or you meet such a person. If you’re like most people I know, you feel an instant spark of recognition and warmth toward that person. That is what it was like for black people in white settings and still is for some percentage.¹

So, what does this mean for diversity at the law firm? Among other things, it means that it’s harder for black people to connect and to help each other at the firm. There was a time when one could assume that if you had a black partner at the firm, he or she would more or less automatically mentor black associates and other associates of color. Now, you can no longer assume that will happen from either side. That is, your black partner may not want to mentor black associates, or associates, in general. And/or, the black associates may not want to be mentored by the black partner(s) you have at the firm. I’m increasingly hearing stories about black partners, who, in the past one could count on to mentor black associates, even if the associate had a questionable reputation up to this point in his or her career, now rejecting such associates in favor of those associates of whatever race who have reputations already well founded upon successful track records. I’m not saying this didn’t happen in the past, but I do not remember hearing of such phenomena until the past five or six years, if that long ago.

1. When I was in college, several decades ago, we referred to it as the “spy in the enemy camp phenomenon.” That is, as a black person on a white campus you were always looking for other black people and you had subtle signals you flashed to each other that said: “let’s connect and get acquainted. What’s it like for you, here? ...” In no way should this be interpreted as we didn’t *want* to be on our various campuses, but with a dearth of other blacks, there was the stress of relative or absolute isolation from others like oneself.



A few years back, a group of partners, of various races, had come together from several firms in a large city to work on issues of diversity for their local bar association. They were extremely surprised – almost to the point of shock – to learn that the associates, regardless of race, were no more trusting of the partners of their own race than they were of partners of another race.

A few years back, a group of partners, of various races, had come together from several firms in a large city to work on issues of diversity for their local bar association. They were extremely surprised – almost to the point of shock – to learn that the associates, regardless of race, were no more trusting of the partners of their own race than they were of partners of another race. The associates seem to feel more trust and rapport with their fellow associates of any race, than with the partners of their own race. This would have been an unheard of phenomenon in a previous generation, except as an isolated example having to do with a particular associate – not with the group.

Further evidence of how things have changed. While I and others may bemoan the passing of the widespread agreement among blacks as it relates to culture and cohesion, I'm just as certain there are those who cheer it, or at least, don't miss its passing. For some, having never known such a time, they don't miss it, anymore than those born after the demise of the rotary dial telephone, or the eight-track tape players miss their absence.

Some people with whom I have spoken, in so many words, say: "What's the problem? Maybe this is the price you pay for the demise of racism and maybe you no longer 'need' to 'stick together.'" *Maybe*, they are right. But I don't think so. First, racism isn't dead. We have not arrived at the much herald "post-racial society." Black associates are still confronted with greater scrutiny and less margin for error than their white counterparts. They are also much less likely to acquire mentors and/or informal mentoring than are their white peers. And it is still true that *each* black professional represents the group. In other words, a bad experience with one black lawyer tends to set up negative expectations for other black lawyers with the people (or their confidants) who had the original undesirable experience with the first lawyer.

Again, this is not to say progress has not been made or that black partners and associates never get equal treatment; noticeable progress has been made and more than in the past, associates of color receive the same or similar treatment as their white peers, much of the time. However, I still hear stories from headhunters and human resource managers of how it's still much harder to get black associates hired and/or promoted to whatever the next level of responsibility is in various firms. Or, they get hired and within a year or two, they *just don't work out*. And, I still hear the occasional story of some blatant racism perpetrated by a given partner in a given firm who, as far as anyone can see, never pays a price for his/her racist (and/or sexist) behavior.

Also, black associates are still, for the most part, new to the corporate law firm environment. Even if they came from a family in which a parent was a lawyer (or, a member of some other professional group such as a teacher, physician, etc.) or an uncle or family friend, the lawyer is much more likely to have been a solo practitioner or a partner in a very small firm with fewer than ten lawyers. Working in a firm of fifty or three hundred and fifty lawyers is a very different experience and one needs to be “groomed” or mentored in order to learn to be successful. Rarely, if ever, does one of any race “make it” on their own – though a few successful black and a lot of white male partners would have you believe so, mainly because they believe it themselves. However, generally most people with whom I have spoken about such things relate stories of how they were helped in one way or another along the way. This in no way denies the fact that they were extremely smart as people and that they had a strong work ethic. But they also had guidance, help, a little inside information now and then, and most importantly, they had someone who protected them when they made a mistake and who gave them honest, direct feedback on their performance. This happens for most attorneys in large law firms who become successful. When it repeatedly doesn’t happen, generally, the attorney fails at the firm and needs to seek a career elsewhere.

In addition, most white groups do not have to give up their group identity and cohesion. Yes, there were times in the past when if you were Irish, Italian or Jewish, you may have had to change your name in order to “be accepted.” I’m old enough to have met people, very senior managers in old line, very conservative corporations, like the Du Pont Co. and Proctor & Gamble, who have told me stories about how they, early in their careers, had to change their names, or they knew people who had to do so, in order to be accepted in the inner circles of power within the company. But, this was a long time ago in America and those same people, were they starting their careers today, all other things being equal, would not have to make those sacrifices. Oh, and by the way, black professionals, for the most part, can’t do anything that superficial to escape their being identified as black. The obvious exceptions are those black people whose skin is sufficiently “light” for them to “pass.” But simply changing one’s name isn’t going to do it. Though Steven Levitt and Stephen Dubner, in their original **Freakonomics** state that people whose parents gave them “African names,” don’t generally do as well in the job market as those presumably black people with Anglo-Saxon names. In any case, if Levitt and Dubner are correct, they’re simply validating my point that racism, though changed from what it was in the past, still exists. And, if that is true, we will be giving up an asset (namely, our racial, cultural and social cohesion) while getting little in return.

But, back to the original point about current descendants of European ethnic groups: they can be successful without giving up their ethnic identity, or group cohesion. Who’s ever met an Irishman who’s not proud to be Irish and tells you about his heritage or isn’t glad to meet other Irishmen. The same can be said for members of other European ethnic groups. Now, certainly, there are individuals of each and every group who will tell you honestly that they don’t particularly enjoy spending time with their family or with members of their ethnic or racial group. But, my experience is that such people are the exception, not the rule.

I think Andrew Young, among others, such as former President Bill Clinton have said the more accurate metaphor for America is not the “melting pot,” but a rich “stew” that has a hardy and nutritious flavor, made from distinct elements that, under the hand of a skillful cook, blend well together, but can still be clearly identified when looked at and under the most sophisticated palates can be identified by taste. So, no one should have to give up his or her ethnic, gender, sexual orientation or racial group identity in order to be successful in America today. That’s the very essence of “valuing and managing workforce diversity.”

More important, a major characteristic of the black social, cultural cohesion about which I've written is the concept that black people, regardless of where any one of us sits on the socio-economic ladder, all share a common heritage and a potential common destiny. As Ben Franklin said of the Founding Fathers, "we will either all hang together or we will surely all hang separately." When racism was much more obvious and direct, where one stood or sat on the socio-economic ladder made little difference in terms of what one risks as a member of this once most despised group. Also, during the time of Jim Crow, we all for the most part lived in the same neighborhoods and attended the same schools and churches. Consequently, one knew that whatever was being done or could be done to the least of your brethren, could be done to you. Therefore, blacks at the top of the economic ladder at least paid lip service to the idea that they cared about those at the bottom and for many such people the walk matched the talk (e.g., Martin Luther King, Andrew Young, Jackie Robinson, Oprah Winfrey, Mary M. Bethune, Bill Cosby, etc.). Now, with the more varied and differentiated impact of racism on black people, especially based upon education, occupation and income, there may be a significantly reduced caring on the part of younger, more affluent black professionals. In part, this is because, since the late mid-sixties, the Fair Housing Laws, and the lack of cohesion within nearly all families, more and more middle and upper-middle class black people don't know anyone at the lower rungs of the ladder. And, worst of all, some of them hold attitudes toward less fortunate black people that are not particularly dissimilar to those held by many of their well-to-do white peers.

And yet, this confrontation with the same racist environment, much as that faced by our parents and grandparents, while different and less obvious may be no less real or present. We need only look at the experience of Professor H. L. ("Skip") Gates and the Cambridge, MA Police Department of a couple years ago to see that even those of us of considerable achievement and fame face the same dangers and humiliations as those of the least of us. Our need to stand together, to support each other, to "school" each other, etc., is as real today as it was twenty to thirty years ago, though less obvious.

Of course, the challenge is to find a way to either reinvigorate those black institutions that sustained us and socialized us in the past – e.g., the Black Church, the NAACP, etc. – and/or to invent new institutions that can do the same or a better job. I certainly am not recommending a return to more blatant racism to achieve this goal. Also, I don't claim any particular wisdom in the area of rejuvenating social institutions, but I do think we need to develop the ability to discuss the issue(s) in an open, though sensitive and respectful manner. We must find a way of supporting each other that does not depend on the amount of racism we face, nor exclusion of members of our race or other racial groups based upon superficial characteristics – e.g., skin tones or color, or background, class, etc.

Intra-racial/Ethnic Diversity

In addition, another aspect of this changing or weakening of cohesive bonds within black society in general and the black professional class in particular is intra-racial or ethnic diversity, caused by the increasingly greater numbers of African and West Indian immigrants and their descendants within the U.S.

There have always been Third World immigrants in America from Africa and the Caribbean. However, those numbers have grown at more rapid rates in the past thirty plus years than in previous decades. According to some writers (e.g., Eugene Robinson, in his [Disintegration: the Splintering of Black America](#)), the African immigrants, on the whole, are the best educated immigrants to come to America in significant numbers in its history.

Though one rarely, if ever, sees open conflict between the two groups, it appears to me to simmer somewhat just "under-the-surface." I make this statement based upon private conversations with



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members of both groups in which I've heard negative comments from members of one group toward the other, usually a consequence of a lack of familiarity with each other's history and culture. Just how deeply and widespread these feelings are I am not able to assess, but I hear them expressed much more by those without college or graduate educations than from those with such backgrounds. To what extent such absence is due to a lack of similar feelings born of education and positive association or simply "good training" in social etiquette, I can't say, but I hear such expressions much more from those people in clerical and relatively low-skilled occupations than among lawyers or other professionals.

While it is always risky to generalize about such a large and diverse group as the African and Caribbean immigrants to the U.S. over the last three or four decades, it can be fairly assumed that they are the product of different cultures than American blacks and vary considerably in the degree to which they identify with and are supportive of them.²

Law Firm Culture

All of the above is complicated by at least one other factor: the competitive and workaholic nature of the legal profession.

As a longtime observer of the legal profession, it is obvious to me that it is a profession that either attracts people who lean toward workaholism and/or the profession socializes its members to become workaholics. Nowhere is this characteristic or tendency more salient than in the halls of the large, corporate law firm. Any new associate and increasingly any partner who goes to work for or hopes to work for one of these legal powerhouses knows that he or she will be expected to bill between 2,000 and 4,500 hours per year. There may be exceptions to this general rule, but if they exist, they are truly exceptions. Few firms of two-hundred attorneys or more support associates or partners who routinely work less than these hours – in some cities, e.g., New York or Washington, DC, it's practically mandatory of all corporate law firms.

2. See generally Thomas Sowell, *Ethnicity: Three Black Histories*, THE WILSON QUARTERLY, (Winter 1979). (discussing some of the differences such as education, occupation and income between American blacks who are the descendants of former slaves, those who are descendants of former Freedmen, freed before the Civil War, and West Indian and African immigrants and their descendants; note: I don't agree with the author's conclusions in this article, but I think his observations about the three black ethnic groups has considerable merit and to my knowledge, he may be the first to make these observations).



Associates and partners have told me much more often in the past two years than in the past decade of partners asking them some variant of the following question when it comes to their attending a meeting related to their gender, race or ethnicity: “Is that a good use of your time?” Such questioning is much more likely to be experienced as an admonishment, than as support or a neutral inquiry.

In environments that demand such devotion, it is difficult, if not impossible to maintain other loyalties beyond work and family. Few people have time and energy for meetings and other gatherings that don’t relate directly to work. It’s challenging enough for many attorneys to keep their marriages and families together, so who can expect them to engage in activities related to racial or ethnic solidarity, with the possible exception of religious activity.

In the past, some law firms, as a show of support, used to allow and in some cases encourage black associates and partners to hold their “affinity bar” meetings at the firm. The same was and may be still true regarding Latino lawyers, women lawyers, and gay and lesbian lawyers. However, one is much more likely to hear disparaging questions from firm partners about one’s attendance at such functions today than was the case a decade ago. For example, associates and partners have told me much more often in the past two years than in the past decade of partners asking them some variant of the following question when it comes to their attending a meeting related to their gender, race or ethnicity: “Is that a *good* use of your time?” Such questioning is much more likely to be experienced as an admonishment, than as support or a neutral inquiry.

I’m sure that some will say, “So what, how is this any different from what I, as a white man, must sacrifice for my career?” My response is that it’s a bigger sacrifice. In any of the large corporate law firms today, as before, there are many, many white male lawyers with whom this hypothetical questioner can relate, from whom he can receive support, validation, etc. Every, or at least, nearly every meeting into which he goes there will be people like himself. He spends hardly a minute, if that much time in unfamiliar territory. He is almost never “the spy, in the enemy camp.” He’s at home. So, he needs no extra time for “solidarity meetings.” So, do white men sacrifice for their career success? Most certainly. But they need to recognize that others – those so-called “diverse attorneys” – sacrifice as much, if not much more, because they don’t have what the white men can and do take for granted, to the extent that most don’t even see their advantages, or shall I say, “privilege.”

Technological Forces

If inter-generational diversity is both a force in and of itself and a “moderating variable” or force (i.e., it influences the effects of the other diversity factors, such as race, gender, etc.), then the same can be said of technology, especially digital technology. In fact, digital technology is an expression of the generations.

Few things separate or identify generational membership like technology. Millennials, for example, are very comfortable with much if not all of the social media networking technology like Twitter and Facebook. The same cannot be said for many Traditionalists or Boomers. So, the conflicts arise early and often. For example, prominent partners in law firms objecting to associates in their firm or young lawyers not in their firm trying to communicate with them through Facebook or another social website. Or, more senior attorneys instructing younger attorneys to “call them” and having the younger attorney email or use texting as a channel of communication. This happens among attorneys or professionals in general and does not appear to be a particularly racial issue, as such. However, it is a source of conflict and irritation within a group that experiences more social forces that push it apart than together.

However, even as I write these words, I hear from others that the fastest growing group to use social media are people over fifty. So, this factor may, in time, cease to be a source of distraction and conflict. But, then again, within a decade, all but a very few of the Traditionalists will have left the workforce and this too will decrease conflict between the generations, no doubt.

Summary

What does all this mean to the legal professional and its quest to achieve racial and other types of diversity? First, it has implications for all or nearly all types of diversity (e.g., race, gender, sexual orientation, physical ability, etc.). All of the so-called “diverse” groups have fault lines based upon generational, intra-group or “ethnic” differences and different responses to the wonders of technology. Diversity managers in law firms and corporations need to understand these fault lines and address them no less than they do other dimensions of diversity. It is doubtful that any one solution will fit all of the groups, though they may share common problems. It may also be that such intra-group tensions are perfectly normal and unavoidable, therefore, not to be overly alarmed about.

However, even though they may be “normal,” they still have to be dealt with in an adaptable or functional manner. That is, we must find approaches to these challenges that get to the more desired outcome. Obviously, the first step is to initiate a process that will **discover** what that desired outcome is or should be. Then, **how** we reach that most desired outcome.

I think all of this can only be achieved if we face it openly and honestly. As James Baldwin once wrote: “not everything that is faced can be changed, but nothing can be changed until it is faced.” So, a challenge for today’s and future generations of black professionals, particularly attorneys, is to decide how we want to face the future: separately or together, unified or disjointed, taking what may come our way or striving toward a self determined planned outcome? And, whatever is decided, at what cost?

If present forces continue, little effort needs to be exerted by black professionals to make room for greater weakening of social and cultural cohesion. On the other hand, as a group, should most people decide social and cultural cohesion is the more desirable outcome, that will require additional effort, because the social, organizational, professional and technological forces are currently arrayed against it. ■

The Work-Family Balance for Lesbian Lawyers

By Mara Slakas

New York Law School, Class of 2011

Research studying the maternal wall and women's work-family balance fails to control for sexual orientation. Though additional research is necessary, this paper suggests, due to increased help at home and work, lesbian lawyers are likelier to successfully balance work and home demands than their heterosexual counterparts.

Introduction

In their recent study of the development of children raised in lesbian households, Nanette Gartrell and Henry Bos found that those children demonstrate higher levels of self-esteem and confidence and attain greater academic achievements than children raised in “traditional” heterosexual households.¹ While numerous factors influence this finding, Gartrell hypothesizes that lesbian parents invest more time in their children, stating “[b]eing present, having good communication, being there in their schools, finding out what is going on in their schools and various aspects of the children’s lives is very, very important.”² However, in an occupation where time is money, how do lesbian lawyers balance childrearing with legal practice? Are their careers suffering? Do their children break away from Gartrell and Bos’s findings? Have lesbian mothers scaled the “maternal wall”³ and waved their flag of victory from the partners’ table?

While researchers have studied the effects of motherhood on lawyers since the 1980’s, they have failed to consider possible differences between heterosexual and lesbian mothers.⁴ Yet research in other contexts suggests that working mothers’ experiences may differ according to their sexual orientation.⁵ The exploratory research discussed in this paper suggests that female lawyers’ experiences may differ as well.

My research is based on an online survey of eleven lesbian and three heterosexual female lawyers with children as well as in-depth interviews with four lesbian lawyers. The survey covered basic background information, such as the number of children in the household, the gender of the respondent’s partner (if any), and the respondent’s practice area and typical working hours, as well as questions about the division of labor in the respondent’s household and the effects of childrearing duties on the respondent’s work. Most respondents work at private law firms (n=10), though some work as in-house counsel (n=1), for the government (n=1), or in public interest jobs (n=2). Among those in law

1. See Alice Park, *Study: Children of Lesbians May Do Better Than Their Peers*, TIME, available at: <http://www.time.com/time/health/article/0,8599,1994480,00.html>.

2. *Id.*

3. The term “maternal wall” grew out of academic research performed in the 1990’s. See e.g., DEBORAH SWISS AND JUDITH WALKER, *WOMEN AND THE WORK/FAMILY DILEMMA: HOW TODAY’S PROFESSIONAL WOMEN ARE CONFRONTING THE MATERNAL WALL* (1993) (referring to discrimination mothers endure based on their status as worker and mother. This discrimination can be explicit. For example, some mothers reported being told that they belonged at home. Discrimination can also be implicit, with mothers reporting practices such as long hours and last minute travel that hindered their ability to succeed.); see also Mary Still, *Litigating the Maternal Wall: U.S. Lawsuits Charging Discrimination Against Workers with Family Responsibilities*, WORK LIFE LAW (2006), available at: <http://www.worklifelaw.org/pubs/FRDreport.pdf>.

4. E.g., Rebecca Korcez, *Working on the “Mommy-Track”: Motherhood and Women Lawyers*, 8 HASTINGS WOMEN’S L.J. 117, 120 (1997) (discussing the Report of the 1988 American Bar Association Commission on Women).

5. E.g., Leticia Anne Peplau & Adam Fingerhut, *The Paradox of the Lesbian Worker*, J. SOCIAL ISSUES 724 (Dec. 2004).



Lesbian lawyers may suffer fewer adverse work consequences due to having children than heterosexual female lawyers

firms, most respondents worked in the litigation area. The survey had a low response rate, which limits generalizations.⁶ However, the results are suggestive and the issue deserves further study.

My research suggests that lesbian lawyers may suffer fewer adverse work consequences due to having children than heterosexual female lawyers for two reasons. First, lesbian lawyers may be more likely to divide domestic and childrearing responsibilities equally with their partners, which allows them to work longer hours, travel, and concentrate better at work. Second, lesbian lawyers also participate in parental leave programs and may be more likely to make use of family-friendly programs, such as part-time work or flex-time programs.⁷ As a result, lesbian lawyers may have more support for childrearing both at home and at work.

This is not to say that motherhood is a bed of roses for either lesbian or heterosexual female lawyers. Both lesbian and heterosexual lawyers indicate that family-friendly programs fail to adequately address their needs. Respondents from both groups reported foregoing family-friendly programs for fear that taking it would negatively affect their careers. And though lesbians were likelier to make use of family-friendly programs, the participation rate of respondents in such programs was still only sixty percent of those whose employers offered family-friendly programs.⁸ Of course, these findings are based on a small, non-random sample and are merely suggestive. They are consistent, however, with findings from more systematic analyses in other work contexts and invite further study.

Division of Household Duties and Childrearing Responsibilities

The division of household duties and childrearing responsibilities has a significant effect on a lawyer's ability to succeed in her career and personal life. Mothers must care for a home and family while, at the same time, being productive members of their professional team. As previous studies reveal, lawyers who dedicate too much time to home and not to work will quickly see consequences in their careers, including being passed over for assignments involving travel and intellectually challenging work.⁹ Accordingly, when studying the maternal wall, it is imperative to ascertain how household duties and childrearing responsibilities are divided.

6. I used the online survey tool www.surveymonkey.com when performing my research. To gain respondents, I emailed the chairs of LGBT and Women's Bar Associations in the New York City area, the Lesbian, Gay, Bisexual & Transgender Community Center, and my personal contacts.

7. While some researchers classify parental leave as part of family-friendly programs, this paper addresses them as separate programs. Parental leave exclusively refers to paid time off after becoming a parent. Family-friendly programs include part-time, flex-time and work-at-home programs.

8. Five out of 11 lesbian respondents said their employers offered family-friendly programs; 3 out of the 5 reported making use of them.

9. Nicole Buonocore Porter, *Re-Defining Superwoman: An Essay on Overcoming the "Maternal Wall" in the Legal Workplace*, 13 DUKE J. GENDER L. & POL'Y 56 (2006).



Researchers indicate that the division of childrearing responsibilities and domestic duties in lesbian lawyer households benefits their careers.

Researchers use the term “second shift” to explain the burdens on working mothers.¹⁰ Since the majority of fathers are less involved than mothers in childrearing and domestic duties, heterosexual lawyers work full-time at their legal positions and, at the end of the day, put in a “second shift” at home. Working mothers also face being called away when children are sick or must be taken to appointments, last minute shopping for birthday presents and party favors, and worrying about whether there is any milk. As a result, their careers suffer.¹¹ They are not able to work as many hours as their male counterparts and, if distracted by duties at home, their work product may suffer.¹²

Conversely, researchers indicate that the division of childrearing responsibilities and domestic duties in lesbian lawyer households benefits their careers. Previous studies of lesbian relationship dynamics hypothesize that, when dividing childrearing responsibilities and domestic duties, lesbians are more likely to assign the work in an egalitarian division than their heterosexual counterparts.¹³ In fact, since lesbians endeavor to divide work evenly, they are more likely to have fewer domestic responsibilities when they cohabitate than when living alone.¹⁴ Thus, with a partner who is also worried about picking up milk and buying last minute birthday presents, lesbians are better equipped to juggle responsibilities at home and work.

Heterosexual survey respondents suggest that, unfortunately, the second shift is alive and well. Two out of three heterosexual respondents stated that they performed the majority of the childrearing and domestic responsibilities in their household.¹⁵ Two out of three heterosexual respondents also stated that this unequal division hindered their career because they could not work as many hours as their peers. Moreover, law firms often grant sizeable bonuses to workers who meet minimum billable hour standards. When asked whether they received as many bonuses after becoming a parent as they did previously, heterosexual respondents reported receiving fewer bonuses after becoming a parent. This may suggest they were no longer able to work as many hours, possibly because of demands at home. Thus, the survey suggests that the division of childrearing responsibilities and household duties is detrimental to heterosexual female lawyers’ professional success.

10. Peplau & Fingerhut, *supra* note 5, at 724.

11. Porter, *supra* note 9, at 56.

12. *Id.*

13. *E.g.* Peplau & Fingerhut, *supra* note 5, at 724.

14. *Id.*

15. The one heterosexual lawyer who stated her partner performed a majority of the childrearing responsibilities noted that her partner works part-time. Thus, I query whether this work schedule fosters more father involvement or whether the father works the second shift role in that relationship instead of the mother.

The exploratory research is consistent with previous studies on lesbian relationship dynamics. Five out of eight lesbian respondents reported that they divide childrearing and domestic responsibilities as a whole equally with their partners, while two stated they did not have partners. Of the three lesbian respondents whose employers granted bonuses for meeting work hour standards, all three stated they received as many bonuses after parenthood as they did prior to becoming parents. Although further research is necessary before making generalizations, these results suggest that lesbian lawyers' careers may benefit from a more egalitarian work-family balance at home

Parental Leave and Family-Friendly Programs

As awareness of the maternal wall has increased, employers have sought to resolve this problem by implementing parental leave programs. However, researchers have argued that lesbians may not participate in parental leave programs because they are not available to non-biological lesbian mothers or mothers who do not have a legally recognized relationship with their child. Some argue that "[l]esbian and gay parents' access to parental benefits are inconsistent and mercurial, leaving lesbian and gay parents dependent upon the whims of employers and subject to layers of incongruous laws."¹⁶

Employers also created family-friendly programs geared toward mothers—the so-called “mommy track”—such as part-time, flex-time and work-from-home programs¹⁷ However, both heterosexual and lesbian mothers are hesitant to use family-friendly programs because they fear being viewed as less committed to their work than coworkers who work full-time. Researchers reason that some attorneys fear “overt stigmatization,” working full-time for part-time pay, and removal from the partnership track.¹⁸ Moreover, some heterosexual lawyers believe certain practice areas are not amenable to part-time or flexible work schedules.¹⁹

The exploratory survey suggests that both heterosexual and lesbian respondents used their employers' parental leave programs. All three heterosexual respondents stated that their employers offered parental leave programs, with each respondent stating she participated in the programs after becoming a parent. Five out of eleven lesbian respondents stated their employers also offered parental leave programs, one reported her employer did not, two stated the question was inapplicable, and three skipped the question. Interestingly, all five lesbian respondents participated in their employers' parental leave program; therefore, these programs must be available to them, despite their sexual orientation. Thus, though the survey did not ask specifically about respondents' legal status as parents, the findings suggest that employers are beginning to offer parental leave programs more uniformly and that lesbian lawyers are making use of them.

Heterosexual and lesbian respondents had different reactions to other family-friendly programs, however, such as part-time and flex-time work. Consistent with previous studies finding that heterosexual mothers underutilize family-friendly programs, all three heterosexual respondents stated that their employers offered family-friendly programs; however, none of them participated in the programs. Two respondents reasoned that the family-friendly programs may hurt their careers. Thus, heterosexual respondents' underutilization of family-friendly programs is consistent with previous research.

16. *Id.* at 160.

17. See generally Margaret Thornton & Joanne Bagust, *The Gender Gap: Flexible Work in Corporate Legal Practice*, 45 OSGOODE HALL L.J. 773 (2007) (further discussing approaches to family-friendly programs).

18. Joan Williams & Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention, Final Report, Third Edition*, 8 WM. & MARY J. WOMEN & L. 357, 432-34 (2002), available at <http://scholarship.law.wm.edu/wmjowl/vol8/iss3/2>.

19. *Id.*



Lesbian lawyers were more likely to use family-friendly programs when they were available.

Lesbian respondents, however, were more likely to use family-friendly programs when they were available. Of the five respondents who stated that their employers offered family-friendly programs, three utilized the programs. The lesbian respondents who did not participate in family-friendly programs stated, like the heterosexual respondents, that they feared participating in the programs would hurt their careers.

Lesbian lawyers' participation in parental leave programs demonstrates employers' greater commitment to fostering a more diverse legal practice; however, further research into this area is necessary. With a better understanding of the reasons lesbian lawyers are more likely to utilize family-friendly programs, researchers will be able to develop programs that foster higher rates of participation for all parents.

Conclusion

Despite the expansiveness of studies researching the maternal wall, researchers have failed to examine the differences in heterosexual and lesbian lawyers' experiences. This exploratory research suggests lesbian lawyers are less likely to suffer the adverse work effects of having children than their heterosexual counterparts. While working full-time and raising children is never an easy feat, lesbian lawyers' more egalitarian domestic arrangements and greater willingness to make use of family-friendly programs may make them better equipped to balance the demands of motherhood and work than their heterosexual counterparts.

Additional research is necessary to further explore these suggestive findings. Not only will further research help lawyers trying to balance frosting cupcakes with writing briefs, but further studies on family-friendly programs, especially if they account for differences between heterosexual and lesbian lawyers, may help employers develop family-friendly programs that employees are willing to utilize. This, in turn, may help employers retain their most important resource — their legal talent. ■

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Lawrene R. Baca

Lawrence Baca, a Pawnee Indian, is a former Deputy Director of the Office of Tribal Justice, United States Department of Justice. During his 32 years with the Department he also served as a Senior Trial Attorney in the Civil Rights Division.

A 1976 graduate of Harvard Law School, Baca was one of the first American Indians to graduate from Harvard. He was the first American Indian ever hired through the Department of Justice's Honor Law Program. In 1973, Baca received his Bachelor of Arts Degree in "American Indian History and Culture" from the University of California, Santa Barbara, where he also taught two courses on Indian issues during his senior year. In 1974, while attending law school, he was a Harvard Teaching Fellow at Harvard University and, in 1976, he taught a course entitled "Perspectives On The Historical Development of American Indian Policy and Law" at the Harvard University Extension School. He was an Adjunct Professorial Lecturer teaching Federal Indian Law at American University Washington College of Law in 2004 and 2005. He initiated the course in Federal Indian Law at Howard University School of Law in 2007.

Mr. Baca is a former president of the Federal Bar Association and has also served as Chairman of the ABA Commission on Racial and Ethnic Diversity in the Profession. He has also been elected President of the National Native American Bar Association three times.



David M. Bamlango

David M. Bamlango is an associate in the Corporate and Finance Group of DLA Piper LLP in Chicago. His practice is focused on leveraged finance, debt capital markets and structured finance transactions. In his leveraged finance practice, David represents agents, lenders and borrowers in domestic and cross-border secured and unsecured lending transactions, debt restructuring and workouts. David's debt capital markets and structured finance practices involve the representation of issuers, sponsors, underwriters and asset managers.



Stuart Buck

Stuart Buck is a Distinguished Doctoral Fellow in the Department of Education Reform at the University of Arkansas. He is the author of *Acting White: An Ironic Effect of Desegregation*, from Yale University Press (2010). He has also authored numerous scholarly articles in journals such as the *Review of Public Personnel Administration*, *Harvard Law Review*, *Harvard Environmental Law Review*, *Stanford Technology Law Journal*, *Administrative Law Review*, *Federal Communications Law Journal*, and the *Case Western Law Review*. Buck received a J.D. with honors from Harvard Law School in 2000, where he was an editor of *Harvard Law Review*; he thereafter clerked for Judge David Nelson of the Sixth U.S. Circuit Court of Appeals and Judge Stephen F. Williams of the U.S. Circuit Court of Appeals for the D.C. Circuit.

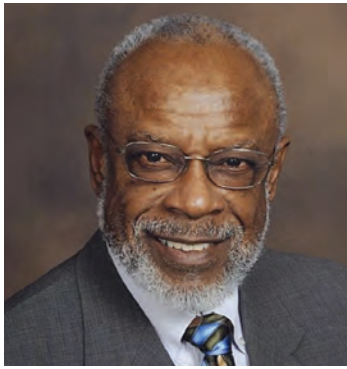


Elizabeth Chambliss

Elizabeth Chambliss is Professor of Law and Co-Director of the Center for Professional Values and Practice at NYLS. She received her J.D. and Ph.D. in Sociology from the University of Wisconsin, where she also served as the Assistant Director of the Institute for Legal Studies. Before joining the faculty at NYLS, she was the Research Director for the Program on the Legal Profession at Harvard Law School.

Professor Chambliss' research focuses on the organization and regulation of professional firms and the effects of globalization on the U.S. legal services market. Her most recent project focuses on the future of U.S. legal education, and the emergence of new organizational models for law schools in the U.S. and abroad. Professor Chambliss was one of the principal organizers of Future Ed, a year-long contest of ideas for innovation in legal education, co-hosted by New York Law School and Harvard Law School. Other current projects include an interdisciplinary, ethnographic study of large law firm culture, with researchers from law, psychology, and business management.

Before working at Harvard, Professor Chambliss taught law at the University of Texas and the University of Denver. She was attracted to New York Law School because of the law school's commitment to innovative teaching and research on the profession and the strength of its Center for Professional Values and Practice.



Jacob Herring

Jacob Herring is a management consultant who focuses upon issues related to workforce diversity in organizations, especially law firms. For over three decades, Herring has helped a variety of organizations, public, private and non-profit identify and effectively respond to the needs, tensions and strengths of a diverse workforce. In that capacity he has done team building for mixed groups and training and development for both minority and majority managers, administrators, partners and associates. He has worked with a variety of law firms (e.g., Wilmer Cutler, Skadden Arps, Foley & Lardner, among others) across the country as well corporations (e.g., the du Pont Co., Apple Computer Co., Digital Equipment Corp., among others), governmental agencies (Federal, State & local governments), Colleges and Universities.

Before becoming a management consultant, Herring worked as a staff psychologist at UC Berkeley and the Berkeley Therapy Institute, in Berkeley, CA. Herring currently lives in Southern Oregon and works with organizations all over the US and parts of the English Speaking world.



Eve Hill

Eve Hill is a nationally known expert on disability rights law. Ms. Hill recently joined the law firm of Brown Goldstein & Levy as Of Counsel, where she participates in the firm's disability rights practice. Prior to joining Brown Goldstein & Levy, Ms. Hill was Senior Vice President of the Burton Blatt Institute at Syracuse University (in the Washington, DC office), where she was responsible for the Institute's disability civil rights work. Ms. Hill is an expert on the Americans with Disabilities Act (ADA) and her recent work has focused on accessibility of electronic books, the internet, and information technology; and procurement, affirmative action and subminimum wage employment programs. Ms. Hill manages the Disability Rights Bar Association, a nationwide group of attorneys who specialize in disability rights advocacy.



Takeia R. Johnson

Takeia is an Associate in Frost Brown Todd LLC's Indianapolis office. She concentrates her practice in the areas of labor and employment, and tort and insurance defense litigation. She represents clients in a variety of labor and employment matters, including Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the First Amendment, and the Indiana Collective Bargaining Act. Ms. Johnson also represents clients in tort litigation involving various negligence claims, including premises liability and wrongful death claims.



Melinda S. Molina

Melinda S. Molina is an assistant professor at Capital University Law School. Her scholarship focuses on how the law impacts subordinate and marginalized groups in the United States. She co-authored two national studies on Latina lawyers. The first is a comprehensive nationwide examination of Latinas in the legal profession across all major legal sectors: National Study on the Status of Latinas in the Legal Profession, *Few and Far Between*. The second is a subsequent study of Latina public interest attorneys: *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest Sector*. These studies are the first of its kind to provide both qualitative and quantitative data on the experiences and status of Latinas in the legal profession, on a national level, and across all major legal sectors employing a mixed method transformative design, exploring and analyzing both the formative and career-related experiences of more than 800 Latina attorneys.

Before joining academia, Professor Molina was an associate in the criminal defense and investigation practice group of the New York office of Sullivan & Cromwell LLP. Professor Molina's practice focused primarily on the representation of institutions and their senior executives in a wide variety of criminal and regulatory investigations involving allegations of accounting fraud, securities fraud, foreign bribery and obstruction of justice. Prior to Sullivan & Cromwell LLP, Professor Molina clerked for the Honorable Robert J. Passero, A.J.S.C.



Kathleen Dillon Narko

Kathleen Dillon Narko teaches Communication and Legal Reasoning. Her focus is teaching legal analysis through the vehicle of writing. She is a frequent presenter at national and regional Legal Writing Institute conferences, and has written and spoken on a variety of topics related to communication and legal analysis.

Her research interests include collaboration and learning theory and integration of analytical communication in law practice.

Professor Narko received her J.D. from Cornell Law School and her B.A. in history, cum laude, from Yale University. Following her undergraduate degree, she attended Salzburg College in Salzburg, Austria.

Prior to joining the faculty, Kathleen Dillon Narko practiced with a large law firm concentrating in the areas of commercial litigation and environmental, safety and health law. She was a member of the firm's Hiring Committee for seven years. Professor Narko worked extensively with corporate clients in all aspects of litigation, including trials and appeals. She was also active in pro bono litigation, including lending discrimination and political asylum matters. She currently consults with law firms, providing training in legal writing.

Professor Narko served as a Hearing Officer for the State of Illinois. She conducted hearings and issued several published decisions in the area of special education law.

Professor Narko maintains an active involvement with the practicing bar. She is a prominent member of the Chicago Bar Association, where she currently serves on the Editorial Board of the CBA Record. She authors a regular column on legal writing, *Nota Bene*, which is widely used by both attorneys and law professors. For several years she has presented a program on Advanced Legal Writing to sold-out audiences of practicing attorneys. She is a past member of the CBA Board of Managers, a current member of the Membership Committee, and a recipient of the David Hilliard Award for Outstanding Committee Service.

She serves on the Board of Advisors of Catholic Charities of the Archdiocese of Chicago, where she is a member of the Legal Advisory Committee. In addition, she is a member of the Leadership Council of the National Immigrant Justice Center.



Sarah L. "Sally" Olson

Sarah L. ("Sally") Olson is a litigation partner at Wildman, Harrold, Allen & Dixon LLP and the firm's Professional Development & Diversity Director. She is a founding member of the firm's Diversity Committee, which she has chaired since 2003. In that capacity, she has helped to create the firm's affinity groups, has initiated a wildly successful cultural education program, has led the firm to adopt new policies supportive of diversity, and has created a variety of structural supports for diverse – and all – attorneys, including formal mentoring, career coaching, work allocation systems, and more.



Mara Slakas

Mara Slakas is a law clerk to the Honorable Joel H. Slomsky at the United States District Court for the Eastern District of Pennsylvania. She graduated magna cum laude from New York Law School, where she also obtained a Certificate for Public Service. Mara received her undergraduate degrees magna cum laude in Anthropology and International Studies from Loyola University Chicago.

While in law school, Mara was a staff editor for the *New York Law School Law Review* and a John Marshall Harlan Scholar affiliated with the Center for Professional Values and Practice. She also participated in Law Without Walls, a collaborative online course, and served as a judicial extern to the Honorable Evan J. Wallach at the United States Court of International Trade.

Mara currently resides in Philadelphia, PA.



Mona Mehta Stone

Mona Stone is Of Counsel at Greenberg Traurig, where she helps individuals, small businesses, and multibillion-dollar companies resourcefully prevent and resolve commercial disputes. Serving as corporate in-house counsel early in her career exposed Mona to a vast array of business legal issues. Drawing on that experience, her extensive litigation and ADR skills have resulted in the efficient resolution of millions of dollars in claims. Mona's practice focuses on Litigation and Labor and Employment matters, and she is an accomplished author and speaker, including client training seminars. Mona is licensed in Illinois and Arizona and earned her J.D. from Tulane University School of Law in 1997.



Practice Round-Up

This Practice Round-Up Section is intended to provide a summary of some of the most interesting, effective, and promising programs, projects, activities, publications and strategies to promote greater diversity and inclusion that are being implemented in the legal profession. Law firms, corporate law departments, bar associations, law schools, and government agencies were invited to submit information about their efforts for inclusion in the Practice Round-Up. By summarizing these efforts, IILP hopes to make it easier to share and improve upon good ideas, avoid reinvention of the wheel, and inspire new endeavors to make ours a more diverse and inclusive profession. If you would like to submit information about a program or project in which you are involved and about which you think others interested in promoting greater diversity and inclusion would benefit from knowing, please visit www.TheIILP.com to learn how to submit your information and the deadlines for the next edition of the “IILP Review: The State of Diversity and Inclusion in the Legal Profession.”

Diversity & Inclusion Reports & Surveys

Each year, any number of organizations publish reports and rankings that help to provide a clearer picture of the state of diversity and inclusion within the legal profession. The following are some recent reports and surveys that IILP found to be of particular interest.

Number of Women Attorneys at NLJ 250 Firms at 5-Year Low

According to the 2010 *National Law Journal's* annual ranking of the nation's largest law firms, the percentage of women partners and associates fell to its lowest number since 2006. In 2010, women partners and associates represented 29.2% of all attorneys while in 2005, they comprised 32% of all attorneys at these firms. The 2010 year decline to 29.2% represents the lowest percent since the NLJ began compiling gender data in 2006. Since 2006, the number of women attorneys has decreased each year, even as firms increased in size from 2006-2008.

2010 Law Firm Partner Classes Include More Women

According to a survey released by the Project for Attorney Retention (PAR) in April 2010, a number of law firms made significant advances in promoting women attorneys to partnership: in 2010, 34% of new partners were female compared to 28% of new partners in 2009. While PAR remains optimistic about this progress, its Research Director, Cynthia Thomas Calvert, notes that the overall number of women partners is still low (approximately 19%) and that the survey does not differentiate between equity and non-equity partners. The 118 participating firms were selected for the PAR survey based on participation in prior years' surveys, firm size, reputation, and availability of information. The survey only includes information from the participating firms' U.S. offices. For more information, see <http://www.pardc.org/PressReleases/NewPartners2010.pdf>.

Washington State Minority Bar Associations Publish 2009-2010 Law Firm Diversity Report

A coalition of eleven Washington State Minority Bar Associations has created the 2009-2010 Law Firm Diversity Report to objectively assess the diversity efforts of the 50 largest law firms in Washington state. The Minority Bar Associations conduct this annual survey to achieve several goals: (1) to highlight the critical issue of diversity; (2) identify law firms' "best practices" on diversity to

other firms; (3) provide attorney hires and law students diversity information on firms to assist with their job searches; and (4) provide in-house counsel with information on firms' diversity efforts to assist with retention decisions.

The methodology of the Report consisted of sending out a questionnaire to the 50 largest Washington state law firms to obtain detailed demographic information (the racial/ethnic, gender, sexual orientation, and disability status) of the firms' attorneys and the diversity efforts/programs existing in the firms. 28 firms responded to the survey and the 22 firms who did not respond to the questionnaire were issued an "F" grade. Approximately 85% of a firm's score was based on "hard factors" (i.e., demographics) and how those "hard factors" measured up to the self-reported attorney demographics of the Washington State Bar Association, Washington state's general census population demographics, and the demographics on diverse partners and associates of the National Association of Law Placement. The firms that performed the best in the Law Firm Diversity Report all had focused, strong initiatives and execution in the areas of recruiting, hiring, mentoring, promoting, and retaining. The Report lists the "best practices" of the firms in these areas.

For additional information, contact the Minority Bar Associations Law Firm Diversity Report Committee at mba.mrc@gmail.com.

NAWL's 2010 Annual Survey Results: Women Still Lagging

On November 9, 2010, the National Association of Women Lawyers (NAWL®) released the findings of its Fifth Annual National Survey on Retention and Promotion of Women in Law Firms. NAWL's Survey, which began in 2006, annually tracks the progress of women attorneys at all levels of private practice in the country's largest 200 law firms. The complete 2010 NAWL Survey is available at: <http://nawl.timberlakepublishing.com/files/NAWL2010Final.pdf>

New to the 2010 Survey is a look at how non-partner track roles hamper women's advancement, as well as an examination of how part-time status roles hinder the retention of female attorneys in private law firms.

The 2010 Survey focuses on the following categories: (1) lack of women in firm leadership ranks; (2) underrepresentation of women holding ownership interests in their firms (women account for only 15% of equity partners); (3) lack of women as top rainmakers (46% of firms reported no women at all among their top 10 rainmakers); (4) the continued compensation gap between female and male lawyers (with women equity partners earning just 85% of the compensation earned by their male counterparts); (5) the impact of the increased use of staff and contract attorneys for low-level or repetitive work (women represent 60% of staff attorneys); (6) the negative impact of partnership tiers/structure on female lawyers; (7) the impact of involuntary terminations on part-time attorneys; and (8) diversity positions within firms. Overall, the Survey results are consistent with prior years. The report reveals that progress for female lawyers in large law firms remains slow, and that the evolving structural changes at firms (e.g., the growing number of multi-tier firms) is detrimental to the advancement of women attorneys.

Founded in 1899, NAWL is a national voluntary legal professional organization devoted to promoting the interests and progress of women lawyers and women's legal rights. Additional information can be accessed at www.nawl.org.

New York City Bar's 2010 Diversity Benchmarking Study

In its *2010 Diversity Benchmarking Study: A Report to Signatory Law Firms*, the NYC Bar reports the results of its efforts to track diversity benchmark data for signatory law firms of its 2003 Statement of Diversity Principles. While study authors note that firms have improved their collective diversity efforts since data began to be collected in 2004, the change has been slow. For example, women partners increased 1.9% (from 15.6 to 17.5%) and minority partners rose 1.6% (from 4.7% to 6.3%) over six years. In examining the impact of the recession on minorities and women, the study found that women and minorities declined to a greater extent among participating law firms. In comparing data for the 83 firms for which data was available for years 2009 and 2010, the study found that women declined by 5% and minorities by 12% compared to a rate of 4% among attorneys overall. The study notes one positive trend in the increase of diverse practice group heads among signatory firms. Between 2009 and 2010, the percentage of minority practice group heads increased from 4.5% to 5.7% and from 14.0% to 15.4% for women practice group heads. For more information, contact www.nycbar.org.

The Bar Council of England & Wales: *Bar Barometer*

There is a tendency for American lawyers to view diversity and inclusion of the legal profession as a strictly American concern. Nothing could be farther from the truth. Our colleagues in the Bar Council of England and Wales, along with the Law Society of England and Wales, have been actively engaged in addressing diversity issues for lawyers in the United Kingdom. The Bar Council, which represents the barristers (as opposed to the solicitors) in the U.K. has recently published the *Bar Barometer*, to provide comprehensive statistics and trends about the Bar of England and Wales between 2005-2010. This first *Bar Barometer* is intended to provide a benchmark against which the Bar Council can monitor and track its progress over time; the Bar Council intends to update the information in the report annually.

Among the interesting findings in this pilot report:

- 34.4% of practicing barristers are women (compared to 30% in the U.S.);
- 10.1% of practicing barristers are from a black or minority ethnic group ("BME") (compared to 11.6% in the U.S.);
- 8.6% of practicing barristers have attained the level of Queen's Counsel ("QC");
- 11% of QCs are women; and,
- 4.3% of QCs are BME barristers.

For more information: <http://www.barcouncil.org.uk/about/statistics/>

Recent Cases & Developments

\$680 Million Settlement Reached in Native American Discrimination Suit

The U.S. government agreed to pay \$680 million to a class of Native American farmers and ranchers who had alleged that the U.S. Agriculture Department's loan program was discriminatory. The settlement of the suit filed in 1999 in the U.S. District Court for the District of Columbia provides \$680 million in compensation to potentially tens of thousands of farmers and ranchers, includes \$80

million in debt relief, and establishes a federal advisory committee (the Native American Farmer and Rancher Council) which will provide a forum to help the government improve loan services to Native American farmers and ranchers. President Obama issued a statement praising the settlement and calling it “an important step forward in remedying the USDA’s unfortunate civil rights history.”

Ethnicity and Gender as Factors in Coast Guard Academy Admissions

In Fall 2010, Congress approved the Coast Guard Authorization Act which gave the Coast Guard, for the first time, the ability to consider an applicant’s sex, race, color, and religious beliefs as it shapes the composition of its classes. The Act struck down a provision of the U.S. Code of Federal Regulations which had prohibited consideration of these characteristics by the academy.

Historically, the percentage of minority cadets in each academy class has been around 16% and 30% for women, who were first admitted to the academy in 1976. For the class of 2014, the current class of freshmen or fourth-class cadets, the percentage of minority students has increased to 24% and 31% women. As a result of the Act, the Coast Guard will be increasing its recruiting efforts for diverse applicants and has doubled its admissions budget to assist in this endeavor.

Recent 9th Circuit Decision Clarifies Responsibility of Testing Entities under the ADA

A recent decision by the 9th U.S. Circuit Court of Appeals held that a Department of Justice regulation interpreting the Americans with Disabilities Act requires that testing entities administer exams “so as to best ensure” that the exam results accurately reflect the test taker’s aptitude. Stephanie Enyart, a law graduate who is blind, requested assistive technology software to take the bar exam. The National Conference of Bar Examiners (NCBE) offered a reader, an audio CD and text magnification instead. Enyart sued, arguing that she would suffer eye fatigue, disorientation and nausea if she used the aids offered by the NCBE and consequently, that her performance on the exam would not accurately reflect her abilities. The NCBE argued that they had met their legal obligations and that providing these accommodations was sufficient because they had worked for other individuals who are blind. The 9th Circuit held that Enyart was entitled to receive her requested accommodations to help ensure that an individual’s particular circumstances are taken into account in administering exams, as opposed to an assumption of a one-size-fits all approach. *Enyart v. National Conference of Bar Examiners, Inc.*, --- F.3d ---, 2011 WL 9735 (9th Cir. 2011)(Nos. 10-15286, 10-16392).

Judge’s Diversity Order Causes a Stir

Judge Harold Baer Jr., presiding over the Southern District Court of New York, created a stir when he issued an order directing Labaton Sucharow and Robbins Geller Rudman & Dowd to “make every effort to put at least one woman and one minority lawyer on the case.” The order was issued in *In re Gildan Activewear Inc. Securities Litigation*, and Judge Baer indicated that he was not singling out the two firms in question but instead stated that diversity considerations “were goals I would urge be met in similar cases that come before me.”

Judge Baer said that he has become concerned by the lack of minority and female lawyers at law firms generally and saw the counsel approval process as a tool at his disposal to address a persistent problem at law firms. Judge Baer stated that in addition to fewer women and minorities in the ranks of firm partnerships, he is also concerned by statistics which show a decrease in minority students attending law schools. By encouraging firms to diversify their legal teams, Judge Baer hopes that this will lead to more women and minority attorneys getting court experience.

Some class action attorneys reacted to Judge Baer's order by stating that while diversity is a noble goal, the Judge went too far in directing firms to take gender and race into account when staffing a case. Stuart Grant, founder of class action firm Grant & Eisenhofer, said Congress did not intend for judges to use their counsel approval powers to focus on law firm diversity when it passed the Private Securities Litigation Reform Act in 1995. In another opinion, Judge Baer wrote that in addition to knowledge, expertise, resources and experience, judges may consider other factors relevant to counsel's ability to represent the interest of the class and he saw no reason why diversity could not be taken into account.

Initiatives & Programs

ABA TIPS Leadership Academy

The American Bar Association's Tort Trial and Insurance Practice Section ("TIPS") Leadership Academy was created to address the importance of increasing diversity in the Section's leadership by bringing together a diverse group of promising young future leaders of the Section for a leadership training program. The program includes workshops and presentations about TIPS, the ABA, media management information, work/life balance issues, career building information and how to be a leader. This model allows the participants to understand the culture and protocols – formal and informal – of TIPS and the ABA so as to feel more comfortable and prepared to become active, informed, and engaged members of the Section and to achieve their individual leadership goals.

Participants in the Leadership Academy undergo a rigorous selection process. Applicants must be nominated by a lawyer or judge who is familiar with their work, experience, and potential for leadership. The Leadership Academy's Steering Committee ultimately selects 20-30 participants for each year's class. Participants are keenly aware of the honor associated with being chosen.

The Leadership Academy meets four times a year in conjunction with the Section's four major meetings: Fall, Midyear, Spring, and the ABA Annual Meeting. The Section funds the travel for the participants to attend affording the participants the benefit of the information they learn through the Leadership Academy and ample opportunity to meet and spend time with TIPS and other ABA leaders, leading to invaluable networking and mentoring for future Section and ABA leaders.

In 2008, TIPS reported that the Leadership Academy expenses were approximately \$175,000 annually with revenues of approximately \$25,000. In February, 2011, the Section changed the program from an annual one to a biannual one. Other organizations that do not convene meetings around the country could easily replicate this program for a much lower cost. The program requires staff support in connection with coordination of speakers and meeting details.

The TIPS Leadership Academy has proven extremely successful. In the short run, Leadership Academy graduates are already chairing General Committees, Standing Committees, and Task Forces, as well as holding other positions of responsibility that require them to report to the highest levels of Section leadership; it is anticipated that before too long, they will be serving on the Section Council (akin to a board of directors). In the long-term, the potential is even greater in that TIPS has created a program that fosters real camaraderie among the participants. While not every participant will aspire to join the Section Council, we can expect that those participants who do will likely be recommending their fellow Leadership Academy colleagues to chair committees, sub-committees, task forces and the like. The TIPS Leadership Academy is planting seeds and nurturing the growth of a diverse and inclusive pool of future leaders which will benefit not only the individuals but also the Section. For more information, contact Mary Ann Peter at MaryAnn.Peter@AmericanBar.org or (312) 988-6155.

Merck's Street Law Program

Merck's corporate in-house legal department became involved in the Street Law program in 2006 as a way to take its pro bono work to the next level. Mark Daniel, a Merck attorney who also leads the pro bono program, wanted to offer administrative assistants and paralegals a way to become more directly involved in pro bono work, beyond supporting attorneys in their volunteer efforts. Street Law was an immediate hit with legal department employees and participation continues to expand, with more than 80 employees now involved. Some have said at past conferences that it was one of the most rewarding experiences they've been involved in during their careers.

The Street Law program involves reaching out to inner-city students to introduce them to the many opportunities that exist in the legal profession. Legal department volunteers teach, interact and share their work experiences with high school students currently enrolled in elective law classes. At the program's inception, Mark Daniel asked Lee Arbetman, Executive Director of Street Law, Inc., to train Merck's legal department on the program, after which Merck became the first New Jersey corporation to sign on.

For the past three years, Merck has partnered with Union High School in Union, New Jersey, and will expand the program to include another New Jersey school, Rahway High School, in 2011.

The way it works

Volunteers from Merck's legal department visit participating high schools on selected days and provide an introduction to career opportunities in the legal profession and the principles of intellectual property law. They also present an Arbitration Hearing Workshop, where students play the roles of judges, attorneys and witnesses in mini-trials. In April 2011, the Merck Street Law team will host a full-day conference at its worldwide headquarters in Whitehouse Station, New Jersey. Approximately 100 students from Union and Rahway high schools have been invited to attend the hands-on workshops, which will focus on intellectual property law, contracts and dispute resolution.

In addition, Merck gives \$500 scholarships to ten students who have proven to be the top students in their class.

This year, Merck is working with Street Law to further expand volunteer opportunities for all of its employees to include:

- Prevention programs that empower young children and adolescents to participate positively in their communities and prepare for college and post-secondary careers.
- Diversion programs designed to teach first time youth offenders problem solving and conflict resolution skills while integrating them back into their community and keeping them out of the juvenile justice system.
- Youth in Transition programs that help kids who are aging out of foster care by providing them with practical knowledge and life skills so they can live independently.

Part of a larger pro bono effort

Merck's Street Law program is part of a broader pro bono legal assistance effort that began at U.S. headquarters in 1994 and now includes 180 volunteers around the world. The tireless efforts of these volunteers have earned numerous awards. In 2010, Bruce Kuhlik, Executive Vice President and General Counsel at Merck, was awarded the Association of Corporate Counsel's Matthew Whitehead II

Corporate Legal Diversity Award for the company's work with the Street Law program. In addition, Merck received the NJ Governor's Jefferson Pro Bono Award, as well as recognition from the Pro Bono Institute and the Volunteer Lawyers for Justice.

For more information, please contact Mark Daniel, Vice President and Group Managing Counsel and head of Merck's pro bono committee, mark.daniel@merck.com, 732-594-6609.

John Marshall Law School National Undergraduate Diversity Mock Trial Competition

The John Marshall Law School (JMLS) has established a mock trial competition to encourage interest in the law among diverse undergraduates. Now in its eighth year, the competition is co-sponsored by the Asian American Law Students Association, the Black Law Students Association, the Latino Law Students Association, and the Middle Eastern Law Student Association at The John Marshall Law School. Participants have the opportunity to conduct a full trial in a courtroom setting and experience how the law is practiced. Unlike other mock trial competitions, the JMLS program also requires that each student team member play all roles during the competition (i.e., opening statement and cross examination, witness, and direct examination and closing argument), thereby further exposing them to all aspects of trial practice. The American Mock Trial Association (AMTA) recognizes the competition as an AMTA Invitational Tournament.

The top four teams are presented with tuition waivers toward coursework completed at John Marshall. Prizes range from a \$15,000 tuition waiver applied over a 3-year period in \$5,000 increments for first-place team members to a \$3,000 tuition waiver for fourth-place team members. Participants also compete individually for Best Advocate awards and accompanying prizes. In addition, Kaplan Test Prep and Admissions, a new partner this year, provides each member of the first-place team and the overall Best Advocate with a free Kaplan LSAT prep course.

Information is available at <http://www.jmls.edu/diversity/national-undergrad-mock-trial.shtml>. For additional information or questions, contact Dean Rory Dean Smith,

Associate Dean for Outreach and Planning Director of Diversity Affairs and Outreach, at 6smith@jmls.edu or (312) 987-1412.

Mentoring Picnic a Success

The Seventh Annual Minority Mentoring Picnic, held on November 13, 2010, was attended by over 2,000 members of the minority legal community from all over Florida. Miami attorney John Kozyak created the fun event as an opportunity to bring lawyers, judges and law students together to forge mentoring relationships. Kozyak is a longtime champion of diversity in the legal profession. The Minority Mentoring Picnic has become a destination event for Florida's legal community as it pairs law students with mentors and provides an opportunity for minority law students across the state to meet each other and learn about the many professional organizations and activities available to them.

Among the mentors attending the picnic this year were former State Supreme Court Justice Raoul Cantero, ABA President Steve Zack, and National Bar Association President Daryl Parks. Florida State University law student Lorraine Young said that attending the picnic was an invaluable experience for her because it provided her with the opportunity to network with different members of the Florida minority legal community, including alumni and other minority students.

For more information, contact John W. Kozyak at JK@kttlaw.com.

The Chicago Committee on Minorities in Large Law Firms Mentorship Academy

It is not uncommon for firm attorneys to roll their eyes at the mere mention of a mentoring program. Most firm mentoring programs simply pair a partner with an associate and tell them to meet and mentor. There is little to no direction given to the pairs about what they should speak about and as a result, many pairs – when they do meet – talk awkwardly about the movies, sports, and/or new restaurants. Unsurprisingly most mentoring programs fail. But why and can it be better?

In answer to this, the Chicago Committee on Minorities in Large Law Firms (the “Chicago Committee”) kicked off its inaugural Mentorship Academy in 2008. Developed in conjunction with Mentorship Academy Director Lane Vanderslice, the Chicago Committee set out to create a mentoring program that does not depend solely on the chemistry between the mentor and mentee and that provides minority attorneys with a support system where they can receive guidance and advice on career management and personal development.

Now in its third year, the Mentorship Academy is a curriculum-and coaching-based approach to building successful mentoring relationships between attorneys at different firms and different levels of seniority. Every year, the Mentorship Academy brings together 7-12 mentorship triads. Each triad typically consists of one (usually majority) senior partner with firm management experience, one minority junior partner or senior associate, and one minority junior associate (years 2-5). Members of the triads are all from different law firms to allow participants to step out of their roles at their firms and discuss issues openly.

The entire Academy meets as a large group regularly once a month for an 8-9 month period, and triads meet once between large group sessions and discuss assigned topics or questions. The large group sessions, led by Mr. Vanderslice, occur in the evening, and over the course of the year, the Academy follows the arc of the career of a law firm attorney – from junior associate to firm management. The sessions allow the attorneys to engage in candid discussions in an intimate and confidential space.

The Academy’s goal is to raise the bar for mentoring relationships and to give minority attorneys an external network with attorneys of all levels. Both associates and partners have enjoyed the Mentorship Academy and have commented that it is one of the best programs in which they have participated. Information is shared, associates are coached, senior attorneys learn about the associate experience, and a community is formed.

The Mentorship Academy works. It works because of Mr. Vanderslice’s carefully crafted curriculum and because of the time committed by all the participants. The curriculum gives the large group and the triads direction and purpose. The time committed by participants ensures that even if there is no “chemistry” in the triad, participants meet at least 15 times (as a triad and in the large group) over a year. This constant interaction ensures that the floor of the Mentorship Academy experience is a high one.

For more information about the Mentorship Academy, please see the Chicago Committee website at www.chicagocommittee.org or contact Program Director Gail Kim at gkim@chicagocommittee.org.

The Skadden, Arps Honors Program in Legal Studies at The City College of New York

In spring 2008, as Skadden, Arps, Slate, Meagher & Flom LLP celebrated its 60th anniversary, the firm announced the establishment of the Skadden, Arps Honors Program in Legal Studies at The City College of New York. The Honors Program, to which the firm has pledged approximately \$9 million in funding for 10 years, provides talented students from diverse backgrounds with academic training, LSAT preparation, college tuition assistance, mentoring, and other necessary resources as they aspire to gain admission to, and succeed in, law school and subsequently in the profession. Overseeing the program is a full-time director, who administers all aspects of the program including recruitment, student advising and interfacing with City College faculty and administrators in connection with the program. The Honors Program students, also referred to as Skadden Scholars, are admitted to the program on the basis of written applications which consider academic achievement, life experience and other factors. Shortly after acceptance to the program, participants must successfully complete the Summer Law Institute, which includes LSAT diagnostic exams, introductory coursework on legal reasoning, analysis and writing.

The Honors Program students may major in any subject, but all are required to take Skadden Seminars on constitutional law, taught by the Joseph H. Flom Professor, who is designated solely for the Honors Program students. In addition to LSAT preparation and rigorous coursework in the Skadden Seminars, the connection to Skadden and its attorneys is a prominent and crucial aspect of the program. All Skadden Scholars are eligible for paid legal internships, funded by the program, in the summer before their senior year. Many of the internships are in Skadden offices or with other private sector employers, while others are in the public interest sector. Skadden also has established mentoring circles of partners, counsel, associates and scholars. The goal of the mentoring program is to provide students with access to Skadden lawyers who are responsible for guiding the students on issues that may include law school applications, time management, juggling multiple responsibilities and similar topics. Mentors and mentees are expected to maintain a regular and on-going dialogue throughout the year – and indeed well into each mentee’s law school and professional career. The program is also structured to foster a high level of camaraderie and peer support among the students in each class. Those efforts will be helped substantially by the planned establishment of the Skadden Honors Center on campus in spring 2011. The new center will be outfitted with a lounge, study area, computers, seminar room and other resources so that the scholars have a dedicated space in which to connect with each other during study time, presentations and/or breaks.

Just two years into the program, some of the scholars have demonstrated above-average increases in their LSAT diagnostic scores. Almost all of them report that the program has opened up a world of possibilities that many of them had never considered or had not deemed possible. With eight more years ahead of us, we are optimistic about the impact this program will have on the legal landscape. For more information, please contact:

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New Director of U.S. Senate's Diversity Initiative

In 2007, Senate Majority Leader Harry Reid established the Senate's Diversity Initiative to attract and retain qualified minority candidates for employment within the offices of all Democratic Senators and Committees. Maria Meier joined Majority Leader Reid's staff as Senior Advisor for Human Resources to direct the initiative. Meier's predecessor, Martina Bradford, estimates that the initiative has helped hire more than 200 minority employees in Senate offices since 2007.

Edwards Angell Palmer & Dodge's Women's Business Collaborative

Since 1996, Edwards Angell Palmer & Dodge's Women's Business Collaborative has evolved from a networking group to a revenue-generating department for the firm. Based on 2010 data compiled through September 30, the group counts 133 new clients with a female billing partner and a female originating attorney in its first year of existence as a department, representing an estimated 10-15% increase in business generated by women attorneys in 2010 compared to 2009. Partner and co-chair-woman Susan Keller believes that the department's ability to track hours spent on marketing efforts and client work better enables the firm's women attorneys to obtain appropriate origination credit and assists the group in capturing the results of their efforts.

For more information, see <http://www.eapdlaw.com/ourfirm/wbc/>.

Shearman & Sterling's Sterling Pride Produces Video for "It Gets Better" Project

Sterling Pride, Shearman & Sterling's gay affinity group, recently produced a 5-minute video for the "It Gets Better" Project for gay youth. The video features law firm associates, partners and staff who share their personal experiences and messages of hope for gay youth. Sterling Pride members learned of the "It Gets Better" Project and wanted to contribute the video testimonials in order to share their own struggles for acceptance as children and their later experiences of finding support and acceptance in the gay community. The video project was led by Sterling Pride co-chair and associate Alexandro Padrés and is available at <http://www.youtube.com/watch?v=NlXnYznQ2CE>.

Activist and columnist Dan Savage started the It Gets Better Project in September 2010 as a way for gay adults and their supporters to inspire hope for gay youths after a number of students took their own lives after being bullied at school. Additional information is available at <http://www.itgetsbetter.org/>.

Schiff Hardin's Bridges Program to Spotlight Individual Attorneys and Staff Members

Inclusiveness – ethnic, gender, sexual orientation, geographic – is an ongoing process and challenge for law firms, especially large firms with multiple offices. As one step, Schiff Hardin LLP adopted a very simple and effective approach to enhance the ability of everyone in the firm to know and connect with each other. In 2009 the firm's Diversity Committee rolled out "Bridges" – periodic firm-wide emails that spotlight an attorney or staff member, written in her/his own words, with participation in the program totally voluntary. To date, more than 100 Bridges emails have been circulated, with many others waiting in line. The response has been entirely positive, and the bridges we have built continue to enhance our workplace and our client service.

For more information, contact: Thomas P. White at 312-258-5767 or twhite@schiffhardin.com

Schiff Hardin's Pledge to the Profession Activities

Schiff Hardin has identified a few pipeline programs to encourage lawyers in the firm to participate in the IILP's Pledge to the Profession.

The following criteria was used to select participating pipeline programs: whether the program involves ongoing engagement with students; the extent to which the program has its own momentum; the geographic reach of the program (Chicago-only or national); the times during the year when the programs are active; whether the program would have a broad appeal to potential volunteers, including non-litigation attorneys; the types of students that the program reaches (different age levels and ethnicities); and whether the program is one that people in the firm already are involved in and energized by.

Based on these criteria, Schiff Hardin selected the following programs to support:

- The Just the Beginning Foundation's JTBF in the Schools program
- Chicago-Kent Law School's PreLaw Undergraduate Scholars program (PLUS)
- The Chicago Urban Debate League
- The Lawyers in the Classroom program of the Constitutional Rights
- Foundation Chicago
- The Cook County Bar Association Minority Law Student Job Fair

The firm has a coordinating team for each program, made up of an associate and a partner, who will work on facilitating participation in the program and promoting it. Participating lawyers are able to receive up to 8 hours of revenue hour credit for qualifying participation in these activities. The firm has also identified partners in each of the firm's offices outside of Chicago (New York, Washington, Atlanta, San Francisco) who will be spearheading similar efforts in those offices. Finally, the firm plans to partner with client attorneys in these activities as well.

For more information, contact: Thomas P. White at 312-258-5767 or twhite@schiffhardin.com

Wildman, Harrold, Allen & Dixon's Learning With Cultural Education Lunches

Wildman, Harrold, Allen & Dixon LLP has organized a series of cultural education lunch meetings that showcase the various ethnic communities in Chicago. Three times a year, the firm identifies a particular community to highlight. To date, the firm has examined the history and culture of the Greek, African-American, Mexican-American, Polish, Swedish, Puerto Rican and Italian communities in Chicago. Speakers from that community are invited to discuss when and how the community was formed, the economic, political and social conditions that have shaped the community, and its formative and evolving culture. These speakers have included local historians, cultural leaders, and business people from the chosen community. They are paired with a Wildman Harrold lawyer or staff member who also comes from the community. Building on the outside speakers' comments, the Wildman Harrold representative tells their family's personal history of coming to Chicago and describes important aspects of their family's cultural heritage. Authentic restaurants from the community being studied cater the lunch. Wildman Harrold staff members have created PowerPoint, pictorial and poster board displays with further information about particular communities. Crafts, music, and clothing specific to the community sometimes are displayed.

Lawyers and staff routinely fill our largest conference room to capacity at these events. Costs average around \$10-12 per attendee for food, a small honorarium, decorations and resource materials. The benefits of these lunches vastly outweigh this minimal cost. Over the course of our first seven lunches, we have learned about values and experiences shared across many cultures, as well as where each culture brings unique experiences and contributions to our city. Through these events, members of our firm have learned about each other's backgrounds and come to respect and enjoy the breadth of diversity we experience. Mutual understanding has improved the firm's communication, cohesion and inclusivity. We highly recommend this program to any firm!

For more information, contact:

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Combating Isolation for LGBT Affinity Groups

Over the last few years, more firms have established affinity groups for their lesbian, gay, bisexual and transgender attorneys (and sometimes, staff). In most cases, these groups are relatively small and struggle to develop programming relevant to the whole firm. In an effort to combat the isolation and build the energy of these groups, a meeting was recently held in Chicago to bring leaders of LGBT affinity groups together. Leaders of groups at Hinshaw & Culbertson, Jenner & Block, and Wildman, Harrold, Allen & Dixon LLP organized the meeting.

Thirty-five attorneys from seventeen Chicago-area firms participated in a two-hour roundtable discussion of affinity group formation, programming, goals and obstacles, followed by a reception. About half of the attendees came from firms where an LGBT affinity group already exists. The other half were from firms considering forming such a group. Discussion issues included whether LGBT affinity groups should include only lesbian, gay, bisexual and transgender persons, or should be open to "straight" allies, as well; whether firms count their LGBT personnel and, if so, how they can do so without compelling anyone to self-disclose; whether staff should be included in such a group; why these groups benefit their firms; how to promote cohesion in an LGBT affinity group around particular goals; and a number of resources for these groups. Feedback was positive and further meetings are planned.

For more information, contact:

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Diversity & Hinshaw University

Hinshaw University began in 1934 as a series of weekly mentoring sessions between the firm's founders and its newest recruits. Those early recruits became the firm's next generation of leaders and they invested heavily into what has become a modern, national, tech-savvy educational institution that consists of four colleges: Communication, Dispute Resolution, Practice Management and Professionalism. Together, the colleges currently offer 54 different courses and unique, stand-alone training programs through a curriculum that is constantly updated to meet the evolving needs of Hinshaw's practice groups and clients.

In addition to serving as an academically grounded institution that provides superior training for the firm's lawyers, Hinshaw University has become one of the main laboratories for evolving and strengthening the firm's diversity and inclusion mandate. Hinshaw University's programming is a transmitter of the firm's core values such as diversity, tolerance, mentoring, skill development, and inclusiveness. Hinshaw University utilizes multiple strategies to help diverse attorneys feel welcome and flourish at the firm, enhance their skills, interact productively with mentors, and develop marketing opportunities. We are especially proud that Hinshaw University actively attempts to creatively partner with diverse groups in the community to assist in the development of diverse attorneys.

Showcasing the Firm's Diverse Attorneys

One of the challenges that any attorney faces at a large national firm is securing firmwide recognition of their talents. Instrumental to the diverse lawyer's success is the ability to reach a firmwide audience and demonstrate fluency and expertise, which engenders confidence that results in referrals and cross-marketing opportunities.

A corresponding concern in any firm is that diverse lawyers have role models – someone with whom they can identify and whose success they can emulate.

Recognizing these realities, Hinshaw University produces monthly video broadcasts that allow any of the firm's practice groups to present educational programs to all of the firm's 25 offices. These monthly programs serve as a platform to introduce the firm's diverse attorneys to their colleagues throughout the country. Far more effective than an "email blast" announcing a new member of the firm, the video broadcast gives the diverse lawyer a captive, internal audience to demonstrate the expertise that they can bring to the firm's clients. This type of exposure provides the firm's diverse attorneys with that crucial ability to draw meaningful referrals and cross-marketing opportunities.

Likewise, the video broadcasts, which are also archived for later viewing, provide an opportunity for the firm's younger diverse lawyers to not only learn from more senior diverse lawyers, but to discern the pathways to success within the firm and with clients. This two-way street also helps foster an atmosphere of mentoring.

Development of the Marketing Prospects of Diverse Attorneys

We believe that the breadth and sophistication of Hinshaw University is one of the factors that differentiates Hinshaw from the firm's legal market competitors. Therefore, diverse attorneys within the firm have increasingly utilized Hinshaw University's resources to help position themselves in the firm and in the marketplace. Hinshaw University enables diverse attorneys to:

- Use programming to develop or enhance subject matter expertise;

- Co-present CLE with subject matter experts;
- Create value-added client services and enhance marketing opportunities with existing or potential clients, such as providing on-site CLE programs to in-house counsel;
- Invite in-house counsel to join diverse attorneys at Hinshaw University programming.

Partnerships with Affinity Bar Associations

Since 2008, Hinshaw University has opened its Basic Skills and monthly CLE programs to members of the Black Women Lawyers' Association of Greater Chicago, Inc. This partnership was formed during the recession to ensure that diverse women had access to free CLE and the courses that the Illinois Supreme Court mandates that new lawyers take after passing the bar. While this partnership was formed to address the challenges brought about by the market disruption, because of its success it continues even as the market recovers. Also, Hinshaw University is always open to partnering with other affinity bar associations. The BWLA partnership was one of the reasons that the BWLA awarded Hinshaw's Chief Diversity and Inclusion Officer its "Helping Hands Award" in 2010.

A Diverse Curriculum

Hinshaw University's programming is by no means limited to the law. Part of the mission of the Practice Management College is to encourage work-life balance, diversity and collegiality. Because the firm's lawyers represent generations ranging from Traditionalists and Baby Boomers to Gen X, Gen "Why" and Millennials, we teach everyone what makes each generation "tick" to improve communication and teamwork. The results have been invaluable and, along with a related program titled "Gender Differences in the Workplace," have been directly incorporated into the Hinshaw University Mentoring Training Program, a one-of-a-kind facilitated DVD workshop conducted at every office throughout the country.

A key component of the mentoring workshop is its detailed set of role-play scenarios that incorporate diversity issues. The participants in the workshop (usually 2-3 pairs of mentors and protégés, along with a facilitator) watch the DVD as it presents a communication model for developing, maintaining and concluding (when necessary) a mentoring relationship. Along the way, the facilitator pauses the DVD so that the participants can select a role-play scenario, some of which touch on racial, GLBT or gender-based issues, and then conduct role play using the techniques taught on the DVD. When the role-play portion is done, the participants explore the dynamics revealed by the scenario and how the role-players responded to them.

The Basics

Each fall, Hinshaw University also offers a week-long Basic Skills course for Hinshaw's newest lawyers – those who have less than two years' experience and joined the firm within the preceding year. The goals of this program are threefold: to help new lawyers make the transition from the classroom to the courtroom/boardroom; to engender a feeling of unity and connection among the firm's many offices throughout the country; and to impress upon our newest lawyers that ethics and integrity are paramount.

Programs such as this benefit greatly from a diverse faculty and a diverse audience that can offer diverse viewpoints, particularly on topics such as professionalism, workplace sensitivity and business development. Hinshaw University therefore includes as Basic Skills' faculty the firm's more

senior diverse lawyers so that younger lawyers can both learn from and identify with those who came before them. And, as noted above, for the last several years Hinshaw University has opened its doors to members of affinity bar associations (like the BWLA) who have recently passed the bar examination and are in need of Basic Skills CLE credit. These young diverse lawyers join the incoming Hinshaw class of lawyers for a week of programs at no cost and, through their presence, enrich the diversity of the learning environment.

Hinshaw's week-long program commences with a three-hour improvisational workshop taught by members of Chicago's storied Second City theater group. The exercise breaks the ice and the self-consciousness newcomers may feel, and encourages the participants to let their hair down and bond with one another. From there, the program takes on such nuts-and-bolts topics as pleadings, client communications, billing practices, a deposition workshop, due diligence in transactions, structural differences in deal types, civility, diversity, common sense in the workplace and business development.

The Art of Trial Advocacy

The Trial Advocacy Program consists of three days of intensive workshops where participants are filmed and critiqued on opening statements, witness examinations and closing arguments. Local judges teach topics such as motions in limine, jury selection and preserving points for appeal. The workshops are followed by day-long mock jury trials at which the firm's senior trial lawyers preside as judges and members of the firm's administrative staff sit as jurors.

Like the Basic Skills course, part of the mandate of Hinshaw University is to include a diverse faculty, particularly women and diverse jurists. And, just like the Basic Skills course, the program is offered for free to non-Hinshaw lawyers from the Chicago area's public legal service sector and diverse/affinity bar associations.

For information concerning Hinshaw University's programming schedule and how to register for upcoming classes, please contact Jennifer Chenault at 312-704-3503.

Growing the Community: Farella Braun + Martel LLP's Diversity Pipeline Internship Program

Launched in 2007, Farella Braun + Martel's Diversity Pipeline Internship Program has provided 20 high school students from diverse or disadvantaged backgrounds with a unique opportunity to learn about the legal profession. The hands-on multi-week summer internship program provides the participants with a practical law firm and professional office experience while inspiring them to consider the possibilities of a legal career.

Throughout the program, the interns are mentored by attorneys and staff members, and these relationships continue after the interns return to school in the Fall, particularly during the college application process. The interns experience the job requirements of both substantive areas of law and administrative functions within the firm through first-hand experience assisting various administrative departments and a curriculum developed by our Pipeline Program Subcommittee.

The Diversity Pipeline curriculum is comprised of weekly seminars that focus on three areas:

1. **The practice of law** - using attorney presentations, exercises and group discussion, the interns learn about current and precedent setting case law, the unique differences between practice areas, and the foundation of case building, issue spotting and legal analysis.
2. **The college application process** - in group and one-on-one sessions with the interns and their parents, the program walks through the academic requirements, personal statement and financial aid aspects of applying to higher education.
3. **Interview skills and resume coaching** - from how to dress to writing a thank you note, each intern is coached on the skills that are needed to obtain a job and communicate effectively in a professional environment.

In addition to the weekly presentations, the Pipeline Program holds three marquis events throughout the summer program. A Mock Trial allows the interns to work with their lawyer mentors and as a team to prepare and conduct a trial. Lawyers and current law school and undergraduate students speak on a College Panel to demystify the college experience through sharing personal stories and anecdotes. At a College Night, we invite community groups, private scholarship organizations and universities to walk the interns and their parents through an overview of the requirements for college, financial aid, and scholarships.

Through the Diversity Pipeline Internship Program, high school students develop practical skills and strategies to assist them in pursuing higher education as well as the confidence to consider, and think themselves capable of, going to law school and becoming an active member of the legal community. To date, 100% of our Pipeline interns have gone on to college or are completing high school and preparing for college.

Farella is pleased to offer our Diversity Pipeline Internship Program content to any firm or corporation interested in taking on a pipeline project. Our success will be as a unified force working together. We currently work with several firms in San Francisco as well as the Bar Association of San Francisco and would enjoy sharing our content in its entirety or working together on a joint program. For more information, please contact Jennifer Peneyra, Diversity Manager, at jpeneyra@fbm.com.

Ms. JD Launches a Global Education Fund

Ms. JD, a grassroots organization committed to advancing women in the legal profession, has launched a Global Education Fund to assist women in developing countries to become lawyers. The inaugural recipients of the grant are two Ugandan women who will study law at Makerere University in Kampala. Ms. JD will spend about \$25,000 for five years of undergraduate and law training for recipients Joanne Nanyange and Monica Athieno. According to Ms. JD, only 3% of adult women in Uganda have access to higher education and 45% have never received any schooling.

Ms. JD was founded in 2006 by law students from 12 different schools, and conducts research, offers scholarships and hosts a number of online resources for women in the legal profession.

St. John's School of Law Ronald H. Brown Center Programs

The Ronald H. Brown Center ("Center") at St. John's School of Law has several successful pipeline initiatives designed to increase the number of students of color in law schools and attorneys of color in legal academia and higher education administration. The Center's programs include the following:

- Collaboration with Legal Outreach: The Center collaborates with the non-profit organization, Legal Outreach, to bring legal skills training to approximately 30 rising ninth graders from underrepresented backgrounds in Queens. Legal Outreach is a 5-week program in which two St. John's law students are selected and trained to teach legal concepts to participants. The program also includes daily career talks by St. John's alumni. The program concludes with a mock trial in which students participate as witnesses and advocates before a panel of judges.
- Bronx High School for Law, Government and Justice: One to two times a year, students attending Bronx High School for Law, Government and Justice participate in a day-long program at the law school to meet representatives from the admissions office, tour the law school, and participate in a law school class. In addition, St. John's serves as Institutional Partner to the Bronx High School through the Urban Assembly, a non-profit organization that creates NYC schools with theme-based curricula. St. John's has also provided law students to coach the school's moot court team.
- RHB Research Professor Pipeline: In its fifth year, the RHB Research Professor Pipeline provides an untenured 2-year commitment to groom talented lawyers from underrepresented backgrounds for a career in legal academia. The Research Professor teaches one course each semester, attends faculty meetings and colloquium, and is encouraged to attend conferences and workshops in her area of academic interest. The Research Professor is also encouraged to make a presentation to the faculty and to receive formal and informal mentoring during her residency at the law school.
- RHB Administrative Fellowship: This administrative fellowship pipeline program is designed to increase the diversity of higher education administration. In this role, the fellow's activities may include counseling students in the Center's Prep Program, drafting funding proposals and reports, teaching a class on professionalism to Prep Program students, and reviewing students' personal statements, resumes, and law school applications.

For more information on these and other programs, visit <http://www.stjohns.edu/academics/graduate/law/academics/centers/ronbrown>.

Chicago Welcomes You: Assisting in Refugee Resettlement

The Chicago Welcomes You project aims to provide a welcome set of materials for Burmese (Karen) refugees to help them adjust to their new life in the U.S. The group's materials include educational and informational resources for refugees and those who support them. Specific materials include the following: (1) *First Steps: An Introduction to Life in America*: a bilingual ring-bound set of reference cards to help communicate day-to-day information including topics such as doing laundry, types of mail, and food vocabulary; (2) *First Steps: An Introduction to Life in America*: a 94-page bilingual, illustrated book that provides more detailed information on day-to-day information to supplement the ring-bound reference cards; and (3) *Ah Mu Weaves a Story*: a bilingual narrative for children and adults that tells the story of a young family's adjustment to the U.S. after migrating from a refugee camp in Thailand.

For more information, visit <http://www.chicagowelcomesyou.org/project.html>.

Asian American Bar Association of New York Historic Trial Reenactments

For the last five years, the Asian American Bar Association of New York (AABANY) has organized a series of historic reenactments of leading trials. These reenactments are based upon the actual trial transcript of these historic trials and AABANY faithfully reenacts portions of the actual testimony, argument, and questioning found in those transcripts. AABANY has reenacted the following trials: the Julius and Ethel Rosenberg Trial, the Yasui (Japanese internment) trial, the trial of the killers of Vincent Chin, and the Massie trial (involving the trial of several Asian Americans accused of a killing in Depression-era Hawaii) and the trial of Tokyo Rose. AABANY has generally performed each reenactment at the national and Northeast Regional National Asian Pacific American Bar Association (NAPABA) conferences held each year, in such venues as Las Vegas, Seattle, Boston, Los Angeles, New Brunswick, Philadelphia, and Connecticut. In addition, AABANY has performed a historic reenactment at New York University.

It should be noted that The Honorable Denny Chin of the United States Court of Appeals for the Second Circuit and his wife, Kathy Chin, a partner at Cadwalader, have been the driving force behind these reenactments, devoting countless hours to the preparation of each script and during the rehearsal sessions for each reenactment.

AABANY believes that these reenactments serve the following purposes:

First, they provide a vehicle for analysis of the direct and cross-examination techniques used by the litigants in these historical cases and the extent to which tactics have changed over the years. It is also revealing to examine the rulings of the judges in these historic trials to determine whether these rulings are consistent with current law.

Second, they provide a window into the attitudes prevailing in a particular era of history. For example, the racial attitudes towards Asians in Detroit in the 1980s pervade the Vincent Chin trial and provide the necessary lens through which the testimony and conduct at issue in that trial must be assessed. Similarly, the attitudes towards Japanese Americans in the post-World War II era are reflected in the Yasui and Tokyo Rose transcripts and the reenactment of those trials provide an excellent vehicle for the examination of those attitudes.

Third, it is often said that acting is analogous to an attorney's role and that courtroom presentations are in large part drama. In fact, in recent NAPABA conferences, acting classes were offered – and were oversubscribed. These historic reenactments dovetail with such attempts to infuse lawyering with techniques used by actors.

Fourth, the reenactments have considerable entertainment value for the audiences in question and typically the reenactments have drawn substantial audiences.

Other bar associations and student groups have used the scripts generated from AABANY's reenactments and have put on their own historic reenactments in such places as Philadelphia and San Francisco. AABANY will provide scripts and PowerPoint presentations to assist such groups and will answer questions regarding those materials. In the past, AABANY has even sent actors to provide continuity in those performances.

For more information, contact aabanyed@gmail.com.

Chicago Bar Association Breaking Barriers, Building Bridges Conference

Breaking Barriers, Building Bridges is an annual conference aimed at facilitating working relationships among bar associations and showcasing the depth and breadth of legal talent and expertise among lawyers in minority and other small bar associations for the larger legal community. It was started in 2001 and is spearheaded by the Chicago Bar Association. While other parts of the country may present conferences that are a collaboration of mainstream bars with minority bars, Breaking Barriers is unique in that in addition to bringing together the local minority and women's bar associations, it also engages groups such as the Justinian Society (Italian lawyers), the Bohemian Bar (Czech lawyers), the Nordic Bar, the Decalogue Society (Jewish lawyers), the Advocates Society (Polish lawyers), and a host of other ethnic- or religious-specific bar associations. In this way, this diverse group of organizations becomes familiar with each others' leaders, learns about common issues, and hears from outstanding speakers of whom they might not normally be aware.

In preparation for each conference, representatives from each participating bar association begin a series of monthly lunch meetings hosted by the Chicago Bar Association during which they discuss the most current issues of interest and importance to their memberships. This allows them to identify common issues. The group then begins to develop program ideas that will enable them to explore these issues from a variety of perspectives from among their different groups. They develop plenary programs with broad appeal across the various groups and break-out sessions that provide an in-depth examination of a particular topic.

The conference supports itself through sponsorships from local law firms and individual registrations. The participating bar associations are not expected to provide any funding but they do assist with publicizing the conference. The Chicago Bar Association underwrites the lunch meetings and provides staff support during the organizational planning and the conference itself.

Typically, 200+ lawyers attend the daylong conference. The feedback from evaluations forms is usually glowing as lawyers in Chicago have come to view this conference as a destination event where they will get to attend innovative, thought-provoking programs and hear dynamic, exciting and often unfamiliar speakers not available elsewhere, while also getting to spend time with a diverse cross-section of lawyers they might not normally meet. Through this conference, the Chicago legal community has seen an increase in networking among diverse groups of lawyers and greater engagement of diverse lawyers in its own membership. With thoughtful planning and organization, Breaking Barriers is a program that could be replicated in other parts of the country to equally excellent results.

For more information, contact Beth McMeen at BMcMeen@ChicagoBar.org.

Chicago Bar Association Vanguard Awards

The Vanguard Awards are presented annually by the Chicago Bar Association, the Asian American Bar Association of the Greater Chicago Area, the Cook County Bar Association, the Hispanic Lawyers Association of Illinois, the Lesbian and Gay Bar Association of Chicago, and the Puerto Rican Bar Association to "honor individuals and institutions who have made the law and legal profession more accessible to and reflective of the community." While many bar associations present awards, the Vanguard Awards are different in that they allow lawyers from different diverse communities to meet, learn about, and hear from exceptional and outstanding lawyers and organizations from other diverse communities. Each of the participating bar associations selects a recipient whose accomplishments it feels has been particularly meaningful and had great impact within its community. The awards are presented during a luncheon that has become a highlight for the Chicago legal community. Law

firms, bar associations, and other organizations provide sponsorship and purchase tables or individual tickets so that the luncheon is self-sustaining. The Chicago Bar Association handles all of the logistical details and supports the program with the services of a staff member. The Vanguard Awards provide Chicago's legal community with a focal point that celebrates the accomplishments of diverse lawyers and organizations and fosters greater understanding and collaboration between the city's diverse bar associations. The program has been successful in stimulating greater collaboration and sharing of information and resources among diverse bar leaders as they come to understand commonalities and work toward common goals.

For more information, contact Tamra Drees at the Chicago Bar Association at TDrees@ChicagoBar.org.

Building a Better Legal Profession: Stanford's Grassroots Law Student Movement for Inclusion

Building a Better Legal Profession (BBLP) is a national grassroots law student movement that seeks market-based workplace reforms in large private law firms. By publicizing firms' self-reported data on billable hours, pro bono participation, attrition rates, and demographic diversity, we draw attention to the differences between these employers by ranking and then assigning letter grades to them. We encourage those choosing between firms — students deciding where to work after graduation, corporate clients deciding who to hire, and universities deciding who to allow on campus for interviews — to exercise their market power and engage only with the firms that demonstrate a genuine commitment to these issues. We currently rank large private law firms in eleven geographic regions: Washington, D.C., Manhattan, Chicago, Northern California, Boston, Southern California, Texas, Atlanta, Pacific Northwest, Miami, and Philadelphia. Law students increasingly rely on BBLP's data because we are the only major ranking organization that is truly independent. We are entirely student-run and accept no contributions or financial support from law firms.

BBLP posts law firm rankings by market and firm size along with firm "report cards" on our website at www.betterlegalprofession.org. Large elite firms receive rankings and grades for inclusion of Black, Hispanic, and Asian associates and partners, as well as for openly LGBT associates and partners and for female associates and partners. Each firm receives a "GPA" based on all these rankings as well as an overall ranking that considers all these categories.

BBLP was founded in January 2007 by Stanford Law School students and quickly spread across the country. In winter 2007, the membership of BBLP drafted its first white paper, *Principles for a Renewed Legal Profession*, which laid out the negative effects of increasing billable hour requirements at private law firms. In summer 2007, BBLP began using publicly available data reported by firms and collected by The Association for Legal Career Professionals (NALP) and ranking law firms in several important geographic markets by billable hour requirements, demographic diversity, and pro bono participation. The organization released these reports on October 10, 2007 at a press conference at the National Press Club in Washington, D.C. in order to provide law students with hard data to help them decide where to work after graduation. As more law students began to select firms based on quality-of-life criteria, rather than simply prestige or compensation, the top law firms would face increasing market pressure to reform their workplace culture in order to attract the best recruits. In April 2009, BBLP published its first book, *Building a Better Legal Profession's Guide to Law Firms: The Law Student's Guide to Finding the Perfect Law Firm Job* to assist students in selecting law firms, identifying practice areas, and distinguishing between firms in a meaningful way.

BBLP introduced our newest data in November 2010 with attrition rankings to track how law firms performed during the layoffs, deferrals, and slow legal market. Law firms are ranked by their

attrition rates overall, by gender, or by minority status. As *Above the Law* explains, “This is news you can use... The folks at BBLP have taken a more granular approach to law firm diversity, looking through the lens of associate attrition at top firms. They looked at firm stats from 2009, cross-referenced against stats from 2010, and came up with some very interesting figures on who ‘disappeared.’”

In March 2011, BBLP co-President Kelli Newman visited the law schools at Harvard, Yale, New York University, and Columbia to share the BBLP message and data, and we are currently working on expanding BBLP to chapters at other campuses nationwide. In addition to updating our rankings annually with firms’ new reported figures, our group looks to compile and analyze data on differences between equity and non-equity partners at firms, a topic firms have long tried to avoid. Finally, BBLP Board Member Jamillah Bowman (Stanford JD/PhD in sociology 2012) is currently conducting a national survey of law students to investigate their views on diversity, and the sources of information they utilize in seeking a firm. A pilot survey at Stanford in 2008 showed that students preferred a diverse workplace, that they strongly prioritized work-life balance, but that they regarded law firms as nontransparent on these issues.

For more information on BBLP, visit www.betterlegalprofession.org.

California Minority Counsel Program

The California Minority Counsel Program (CMCP) is a California 501(c)(6) non-profit mutual benefit corporation. Its mission is to

promote diversity in the legal profession by providing access and opportunity for business and professional development to attorneys of color.

CMCP’s impact is to level the playing field for attorneys of color by providing access to decision-makers for business and professional development. Through the various programs described below, CMCP member attorneys develop relationships that further their careers and lead to new business. CMCP measures results from some programs like *Corporate Connections* (described below) through surveying participants, and also by talking with members on a continual basis to get their input into what works and what doesn’t and their personal success stories.

CMCP’s members are corporate and public agency law departments, minority-owned law firms, majority-owned law firms (both national and small local firms). The benefits of CMCP membership are enjoyed by every attorney working for an organization that is a member. We also have individual attorney members committed to CMCP’s mission who join separately when their organization is not yet a member; often the individual attorneys’ success through CMCP results in their organization joining. CMCP’s current membership is approximately 180 organizations; that number is steadily increasing. Although CMCP is focused on California, many member law firms and corporations are national, with headquarters elsewhere, but locations and/or substantial business in California.

CMCP’s programs run year-long in our primary California markets (San Francisco Bay Area, Greater Los Angeles, Orange County and San Diego). They are structured to provide a myriad of ways of for minority attorneys to take advantage of opportunities to showcase their skills, such as:

- Networking events, including events with decision-making members of the business community
- CMCP-produced panels and programs where minority attorneys have an opportunity to speak about their areas of expertise

- Referrals of minority attorneys to other organizations and business groups seeking panels or individual attorney legal programs
- Our e-Newsletter in which CMCP publishes substantive legal articles written by members
- CMCP volunteer subcommittees that showcase member talents and provide member volunteers a way to expand their networks
- CMCP's Annual Business Conference, the cornerstones of which are *Corporate Connections* speed-dating between outside counsel and corporate/public agency attorneys (a program CMCP initiated which is now being emulated by others), and our *General Counsel Panel*, always an open and honest discussion by nationally-known General Counsel on the challenges and progress in diversifying the legal profession.

CMCP has a staff of 4 – an Executive Director, a Program Director, a Communications and Systems Director, and an Office Manager/Accounting Director. Everyone on CMCP staff is responsible for promoting CMCP, maintaining relationships with existing members, cultivating new members, and working with member volunteers. To the greatest extent possible, CMCP uses member attorney volunteers to produce program, newsletter content, recruit new members, develop relationships and do any other activities that provide opportunity to those attorneys to meet and/or directly show their talents to decision-makers. Volunteering with CMCP is a key to opportunity.

CMCP has an annual operating budget of approximately \$650,000. This pays for all staff, infrastructure and programming. CMCP is funded solely through membership dues and program sponsorships.

CMCP emerged in 1989 in response to the disparity between the percentage of minorities in the state's population and legal profession. For 22 years, through independent programs and initiatives and partnerships with like-minded organizations, CMCP has pro-actively assisted corporations, law firms and public agencies in meeting their commitments to increased diversity, and provided direct opportunities for minority attorneys to attain access to business decision-makers and demonstrate their abilities. CMCP has been recognized for its leadership and effectiveness by publications such as *The Recorder*, *The Daily Journal* and *Diversity & The Bar*, and by industry leaders such as the California State Bar (as its first non-profit Diversity Award Recipient) and the Minority Corporate Counsel Association (MCCA).

For more information about CMCP, our programs and membership benefits, please visit www.cmcp.org

CLI Publishes a Comprehensive Manual for Creating Inclusive Workplaces

The Center for Legal Inclusiveness (CLI), a nonprofit created by leaders in the Denver legal community in 2007, has published a comprehensive inclusiveness manual for the legal profession. The manual, titled *Beyond Diversity: Inclusiveness in the Legal Profession*, is a step-by-step protocol for creating inclusive workplaces. CLI's step-by-step process requires legal organizations to re-examine all aspects of their internal fabric, including procedures, policies, physical environment, compensation, work-assignment systems, professional development, marketing, promotions, budgeting, as well as diversity programs involving recruiting and mentoring.

CLI's manual has been tested and guided by CLI's Inclusiveness Network (a group of seven law firms, two corporate law departments, and two government law offices in Denver) that has been implementing the manual's processes since 2008. Members of CLI's Inclusiveness Network

are making fundamental structural and cultural changes in their organizations by successfully embedding diversity and inclusiveness practices. The original Inclusiveness Network has been so successful that a new group of legal organizations will begin implementing the steps of the manual in January 2011. This group will be comprised of Walmart's Legal Department, Colorado's law schools and several national and regional law firms.

The fourth edition of the manual will be published at CLI's annual conference, the Legal Inclusiveness & Diversity Summit on March 14-15, 2011. Additional information about the Summit can be found at www.centerforlegalinclusiveness.org. The inclusiveness manual and other diversity resources can be found at CLI's website, www.legalinclusiveness.org. ■



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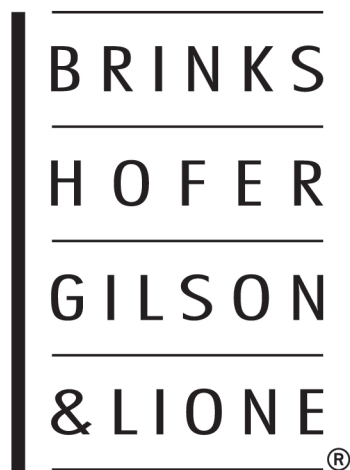
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