



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

# THE NEXT STEPS



## REPORT AND RECOMMENDATIONS

Race and Ethnicity  
Gender  
Sexual Orientation  
Disabilities

*ABA Presidential Initiative  
Commission on Diversity*

*April 2010*

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*Report Editor: Cie Armstead*

*Report Designer: Elmarie Calungaguin*

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# SUMMARY REPORT AND RECOMMENDATIONS

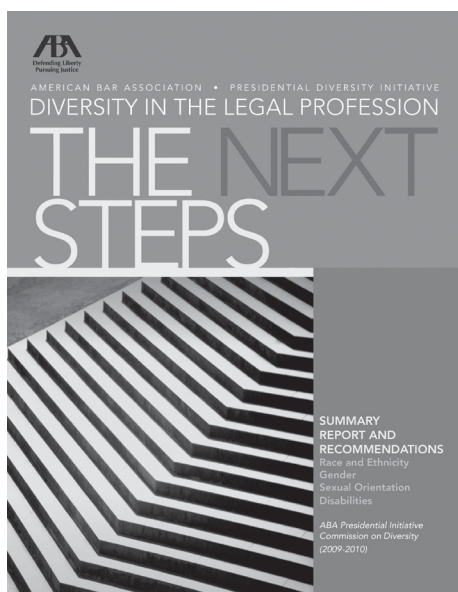
FROM 2009 ABA STUDY OF THE STATE OF DIVERSITY IN THE LEGAL PROFESSION, EXAMINING

Race and Ethnicity ■ Gender ■ Sexual Orientation ■ Disabilities



## FOCUSING ON

Law Schools ■ Law Firms/Corporate Law Departments  
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**Chair:** Honorable Ellen F. Rosenblum

#### Commission Members

Ramon A. Abadin  
Joan M. Durocher  
Kimberly A. Greeley  
Marcia D. Greenberger  
Mark Johnson  
Kim M. Keenan  
Nimesh M. Patel  
Honorable Peggy A. Quince  
Ramona E. Romero  
Evet L. Simmons  
Jo Weiss

#### Report Authors

Tucker B. Culbertson  
Marc-Tizoc González  
Margaret Montoya

#### ABA Staff

Cie Armstead  
Katy Englehart

#### Board of Governors Liaison

Honorable Leslie Miller

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#### Report & Recommendations

##### *Legal Scholar Team*

Professor Margaret Montoya  
 Professor Tucker Bolt Culbertson  
 Marc-Tizoc González

#### Report & Recommendations

##### *Practitioner Working Group*

Raoul G. Cantero III  
 Vicky DiProva  
 Loren Gesinsky  
 Stacy L. Hawkins  
 Supria B. Kuppuswamy  
 Kelly McNeil Legier  
 Meredith Moore  
 Mary B. Richardson-Lowry  
 Miguel R. Rivera, Sr.  
 Judy Toyer  
 Simone Wu

#### Report & Recommendations

##### *“Emerging Issues” Comment Group*

Matthew L.M. Fletcher  
 Jennifer D. Franklin  
 Jason Goitia  
 William H. Grignon  
 Stephanie A. Marella  
 Kathryn K. Mlsna  
 Joseph L. Smith, Jr.  
 Mary L. Smith  
 J. Anthony Vittal

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

**Carolyn B. Lamm**  
President

**AMERICAN BAR ASSOCIATION**

321 North Clark Street  
Chicago, IL 60654-7598  
(312) 988-5109  
Fax: (312) 988-5100  
E-mail: [abapresident@abanet.org](mailto:abapresident@abanet.org)

Dear Colleagues:

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

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

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

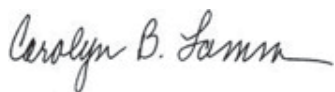
ABA leadership is fully committed to this process. I hope you share that commitment because much more needs to be done to make the legal profession fully reflect the communities we serve.

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

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

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

Sincerely,



Carolyn B. Lamm



Dear Colleagues:

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

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

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

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

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

Sincerely,



Ellen F. Rosenblum

Chair, Presidential Commission on Diversity

In 2009, the American Bar Association set out to assess the state of diversity in the legal profession. This nationwide endeavor quickly revealed that we have made some progress, but the lack of genuine diversity remains a disappointment. As America races toward a future where minorities will be the majority and more marginalized groups make their voices heard, the legal profession's next steps towards advancing diversity must produce more viable, sustained outcomes. Despite our efforts thus far, racial and ethnic groups, sexual and gender minorities, and lawyers with disabilities continue to be vastly underrepresented in the legal profession.

This Report devotes its pages to specific recommendations for next steps to increase diversity in the different sectors of the profession, namely law firms and corporations, the judiciary and government, law schools and the academy, and bar associations. The multifaceted process that produced this Report resembled a national town hall where we listened to many voices from many different localities. It is the product of numerous surveys, hearings, summits, and workshops the ABA held throughout the country over the last year.

The overarching message is that a diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes. To provide a conceptual and normative context, the Report begins by articulating four rationales for creating greater diversity within the 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.

**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.

**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* 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.

The next section of the Report offers an overview of *trends* gleaned from the regional hearings and online survey. It also echoes the candid comments on *disappointments* in past diversity efforts. The hearings and survey responses, however, revealed *new directions* that may suggest an encouraging future for many diversity efforts.

The Report's *Recommendations* for next steps reflect and incorporate the multiple experiences, false starts, insights, frustrations and new beginnings that represent the various ways that diversity works within the different sectors of the legal profession. We have included Recommendations that are already being used as well as some that are ambitious and aspirational. Within each of the four sectors of the profession, the recommendations are broadly categorized, but not prioritized. We recognize that every individual or organization will have its own priorities based on its unique circumstances. We do encourage the Report's users to select and prioritize recommendations for next steps that they can implement in their own environments.

Following the Recommendations, the Report features a set of *Emerging Issues*. The Legal Scholar Team and the Practitioner Working Group collaboratively identified these topics from the myriad issues raised during the information gathering process. These ten issues provide short descriptions of new developments that will affect how the legal profession responds to the challenges posed by understandable demands for inclusion, complex personal and group identities, and a society under stress from increasing inequalities and international competition. Mirroring this project's multi-voice process, this section includes feedback on the Emerging Issues from a Special Comment Group.

Although it is impossible to capture all of the moving and provocative testimonials and comments we received, we have sprinkled quotations from some of these voices throughout the Report. The fruit of the conversations held can also be found in the *sample program boxes* and *substantive sidebars*.

In the *Diversity Dialogue* section we have included questions and observations that will hopefully prompt reflection, debate, and, ultimately, progress. To facilitate the resulting actions, progress, and next steps, the Report concludes with a *Research & Resources* section. The items included represent a sampling of the vast amount of information available on diversity in the legal profession. An ever-expanding, more comprehensive listing is available on the project's website [<http://new.abanet.org/centers/diversity/Pages/presidentialdiversityinitiative.aspx>].

This Report is not prescriptive and is not a "to-do" checklist for the profession. Instead, the Report is intended to be used as a tool to challenge assumptions, provoke curiosity, generate conversations, enable dissenting voices, and encourage new partnerships and coalitions. Use the Recommendations to strategically move diversity a step forward from wherever you stand in the profession. We cannot permit the state of diversity in the profession to regress. Now is the time to take the next steps to accelerate the pace of change and create a consistent climate of inclusion in the legal profession, the justice system, and society overall.



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

## GATHERING THE INFORMATION

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

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

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

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

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

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

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

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

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

## USING THE INFORMATION

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

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

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

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

## TAKING THE NEXT STEPS

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

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

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

Inform us of existing programs and initiatives that address any of these recommendations. Contact the ABA Diversity Center (312.988.5667 or [diversity@staff.abanet.org](mailto:diversity@staff.abanet.org)) so we can tell others about these programs and encourage replication of the successful ones.

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

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

### ***The Democracy Rationale***

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

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

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

### ***The Business Rationale***

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

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

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

## The Leadership Rationale

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

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

## The Demographic Rationale

The U.S. population is getting older and more diverse.

An aging population:

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

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

A more ethnically and racially diverse population:

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

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

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

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

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

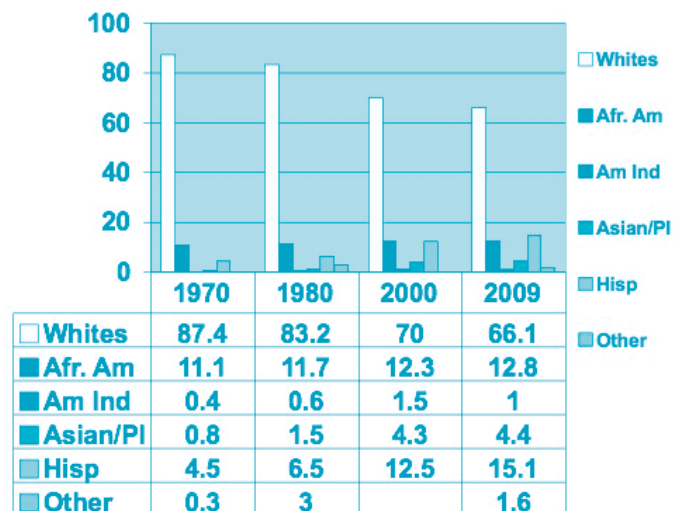
40.6 million: Projected number of Asian residents of the U.S. in 2050

## Rationales: Cross-Disciplinary Insights

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

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

Racial/Ethnic Census Data, United States



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



# TRENDS, DISAPPOINTMENTS AND NEW DIRECTIONS

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## AN OVERVIEW FROM ABA 2009 DIVERSITY REGIONAL HEARINGS AND SURVEYS

In examining the state of diversity in the legal profession, we have asked, listened to, probed, and embraced what hundreds of people have told us. Those voices—representing diverse experiences working to create a more inclusive profession—often expressed common themes. From the numerous meetings, conference calls, panel presentations, round table discussions, and personal or phone conversations, trends began to emerge. Shared disappointments in past diversity efforts and outcomes surfaced, as well. Encouragingly, the findings also reveal some paths that are charting new directions for the profession's diversity journey.

### A. TRENDS

1. While law firms have increasingly come to recognize that diverse corporate clients and international markets often require lawyer diversity, *the recession is drying up monies for diversity initiatives and creating downsizing and cutbacks* that may disproportionately and negatively affect lawyer diversity—thereby undoing the gains of past decades.
2. Similarly, the increasing cost of legal education makes attending law school and the *debt burden* exceedingly difficult for poor and working class people. Because income and wealth converge disproportionately with race, ethnicity, gender, sexuality, and disability, the cost of legal education in our current economy must be a central site for advocacy in the interest of a diverse legal profession.
3. Nevertheless, legal institutions tend to acknowledge *the need for comprehensive diversity strategies*.
  - a. Some bar associations have incorporated diversity goals in their strategic plans or are reviewing past diversity efforts in order to recommit themselves to diversify the profession.
  - b. Some firms incorporate diversity goals into their annual employee evaluations and prepare regular accountability reports with empirically substantiated data on lawyer diversity. Other firms have hired full time diversity professionals as part of the management team with budgets and oversight of key functions.



**“Without a thoughtful integration plan, efforts to retain diverse lateral hires often fail. Our efforts have not resulted in broadly satisfactory representation at all levels.”**

*Survey Respondent from large firm*

- c. Law schools in collaboration with the LSAC are becoming more adept at using the LSAT as one part of admissions programs that recruit, evaluate and enroll a diverse applicant pool. Some law schools have established diversity-oriented centers or offices to focus resources on increasing the enrollment of diverse students and to engage in outreach to students earlier in the educational pipeline.
4. ***Consensus on the need for the legal profession to help dramatically improve the P-20 (pre-school through advanced degree) pipeline appears to exist. Students, lawyers, judges, and clients are increasingly*** involved in pipeline activities, which emphasize law and civic engagement, aim to keep diverse students in school, facilitate the involvement of students’ families, and help all students improve their academic performance to pursue higher education.
5. Effective models exist for ***meaningful mentoring and leadership training*** to enhance the skills of diverse attorneys. ***Robust models of diversity training*** have also been developed on bias (which is often implicit), discrimination (which is often unconscious), and attitudinal and cultural opposition to diversity.
6. Relatively well-established diversity bar associations have now accumulated enough resources to institutionalize their programmatic work. Conversely, relatively newer diversity organizations operate on shoestring budgets, over-rely on individual charismatic volunteer leaders, or find it difficult to access collaborations with majority bar associations. Similarly, small local bar associations, especially those in rural locales, tend to lack the resources to engage diversity initiatives beyond the efforts of exceptional individuals.

## B. DISAPPOINTMENTS

1. Despite decades of reports, task forces, and goals, ***in 2000 the legal profession remained about 90% Caucasian***, with the national population at that time being about 70% Caucasian. Demographic projections for the legal profession for 2010 are not suggesting that much progress has been achieved.
2. The legal profession is less racially diverse than most other professions, and racial diversity has slowed considerably since 1995.

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

multidimensionality and locality of identities. Moreover, quantitative measures alone are insufficient if they are not coupled with qualitative data drawn from direct communication with applicants, employees, and clients.

### C. NEW DIRECTIONS

1. Understanding diversity work as ongoing and evolving rather than static allows for a different approach to programming, which may circumvent **diversity fatigue**. Even as some forms of exclusion are ameliorated, others will persist, and new forms will emerge. If we understand equal access and inclusion as tasks uniquely charged to the legal profession throughout U.S. culture and history, diversity work is less likely to be viewed as incriminating and hostile, and more likely to be viewed as a core function of the profession itself.
  - a. Moreover, the legal profession increasingly recognizes that:
    - (1) ***diversity encompasses identities beyond race and gender***, and
    - (2) race and gender cannot be addressed adequately under rubrics of “white/non-white” and “male/female.”
  - b. Recognizing a more expansive and sophisticated conception of diversity may also incite greater suspicion and fatigue among those who are either opposed to or not sold on prioritizing diversity within the legal profession. We must develop and deploy a persuasive and accessible theoretical framework, which identifies the logical and historical connections among irreducibly distinct forms of identity discrimination.
2. ***Different types of law firms need different types of diversity programs and policies.*** Large law firms and corporate general counsel offices have different opportunities and challenges than small firms and solo practitioners. Minority-owned firms, as well as women-, LGBT-, and disabled attorney-owned firms also face unique opportunities and challenges in advancing diversity.
3. State bars and bar associations are beginning to ***realize the need for a paradigm shift along the educational pipeline***. Diversity programs that “take the long view,” such as law-oriented pipeline programs focused on high school, college, or even middle school are following other professions with robust pipeline programs, such as math and science curricula developed by engineering schools.
4. Training programs for prospective judges beginning five and ten years prior to their actual pursuit of a judgeship exist and should be supported.

5. Indeed, diversity programs that create partnerships among legal professionals, their business clients, foundations, community organizations, and schools generate mutual support and productive pressure among partners in the interest of diversity.
6. Some researchers—such as Professor Marjorie Shultz and her collaborators at UC Berkeley—are in the process of developing new ways of *evaluating law school applicants by identifying the wide range of skills and capacities needed to be an effective lawyer*.
7. Similarly, some law schools' diversity efforts include tried and tested *conditional admissions programs* that provide opportunities to students whose LSAT scores would normally prevent their admission; those students' academic success have defied their predicted grades.
8. Some law schools are developing alliances with other professional schools and adapting their diversity programs. *Cultural competence education* in medical schools is a notable example.
9. Some law schools and bar associations offer insights about *the different meanings and possibilities of diversity contingent on regional differences and differences between metropolitan areas and rural communities or small cities*.
10. Some law offices and judges have developed diversity initiative advisory committees. Some elder lawyers suggest the legal profession needs President Obama to call on lawyers to diversify and commit to pro bono activities as President Clinton did in 1999.
11. Such partners have recognized that *retaining diverse lawyers means actually changing the way of doing business*, which could improve the workplace environment for all attorneys, but is feared to be less profitable.

**“The challenge we face is debunking the notions that being disabled means being unable, and that accommodations of disability are either dangerous or apt to encourage fraud and freeloading.”**

*Testimony from Boston Regional Hearing*

“Future diversity efforts in the profession should go beyond superficial markers. Gender and racial diversity are extremely important, but it is most important to recognize that the presence of those voices is what leads us to be better lawyers and a better profession.”

Survey Respondent, Pres. of state affinity bar

12. Indeed, some law firms have begun to tie employees' compensation to their demonstrated commitment to diversity in recruiting, mentoring, and work assignments.
13. Majority and minority bar associations are realizing the need to collaborate in ways that do not undercut the membership of either bar association while recognizing their different access to resources.
14. Legal professionals can benefit from implementing and supporting the practices of many businesses and corporations, whose commitments to diversity have been more energetic and effective.
15. It is productive to forge and foreground alliances among different affinity groups within the profession, whose needs and interests are distinct but convergent. For example, *primary caregivers (who are most often women) and lawyers with certain disabilities share an interest in flexible scheduling, telecommuting, and sabbaticals.* Similarly, economically disadvantaged people and primary caregivers share an interest in law schools that provide part-time and evening class options.
16. Web-based databanks and social networking sites could become an invaluable asset for diversity work across the country, allowing individuals and organizations to share effective models, strategies, and structures. Similarly, *not only “best practices” but also “preferred partners” could be publicized, thereby spreading “the best of the best” work on diversity informed by visitors’ unique professional, geographical, cultural, and demographical identities.*
17. Can, or should, the bar exam evaluate the skills necessary to deliver services in diverse legal environments?
18. How should hiring officials or committees consider diversity activities shown on resumes or reported through the media?
19. Should the legal profession's unique role in advancing democracy and promoting equality become a central component of professional responsibility curricula in law schools?





# RECOMMENDATIONS FOR LAW SCHOOLS AND THE ACADEMY

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## RECOMMENDATIONS\* FOR NEXT STEPS TO ADVANCE DIVERSITY IN LAW SCHOOLS AND THE LEGAL ACADEMY

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

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

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

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proficient and able to communicate easily with people from many different backgrounds and life experiences.

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

## RECOMMENDATIONS

### A. Culture: Building Consensus/Creating Accountability

1. Encourage law schools to make commitment to diversity an integral part of their mission and educational philosophy; explore ways law schools can be held accountable for their diversity efforts.
2. Disseminate different rationales for diversity: such as, the democracy argument, the business case, a demographics rationale, and Justice O'Connor's leadership analysis.
3. Follow the lead of the medical profession, which analyzed racial and ethnic health disparities based on a Congressional mandate with funding, and analyze the justice disparities caused by a legal profession that is not diverse.
4. Create greater respect for dissenting voices and cultural and stylistic differences so that diverse faculty, students, and attorneys do not feel the need to assimilate, thereby diluting the benefits of diversity.
5. Commit to diversity beyond simply adopting a diversity statement. Law school leaders (*i.e.*, dean, faculty) must take a visible role in diversity efforts and be in attendance at diversity events.
6. Define diversity beyond racial, ethnic, and gender diversity. Educate law schools that mental and physical disability is a crucial component of diversity within law schools and the legal profession, and reasonable accommodations, in many instances, are not cost prohibitive.
7. Require law schools to teach diversity courses in a problem-solving format, comparable to how ethics is taught.

8. Disseminate information on creating inclusive learning and work environments, for example, by using materials on privilege and unconscious bias.
9. Follow the law firm and general counsel “Call to Action” model to develop an effective means of holding law schools more accountable for diversity results.
10. Give a clear message to law schools about the importance of diversity in the classroom, emphasizing that it is NOT a ‘sidebar’ issue, but a crucial part of what lawyers should be learning.
11. Require training for students dealing with diversity in the legal context as well as for older faculty, lawyers, and judges who may have less exposure to diverse professionals.
12. Use the term “diverse” rather than “minority,” as the latter is not as inclusive and may have a more negative connotation than the former.
13. Assist law schools in understanding what they can do to promote diversity through the ABA, such as working with the Section on Legal Education and Admissions to the Bar.

## **B. Planning**

1. Plan, design, and create comprehensive diversity strategies for legal institutions, including law schools, that differ in cultural and institutional norms, populations, goals, etc. (i.e., a “one size fits all strategy” will be ineffective).
2. Educate law school applicants about planning for the financial aspects of a legal education, including the risks associated with mortgaging their futures (i.e., acquiring excessive student loans) and that they are not guaranteed to secure employment with a \$150,000 a year salary.
3. Work with expert consultants to plan, design, and implement diversity education programs that can be used for pipeline outreach efforts by the bench and bar.

**“Our institution has moved from a student focused basis of diversity to a holistic approach that expands the role of the Office of Multicultural Affairs to partner with all departments and community constituencies. This expansion is a continuous process that is constantly evolving and changing.”**

*Survey Respondent, Assoc Dean of Multicultural Affairs at Midwestern law school*

### Pre-Law Summer Institute

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

The PLSI, which has operated for more than 40 years, estimates that over one thousand students have passed through the program. That includes about a quarter of all Indian lawyers currently practicing. One of PLSI's origins traces back to a federal survey of Indian lawyers in the mid-1960s that found only about two dozen lawyers who were American Indians in the whole nation.

The success of PLSI in providing a nationally respected pre-law orientation can be traced to its original and continuing intent — that it be based on sound legal education principles; it does not function as a philosophical, political, or cultural training ground. The program's accomplishments have served as a model for numerous other programs, such as the LSAC PLUS programs.

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

### C. Accountability

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

### D. Diverse Faculty: Hiring and Retention

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

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

### ***E. Educational Practices: Admissions, Law School Debt***

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



**“Individual components done in a vacuum tend not to be effective. Programs need to span the entire educational cycle, including student and faculty recruitment, student affairs, academic support, and career services.”**

*Survey Respondent, Assoc Dean of Enrollment at Midwestern law school*

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

#### **F. Data Collection, Law School Rankings**

1. Identify the data that already exists (e.g., LSAC data); coordinate the databases (NALP, NCBE, ABA); and identify the portals/sources that need to be connected.
2. De-emphasize national *U.S. News and World Report* rankings because of the adverse impact upon applicants of color.
3. Educate the public regarding the *U.S. News and World Report* rankings: what they mean and do not mean.
4. Educate employers (law firms, judges) on the deleterious effect of using rankings or LSAT scores to identify potential interviewees; explore ways to hold them accountable for misuse of such data.
5. Explore the use of a supplement to the LSAT, like the test of “lawyer effectiveness” being developed at UC-Berkeley by Prof. Margery Schultz and her collaborators.

## G. Pipeline Practices

1. Promote broader use of pipeline diversity databases (e.g., ABA/LSAC Pipeline Diversity Directory), listing the different programs and the contact person; encourage development of tool kits, best practices, and funding opportunities.
2. Establish a blog, video conferencing, electronic bulletin board, or other virtual resource for people to post concerns, issues, solutions, and success stories regarding diversity and pipeline programs.
3. Develop pre-law school boot camps, like the HBCUs.
4. Create a long-term mentoring program that links a diverse professional to every child who says he or she wants to be a lawyer or judge.
5. Add programs such as Street Law to law school curricula to promote pipeline outreach.
6. Connect the effects of low educational attainment (high dropout rates and low graduation rates) on professional education; gain support from the legal profession for public school educational reform.
7. Connect law students and law schools with practitioners on pipeline initiatives in underrepresented communities in the early secondary school stages.
8. Urge law schools, law firms, and all individuals in the profession to donate and direct financial and other resources to expand civic education and service learning.

### Diversifying the Legal Profession: 40+ Years

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

SAMPLE PROGRAM

## H. Career Enhancement

1. Forge strong ties between affinity bar associations and law schools in order to create opportunities for diverse students. Incentivize attorney members of the bar to participate in law school activities for diverse students, such as mentoring programs.

## SUBSTANTIVE SIDEBAR

### A Disturbing Trend in Law School Admissions

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

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



# **RECOMMENDATIONS FOR LAW FIRMS AND CORPORATE LAW DEPARTMENTS**

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## **RECOMMENDATIONS\* FOR NEXT STEPS TO ADVANCE DIVERSITY IN LAW FIRMS AND CORPORATE LAW DEPARTMENTS**

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

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

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

The current economic downturn has made it exceedingly difficult for private practitioners to support their clients, employees, and programs. As such, this call to invigorate and expand diversity programming may seem to present a profound financial challenge. Many of the recommendations herein, however, involve altering and addressing existing practices and cultures in the workplace, and may not necessitate significant financial commitments. Nonetheless, financial commitment

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## SAMPLE PROGRAMS

### Colorado Campaign for Inclusive Excellence

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

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

For more information, see [www.colegaldiversity.org](http://www.colegaldiversity.org).

is crucial for diversity work, despite—and because of—this economic downturn. These pecuniary considerations underlie several of the recommendations, such as: the assignment of deferred or furloughed associates to diversity programming; and the cultivation of alliances with bar associations, non-profit organizations, and schools that have existing pipeline diversity programs in need of financial support to stay afloat.

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

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

## RECOMMENDATIONS

### A. Planning

1. For existing firm/law department diversity programs:
  - a. Re-examine prior diversity goals and programs.
  - b. Gather new quantitative and qualitative data on numerical representation and work culture.
  - c. Update goals and programs in light of this data, the organization's specific challenges and resources, and this report's general recommendations on “rethinking diversity.”
  - d. Draft, publicize, and implement an updated diversity and inclusion action plan, which includes measureable goals



and mechanisms for regular assessment and meaningful accountability.

2. Tie compensation to advancement of diversity goals.
3. Using recent reports and research, develop persuasive arguments to present the tangible benefits of diversity to decision-makers (e.g., assignment partners, practice group leaders).
4. Retain diversity experts as consultants or professional staff to achieve and maintain diversity and inclusion goals and accountability.
5. Formalize a succession plan for diversity at all levels of the organization.
6. Develop and disseminate rebuttals to inaccurate assertions that commitments to diversity amount to impermissible reverse discrimination. Emphasize that holistic, multidimensional diversity programming differs profoundly from—and thus avoids the alleged harms of—policies aimed at superficial, one-dimensional demographic representation.

## **B. Culture**

1. Sponsor regular trainings on multiple dimensions of diversity and inclusion—especially for leaders charged with ensuring accountability within the organization.
2. Ensure that diversity programming investigates and addresses work cultures that inhibit inclusion and retention (e.g., those which involve implicit bias, unconscious discrimination, micro-aggressions, micro-inequities, or covert opposition to diversity and inclusion).
3. Create affinity groups—internal to the organization or in collaboration with other organizations and bar associations—for employees from underrepresented groups.
4. Encourage alliances among affinity groups to address common issues.

**“Hiring a full-time professional to spearhead the firm’s diversity efforts was the most effective tool the firm has used to advance its initiatives. Making sure the person has the tools necessary to do her job was equally important.”**

*Survey Respondent, Diversity & Inclusion Director at mid-sized law firm*

5. Host or participate in town halls, retreats, and other events for attorneys from underrepresented groups.
6. Coordinate and prioritize diversity programming with assignment, business development, and client relationship management systems.
7. Examine and, where necessary, alter all policies to ensure they are inclusive of LGBT and other employees (e.g., single parents and those caring for relatives other than spouses and children) whose families and obligations differ from those of “nuclear” heterosexual families (e.g., domestic partner benefits, adoption leave, etc.).
8. Explore viable ways to engage heterosexual, white men as vocal and visible champions of diversity efforts.
9. Meaningfully address work/life balance by exploring how to expand part-time and work-at-home arrangements.
10. Address legacy systems that function as glass ceilings for billing credits for attorneys from underrepresented groups.
11. Diversify client relationship leadership.

### ***C. Assessment and Accountability***

1. Develop and standardize surveys or other devices that can particularly help smaller law departments and law firms assess the success of diversity programming.
2. Regularly assess the state of diversity in the work environment, such as through biennial employee surveys, interviews, and focus groups that address not only numerical representation, but also cultural receptivity to difference.
3. Build self-assessment mechanisms into all diversity and professional development programs, featuring both qualitative and quantitative measures of success.
4. Develop a diversity committee structure with an institution-wide oversight group.
5. Develop office and departmental diversity committees for local implementation and information gathering.
6. Provide senior leadership support by having the Diversity Committee Chair report directly to Firm Chairman, Managing Partner, or other comparable level position. Assign each affinity group a management committee sponsor of a different demographic group.
7. Regularly provide diversity metrics to management committee, office heads, and practice groups.

8. Implement confidential, anonymous “exit interviews” to determine the causes of—and develop programs to prevent—attrition by attorneys from underrepresented groups.
9. Tie compensation to achievement of diversity goals.
10. Make diversity contributions and services by associates and partners compensable (e.g., through revenue generating or billable hours mechanisms).
11. Incorporate diversity into preferred provider criteria and electronic billing systems.
12. Hold provider law firms accountable for their diversity efforts, as Microsoft and Walmart have done.
13. Establish and regularly revise processes for analyzing data on diversity programming relevant to recruiting, retention, assignments, and promotion.

#### **D. Hiring, Retention, and Advancement**

1. Develop interviewing and hiring models that enable assessment of talent beyond the highest levels of the diverse applicant pool.
2. Create programs where attorneys from underrepresented groups receive access to high-profile client assignments.
3. Implement secondment programs or rotational assignment programs that allow attorneys from underrepresented groups to work directly with or at the client for development of substantive relationship-building, rainmaking, and other skills.
4. Provide business development training targeted to income partners from underrepresented groups.
5. Review the attorney evaluation process to ensure that it is free of implicit bias.
6. Focus on mentoring across differences and provide skill building and accountability mechanisms to foster an energetic mentoring culture.
7. Retain diversity experts to facilitate discussions between management and employees from underrepresented groups.

#### **SUBSTANTIVE SIDEBAR**

##### **Improving Attrition**

“In 2006, after doing a study on attorney attrition, we determined we needed to look deeper at why we were losing greater numbers of our Asian [-Pacific American (APA)] attorneys. A subcommittee organized a forum for our APA lawyers to be in one location, provide an outside subject matter expert/facilitator on APA lawyer issues, and invite firm management to participate. As a result, attrition of our APA lawyers has significantly decreased, far greater than our expectations.”

*Survey response from large law firm with offices in four major U.S. cities*

8. Partner with law schools to create and implement “third-year residencies” for law students to increase the likelihood of success and retention.

“When clients and other attorneys realize that high quality legal work can be done at a mid-sized minority owned firm, the recruitment of high quality diverse lawyers takes on its own inertia.”

*Regional Hearing Testimony, Partner at minority-owned firm*

### **E. Outreach**

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



# RECOMMENDATIONS FOR JUDICIARY AND GOVERNMENT

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## RECOMMENDATIONS\* FOR NEXT STEPS TO ADVANCE DIVERSITY IN THE JUDICIARY AND GOVERNMENT

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

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

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

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

Externally, members of the judiciary and government should partner with bar associations, community organizations, and schools at all levels to discuss and

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advance diversity and inclusion within their fields. Members of the judiciary and government must communicate that the aspirations of attorneys from underrepresented

groups to join the judiciary and government are possible. Subsequently, they can mentor and develop those aspiring attorneys, such that their success becomes probable.

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

### Judges Helping to Diversify the Pipeline

Just the Beginning Foundation (JTBF) tackles the issue of judiciary diversity through active pipeline programming for students at all junctures of their education. Founded in 1992 by a multi-racial group of judges and lawyers, JTBF is dedicated to creating opportunities in the profession – especially on the bench – for underrepresented populations. Through the Summer Legal Institute (SLI), Middle School Law Camp, E-mentoring, and Externship programs, JTBF exposes students to the possibility of a career in the legal profession.

Their premier program, the Summer Legal Institute, introduces high school students to the profession in an intensive workshop, covering everything from mock trials with practicing judges, to college preparation assistance, to networking luncheons with law firm representatives. The effectiveness and popularity of the SLI project in Chicago has encouraged the foundation to expand their reach, initiating SLI-modeled programs throughout the country.

JTBF's Externship program facilitates opportunities for law students to work with judges across the nation on legal research, briefings, and the drafting of memoranda of law, an advantageous first step in building a career on the bench. These externships serve a foundational role for minority students in becoming an integral part of a more diverse judiciary.

For more information, visit the JTBF website: <http://www.jtbf.org>.

## RECOMMENDATIONS: JUDICIARY

### A. Culture, Assessment, and Accountability

1. Develop, implement, and evaluate initiatives to increase the number of judges from underrepresented groups on the state and federal bench.
2. Advocate transparency in the process of selecting judges, appointments, and influential government employees; and stress that a diverse and inclusive bench is required for institutional credibility.
3. Modify the criteria and questions for judicial candidates to make them more inclusive (e.g., extend emphases beyond trial experience).
4. Advocate the adoption of rules requiring judges to engage in continuing legal education, such as two hours every two years on: pro se and indigent litigants; pro bono representation; and the impact of race, ethnicity, gender, sexual orientation, disability, and language on litigants and litigation.
5. Seek out and regularly conduct trainings on the importance of diversity on the bench, as well as among judicial clerks and staff.
6. Establish teams to assist judicial candidates from underrepresented groups with their applications, write letters of recommendation to the governor's judicial appointments secretary, and interact with the media.



7. Ensure that judges from underrepresented groups get meaningful assignments and opportunities to advance.
8. Address the political appointment processes from within to make diversity important to the players by appealing to self-interest, as well as the greater good.
9. Identify and promote reforms of state judicial systems that hinder diversity on the bench.
10. Advocate public financing of judicial elections.
11. Hire staff specifically to address access to justice and fairness in the courts, including pro se and indigent litigant representation; pro bono activities; racial, ethnic, and gender fairness; and matters of disability and foreign language interpretation.

## **B. Hiring, Retention, and Advancement**

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

“Future directions include the need to hire a staff person dedicated to issues involving access to justice and fairness in the courts.”

*Survey Respondent, State Supreme Court Judge*

### Connecting Judges and Diverse Law Students

The ABA Judicial Clerkship Program (JCP) is a joint project of the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline and the ABA Judicial Division, with the generous support of LexisNexis®. The 3-day program, held during the ABA's Midyear Meeting, brings together about 100 law students from across the country with judges and former law clerks. JCP offers students a simulated judicial clerkship experience, including substantive research and writing exercises. These activities reinforce to the students the reasons and values of pursuing a judicial clerkship. The program also introduces the judges to a broader pool of law schools from which they hire their clerks. Since JCP's launch ten years ago, numerous students have obtained clerkships and internships as a result of their participation. For more information on JCP, visit <http://new.abanet.org/centers/diversity/Pages/JudicialClerkshipProgram.aspx>

## RECOMMENDATIONS: GOVERNMENT

### A. Culture, Assessment, and Accountability

1. Gather data, establish goals, and propose reforms of the selection processes for the judiciary at the state, federal, and local levels.
2. Advocate transparency in the process of selecting judges, governmental appointments, and influential government employees; and emphasize that diversity and inclusion throughout all levels of government are required for institutional credibility.
3. Address the income disparity between public and private practice.

### B. Hiring, Retention, and Advancement

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



# RECOMMENDATIONS FOR BAR ASSOCIATIONS

## RECOMMENDATIONS\* FOR NEXT STEPS TO ADVANCE DIVERSITY IN BAR ASSOCIATIONS

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

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

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

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

## RECOMMENDATIONS

### ***A. Culture: Building Consensus, Establishing Common Definitions and Understanding***

1. Develop explicit definitions about particular kinds of diversity and ensure they are consistent with the self identification standards of each community of interest.
2. Make bar association diversity statements and initiatives open-

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*\*The alpha and numerical labeling of the recommendations are for referencing purposes only. The labels are NOT meant to imply priority or significance, which can best be determined by individual users.*

## SAMPLE PROGRAMS

**NAWL Mentoring**

In response to the relatively low numbers of women attorneys in senior level positions and the overwhelming number of younger women attorneys who request mentoring from them, the National Association of Women Lawyers (NAWL) developed a very successful mentoring program that matches approximately 100 mentor/mentees each year. Not solely based on age or geography, the program targets associates and those in practice 10 years or less. The program operates via one-on-one telephone interactions, and monthly teleconferences on skills building that are available to all mentor/mentee pairs. This fulfills a gap that allows mentees to receive mentoring as they develop the skills to do this organically in their own place of employment. One success story is an attorney who wanted to use her undergraduate training in medicine in a government attorney position; she was successfully matched with an attorney with the U.S. Department of Health and Human Services.

ended rather than limited to fixed categories so not to omit, exclude, or elide forms of diversity that are slowly gaining social recognition, such as transgender identification.


3. Target special diversity efforts to social groups that are historically underrepresented within the profession's diversity efforts, such as disabled, LGBT, and Native American lawyers.
4. Develop programming, initiatives, and research that address the intersectionality of identity, or how diversity crosses categories of difference, e.g., disabled or LGBT lawyers amongst Native American nations or racial/ethnic minority groups.
5. Encourage and support collaboration between and amongst mainstream bar associations and diverse affinity bar associations. Beyond such linkages, consider developing internal affinity groups for specific populations of diverse lawyers.
6. Work to help change the culture of the legal profession so that more lawyers feel free to overcome fears of publicly identifying as having a disability or being LGBT. Beyond accessibility, bar associations should promote welcoming inclusiveness for all diverse attorneys.
7. Institute continuing legal education, as part of regular bar association programming, on the elimination of bias and affirmative training on diversity in the profession (including making "service learning" qualify for CLE credit) to socialize new lawyers toward valuing diversity in the profession.
8. As to disability in particular, educate leaders and members on how to avoid impermissible inquiries and assumptions about what a person with disabilities can or cannot do, and the potential affirmative obligation (similar to religious accommodations) to make reasonable accommodations for people with disabilities—even if this involves reasonably different treatment than for individuals without disabilities.

***B. Planning: Assessment and Accountability***

1. Develop diversity data, programming, and initiatives targeted to sectors of the legal profession outside of large law firms and corporate

legal departments; focus on government, public interest, and small and solo practitioners, which account for the majority of private practice attorneys nationwide.

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



“[For bar associations,] what is least effective is putting reports on the shelf, rather than taking the time and effort to implement their recommendations.”

*Survey Respondent, past State Bar President*

**“Similar to the multi-state ethics examination, education and admission to the bar should be based upon passing a diversity training program.”**

*Survey Respondent,  
Bar Association leader*

### ***C. Pipeline Practices: Outreach and Mentoring***

1. Develop and implement mechanisms to equip bar associations to serve as public education advocates. Fundamental changes in American education are necessary in order to develop a critical mass of diverse law applicants, law students, lawyers, and leaders of the legal profession.
2. Continue to support, fund, and expand the development of pipeline programs that help diverse youth imagine and work toward joining the legal profession—as early as elementary or middle school, and particularly in high school and college.
3. Collaborate and encourage development of systems and protocols to track the operation and success of pipeline diversity programs over time to ensure efficacy and sustainability. See, e.g., CSIRE (continuity, sustainability, impact, replicability and evaluation) criteria developed by The State Bar of California’s Diversity Pipeline Task Force.
4. Seek opportunities to incorporate into diversity programs targeted efforts to increase the ranks of self-identifying attorneys with disabilities (which will depend in part on societal progress in encouraging self-identification, admitting to the bar, and employing individuals with disabilities).
5. Partner with local high schools, university student organizations and advocacy organizations to support the aspirations of diverse students to become lawyers. (See, e.g., For People of Color, Inc., <http://www.forpeopleofcolor.org>.)
6. Encourage development of mechanisms to define and require diversity curriculum in accredited law schools; collaborate to support these efforts.

### ***D. Leadership Development: Networking and Mentoring within the Legal Profession***

1. Encourage all members—younger and mature generations—to use emerging technologies of networking to truly integrate and knit together the entire legal community (including bar-association leadership, many of which tend to use new technologies less often).
2. Facilitate the use of mentoring circles as a means of expanding access to the limited number of senior diverse lawyers who can serve as role models within the profession.



3. Ensure that mentoring programs provide opportunities to integrate into substantive programs, committee work and the social fabric of bar associations those attorneys with disabilities, less experience, or who otherwise may feel unwelcome.
4. Collaborate to develop national and regional leadership academies to identify, develop, and place diverse lawyers in positions of leadership throughout national, state, and local bar associations.
5. Explore the feasibility of including on the governing boards of large national and state bar associations representation from constituent affinity bars.
6. Develop collaborative relationships amongst and between national, regional, state, and affinity bar organizations to maximize impact, coordinate resources, and ensure the continuity of messaging, data, and programming regarding the collective diversity efforts within the geographic legal communities they serve.
7. Coordinate efforts among relevant national and regional affinity bar organizations to promote diversity on the bench by supporting diverse judicial candidates and assisting with the development of programs that groom diverse lawyers for judicial service.

### ***E. Recommendations for the American Bar Association***

1. Establish an Association-wide diversity plan and encourage each pertinent entity (e.g., Section/Division/Forum) to have its own functional diversity plan that assigns responsibility for diversity directly to entity leadership.
2. Coordinate the development of a Diversity Impact Statement (comparable to an Environmental Impact Statement) to shape the dialogue and provide continuity of efforts around diversity within the profession.
3. In collaboration with relevant national and regional affinity bar organizations, coordinate efforts to centralize data collection and reporting about diverse populations within the legal profession.
4. Design, administer, and report on—in consultation with disability-rights organizations—a comprehensive survey in which attorneys identify (with appropriate confidentiality) their disabilities and their needs, wishes, and experiences related to being attorneys with various disabilities.

## SAMPLE PROGRAMS

**Tackling Unconscious Bias**

The Mecklenburg County Bar (MCB) regularly sends its senior leadership and staff members to a program called Leadership Development Institute (LDI) through the Community Building Initiative. LDI is a 12-month leadership program begun in 2001 that develops, connects and guides diverse groups of leaders in increasing their awareness of and ability to influence for racial and ethnic inclusion and equity. LDI is intended for board members and senior staff of non-profit and public organizations. LDI exercises help identify and uncover preconceived notions and unconscious biases one may have. The MCB Special Committee on Diversity and the full-time position of Diversity Coordinator were created as a direct result of bar leaders' LDI experience.

5. Promote and encourage broader use of the ABA Diversity Center website, which includes a central calendar of diversity events sponsored by ABA groups and other organizations.
6. Promote and encourage broader use of the ABA/LSAC Pipeline Diversity Directory, an online searchable database of law-related pipeline programs nationwide.
7. Work collaboratively to develop a standardized diversity index for law schools.
8. Serve as a clearinghouse for information and resources relating to the development, implementation, and results of successful legal internship and clerkship programs.
9. Collaborate with the legal academy to explore more effective diversity-minded recruiting practices that place appropriate reliance on all relevant qualifications for admission, rather than the present over-reliance on LSAT scores and the UGPA.
10. Collaborate with the American Bar Foundation to ensure diversity-related research and scholarship receive funding and publication priority.



The 2009 multi-stage assessment of the state of diversity in the legal profession yielded a number of emerging issues. How the profession responds to these nascent topics, new developments, and contemporary twists on old issues will impact our next steps to advance diversity. Accompanying each emerging issue summarized below are reactions from the Special Comment Group.

### COMPLEXITY AND DIVERSITY: BOLD NAIVETÉ AND FATIGUED EXPERIENCE

As many more decision-makers—in and outside of the legal profession—act to increase diversity, the approaches, rationales, and perspectives necessarily become more varied. Managing diversity requires adapting to this evolving environment. Compounding this environmental change, for the first time in American culture, four generations co-exist in the workplace. In the diversity arena, these generational differences are often competing and divisive.

Besides differences based on age, those who have worked on diversity issues for years can come into conflict with those who are relatively new to this arena. This is an over-generalization; there are many counter-examples. Nevertheless, older diversity advocates may complain of diversity fatigue as a response to the continual recycling of issues that had seemingly already been discussed and even resolved. The latter group—novice diversity champions—may sound naïve in their lack of a nuanced analysis of the issues and a resistance to conceding that compromise and ambiguity sometimes can be positive outcomes.

#### *From the Special Comment Group*

- A. I think this subject is somewhat mischaracterized in this Emerging Issue. The “diversity fatigue” arises not from the perception that issues have been “resolved” but that the same areas continue to be discussed with the results being unaffected. For example, while women now comprise approximately 50% of entering law school classes, they are still less than 20 percent of all partners.
- B. From an administrative standpoint, I believe the issue of naïveté and fatigue is notable in diversity going forward. I think it is a valuable issue among staff members and volunteers to discuss. However, from a programming standpoint and for the profession as a whole, I do not feel this emerging issue is relevant. In my opinion there is no resolution as there will always be constant change. I think the most practical way to address the issue moving forward is to provide those working on diversity issues with the tools needed to adapt to the evolving environment.
- C. This description appears to take the side of the old guard by characterizing the new generation as simply naïve to the old battles. It should be more balanced, recognizing the unique contribution and perspective of the newer generation. The newer generation isn’t constrained by identities, and views the diversity movement as allowing people from different backgrounds and set of experiences to mold their own identities. In that way, the new generation believes the goal of diversity efforts should be to lift the constraints of identity limitations. Put differently, the newer generation isn’t as comfortable with categories, and sees them as making people categorize and limit themselves by a box checked on a list. The next generation of diversity efforts will be

“The mathematical model for diversity supports the argument that having a diverse workforce is the most cost-effective way of creating a highly productive work environment.”

*Special Comment Group Responder*

to render that categorization meaningless. The next generation of diversity champions understands that it stands on the shoulders of giants, but has its own ideas of where the movement should go. The section has a general recognition of this idea, but attributes it to naiveté.

### EMPLOYMENT DISCRIMINATION AND FIREFIGHTER CASES

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

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

In another firefighter case, on January 21, 2010, a federal district court ordered New York City to hire 293 Black and Hispanic firefighters with retroactive backpay and other damages after concluding that the City had intentionally violated Title VII by using discriminatory written entrance exams. <http://www.nytimes.com/2010/01/22/nyregion/22vulcan.html?scp=1&sq=NY%20fire%20department%20discrimination&st=cse>

### From the Special Comment Group

These rulings put employers between a rock and hard place. Although voluntary compliance is ideal, employers will be hesitant to voluntarily take action to comply with Title VII in fear of later being sued for disparate treatment, as in the *Ricci* case. On the other hand, if an employer fails to take action, it can be found as intentionally violating Title VII. Thus, this will be a huge issue from here on out. In particular, defining what is job-related and consistent with business necessity and identifying whether there is an equally valid, less-discriminatory alternative that fits the employer's needs but was not adopted will be the two issues fiercely debated in future litigation of this kind.

### MATHEMATICAL MODELS OF DIVERSITY

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

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

### From the Special Comment Group

- A. I think this is a very notable issue because as we critically assess the legal profession we understand that grades are not the only determinative factor of one's ability to be successful. Nor do I feel that the ivory towers in which many of us dwell in law firms totally get the full picture as to the value of diversity. We rely too heavily on GPAs. ... The practical steps that can be taken to deal with this issue are actually dealing with the hierarchical system within a law firm, especially the big corporate law firms. We need to put an agenda together that allows people to weigh things other than just one's GPA. Encourage an assessment of the overall productivity of lawyers as it correlates with one's GPA and see how much they produce compared to those that were laterals and would not have received a second look based on their law school GPAs.
- B. This issue is important as one of the strongest arguments for making the business case for diversity. Most of the statements for the business case have been stated in general terms without reference to quantifiable research. ... Beyond even mathematical models, however, academics and corporations have begun to develop a body of research that quantifies the benefits of diversity from a business perspective. One of the best speeches I heard on this subject was given by James Turley, CEO of Ernst & Young ("E&Y"), at a conference presented by the Cleveland Metropolitan Bar Association entitled "Improve Your Bottom Line: Attract, Retain, and Promote Women and Minority Lawyers," ...

Mr. Turley mentioned that E&Y had begun to develop empirical data that diversity created more profitability for the firm. ... until the barriers are removed for women and persons of color, they will not be represented in greater numbers in the leadership ranks of the legal profession, and, as an action step, quantifying the business case for diversity in the legal profession might be a powerful step forward.

### CAN YOU BRING YOUR WHOLE SELF TO WORK?

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

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

### From the Special Comment Group

- A. The Report asks, "CAN YOU BRING YOUR WHOLE SELF TO WORK?" but ignores the fact that going to work in general and working as a lawyer in particular require an individual, any individual, all individuals, even "the white guy who went to Harvard," to curb idiosyncrasies, adjust preferences, trim quirks, and conform to an organizational model. Thus, the more apposite question should be, "what is the basic work model and how can it be changed to maximize each individual's skill-set, dedication, and potential?"

- B. Can you bring your whole self to work is an issue our [bar association's] signatory law firms and corporate legal departments continue to grapple with. In a recent survey we took of our signatory law firms we saw there were more LGBT attorneys at the partnership level compared to any other. While there is no scientific correlation between a firm's culture and the number of LGBT attorneys in this particular survey, we assume those in positions of leadership are comfortable to reveal such personal details without the threat of inadvertent discrimination.

[Our bar association] is supportive of research regarding this emerging issue. Our local recruiters have invested valuable time and resources into recruiting minority associates to the area. However, retaining these individuals is a matter of culture improvement. The profession as a whole needs to better prepare itself to support and extract practitioners' authentic selves so it may benefit as a whole.

- C. This is a very important issue in the legal profession. Diverse attorneys are routinely under pressure to assimilate. By repressing their diverse attributes, diverse attorneys lose the qualities that make them so valuable in the workplace. Thus, the legal profession as a whole loses out as well. All spectrums of the legal profession should adopt a culture of acceptance of one's individuality in place of the current culture of conformity. Only under a culture of acceptance can individuals from diverse grounds truly thrive. As a result the legal profession will also thrive.
- D. This is an important issue on a prospective basis; however, it is hard to quantify its effects or to create programs that improve the situation. At the beginning of this emerging issue, the Report distinguishes this topic from merely increasing numerical representation of underrepresented groups in a workforce. Nonetheless, one true way of resolving this issue is to increase numerical representation. ... There is research on this topic in the board of director context. One study explicitly concluded: "While a lone woman can and often does make substantial contributions, and two women are generally more powerful than one, increasing the number of women to three or more enhances the likelihood that women's voices and ideas are heard and that boardroom dynamics change substantially." Vicki W. Kramer, Alison M. Konrad and Sumru Erkut, *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance* (2006).
- E. Many diverse attorneys feel the need to assimilate and become one with their brethren within the legal profession. I do not feel as though this will be a notable issue going forward. I feel as though the new generation of diverse candidates is more proud of their culture and they are not bogged down by the lack of acceptance of diversity within the legal profession.

There is competence and substance to each individual that now comes to the legal profession and they are willing to celebrate their own diversity, culture, sexual preference or disabilities. This in turn allows them to add to the fiber of a corporate setting as opposed to assimilating and changing who they are. I have found with older attorneys of diverse nature that they almost were forced to assimilate in order to survive. Now, I think that trend is changing and it is something I think will improve in due time within the legal profession.

### TRIBAL COURTS & NATIVE AMERICANS

Judicial and government employees at all levels must solicit training and research on tribal law and Native cultures. Interactions among tribal, state, and federal courts are changing rapidly in multiple fields involving business, property, and crime. Tribal courts have continuously



developed sophisticated and particularized approaches to the interests and injuries of Native individuals.

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

### *From the Special Comment Group*

While providing training on Native American law and cultures for judicial and government employees is important, it is necessary to take a step back, and focus on a more fundamental issue – including Native Americans, as an initial matter, in all discussions and initiatives involving diversity in the legal profession as a whole, not just for judicial and government employees. I think the main problems relating to Native Americans in the legal profession are (1) that there is an ignorance relating to Native American issues and law and (2) that they are often overlooked completely.

Criminal jurisdiction in Indian country is divided among federal, tribal, and state governments, depending on the location of the crime, the type of crime, the race of the perpetrator, and the race of the victim. The rules of jurisdiction were created over 200 years of Congressional legislation and Supreme Court decisions – and are often referred to as a “jurisdictional maze.” There clearly is a crisis situation, and the ABA could help shed a light on this situation as a follow up to the resolution passed at the [2009] Annual Meeting which called for increased funding for tribal courts.

In addition, the Report overlooks one key fact in this Emerging Issue: that there are no Native Americans in the federal judiciary. As NNABA noted in a May 6, 2009 letter to President Obama: “There are 866 federal judgeships . . . , and not one Native American federal judge. . . . The NNABA letter also notes that there have been only two Native Americans who have served as federal judges in the last thirty years.

### **COGNITIVE PSYCHOLOGY AND UNCONSCIOUS BIAS**

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

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

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

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

impact on members of diverse groups. How to recognize and counter this unconscious bias warrants additional study. “The Ladder of Inference” is one technique developed to interrupt the process of acting on biased conclusions. For more information on this concept, visit <http://leadershipdiamond.blogspot.com/2009/04/ladder-of-inference.html>.]

### *From the Special Comment Group*

- A. To give the Report its due, it does try to define “diversity” as: “the term used to describe the set of policies, practices, and programs that change the rhetoric of inclusion into empirically measurable change.” What does this mean? It appears to merely substitute “inclusion” for “diversity” without defining either or adding anything new. This Report is based on a discussion of categories and what to do with those people who fall into those categories, thereby perpetuating the categorization paradigm and its intrinsic internecine dynamics.
- B. I strongly believe cognitive psychology and unconscious biases need to be notable issues in the legal profession’s diversity efforts moving forward. It has been my experience that often trained legal practitioners have underdeveloped skill-sets with regards to relationship management and development. Their well-trained expertise allows them to analyze and solve detailed problems with tangible outcomes. The loosely defined problems associated with misperceptions, assumptions and biases prove harder to solve. Therefore, they are often overlooked by the legal profession as a whole.
- C. This is an important issue that we should deal with on a regular basis within the legal profession. I have found that it is sometimes an innate bias that just exists within individuals that help them carry forth their prejudices toward differing cultures, races, genders, etc. Even with our own law firm there is a continuous need for diversity training. It is imperative that we get beyond the aspect of preconceived notions and ideas. Through training done by professional companies and organizations, I think professionals will become more sensitive to these unseen biases and, therefore, help to improve the profession as we move forward.

### **CROSS-DISCIPLINARY INSIGHTS: CULTURAL COMPETENCE**

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

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

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

organizations and behavioral health managed care organizations, support standards that require cultural and linguistic competence in health care. For one assessment tool that has been developed in medical education to evaluate cultural competence curricula, see (TACCT) Tool for Assessing Cultural Competence Training. <http://www.aamc.org/meded/tacct/start.htm>. *Would the legal profession and its clients benefit from requiring legal practitioners to have cultural and linguistic competence?*

#### **From the Special Comment Group**

- A. The point, while correct, should be written in a way that includes people with disabilities.
- B. The legal profession and its clients would benefit immensely from requiring legal practitioners to have cultural and linguistic competence. The same benefits of cultural and linguistic competence which the medical profession has experienced are transferable to the legal profession. Cultural and linguistic competence could be instituted as required coursework in law school and CLE requirements, similar to ethics.
- C. Many corporations conduct cultural competence training for their workforces. This training is designed to create an awareness of how cultural differences can affect an individual's behaviors and outlook, as well as others' perceptions of the individual. For example, different cultures may have different definitions of what constitutes an effective leader.

#### **INTERSECTIONALITY: OUR PLURAL IDENTITIES**

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

#### **From the Special Comment Group**

- A. As an example, the high rate of "outmarriage" (e.g. marriage between persons of different racial or ethnic backgrounds) has resulted in an increased number of individuals with multiple racial identifies. This creates a need for the multi-ethnic individual to be aware of the multiple perceptions that others may have of him, and of the ways his racial background may influence his behaviors and perceptions.
- B. It is without question that this will be a very notable issue in diversity going forward, in that our world is becoming more inclusive with cultures, ethnicity, sexual preference, age, disability, etc. ... The way to work through this issue is to be completely open and honest. We must understand that we don't have every answer. What we do have is the obligation to make a good faith effort to improve. We must receive views from many different avenues as opposed to being the traditional strict legal dark-suit, white-shirt and basic-tie operation. While a passing reference to ability is made, the point should be written in a way

that includes people with disabilities. The same identity concerns face them, too (wanting to be seen as an “individual with a disability,” not as a “disability with an individual”).

### DIVERSITY DEFENSE: INCLUSIVE MULTI-DIMENSIONAL DEFINITIONS

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

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

“The Report fails to [adequately] define “diversity” and, thus, the term remains a slippery all-things-to-many-and-no-thing-to-all.”

*Special Comment Group Responder*

#### *From the Special Comment Group*

A. This emerging issue talks about the continued need or practice of including variables when making decisions toward a particular outcome. As it states, courts have found that it is permissible to include things such as race, ethnicity, color, sex, gender, sexuality preference, etc., as long as it is not used in an overbroad fashion. This is a practice which continues in our society through contract set-asides for DBE [Disadvantaged Business Enterprise] businesses, MBE [Minority Business Enterprise] businesses, WBE [Women Business Enterprise] businesses, and 8(a) certification, for example.

There are myriad approaches that cities, states, and governments are taking as well as private sector companies to make sure that business is spread among many diverse entities. This is necessary in that not only does it breed a more productive society, but it creates more inclusive theories, thoughts and ideas and allows for growth within the profession. It builds better businesses as a whole.

B. Diversity rightly needs a multi-dimensional definition, not because jurisprudence requires it, but because it is the right way to conceive of diversity. Diversity efforts should allow people to create their identity, not have one thrust upon them. This section should make that point directly, not hide behind judicial requirements.

C. This emerging issue is one that is new to [our bar association]. Traditionally our conversations regarding the definition of diversity center around how to broadly include those underrepresented rather than how they fundamentally differ from forms of affirmative action. While I think the discussion around this topic is appealing, I don't currently think it is a notable issue in diversity efforts in the legal profession moving forward.... Furthermore, the new generations of law firm associates entering the profession are accustomed to learning the benefits of diversity and inclusion compared to the once adopted ways of affirmative action. Our members have discussed the need for top candidates in their workplaces and for the assurance that all potential candidates are provided with the opportunity to be evaluated for employment. However, it is with the understanding that we are engaged in diversity efforts to benefit the greater whole, not to meet a general quota.

## DIVERSITY: A JOURNEY (NOT A DESTINATION)

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

### *From the Special Comment Group*

- A. Diversity should play a role in every aspect of management, including financial planning, marketing, and client relations. It should not simply be a compartmentalized committee that is the sole group charged with diversity concerns. The effort is too big and too important to the strength and perpetuation of an organization for it to be viewed as only the concern of a single committee.
- B. Diversity is absolutely a journey, not a destination. It is something that will not be done overnight. It will take many, many years to complete. Even at our firm we have put short-term, mid-term, and long-term goals with our objective of reaching a higher level of diversity in about 20 years. It is without question that one cannot obtain a true level of diversity in a short period of time. We must work collectively, proficiently, and purposefully to include diversity in every aspect of life—whether it is professional, social, or philanthropic. It is of the utmost importance that we include diversity in our everyday lives to make us better as individuals and professionals. The legal profession in itself continuously has been behind the curve. We must make this a journey and realize that it will not be done quickly, but rather a long, steady approach that makes our society and our profession one to be proud of in future years.
- C. This emerging issue is one certainly felt within our Bar. First, we have the challenge of validating the work we are currently doing with regard to diversity to the greater Bar membership. Second, we have yet to find a long-term place for diversity outside of the Diversity Committee within the organization.

Perhaps the most notable reason to include this emerging issue in diversity efforts going forward is researching the idea of “success.” The difference between financial planning, marketing, and client relations compared to diversity is that former have levels of measurable outcomes that are warranted, necessary and continuously reviewed. As noted [elsewhere in this report], diversity efforts may sometimes concede that compromise and ambiguity can be positive outcomes. Ambiguity and compromise can be a hard sell in a competitive industry littered with corporate clients.

It would be extremely helpful to see how companies and organizations inside and outside of the legal profession have defined ongoing success throughout their journey.

The nation-wide conversation that resulted in this Report will only be effective if it continues in many venues and leads to specific strategies and actions that are concrete and measurable. The following framework collects questions that emerged from breakout sessions at the Diversity Summit. These questions are offered as conversation starters. Many of the issues raised below can also serve as catalysts for empirical research projects.

### THE LEGAL PROFESSION

1. **What forces are causing the profession to change and to resist change?**
  - a. How will the U.S. recession and the global economic crisis affect the resources available for diversity initiatives?
  - b. Will members of racial/ethnic minority groups, women of different backgrounds and the emerging diversity groups—LGBT attorneys and persons with disabilities—be the first to be furloughed or fired?
  - c. How will the “post-affirmative action” and “post-racial” generations of law students and new lawyers challenge and/or acquiesce in workplace practices and norms?
2. **How can we minimize the fragmentation of diversity projects and continual re-learning, which wastes efforts and resources?**

### LEGAL ORGANIZATIONS—*Law Schools, Law Firms, Corporations, Bar Associations, Government Agencies and Judicial Offices*

1. **How is the organization modeling diversity in its leadership and actions?**
  - a. How can the organization’s programs advance diversity in the profession?
  - b. Does the organization’s leadership, including internal subgroups, reflect diversity commitments and goals? Is there a diversity mission statement or other aspirational document?
  - c. Does the organization’s budget, when considered as a moral document, reflect its diversity values and priorities? Where does the organization commit its resources (its money, time, and clout)?
  - d. What are the organization’s demographics? How do they compare with the entire profession and that of specific states and regions? Has the organization studied its demographics to identify patterns of exclusion or practices of inclusion? Is the organization transparent about its diversity data?
2. **Bar Associations**
  - a. Can larger or national bar associations, such as the ABA, shift their focus from large firms to include small firms, partnerships, and solo practitioners that reportedly constitute 80% of American lawyers?
  - b. Can larger or national bar associations, such as the ABA, work more closely with the specialty bar associations where most diverse attorneys are affiliated?
  - c. What diversity “lessons” can the ABA and the legal profession glean from and share with other professions, such as medicine?
  - d. For example, clinical psychologists have espoused both scientist-practitioner and scholar-practitioner models.
3. **Law Schools**
  - a. How can larger organizations, including academia, help develop valid metrics and evaluation methods to measure the effectiveness of diversity work in various locales?



- b. What concrete possibilities exist for joint research ventures with dedicated fundraising plans, e.g., conducting a comprehensive literature review of diversity legal scholarship?
  - c. How should diversity be taught? What is a model diversity curriculum? How have diversity issues already been included in core courses, e.g., first year writing courses, elective courses, or seminars?
  - d. Are there diversity models that bridge the chasms between legal practice, theory, teaching, and research? If not, can the ABA (and/or another national organization) develop such a model?
  - e. What models exist that align projects to ensure educational inclusion and excellence from grade school through high school, college, law school, bar exam and into the profession?
- 4. Law Firms and Corporations**
- What resources exist to inventory and propagate the efforts of large law firms and corporations that have already developed in-house diversity metrics and other best practices?

## DIVERSITY PARTNERSHIPS

- 1. How can larger bar associations, corporations and nationwide-entities best use their national or broader infrastructure?**
  - a. As a champion and voice for diversity, disseminating rationales and data that support diversity, access and success?
  - b. As a lobbyist at federal and state levels for effective educational reform and investment to create equal opportunity?
  - c. As a repository for best practices to “plug the leaks” and “clear the clogs”?
  - d. As a clearinghouse of data, research, projects and information?
  - e. As a promoter of innovations?
- 2. Can the ABA (and/or another national organization) design and implement a diversity-conscious network of diversity partners with defined roles or resources for diversifying the profession? What are the reasons not to create such a network? This is one example of what such a network might include:**
  - a. Law firms and corporations—employers of diverse attorneys.
  - b. Law schools—educators, where diversity norms, knowledge and skills are inculcated.
  - c. Minority/specialty bar associations—large pools of diverse lawyers.
  - d. Professors (scholars of color, feminists, LGBT, disabled)—experts on issues of identity and diversity.
  - e. Other professions with analogous methods and approaches to diversity.
  - f. Public and private schools—settings for pipeline projects.
- 3. Which diversity entities could serve as collaborative partners with national bar associations—such as, research centers like the CUNY Center for Diversity in the Legal Profession; Berkeley Warren Institute on Race, Diversity and Ethnicity; or Stanford Center on the Legal Profession?**
- 4. How can the larger or national bar associations better collaborate with law professor organizations that are dedicated to social justice research and teaching with a focus on diversity in the legal profession, like LatCrit, Inc. or SALT (Society of American Law Teachers)?**



## **Walmart Drives Diversity Within its Legal Department and Beyond** **– Walmart's Commitment to Diversity Reflects Its Respect for Its Associates and Customers –**

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

### **Walmart Legal Department's Dedication to Internal Diversity:**

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

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

### **Walmart Legal Department's External Diversity Leadership:**

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

### **Recent Accolades:**

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

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# LexisNexis is committed to diversity and inclusion

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

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



**LEGAL SCHOLAR TEAM**

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

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

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

**DIVERSITY PRACTITIONER WORKING GROUP**

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

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



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

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

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

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

**MEREDITH MOORE** is Director of Global Diversity at Weil, Gotshal & Manges LLP, where she is responsible for overseeing the firm's diversity initiatives globally including diversity education and training, affinity groups, and supplier diversity programs. Prior to joining the firm, Ms. Moore launched the Office for Diversity at the New York City Bar Association. She previously served as Director of Research and Information Services at Catalyst, the leading research and advisory organization working with businesses and professions to build inclusive environments and expand opportunities for women at work. Ms. Moore is currently an adjunct assistant professor at New York University's Wagner School and was previously an adjunct professor at Columbia University's School of International and Public Affairs.

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

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

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

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

#### **EMERGING ISSUES SPECIAL COMMENT GROUP**

**MATTHEW L.M. FLETCHER** is an Associate Professor at Michigan State University College of Law and Director of the Indigenous Law and Policy Center. He is the Chief Justice of the Poarch Band of Creek Indians Supreme Court and also sits as an appellate judge for the Pokagon Band of Potawatomi Indians and the Hoopa Valley Tribe. He has worked as a staff attorney for four Indian Tribes—the Pascua Yaqui Tribe, the Hoopa Valley Tribe, the Suquamish Tribe, and the Grand Traverse Band; and he has been a consultant to the Seneca Nation of Indians Court of Appeals. Prof. Fletcher is a citizen of the Grand Traverse Band of Ottawa and Chippewa Indians, located in Peshawbestown, Michigan.

**JENNIFER D. FRANKLIN** is an Assistant Attorney General in the Office of the Illinois Attorney General, where she is a member of the Predatory Lending Unit in the Consumer Fraud Bureau. Prior to joining the Illinois Attorney General's Office, Ms. Franklin worked in the Akron Regional Office of the Ohio Civil Rights Commission. She currently serves on the Diversity Committee of the Business Law Section of the American Bar Association, and the Standing Committee on Law Related Education for the Public of the Illinois State Bar Association. In addition, Ms. Franklin is Chair of the Young Lawyer's Committee of the Women's Bar Association of Illinois, and Co-Chairs the Young Lawyer's Committee of the Black Women Lawyer's Association of Greater Chicago.

**JASON GOITIA** received his undergraduate degree, with honors, from the University of Florida and his law degree from the University of Chicago. At the University of Chicago, he was a class representative and editor-in-chief of the law school newspaper. After law school, he worked for Gardner Carton & Douglas LLP (now Drinker Biddle & Reath LLP); Mayer, Brown, Rowe & Maw LLP (now Mayer Brown LLP); and Goldman, Sachs & Co. While at Goldman, he served as chairman of the Board of Advisors of his college fraternity, reorganizing its operations and managing a capital campaign study; he has also managed the board's legal affairs since 2004. After leaving Goldman, Jason formed The Goitia Law Firm.



**WILLIAM H. GRIGNON** is a blind lawyer, currently licensed in California and Florida. After graduating from Pepperdine University School of Law, he worked in the Los Angeles office of Kirkland & Ellis LLP for more than five years. He focused on complex commercial litigation and performed much pro bono work with adoptions, guardianships, homeless veterans, and individual education plans for disabled students. Mr. Grignon has served as an Advisory Member of the National Association of Law Students with Disabilities, a member of Braille Institute of America's board of directors, a Diplomat for the ABA Business Law Section, and a member of the ABA Commission on Mental and Physical Disability Law.

**STEPHANIE A. MARELLA** is the Diversity Coordinator for the Mecklenburg County Bar (MCB) in Charlotte, NC. Prior to joining the MCB, Ms. Marella worked in the Governmental Affairs Office of the American Bar Association as the legislative editor in Washington, DC. Her professional experiences also include the public policy and advocacy office of the Girl Scouts of the USA, Washington Resource Associates, and the office of Senator Arlen Specter. She is a graduate of George Mason University where she earned her undergraduate degree in government and international politics and master's in public administration, specializing in nonprofit management.

**KATHRYN K. MLSNA** is an experienced diversity professional and corporate executive with in-house and consulting firm expertise. After an extensive career with McDonald's Corporation as a member of its Global Legal Department, Ms. Mlsna was recruited by the international consulting firm Global Lead Management Consultant, LLC. She served as an officer responsible for the development of strategies addressing inclusive and diverse workforce recruitment, retention and advancement for Fortune 500 and other organizations. She is on the Advisory Board for the Asian Pacific Islander American Scholarship Fund and is a member of The Council of One Hundred, a women's mentoring organization of Northwestern University. Ms. Mlsna earned her B.A. from Northwestern University and her J.D. from Northwestern University School of Law.

**JOSEPH L. SMITH, JR.**, is the Diversity Partner at Baker & Daniels LLP in Indianapolis, IN. He focuses his practice in government services, labor and employment law, and certified business enterprises and supplier diversity. He also chairs the firm's diversity and inclusion committee. Mr. Smith has served as Executive Assistant to former Governor Frank O'Bannon; as the Governor's Liaison for Minority Business Development, the Department of Transportation and the Indiana Lottery; as Political Director of the Indiana Democratic Party, coordinating and overseeing the Party's political operations across the state; as a Compliance Officer for the Office of Federal Contract Compliance Programs in the U.S. Department of Labor; and as General Counsel for the Indiana Professional Standards Board.

**MARY L. SMITH** is Senior Counsel, Civil Division, at the U.S. Department of Justice. Ms. Smith also served in the Clinton White House as Associate Counsel to the President and Associate Director of Policy. Her legal experience includes corporate and law firm positions, as well. She is the first Native American woman to serve on the ABA Board of Governors. Ms. Smith holds leadership positions in the ABA's Section of Litigation and the Section of Individual Rights and Responsibilities. She was the first Native American to serve on the ABA's Commission on Women in the Profession, where she chaired the Women of Color Research Initiative. She also served as the National Native American Bar Association's delegate to the ABA House of Delegates.

**J. ANTHONY VITTAL** is the founder of The Vittal Law Firm in Los Angeles, CA. He previously held positions as general counsel of Credit.com, Inc., and Identity Theft 911, LLC, in San Francisco. Mr. Vittal has extensive bar association experience including: past President of the Beverly Hills Bar Association and California Association of Local Bars; a founder and past Co-Chair of the California Bench-Bar Coalition; past Vice-President of the California Coalition for Justice; and a founder of the National Conference of Bar Presidents' Minority Bar Forum. He represents the State Bar of California in the ABA House of Delegates. Mr. Vittal holds leadership positions in the ABA's Tort Trial and Insurance Practice Section, General Practice, Solo, & Small Firm Division, and Council on Racial and Ethnic Diversity in the Educational Pipeline.

■ This compilation of diversity resources serves as a starting point to implement the Report's recommendations, replicate successful programs, and take the next steps to produce real change. The list herein is not meant to be extensive or exhaustive. A more comprehensive list is available on the project's website (<http://new.abanet.org/centers/diversity/Pages/presidentialdiversityinitiative.aspx>). Visit the website to submit additional resources and research for the expanded online version.

## WEBSITES

### American Bar Association

#### Center for Racial and Ethnic Diversity

<http://new.abanet.org/centers/diversity/Pages/default.aspx>

#### Commission on Mental and Physical Disability Law

<http://new.abanet.org/disability/Pages/default.aspx>

#### Commission on Sexual Orientation and Gender Identity

<http://www.abanet.org/sogi>

#### Commission on Women in the Profession

[www.abanet.org/women](http://www.abanet.org/women)

### Anapata (web-based platform that aims to advance diversity in the legal profession)

<http://anapata.com/aboutus.html>

### Association for Legal Career Professionals (NALP) — Diversity Page

[www.nalp.org/diversity](http://www.nalp.org/diversity)

### Council on Legal Education Opportunity (CLEO)

[www.cleoscholars.com](http://www.cleoscholars.com)

### Cuban American Bar Association

<http://cabaonline.com>

### CUNY Center for Diversity in the Legal Profession

[www.law.cuny.edu/clinics/JusticeInitiatives/](http://www.law.cuny.edu/clinics/JusticeInitiatives/)

### Diversity is Natural

[www.diversityisnatural.com](http://www.diversityisnatural.com)

### Diversity Research

[www.diversityresearch.com](http://www.diversityresearch.com)

### Hispanic National Bar Association (HNBA)

[www.hnba.com](http://www.hnba.com)

### LatCrit, Inc.

[www.latcrit.org](http://www.latcrit.org)

### Law School Admission Council (LSAC)

[www.lsac.org](http://www.lsac.org); Diversity Initiative, <http://www.lsac.org/SpecialInterests/minorities-in-legal-education.asp>

### Lawyers for One America

[www.lawyersforoneamerican.org](http://www.lawyersforoneamerican.org)

### Minority Corporate Council Association

[www.mcca.com](http://www.mcca.com)

### National Asian Pacific American Bar Association (NAPABA)

[www.napaba.org](http://www.napaba.org)

### National Bar Association

[www.nationalbar.org](http://www.nationalbar.org)

### National LGBT Bar Association

[www.lgbtbar.org](http://www.lgbtbar.org)

### DRI – The Voice of the Defense Bar Diversity Committee

<http://www.dri.org/open/Committees.aspx?com=0440>

**National Minority Law Group**  
(certified minority-owned law firm)

<http://www.nmlg.org/>

**National Native American Bar Association**

[www.nativeamericanbar.org](http://www.nativeamericanbar.org)

**North American South Asian Bar Association**

[www.nasaba.com](http://www.nasaba.com)

**The National Association of Bar Executives**

[www.abanet.org/nabe/diversity/index.shtml](http://www.abanet.org/nabe/diversity/index.shtml)

**The National Tribal Justice Resource Center**

[www.ntjrc.org](http://www.ntjrc.org)

**The Tribal Law and Policy Institute**

[www.tribal-institute.org](http://www.tribal-institute.org)

## ASSOCIATIONS

### American Bar Association

#### Publications

*Dear Sisters, Dear Daughters: Strategies for Success from Multicultural Women Attorneys* (2009). **ABA Center for Racial and Ethnic Diversity**. This is a unique, inspirational collection of letters from 44 experienced women attorneys of color to the next generation outlining various roadmaps for success in the legal profession as a minority woman attorney. [www.ababooks.org](http://www.ababooks.org).

*Making the Invisible Visible: A New Approach to Disaster Planning and Response*. **ABA Council on Racial and Ethnic Justice**. <http://new.abanet.org/centers/diversity/PublicDocuments/KatrinaResourceGuide.pdf>

*The Directory of Minority Judges of the United States*. **ABA Judicial Division Standing Committee on Minorities in the Judiciary**. Comprehensive compendium of all Minority Judges in the United States. [http://new.abanet.org/divisions/Judicial/Pages/Publications\\_Directories.aspx](http://new.abanet.org/divisions/Judicial/Pages/Publications_Directories.aspx)

*The Judges' Journal, Judicial Diversity, Part I (Summer 2009) and Part II (Fall 2009)*. **ABA Judicial Division Judges' Journal**. Issue thematically dedicated to judicial diversity, including interviews and current research on the topic. <http://new.abanet.org/divisions/Judicial/Pages/JudgesJournal.aspx>

#### Research and Reports

*A White Paper on Same-Sex Marriages and Non-Marital Unions*. ABA Section of Family Law. Report on the status and legal ramifications of recognition of same-sex marriages and non-marital unions. <http://www.abanet.org/family/reports/WhitePaper.pdf>

*Increasing Diversity into the Profession: Collaborating to Expand the Pipeline*. **ABA Center for Racial and Ethnic Diversity**. Outlines a range of strategies and solutions discussed during the 2005 conference and in subsequent meetings of key stakeholders. Centers on the building of multiple pathways, or pipelines, which will enable more students of color to successfully pursue careers in law. <http://new.abanet.org/centers/diversity/PublicDocuments/PipelinePostReport.pdf>

*Miles to Go: Progress of Minorities in Legal Profession*. **ABA Commission on Racial and Ethnic Diversity in the Profession**. Provides a current, comprehensive picture of the status of minorities in the profession and to use this information to help the profession set an agenda for effective future action. <https://www.abanet.org/abastore/index.cfm?fm=Product.AddToCart&pid=4520014>

### The Florida Bar

#### Research and Reports

*Florida Lawyers with Disabilities: A Survey Report*. **The Florida Bar**. Created a forum for the exploration of issues, strategies, and recommendations to enhance the participation of attorneys with disabilities in Florida's legal communities, in court and out of court. [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/43978A94AFC940F9852573CA006E2526/\\$FILE/DIG%20Survey%20Report%20Final%2012%2007.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/43978A94AFC940F9852573CA006E2526/$FILE/DIG%20Survey%20Report%20Final%2012%2007.pdf?OpenElement)

### Hispanic National Bar Association

#### Research and Reports

*Few and Far Between: The Reality of Latina Lawyers*. **The Hispanic National Bar Association**. National

## LatCrit Theory and Practice

LatCrit, Inc. (Latina & Latino Critical Legal Theory) is the longest sustained organization of legal scholars who identify and theorize the multiple dimensions of diversity and who are committed to using the law to advance an anti-subordination/human rights agenda. LatCrit is now entering its 15th year of annual meetings with an impressive record of scholarship, community building and institutional reform and transformation. Building on a "bottoms up" approach of critical outsider jurisprudence, LatCrit seeks to sharpen the social relevance of critical theorizing and to promote theory as a catalyst for social transformation. Having emerged from the legal academy of the United States in the mid-1990s, LatCrit theorists have emphasized transnational and counter-disciplinary approaches to the study and practice of law and policy. This combination of knowledge-production and academic activism is reflected in the projects and publications of this diverse and far-flung community during the past 15 years.

Study of the Status of Latinas in the Legal Profession to understand the barriers and issues Latinas face as a result of their status as ethnically and racially diverse females.

<http://www.hnba.com/publications/status-of-latinas-in-the-profession-report/>

#### Law School Admission Council

##### Research and Reports

*Are Other Things Essentially Equal? An Empirical Investigation of the Consequences of Including Race as a Factor in Law School Admission.* Evaluates the consequences of using race as a factor in the law school admission process from the perspectives of preadmission academic credentials and subsequent academic performance. <http://members.lsac.org/Public/MainPage.aspx?ReturnUrl=%2fPrivate%2fMainPage2.aspx>

*A Report on the Inclusion of Diverse Speakers on the LSAT Listening Comprehension Assessment: A Survey of the Literature with Recommendations.* Provides the background in sociolinguistic research on dialects of American English that is necessary for understanding the use and implications of including diverse voices in an assessment of listening comprehension in the LSAT. Focus on African American Vernacular English and Hispanic English, including Chicano English. <http://members.lsac.org/Public/MainPage.aspx?ReturnUrl=%2fPrivate%2fMainPage2.aspx>

*History and Performance of Chinese Law School Admission Test Takers.* Reviews the history of LSAT administrations in China, Taiwan, and Hong Kong. Delineates volumes of Chinese test takers in the three regions. Describes and compares the LSAT performance of Chinese test takers from the three regions since 1991. <http://members.lsac.org/Public/MainPage.aspx?ReturnUrl=%2fPrivate%2fMainPage2.aspx>

*The Road to Law School and Beyond: Examining Challenges to Racial and Ethnic Diversity in the Legal Profession.* Brings together existing data that describe the participation rates at successive points along the way to employment in the law. It focuses on the process by which prospective lawyers are educated, starting with graduation from high school, through the steps that lead to a career in the law. <http://members.lsac.org/Public/MainPage.aspx?ReturnUrl=%2fPrivate%2fMainPage2.aspx>

*The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions.* Focuses on empirical data related to the role of race as a factor in the law school admission process. <http://members.lsac.org/Public/MainPage.aspx?ReturnUrl=%2fPrivate%2fMainPage2.aspx>

#### Minority Corporate Council Association

##### Research and Reports

*2009 Law Firm Diversity Professional Survey.* Offers benchmarking data for law firms regarding this emerging position, including sample position descriptions, budgets, staffing support, and managerial reporting relationships. [http://www.mcca.com/\\_data/global/images/Research/2009\\_LawFirmDiversityProfessional\\_Survey.pdf](http://www.mcca.com/_data/global/images/Research/2009_LawFirmDiversityProfessional_Survey.pdf)

*A Call to Action re the Inclusion of Attorneys with Disabilities.* Examines the professional experiences and challenges faced by attorneys with disabilities who work at large law firms along with a set of recommendations for their greater inclusion. [http://www.mcca.com/\\_data/global/images/Research/2009\\_MCCA\\_Report\\_On\\_Attorneys\\_With\\_Disabilities.pdf](http://www.mcca.com/_data/global/images/Research/2009_MCCA_Report_On_Attorneys_With_Disabilities.pdf)

*Creating Pathways to Diversity: A Set of Recommend Practices for Law Firms.* Analysis that balances quantitative and qualitative findings about the diversity practices and initiatives in law firms. <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=613>

*Creating Pathways to Diversity: The Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms.* Addresses: to what extent do credentials and experience really distinguish successful lawyers from those who do not make it to partnership? <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=614>

*Creating Pathways to Diversity: A Study of Law Department Best Practices - 2005 Update of the Green Book.* Re-examines the diversity practices of several top U.S. corporate law departments that are recognized for diversity leadership. [http://www.mcca.com/\\_data/n\\_0001/resources/live/Pathways\\_Green\\_2005\\_book.pdf](http://www.mcca.com/_data/n_0001/resources/live/Pathways_Green_2005_book.pdf)

*Creating Pathways to Diversity: From Lawyer to Business Partner Career Advancement in Corporate Law Department.* Examines the success factors and barriers to advancing in-house. <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=665>

*Creating Pathways to Diversity: Mentoring Across Differences: A Guide to Cross-Gender and Cross-Race Mentoring.* Examines mentoring relationships in law firms and law departments. <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=666>

*Creating Pathways to Diversity: Metrics for Success: Measurement in Diversity Initiatives.* Information to apply measurement approaches that are appropriate for various stages of diversity progression. <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=615>

*Creating Pathways to Diversity: Perspectives from the Invisible Bar: Gay & Lesbian Attorneys in the Profession.* Collection of articles and research reports to examine how sexual orientation affects attorneys in law firms and in law departments. <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=612>

*Examining the Role of the Law Firm Diversity Professional.* Examines the issues and challenges facing diversity professionals in large law firms. [http://www.mcca.com/\\_data/global/images/Research/MCCA\\_Examining\\_Law\\_Firm\\_Diversity\\_Professionals\\_Report.pdf](http://www.mcca.com/_data/global/images/Research/MCCA_Examining_Law_Firm_Diversity_Professionals_Report.pdf)

*Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms.* Latest report on the professional experiences of attorneys at Top 200 law firms. [http://www.mcca.com/\\_data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf](http://www.mcca.com/_data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf)

*Women- and Minority-Owned Law Firms: Taking the Pulse.* Results of a 2009 survey conducted regarding the experiences of women- and minority-owned law firms during the most recent economic challenges. [http://www.mcca.com/\\_data/global/images/Research/2009\\_Research\\_Women\\_and\\_Minority\\_Law\\_Firms.pdf](http://www.mcca.com/_data/global/images/Research/2009_Research_Women_and_Minority_Law_Firms.pdf)

### National Asian Pacific American Bar Association

#### Research and Reports

*Language Access Report.* National Asian Pacific American Bar Association. Advocates for the rights of limited English proficient Asian Pacific Americans in the justice system. <http://www.napaba.org/napaba/showpage.asp?code=lar#lar>

### New York City Bar Association

#### Publications

*Report on Website Accessibility for People with Disabilities (October 2006).* **New York City Bar Association.** Examines the legal arguments that make the web less than worldwide for people with disabilities and demonstrates how those arguments do not withstand reasoned legal analysis. [http://www.nycbar.org/pdf/report/Website\\_Accessibility.pdf](http://www.nycbar.org/pdf/report/Website_Accessibility.pdf)

### State Bar of Texas

#### Publications

*Lawyer Mental Health: Acknowledging Challenges, Raising Awareness and Finding Solutions (April 2007).* **The State Bar of Texas.** [http://www.texasbar.com/Template.cfm?Section=Texas\\_Lawyers\\_Assistance1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=19191](http://www.texasbar.com/Template.cfm?Section=Texas_Lawyers_Assistance1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=19191).

## BIAS ISSUES

#### Published Articles

*Debiasing Through Law.* Cass Sunstein and Christine Jolls. Provides examples of debiasing through law from many areas, including consumer safety law, employment discrimination law, wrongful discharge law, property law, and corporate law. <http://www.ftc.gov/be/seminardocs/04sunstein.pdf>

Susan T. Fiske, *What We Know Now About Bias and Intergroup Conflict, the Problem of the Century*, Association for Psychological Science (2007).

Linda Hamilton Keieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, Stanford Law Review (1995).

Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CAL. L. REV. 997 (2006).

*The Law of Implicit Bias.* Cass Sunstein and Christine Jolls. *Some aspects of current law operate, whether intentionally or not, as controls on implicit bias. An underlying suggestion is that implicit bias might be controlled through a general strategy of "debiasing through law."* <http://ssrn.com/abstract=897553>.

#### Research and Reports

*(How) Does Unconscious Bias Matter?: Law, Politics, and Racial Inequality.* R. Richard Banks and Richard Thompson Ford. (Unpublished paper). Describes the Implicit Association Test and the ambiguity of its findings; explains the irrelevance of state-of-mind in constitutional and statutory antidiscrimination law. [http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=r\\_banks](http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=r_banks).

National Center for State Courts (NCSC) has an implicit bias project underway. The NCSC's implicit bias project is Phase II of a larger project to address issues of race and ethnic fairness in the state courts. <http://www.ncsc.org>



## DISABILITY ISSUES

### Publications

*The Second National Conference on the Employment of Lawyers with Disabilities: A Report from the American Bar Association to the Legal Profession* (2009). **ABA Commission on Mental and Physical Disability Law.** Relevant to both legal employers and lawyers/law students with disabilities. <http://www.abanet.org/disability/conferences/reports.shtml>

### Published Articles

William D. Goren, *Should your Law Firm's Internet Site be Accessible to the Persons with Disabilities so as to Comply with Title III of the Americans with Disabilities Act?* DCBA Brief, Vol. 19 (2006-07). <http://www.dcbabrief.org/vol190307art5.html>

Linda Hamilton Krieger, Ed., *Backlash Against the ADA: Reinterpreting Disability Rights* (University of Michigan Press, 2003).

## NATIVE AMERICAN ISSUES

### Published Articles

Christine Zuni Cruz, *Shadow War Scholarship, Indigenous Legal Tradition, and Modern Law in Indian Country*, 47 Washburn L.J. 631 (2008).

Patrice H. Kunes, *Tribal Self-Determination in the Age of Scarcity*, 54 S.D. L. Rev. 398 (2009).

Patrice H. Kunes, *Tribal Self-Determination in the Age of Scarcity*, 54 S.D. L. Rev. 398 (2009).

Aliza G. Organick, *Tribal Law and Best Practices in Legal Education: Creating a New Path for the Study of Tribal Law*, 19 Kan. J.L. & Pub. Policy 63 (2009).

Michael Riley, *Promises, Justice Broken: A Dysfunctional System Lets Serious Reservation Crimes Go Unpunished and Puts Indians At Risk*, Denver Post, Nov. 21, 2007.

Caprice L. Roberts, *A Desert Grows Between Us – The Sovereignty Paradox at the Intersection of Tribal and Federal Courts*, 65 Wash. & Lee L. Rev. 347 (2008).

Robert O. Saunooke, *Native Americans and the Federal Bench – The Time Has Come*, The Judges' Journal, Vol. 48, No. 4 at 25 (Fall 2009).

### Research and Reports

*Centers for Disease Control.* February 8, 2008. Finds that American Indian and Alaska The survey found that two in five Native women (39 %) have been victims of intimate partner violence in their lifetime, compared with one in four women overall.

*Communities in Crisis: Public Safety in Indian Country.* National Congress of American Indians, 2009 Presidential Transition Policy Brief. Nov. 2008. Crime rates on Indian reservations continue to grow even while crime rates in the rest of the country have dropped.

*Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA.* **Amnesty International.** April 2007. 34% of Native women will be subject to rape or sexual assault in their lifetimes. <http://www.amnesty.org/en/library/info/AMR51/035/2007>

## WOMEN'S ISSUES

### Published Articles

Jennifer L. Peresie, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts*, 114 Yale L.J. 1759 (2005).

*National Association of Women Lawyers Releases Fourth Annual Survey.* NAWL Press Release, (Oct.26, 2009), <http://www.nawl.org/Assets/2009+Survey+Press+Release.pdf>.

*Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms*, NAWL, (Oct. 2009), <http://www.nawl.org/Assets/Documents/2009+Survey.pdf>.

### Research and Reports

**From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms (2008).** **ABA Commission on Women in the Profession. Report** contains insights and advice gathered from 28 women of color partners in national law firms and examines the law firm practices that contributed to the success of these partners. [www.abanet.org/women/woc/wocinitiative.html](http://www.abanet.org/women/woc/wocinitiative.html).

**Visible Invisibility: Women of Color in Law Firms. ABA Commission on Women in the Profession.** Presents the findings of the survey and focus group research and concludes with specific recommendations for law firms interested in retaining women of color. <http://www.abanet.org/women/woc/wocinitiative.html>.



## MISCELLANEOUS

### Publications

Crenshaw Peller et al., *Critical Race Theory: The Key Writings That Formed the Movement* (The New Press 1995).

Sarah E. Redfield, *Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession*, Vandeplas Publishing, Dec 2009.

<http://vandeplaspublishing.com/store/product.php?productid=106>

### Published Articles

Emily Barker, *Diversity Scorecard 2010: One Step Back*, The American Lawyer, Mar. 2010, <http://amlawdaily.typepad.com/amlawdaily/2010/03/onestepback.html>.

Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 Clinical L. Rev. 33 (2001).

Pat K. Chew & Robert E. Kelley, *Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 Wash. U. L. Rev. 1117 (2009).

Wendy Espeland and Michael Sauder, *Rankings and Diversity*, Southern California Review of Law and Social Justice, Fall 2009.

Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 Clinical L. Rev. 307 (2001).

### Research and Reports

*Bar None: Report to the President of the United States on the Status of People of Color and Pro Bono Services in the Legal Profession*. For your copy, email Tevia Barnes with Lawyers for One America at [tevia@lfoa.org](mailto:tevia@lfoa.org).

*Cultural Awareness & Inclusion Scorecard (CAIS)*. PricewaterhouseCoopers. The CAIS provides comprehensive data to support the approach that being a diverse firm does not just center around headcount but instead, focuses on the fair apportionment of billable hours to attorneys of all gender and race. [www.pwc.com/lfsurveys](http://www.pwc.com/lfsurveys)

*SALT's 2002 Statement on the Bar Exam*. Noted the negative effect of the current bar exam on the profession's ability to create a more diverse bench and bar. <http://www.saltlaw.org/userfiles/SALTBarExam.pdf>

*SALT Raises Questions for States Considering Adoption of a Uniform Bar Exam*. Alternatives to the bar examination have been proposed and New Hampshire has implemented a pilot project for the Daniel Webster Honors Program. <http://www.saltlaw.org/userfiles/1-20-10SALTuniformbarexamfinal.pdf>

## CROSS-DISCIPLINARY ISSUES

### Publications

American Society of Association Executives. Literature review of reporting on "Diversity and Inclusion in Associations."

<http://www.asaecenter.org/files/FileDownloads/diversityandinclusion.pdf>

### Published Articles

Diana Burgess, PhD, Michelle van Ryn, PhD, MPH, John Dovidio, PhD, and Somnath Saha, MD, MPH, *Reducing Racial Bias Among Health Care Providers: Lessons from Social-Cognitive Psychology*, Society of General Internal Medicine (2007).

### Research and Reports

National Academy of Engineering. Results from a diversity study completed in February 2005. <http://www.nae.edu/Programs/Diversity7093/Activities/WorkforceStudy/KeyInsights.aspx>

### Associations

Health Professionals for Diversity (HPD) is a coalition of organizations that represent health care providers, researchers, educators, students, and others dedicated to improving the health of all who live in this nation. [www.hpd-coalition.org/](http://www.hpd-coalition.org/)

Graduate Management Admission Council Diversity Initiatives. <http://www.diversitypipeline.com/gmac/schoolservices/diversity/>

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

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

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

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

## **THE COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW**

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

## **THE COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY**

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

## **THE COMMISSION ON WOMEN IN THE PROFESSION** (<http://www.abanet.org/women>)

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

## DIVERSITY AT THE ABA

1973	Commission on the Mentally Disabled created (later becomes Commission on Mental and Physical Disability Law) to promote the rule of law for persons with mental, physical, and sensory disabilities and their full and equal participation in the legal profession.
1980	ABA President calls for “a better understanding of the concerns and problems of minority lawyers” to determine constructive and meaningful ways to address these problems.
1986	Goal IX— <i>To promote Full and Equal Participation in the Profession by Minorities and Women</i> —adopted.
1986	Commission on Opportunities for Minorities in the Profession created; later becomes the Commission on Racial and Ethnic Diversity in the Profession.
1987	Commission on Women in the Profession created to assess the status of women in the legal profession, and identify barriers to advancement.
1991	Margaret Brent Women Lawyers of Achievement Award was established to recognize the accomplishments of women lawyers who have excelled in their field and have paved the way to success for other women lawyers.
1992	Presidential Task Force on Minorities in the Justice System created; later becomes the Coalition on Racial and Ethnic Justice.
1995	Spirit of Excellence Award established to recognize individuals who have contributed to the advancement of racial and ethnic diversity in the profession.
1999	ABA Presidential Advisory Council on Diversity created to focus on improving diversity in the pipeline to the profession; later becomes the Council for Racial and Ethnic Diversity in the Educational Pipeline.
2000	ABA Legal Opportunity Scholarship Fund created to encourage racial and ethnic minority students to attend law school and to provide financial assistance to those in need.
2001	ABA Center for Racial and Ethnic Diversity created as coordinating body for diversity efforts throughout the ABA.
2007	Commission on Sexual Orientation and Gender Identity created to secure equal treatment of persons in the ABA, the legal profession and the justice system.
2008	ABA restructured its Mission & Goals, and identified diversity as one of only four Association priorities. The new Goal III is to:  <b>“ELIMINATE BIAS AND ENHANCE DIVERSITY”</b> with the following objectives: Promote full and equal participation in the Association, our profession, and the justice system by all persons. Eliminate bias in the legal profession and the justice system.
2009	ABA Presidential Diversity Summit - Diversity in the Legal Profession: The Next Steps?
2009	Alexander Award was established to recognize an organization or individual who has shown innovation and leadership in educational pipeline diversity programming that involves collaborative partnerships with various segments along the pipeline.
2010	Release of “ABA Presidential Diversity Initiative - Diversity in the Legal Profession: Next Steps” Report and Recommendations.



**Center for Racial & Ethnic Diversity**  
321 North Clark Street  
Chicago, IL 60654  
312/988.5667  
[diversity@staff.abanet.org](mailto:diversity@staff.abanet.org)  
<http://new.abanet.org/centers/diversity>