University at Buffalo School of Law

GOING BEYOND THE WEBSITE DIVERSITY STATEMENT: LEGAL EMPOYERS AND RETENTION OF DIVERSE LAWYERS

NOVEMBER 8, 2023

Presented by:
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Going Beyond the Website Diversity Statement: Legal Employers and Retention of Diverse Lawyers
November 8, 2023

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Prof. Athena Mutua
Floyd H. & Hilda L. Hurst Faculty Scholar

Athena Mutua received her B.A. from Earlham College, her J.D. and M.A. from American University, and an LL.M. from Harvard Law School. She writes in the areas of critical race and feminist legal theory.

Her work includes the edited collection Progressive Black Masculinities (Routledge, 2006) and articles titled “Restoring Justice to Civil Rights Movement Activists: New Historiography and the ‘Long Civil Rights Era’ ” (2008); “The Rise, Development, and Future Directions of Critical Race Theory” (Denver University Law Review, 2006); and “Gender Equality and Women’s Solidarity Across Religious, Ethnic, and Class Difference in the Kenya Constitutional Review Process” in the William and Mary Journal of Women and Law (2006). The latter article involved activism and research for which she received the University of Buffalo Exceptional Scholars Young Investigator’s Award.

Her article “Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality” (Buffalo Law Review, 2008) explores issues of race and gender as they relate to class structures and introduces the concepts and boundaries of ClassCrits, a project she helped found.

Prof. Luis Chiesa, Dr. Teresa A. Miller Professor Law and Vice Dean for Diversity, Equity, and Inclusion

Born and raised in Puerto Rico, Professor Luis E. Chiesa earned his J.D. at the University of Puerto Rico School of Law (graduating first in his class), then his master of laws and doctor of juridical science degrees at Columbia University. He clerked for Hon. Federico Hernández Denton, chief justice of the Puerto Rico Supreme Court, and taught at Pace Law School before joining UB School of Law. Previously, Chiesa was the Rembe Distinguished Visiting Professor at the University of Washington; a visiting professor of criminal law at the Torcuato Di Tella University in Buenos Aires, Argentina; and a member of the visiting faculty at Sergio Arboleda University in Bogota, Colombia.

Chiesa's writings have been published in the Washington & Lee Law Review, the Utah Law Review, the Ohio State Journal of Criminal Law and the New Criminal Law Review, among other journals. Furthermore, Chiesa often publishes in some of the leading European and Latin American criminal law reviews. In addition to his teaching and scholarship, he directs the Buffalo Criminal Law Center.

Chiesa's research interests focus on substantive criminal law, criminal procedure, comparative law and animal cruelty laws. He brings the perspective of comparative law to the task, looking at the ways the criminal law doctrines of other countries can inform an understanding of our own laws.

Professor Chiesa received the Jacob D. Hyman Professor of the Year Award from the School of Law's Students of Color Dinner in 2014. He was also selected Professor of the Year by the 2014 graduating class.

Jamila Lee ‘15, Assistant Dean for Student Affairs

Jamila A. Lee, Esq. is an Assistant Dean of Student Affairs at SUNY at Buffalo School of Law. In her position, she handles academic advisement, disability accommodations, orientation, commencement, events, external and internal community building, diversity, equity, inclusion and belonging, and implementation of policies and procedures.

Ms. Lee earned her Bachelor of Arts from Trinity College in Hartford, Connecticut before going to earn her juris doctor from SUNY at Buffalo School of Law. During her law school career, she served as the President of the Buffalo Chapter of the National Black Law Student’s Association.

Prior to rejoining SUNY at Buffalo School of Law, Ms. Lee was the Deputy Chief Clerk of Erie County Surrogate’s Court where she worked as a manager and a court attorney. Ms. Lee continues her work with Surrogate’s Court in an independent capacity by conducting adoption home study investigations for the Surrogate Judge. Prior to her state employment, Ms. Lee also practiced law in private practice.

Through her professional affiliations, Ms. Lee gives back to her community. Ms. Lee serves as a board member for the Legal Aid Bureau of Buffalo, Inc., the Minority Bar Foundation of Western New York, and the Erie County Bar Association. She is a member of the Women’s Bar Association of New York - Western New York Chapter (WBASNY), the Buffalo Prep Collective, The Buffalo Seminary Anti-Racism Task Force, the Buffalo Seminary Alumnae Heads Council Engagement, and the Minority Bar Association of Western New York.

Ms. Lee was honored with the distinction of being a Buffalo Black Achiever, Who’s Who in America, and Business First’s Legal Elite of Western New York. Recently, Ms. Lee was awarded the Diversity Leadership Award from WBASNY. Ms. Lee feels extremely blessed to be the daughter of Owen Lee and the Hon. Barbara Johnson-Lee. As a first-generation American, Ms. Lee owes her accomplishments and privileges to her parents’ sacrifices and hard work.

Ursuline Bankhead, PhD
Psychology Chief/Assistant Chief of Mental Health and Chair of the Health Equity Committee VA Western New York Healthcare System

Dr. Bankhead has presented and trained on various topics including communication, implicit bias, diversity and inclusion, grief and loss, cognitive impairment, intergenerational trauma, and gender issues for various organizations and groups.

Presently, she is the Psychology Chief/Assistant Chief of Mental Health and Chair of the Health Equity Committee for the VA Western New York Healthcare System. Additionally, she is a member of the Attorney Grievance Committee for the 8th Judicial District of New York State, and has served as a consultant and supporter of Girl Scouts of Western New York.

Hon. Lenora Foote-Beavers ‘97, Judge, Buffalo City Court

Judge Lenora Foote-Beavers began her term in Buffalo City Court on January 1, 2020, and presided over the Domestic Violence Part for two years. She was appointed in 2021 to also serve as an Acting Erie County Family Court Judge, and currently hears custody, visitation and family offense cases. Previously, Judge Foote-Beavers served as a Support Magistrate with Erie County Family Court for 10 years.

Judge Foote-Beavers previously served as the Chief of Staff for the Fourth Department (22 counties) and Assistant to Presiding Justice. She was the first African-American and first Buffalo resident to hold this position. She handled various court management responsibilities including developing all diversity initiatives and creating a diversity plan for the Court. Judge Foote-Beavers’ main priority was to transform the face of the Court to elevate the diverse contributions by staff, connect staff with the neighborhoods served by the court, and better reflect the many distinct community members stretching from Niagara Falls to Syracuse. She was also responsible for overseeing the Human Resources Department and monitored complex personnel issues and litigation involving Court employees, advising the Department of Finance and assisting with budget preparation and allocations, managing and/or directing special projects, and regularly reviewing the operations and efficiencies of the three judicial districts encompassing the Fourth Department. Judge Foote Beavers organized the DEI educational plan for all Fourth Department employees, and was very intentional with the strategies employed to help transform the culture of the Court, by increasing diverse hiring and promotion, as well as empowering employees to create a work atmosphere of growth, belonging and overall staff well-being.

Judge Foote-Beavers was appointed to the Eighth Judicial District’s Diversity Committee in 2007, and currently serves on the Franklin H. Williams Judicial Commission for the NYS Courts (“FHW”) since 2016. As a FHW Commissioner, Judge Foote Beavers is responsible for analyzing issues impacting judges, staff and litigants of color, developing and implementing policies and strategies to resolve those issues, which ultimately improves the services the Court provides to the work force and the community as a whole. In addition, she responds to confidential employee complaints regarding DEI issues, may assist with resolution of those issues and/or refer the employee to the appropriate department for further investigation. Judge Foote Beavers recently co-chaired the FHW Awards Gala, highlighting members of the Court and legal community for their commitment to DEI, supported a team in planning several educational programs such as “Impact of Racism on Mental Health”, “Systemic Racism in America”, coordinated town hall sessions for employees to discuss DEI issues in the work place, and professional development and leadership training in the NYS Courts. In response to the tragedy experienced by all in Buffalo on May 14, 2022, FHW hosted an all day seminar in October, 2022 entitled “Buffalo Rising: Remembering the Past to Build a Stronger Community”. Judge Foote-Beavers served as a moderator for the program.

In addition to the DEI work incorporated within the Judge’s employment with the NYS Courts, she also serves on the Western New York Women’s Foundation Board of Directors, and chairs the Women’s Economic Mobility Hub.

Kristen Kelly
Associate Director for the Office of Diversity, Equity, and Inclusion

Kristen serves as Associate Director for Diversity, Equity, and Inclusion and Director of the Discover Law Undergraduate Scholars Program.

Kristen joined the Office of Admissions at the School of Law in 2015 where she was later named the Assistant Director of Admissions and Coordinator for Diversity Recruitment. Her D.E.I. experience spans her 8 1/2-year tenure at UB law where she's focused on recruiting, advising, and creating programming for historically underrepresented students throughout the law school enrollment process. Kristen is co-chair of the School of Law's D.E. I. Committee and serves as a member of the Sweet Home School District D.E.I. Committee. She is committed to cultivating a supportive and inclusive legal community in which our graduates may succeed and thrive.

GOING BEYOND THE WEBSITE DIVERSITY STATEMENT

Retention of diverse lawyers and law students

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Career Services Office

Empowering students, employers, and alumni through education and collaboration to achieve optimal career outcomes.

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WBASNY Western New York Chapter

MBAWNY Minority Bar Association of Western New York

BAR ASSOCIATION OF ERIE COUNTY

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WELCOME

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Professor Athena Mutua
Floyd H. & Hilda L. Hurst Faculty Scholar, University at Buffalo School of Law

Structural Racism in Law Firms

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Professor Luis Chiesa
Dr. Teresa A. Miller Professor Law and Vice Dean for Diversity, Equity, and Inclusion, University at Buffalo School of Law

Systemic Issues in Law Firms & Looking Beyond Grades and Law Review

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Deja Graham, J.D. Candidate (Class of 2024)
Author, The Forgotten: NYC & School Segregation, University at Buffalo School of Law


THE FORGOTTEN: NYC AND SCHOOL SEGREGATION

Deja Graham[1]

Abstract

School segregation is an issue of the past and present. Generations of Black and Brown Americans have attended schools that were inadequate and unequal to their white counterparts. This inequity in access to quality education has caused issues with diversity in professional fields, like the medical and legal fields. The lack of diversity in these fields are the results of decades of school segregation due to the government's failure to eradicate the dual system of education. Since the landmark case of Brown v. Board of Education, little progress has been made in providing Black and Brown children in metropolitan cities adequate or equal education to their white counterparts. New York City is just one example of how school segregation in metropolitan cities has decreased a minority's chance at success in obtaining higher education and, as such, entering the professional work force. The diversity issues that are seen in these professional fields starts on the first day a child is enrolled into kindergarten. The chances of a Black or Brown child achieving success decreases with every year they continue to receive a separate and unequal education.

INTRODUCTION

Though decades have passed, segregation is not only prevalent but palpable in our education system. It has been almost 70 years since the landmark decision of *Brown v. Board of Education*, which ruled segregation in schools unconstitutional.[1] Before 1954, the entire country was split into black and white in every aspect from water fountains to schooling. In the unanimous majority opinion, Chief Justice Warren declared that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational

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Jamila Lee ('15)
Assistant Dean for Student Affairs, University at Buffalo School of Law

The Law Student & New Lawyer Perspective

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Ursuline Bankhead, PhD
Psychology Chief/Assistant Chief of Mental Health and Chair of the Health Equity Committee VA Western New York Healthcare System

How to Honestly Assess Your Firm's Diversity Culture

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Some Grounding

- Per the ABA, attorneys who identify as **other than White** make up only 14% of all attorneys. That is -- 86% of all attorneys are White vs. 60% of the US population.
  - 10% of law firm partners identify as members of the global majority.
  - 2.1% of law firm partners report being LGBTQ+
- The Black and Brown attorneys are more likely to work in government or be solo practitioners than work in law firms.
- Women attorneys, especially non-white women, leave law firms and the law at significantly high rates.
- 70% of Black women attorneys report workplace discrimination and 66% planned to leave their firms within 2 years due to "not belonging."

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Assessing Culture

Quick Hit	What it means
What does your Diversity Statement say?	Have you assessed, discussed and processed any objectives and goals? Do you know what it says?
Are your diverse staff members part of your "team?"	Beyond your website or brochure are team members engaged/included in decisions-making for cases?
In case discussions, are you including issues of diversity?	Do you know how to talk about diversity in meaningful and professional ways relevant to the case?
Can you identify areas of bias in your hiring?	Do you have a realistic strategy for hiring a diverse staff?
Do you know your gains/losses for diverse staff?	Who is staying and leaving?
When staff bring issues of bias to management how does your firm respond?	Is your firm a place where all staff are safe?

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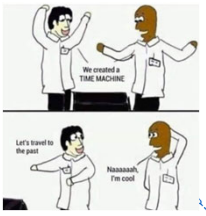
Asking Your Firm Some Questions

- Do you assume diversity = tragic backstory and/or a quota system?
- Do you assume that continuing generational law students or attorneys are a better "fit" than a first-generation law student or first-generation attorney?
- Do you assume a dialect, such as AAVE, is indicative of less intelligence? Do you know what AAVE is?
- Beyond your website – and diversity statement- what do the following mean:
  - "We value a diverse workforce"
  - "We are inclusive"
  - "We support a diverse workforce"



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Addressing the Issues

1. Go back to the diversity statement and see if it is empty- just words to make you feel temporarily good.
2. Have in place, a strong anti-harassment/bullying policy with teeth that applies ***across the board*** to help protect all, but particularly diverse, staff.
3. Assess your gains/losses– if no one is coming and all are going, or going quickly, you need to return to #1. WHO is screening and WHO is hiring? What is their criteria?
4. Engage in mentoring- REAL mentoring- of newly onboarded staff? How are you helping them to fit in?
5. Ensure performance appraisals are realistic, fair, and clear. ***And***, ensure staff are given the opportunity to reach those goals.
6. Figure out how to communicate with others. Communication styles vary by culture AND individual. Don't assume someone is disinterested because they are quiet, is vulgar because they are boisterous. Those people may be your best assets!
7. If someone isn't the "right fit" explore why. Is it because ***you*** are uncomfortable with WHO they are vs. WHAT they can do?

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Last Thoughts

- Law firms miss out on talent because of the presumed "bad fit" and law clerks and new attorneys miss out on great learning and connections because of stereotypes.
- While grades are important, they don't always predict what one can do actually ON the job.
- If your firm looks like the meme—> maybe we need to have a deeper discussion.

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Some references

- https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf
- NALP Report on Diversity
- Legal Profession Equity Journey Challenged by Employment Disparities | The Law School Admission Council (lsac.org)

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Hon. Lenora Foote-Beavers '97

Judge, Buffalo City Court

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Diversity, Equity, Inclusion and Belonging: Hiring and Mentoring New Lawyers

Hon. Lenora B. Foote-Beavers
lfoote@nycourts.gov

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Belonging: A Critical Piece of DEI
Carin Taylor, Chief Diversity Officer
Workday, Inc.

- **Black History is American History**

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Hispanic History is American History
Why are employers failing?
• Diversity IS NOT Inclusion
• Not just photos or statement on the website
• Meaningful policies and programs
• Not just the top 10 and law review
• Look deeper in the pool of candidates
• Ongoing education – at least bi-monthly

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P.E.A.C.E.
P – PSYCHOLOGICAL SAFETY/TRUST
E – EMPATHY/CARE & COMPASSION
A – ACCEPTANCE/AUTHENTIC BEST SELF
C – CONNECTION/FEEL WANTED
E – EMBRACE/APPRECIATED
Irish history is American History

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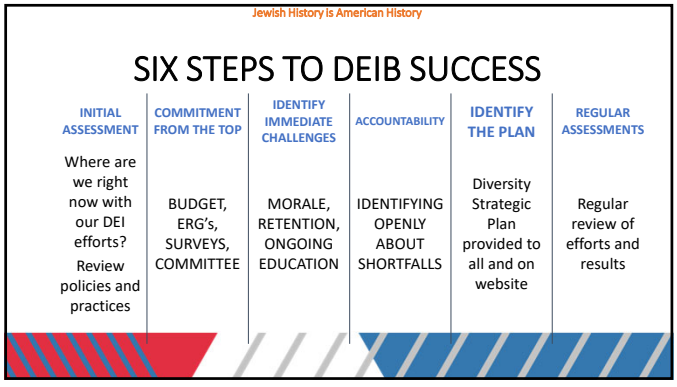
Jewish History is American History
SIX STEPS TO DEIB SUCCESS
INITIAL ASSESSMENT
Where are we right now with our DEI efforts?
Review policies and practices
COMMITMENT FROM THE TOP
BUDGET, ERG's, SURVEYS, COMMITTEE
IDENTIFY IMMEDIATE CHALLENGES
MORALE, RETENTION, ONGOING EDUCATION
ACCOUNTABILITY
IDENTIFYING OPENLY ABOUT SHORTFALLS
IDENTIFY THE PLAN
Diversity Strategic Plan provided to all and on website
REGULAR ASSESSMENTS
Regular review of efforts and results

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Think about doing….

- Mentoring Programs – mentors that WANT to be mentors
- Define the Firm's Culture
- Professional Development Opportunities
- Flexible Work Models
- Recognition and Rewards
- Empathy and Support
- Regular Feedback/Effective Communication
- Social Opportunities
- Community Service Events

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Italian History is American History

List of Sources

- ***Belonging, A Critical Piece of Diversity, Equity & Inclusion,*** TED Talk with Carin Taylor, Chief Diversity Officer, Workday, Inc.
- ***Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel***, Fordham Law Review, Volume 83, Issue #5, Article #13, Deborah L. Rhode, Lucy Buford Ricca
- ***How We Built a Mentoring Program that Actually Works,*** Baker Donelson, Bearman, Caldwell & Berkowitz, PC, Women's Initiative Newsletter, Issue #2 (2018), Kristine Roberts
- ***What Makes Lawyers Happy? Keys to Attract and Retain Talent in 2023***, Thomson Reuters, February 22, 2023
- ***Seven Ways Law Firm Leaders Can Retain Talent,*** Law.Com, Juanita Kendall, June 6, 2023
- ***How to Improve Law Firm Hiring and Retain Top Talent***, Bill4Time, June 17, 2022
- ***Small Firms, Big Issues: How to Compete on the Diversity Front***, Minority Corporate Counsel Association, Diversity & the Bar, July/August 2005 Issue
- ***Mentorship Program Toolkit***, Washington State Bar Association, mentorlink@wsba.org

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Kristen M. Kelly (she, her, hers)

Kristen serves as Associate Director for Diversity, Equity, and Inclusion and Director of the Discover Law Undergraduate Scholars Program. Kristen joined the Office of Admissions at the School of Law in 2015 where she was later named the Assistant Director of Admissions and Coordinator for Diversity Recruitment. Her D.E.I. experience spans her 8 1/2-year tenure at UB law where she's focused on recruiting, advising, and creating programming for historically underrepresented students throughout the law school enrollment process. Kristen is co-chair of the School of Law's D.E. I. Committee and serves as a member of the Sweet Home School District D.E.I. Committee. She is committed to cultivating a supportive and inclusive legal community in which our graduates may succeed and thrive.

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PUSHING PAST INCLUSION AND EMBRACING BELONGING

Practical tips for hiring and retention

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Pushing Inclusion

Every department is responsible for achieving inclusive excellence

- Sustainable Practices
- Top-Down Inclusive Leadership
- Humility, Acceptance, and Growth
- Learn Together

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Embracing Belonging

Belonging means the level of security and comfortability an employee feels at work when they are accepted, included, and supported. Feelings of belonging at work support engagement, high performance, and employee well-being and help teams build cohesion and achieve organizational goals.

Matt Tenney, Author of Serve to Be Great: Leadership Lessons from a Prison, a Monastery, and a Boardroom

- Don't Fake It
- Address Tough Topics
- It's Okay to Make Mistakes
- Check In
- It's Not Always About Doing More

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Glossary for Understanding the Dismantling Structural Racism/Promoting Racial Equity Analysis

We hope that this glossary will be helpful to your efforts. Unlike most glossaries, this glossary is not in alphabetical order. Instead it ranks the words in order of importance to an overall understanding of the dismantling structural racism/promoting racial equity analysis.

Structural Racism: A system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with "whiteness" and disadvantages associated with "color" to endure and adapt over time. Structural racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic and political systems in which we all exist.

Racial Equity: Racial equity refers to what a genuinely non-racist society would look like. In a racially equitable society, the distribution of society's benefits and burdens would not be skewed by race. In other words, racial equity would be a reality in which a person is no more or less likely to experience society's benefits or burdens just because of the color of their skin. This is in contrast to the current state of affairs in which a person of color is more likely to live in poverty, be imprisoned, drop out of high school, be unemployed and experience poor health outcomes like diabetes, heart disease, depression and other potentially fatal diseases. Racial equity holds society to a higher standard. It demands that we pay attention not just to individual-level discrimination, but to overall social outcomes.

Systemic Racism: In many ways "systemic racism" and "structural racism" are synonymous. If there is a difference between the terms, it can be said to exist in the fact that a structural racism analysis pays more attention to the historical, cultural and social psychological aspects of our currently racialized society.

White Privilege: White privilege, or "historically accumulated white privilege," as we have come to call it, refers to whites' historical and contemporary advantages in access to quality education, decent jobs and liveable wages, homeownership, retirement benefits, wealth and so on. The following quotation from a publication by Peggy Macintosh can be helpful in understanding what is meant by white privilege: "As a white person I had been taught about racism that puts others at a disadvantage, but had been taught not to see one of its corollary aspects, white privilege, which puts me at an advantage. . . White privilege is an invisible package of unearned assets which I can count on cashing in every day, but about which I was meant to remain oblivious." (Source: Peggy Macintosh, "Unpacking the Invisible Knapsack." excerpted from Working Paper #189 *White Privilege and Male Privilege a Personal Account of Coming to See Correspondences through Work in Women's Studies.* Wellesley, MA: Wellesley College Center for the Study of Women (1989).)

Institutional Racism: Institutional racism refers to the policies and practices within and across institutions that, intentionally or not, produce outcomes that chronically favor, or put a racial group

at a disadvantage. Poignant examples of institutional racism can be found in school disciplinary policies in which students of color are punished at much higher rates that their white counterparts, in the criminal justice system, and within many employment sectors in which day-to-day operations, as well as hiring and firing practices can significantly disadvantage workers of color.

Individual Racism: Individual racism can include face-to-face or covert actions toward a person that intentionally express prejudice, hate or bias based on race.

Diversity: Diversity has come to refer to the various backgrounds and races that comprise a community, nation or other grouping. In many cases the term diversity does not just acknowledge the existence of diversity of background, race, gender, religion, sexual orientation and so on, but implies an appreciation of these differences. The structural racism perspective can be distinguished from a diversity perspective in that structural racism takes direct account of the striking disparities in well-being and opportunity areas that come along with being a member of a particular group and works to identify ways in which these disparities can be eliminated.

Ethnicity: Ethnicity refers to the social characteristics that people may have in common, such as language, religion, regional background, culture, foods, etc. Ethnicity is revealed by the traditions one follows, a person's native language, and so on. Race, on the other hand, describes categories assigned to demographic groups based mostly on observable physical characteristics, like skin color, hair texture and eye shape.

Cultural Representations: Cultural representations refer to popular stereotypes, images, frames and narratives that are socialized and reinforced by media, language and other forms of mass communication and "common sense." Cultural representations can be positive or negative, but from the perspective of the dismantling structural racism analysis, too often cultural representations depict people of color in ways that are dehumanizing, perpetuate inaccurate stereotypes, and have the overall effect of allowing unfair treatment within the society as a whole to seem fair, or 'natural.'

National Values: National values are behaviors and characteristics that we as members of a society are taught to value and enact. Fairness, equal treatment, individual responsibility, and meritocracy are examples of some key national values in the United States. When looking at national values through a structural racism lens, however, we can see that there are certain values that have allowed structural racism to exist in ways that are hard to detect. This is because these national values are referred to in ways that ignore historical realities. Two examples of such national values are 'personal responsibility' and 'individualism,' which convey the idea that people control their fates regardless of social position, and that individual behaviors and choices alone determine material outcomes.

Progress & Retrenchment: This term refers to the pattern in which progress is made through the passage of legislation, court rulings and other formal mechanisms that aim to promote racial equality. Brown v. Board of Education and the Fair Housing Act are two prime examples of such progress. But retrenchment refers to the ways in which this progress is very often challenged, neutralized or undermined. In many cases after a measure is enacted that can be counted as progress, significant backlashes—retrenchment—develop in key public policy areas. Some examples include the gradual erosion of affirmative action programs, practices among real estate professionals that maintain segregated neighborhoods, and failure on the part of local governments to enforce equity oriented policies such as inclusionary zoning laws.

Selected excerpts from:

The Color of Law Review

Gregory S. Parks[1] & Etienne C. Toussaint[2]

INTRODUCTION

In the first seventy-three years of the *Virginia Law Review*'s existence, established on March 15, 1913, there were no Black members. In 1987, three Black students were welcomed as members of the *Virginia Law Review*, two of whom were invited because of a newly implemented affirmative action plan. Yet, it would take until 2021--approximately 108 years after the law journal's establishment--for the *Virginia Law Review* to elect its first Black Editor-in-Chief ("EIC"), Tiffany Mickel. Some might argue that this narrative merely reflects the difficulty of joining, much less leading, one of the nation's most prestigious law journals at one of its top-ranked law schools where the enrollment of Black students is routinely low. After all, Mickel is exceptional among Black law students nationwide as one of only a few Black women in the United States with a materials science and engineering degree from MIT. Her election is well-deserved, and her accomplishments deserve praise. Yet, the *Virginia Law Review*'s story appears to be more of an illuminating trend concerning law review's diversity problem than a heroic triumph for Black law students.

For example, on January 15, 2022, *Texas Law Review* elected Jason Onyediri as its first Black EIC after nearly 100 years of the journal's existence. In February 2021, the *Tulane Law Review* elected Antonio Milton as its first Black EIC, and the *Fordham Law Review* elected Tatiana Hyman as its first Black EIC. Also in 2021, the Georgia State University College of Law, the University of Minnesota Law School, the Syracuse University College of Law, and the Benjamin N. Cardozo School of Law each elected their first Black EIC in their school's respective histories. In fact, of the approximately

[1] Associate Dean of Strategic Initiatives, Professor of Law, Wake Forest University School of Law.
[2] Assistant Professor of Law, University of South Carolina School of Law.

sixty-five Black EICs from the top 100 law schools across U.S. history, roughly thirty-eight--more than half--were elected in the past ten years. What inspired the dramatic increase in the diversity of law review leadership in recent history, and why has it taken so long?

This question--what this Article calls law review's “diversity problem”--does not have an easy answer. While legal scholars have been talking about diversity, equity, and inclusion (“DEI”) on law review boards for far longer than the past decade, no American law school has yet to solve it. In 1988, then law student Frederick Ramos wrote a law review note exploring the impact of affirmative action policies on the diversity of law review boards. Of the eighty-four law reviews that responded to Ramos's survey, only six had affirmative action programs for editor selection, all of which had non-White members.All six of the law schools with affirmative action programs were so-called “elite” law schools: one in the South, three in the Midwest, and two in the West.Ramos discovered that law reviews with affirmative action programs averaged seventy-six members while those without such programs averaged forty-five members, suggesting that some law review DEI efforts at the time were not reducing the number of White student editors, but instead were increasing the number of editor positions to incorporate more racially and ethnically minoritized students.

Ramos's study further revealed that sixty percent of the law reviews in the survey pool with affirmative action programs had at least one Black student, eighty percent had at least one Hispanic student, and forty percent had at least one Asian American student. Conversely, of the seventy-eight law reviews that did *not* have an affirmative action program, thirty law reviews had no non-White members at all, comprising almost forty percent of the entire sample population.Even more, of the forty-eight law reviews that did *not* have an affirmative action program but *did* have non-White student representation, only seven had at least one Black student on the senior editorial board.For those law reviews in the study that implemented a mixed-method editor selection process (e.g., assessing first-year grades alongside performance on a writing competition), fifty-eight percent had at least one non-White member.Based on his

analysis of the impact of affirmative action programs on the diversity of law reviews, Ramos concluded that law reviews intent on increasing non-White student membership should consider an affirmative action program.At a minimum, he argued, such reforms should include structural changes to both the editor selection and scholarship publication process.

Unfortunately, few law reviews heeded Ramos's advice. Instead, ten years later, in 1998, *The Journal of Blacks in Higher Education* determined that not much had changed.In their survey of the twelve highest-ranked U.S. law schools, the journal found that only fifty of the students on their law reviews self-identified as Black. Specifically, Black students made up only 4.8% of the 1,038 law review editors surveyed. Even as law schools have been pushing for greater DEI in the classroom, few law schools seem to be concerned with the diversity of their law review boards. The silence of law schools amidst the persistent homogeneity of their law reviews suggests that at least some law school administrators believe the problem lies with the merit of their non-White students. Perhaps law reviews have been selecting the best law students all along, such adherents presumably contend. Black law students, they no doubt add, alongside other non-White students, have simply fallen short of the mark. ***

Critics of affirmative action and progressive DEI efforts argue that law school's so-called diversity problem does not imply that law schools are failing their law students or their local communities. Rather, too few qualified racially and ethnically minoritized students are applying to law school.For those few non-White applicants who do qualify for law school, but who are not “skilled” enough to earn admission to the law review, such critics note, law schools offer specialty journals that law students can voluntarily join, alongside other academic-enrichment programs that provide opportunities for strengthening legal research, writing, and advocacy skills.Law reviews are not biased, one concludes from this line of reasoning. Instead, the truth is that most law schools are predominantly composed of White students, which explains why law reviews look the same as most law school classrooms--predominantly White. Further still, the typical law review selection process is widely perceived to be neutral and color-blind, selecting

students based on their meritorious performance on first-year law school exams or a legal editing and writing exercise, and not for their popularity amongst peers. Perhaps law review's diversity problem is merely a symptom of law schools' failure to admit more underrepresented students into their J.D. programs?

We disagree. Far more must be done than merely tweaking law school enrollment statistics. This Article argues that law review's diversity problem must be engaged in the broader context of two complementary lenses: (1) sociopolitical efforts to eradicate racial injustice in the United States; and (2) institutional efforts to reform legal education. ***

By revisiting Critical Race Theory's (CRT) critique of racism in law (attending to the lens of sociopolitics) and the legal academy's critique of racism in legal pedagogy (attending to the institutional lens of the law school),this Article clarifies three fundamental drivers of law review's diversity problem, with implications not just for law reviews, but for legal education writ large.

First, this Article claims that the *purpose* of DEI for law reviews is not solely to increase diversity on the law review roster to enhance the learning experience of students on the journal. A deeper purpose of DEI, we argue, is to realign the distorted function of the law review with its ideal purpose. Alongside its familiar educational and professional purposes for law students, one of law review's fundamental purposes is to promote scholarly discourse on law and law reform to promote the public's interest. However, in practice, many law reviews are purposed toward political, social, and economic ends that undermine its lofty ideals. To avoid advancing a limited political vision of legal discourse, law reviews must consider a diverse spectrum of legal issues in their periodicals, not merely those that accord with the lived experiences and academic interests of their prototypical editor, who in most instances is an upper-class person racialized as White. Further, to avoid reproducing social hierarchy and serving as a gatekeeper for elite law practice and prestigious clerkships, law reviews must engage the contributions, needs, interests, and values of historically marginalized

groups, including law students. In so doing, law reviews challenge the status quo operation of the law review as a [W]hite space, whereby a historically [W]hite vision of academic discourse dominates both the production and reception of legal scholarship. For example, many law reviews have recently emphasized nontraditional scholarship on movement lawyering, police abolition, and climate change, alongside more traditional doctrinal articles on leading Supreme Court constitutional cases.

Second, this Article argues that the *role* of DEI for law reviews is not merely to increase the equality of opportunities for underrepresented students, nor simply to increase the discussion of marginalized experiences and diverse perspectives of law in public forums. We argue the role of DEI is to articulate a more ambitious conception of "equity" in law, political economy, and legal education. The equity imperative for law reviews, as it were, presents a challenge to the fundamental structure of the sociolegal institutions that coordinate legal education in the United States. This refers both to the meaning of law in the context of political processes, as well as to the constitution of the law review itself as an instrument of democratic cultural discourse that often shapes the evolution of law in legislatures and courts. Equity, as a political concept, must confront the so-called meritocratic mechanisms in law school, and by extension, in the law review. Indeed, as Lani Guinier argued, the very conception of meritocracy that governs how racially and ethnically minoritized students pursue equitable outcomes on the pathway toward legal practice must be challenged as a historically limited vision of legal education. Such views too often ignore the multicultural experiences of low-income Americans and non-White men and women in American society.

Finally, this Article contends that the *value* of DEI for law reviews is not simply the increased number of marginalized voices it introduces to mainstream legal discourse. DEI efforts also challenge the culture of mainstream legal discourse with voices that do not have the perceived academic merit or societal prestige necessary to gain access to such forums. This framing not only embraces a view of the lawyer as a public citizen with a special responsibility for justice, but also resists the elitism that pervades the legal profession and often renders law school (and the law review) complicit in the

production of social hierarchy. Challenging elitism in the legal profession, we argue, requires a bold critique of the toxic ideologies that color societal views on meritocracy and leadership, which can influence the very color of law review itself. Research has shown that in-group models have the potential to dramatically reduce or even eliminate stereotype threats that inhibit diverse law review applicants. Accordingly, law review DEI efforts must take seriously the call to increase diversity among EICs, which ultimately demands redefining their leadership structures altogether. To be sure, the recent wave of Black law review EICs is a bold step in the right direction. However, as we conclude in this Article, more work remains to dismantle the gatekeeping function of law reviews and transform it into an educational space open to all law students and all members of the broader community. ***

I.

B. *Law Review as a White Space*

Scholars such as Wendy Leo Moore and Bennett Capers argue that law schools-- from the portraits of White men that frequently adorn lecture halls, to the European names that commonly grace library entryways, to the White judges that typically author the case law itself--often function as a White spaces. According to the Law School Survey of Student Engagement (“LSSSE”) conducted in 2019, sixty percent of American law students were White, while Black, Latinx, Asian American, or multiracial students represented under ten percent each, and Native American students represented fewer than one percent. The views of Moore and Capers reflect the broader insights of Elijah Anderson, who notes the legacy of racial segregation in the United States: “The wider society is still replete with overwhelmingly [W]hite neighborhoods, restaurants, schools, universities, workplaces, churches and other associations, courthouses, and cemeteries, a situation that reinforces a normative sensibility in settings in which [B]lack people are typically absent, not expected, or marginalized when present.”

Non-White people in the United States must quickly learn how to navigate the cultural nuances of such domains to ensure their success and well-being, even if they are unfamiliar with such cultures. Conversely, for many White people, the inclusion of merely one or two non-White persons into "homogeneously [W]hite and relatively privileged" spaces renders such spaces "diverse" because it disrupts the status quo. Indeed, some White people in such scenarios "immediately try to make sense of [the Black person]--to figure out 'who that is,' or to gain a sense of the nature of the person's business and whether they need to be concerned."

Much of the same can be said of the law review. In the early nineteenth century, newspapers were the primary medium through which daily news reached the American public. However, these publications were usually written by journalists who had little to no knowledge of the law, leading to widely circulated misrepresentations and misinterpretations of the law. To mitigate confusion, lawyers began developing their own periodicals where they could discuss major cases and opine on changes in the law or the need for law reform. The first law journal in the United States, the *American Law Journal* and *Miscellaneous Repertory*, was founded in 1808 in Philadelphia. Competing law journals were created soon thereafter, however, most were eventually discontinued. All of the law journals published during this era were authored by White lawyers, rendering mainstream legal discourse a historically White space.

Since the early twentieth century, law students have viewed law review editing duties as a vehicle to enhance their awareness and understanding of the law. Over the past century, law reviews have proliferated, growing from seventy-eight in the 1950s to over one thousand today, including the emergence of specialty journals that provide a venue for the discussion of niche legal topics. However, before the civil rights movement amplified the importance of DEI in the legal profession, very few Black lawyers (or other racially and ethnically minoritized lawyers) were featured as authors in the pages of the nation's elite law reviews, let alone elected to editorial boards as student editors. The few Black law students who were elected to law review editorial boards in the early twentieth century faced extreme hostility from their White counterparts, which in many

instances continued after the civil rights advances of the 1950s and 1960s. Cultural tropes of Black inferiority influenced the perception of Black legal thinkers at many law schools. Thus, legal scholarship by Black attorneys was frequently criticized by White students and law faculty as deficient, while the qualifications of Black law students were often called into question based on the existence of affirmative action policies. Such challenges, in many ways, persist today. Even though Black enrollment in law schools nationwide has improved significantly over the past half-century, Black students' membership in law reviews is still alarmingly low. Most law reviews are still predominantly White spaces in form and function.

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C. *Law Review Editor Selection*

For many law students, the pinnacle of legal education is joining their school's law review, which is generally deemed the most exclusive extracurricular activity in law school. Law reviews offer their members a plethora of benefits, from “an intense research and writing course” to “a pathway to judicial clerkships and employment at large law firms.” Furthermore, a highly regarded law review can improve a law school's reputation by attracting articles and essays written by prominent scholars. This boost in reputation can attract the best faculty candidates to seek employment at the school. Such benefits, however, are exclusive and zero-sum: some students win, and other students lose. While those students who are deemed worthy of law review membership witness their careers blossom, law students who are not chosen must seek other ways to distinguish themselves from their peers. In addition, prestigious clerkships and positions at top law firms establish a pipeline to future positions in government and business that confer wealth and power. With so much at stake, the mechanisms that law reviews use to pick each new class of law student editors are worth examining. At many law schools, law reviews rely upon three primary methods of choosing editors, often employing some combination of the three. The first pathway to gain membership onto a law review is called “grading on,” whereby student editors are selected solely based on their first-year grades. The second common method of editor selection is called “writing

on," which consists of a canned writing competition that can last from one to six weeks. These two methods, either used alone or in conjunction, encompass the majority of law review selection processes. The third method, used less frequently, is called "publishing on," which assesses potential student editors based on the quality of a publishable note. Based on a study conducted in the late 1980s, eleven percent of the eighty-four law reviews surveyed solely used a write-on method to assess applicants, while two percent used grades as the only factor. The rest of the law reviews in the study used a combination of grades and writing competition scores. Not much has changed. ***

Each editor selection method is not without its share of critiques. For example, out of the three primary selection methods, the grading-on method is often viewed as the most "objective" selection criteria because it centers on academic performance.As of 2012, around eighty-eight percent of law reviews used "grades or class rank as factors in selecting students for law review membership." However, critics lament that first-year law school grades often have a limited correlation with a student's skill in scholarly writing or their aptitude for editing legal texts.Relying on first-year grades tends to underemphasize an applicant's reading and writing ability and overemphasize their ability to excel at law school exams, which may not adequately capture their legal editing skills or ability to think critically about legal scholarship.Indeed, some aspects of law exam writing--e.g., the familiar temptation to write as much information on the page in the time allotted at the expense of the logical flow of ideas or even grammar--are incompatible with strong legal writing. ***

[C]ritics of the writing competition point toward its canned nature, limited timeframe, emphasis on "formalistic conformity," and limited resource pool as shortcomings. These factors not only hinder creativity, but also stymie opportunities to critique dominant views with nontraditional legal opinions, insights, and resources. ***

For law reviews that manage to overcome these individual shortcomings …. there remains the ongoing challenge of law review membership homogeneity. Although some law reviews have adopted affirmative action plans, many others choose to explicitly ignore race, ethnicity, and sex during the selection process. Such neutrality or "colorblindness" appears to provide the fairest selection process for all students by

eschewing categorizations that often carry with them hidden biases, stereotypes, and prejudices. However, as critical race theory founder Derrick Bell argued, “the selection process favors [B]lacks who reject or minimize their [B]lackness, exhibit little empathy for or interest in [B]lack students, and express views on racial issues that are far removed from positions held by most [B]lacks.” In other words, law students that tend to perform well on law school exams or on writing competitions are often those who have mastered the language of so-called traditional legal analysis. However, such legal discourse, as noted above, has not historically catered to countercultural views or framed legal analysis through the lens of race, gender, or sexuality in explicit ways. Rather, traditional legal analysis tends to normalize the cultural views of the upper-class White men who are its predominant authors. Put another way, legal analysis has historically served as a White space, underscoring the goal of critical race theorists to expose the embeddedness of racial ideology in many laws and public policies.

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A Push for More Progress: Increased Diversity in the Legal Profession

The Legal Intelligencer

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Byline: KATHARINE W. FOGARTY AND ALEXANDRA LYNCH Special to the Legal

Body

O ver the last few years, more and more law firms have recognized the importance and value of having a diverse workforce, i.e., employees with different perspectives, opinions and experiences. As a result, law firms across the country have implemented diversity, equity and inclusion initiatives, including the pursuit of Mansfield Rule certification, in an effort to modify and improve upon their processes for making hiring and promotion decisions.

However, while there has been an overall push for increased diversity efforts among law firms, diversity in the legal profession falls far behind in comparison with other professions. In fact, according to data from the American Bar Association (ABA), only 19% of attorneys in the United States are considered minorities ("U.S. Supreme Court's affirmative action ruling a 'headwind' for lawyer diversity, experts say," Reuters, July 29, 2023). In comparison, minorities make up a much larger percentage in other professions, e.g., 36% of physicians and 30% of dentists. These numbers alone make it clear that much more needs to be done to create a diverse and innovative legal industry.

The need for a greater push by legal professionals to increase hiring and advancement opportunities for diverse candidates is only further illustrated by the findings from the ABA's Model Diversity Survey Report for 2022 (the report). The report summarizes findings from studying diversity, equity and inclusion efforts throughout the legal profession and examining representation among the different attorney levels of a law firm, e.g., equity partner, non-equity partner, associates, of counsel. The report's 2022 findings are fairly consistent with those findings from both 2020 and 2021, which showed that Caucasian men continue to dominate in representation within law firms they make up the top 10% of the highest paid attorneys at the firm and are disproportionately overrepresented in firm leadership positions (2022 ABA Model Diversity Survey, 2021 ABA Model Diversity Survey, 2020 ABA Model Diversity Survey, American Bar Association). In fact, Caucasian men were disproportionately overrepresented at the equity partner level but underrepresented at the associate level (2022 ABA Model Diversity Survey Reports). Further, Caucasian men were most likely to serve on governance committees at their law firms, whereas minority women attorneys were least likely to serve in these roles.

The report also found that all non-Caucasian attorney groups had 2% or less representation among the top 10% or next 20% of top earners in a firm. Additionally, African American women had the highest turnover rate throughout most of the attorney levels, especially at the partnership level. Further, the turnover rate for LGBTQIA+ individuals was higher than the baseline for both nonequity partner and of counsel roles and the turnover rate for disabled attorneys was higher than the baseline at the associate level. The report also found that African American males were more likely to be promoted to equity and nonequity roles, whereas African American women were least likely

to be promoted into these roles. Id. In comparison, associates who are disabled or are veterans were least likely to be promoted to equity partner relative to non-equity and of counsel roles.

These findings highlight the ongoing lack of diversity in the legal profession, and one way in which law firms are demonstrating their commitment to enhancing diversity is through obtaining certification under the Mansfield Rule. The Mansfield Rule, modeled after the NFL's Rooney Rule, was launched by the Diversity Lab in 2017 to assess whether law firms consider diverse candidates for hiring and promotions. The purpose of the Mansfield Rule is to diversify the entire power structure of law firms by broadening the pool of candidates considered for job openings, promotions, and leadership roles. The Mansfield Rule measures whether law firms have affirmatively considered at least thirty percent (30%) of talent from four groups: women attorneys, underrepresented racial and ethnic attorneys, LGBTQIA+ attorneys, and attorneys with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities and senior lateral positions. Law firms are also asked to consider 30% of underrepresented talent for C-suite roles and 50% underrepresented talent for top internal roles and outside counsel. The Mansfield Rule now on its sixth iteration continues to evolve and expand as previous versions did not specifically include equity partnership and did not count the four groups separately.

Obtaining Mansfield certification clearly demonstrates a law firm's commitment to diversity as those firms that piloted the Mansfield Rule from 2017 through 2019 have diversified their management committees by more than 30 times the rate of non-Mansfield firms ("Mansfield Rule 6.0 Pushes for Increased Diversity in the Legal Profession" Civility, Aug. 26, 2022). More and more law firms are recognizing the importance and significance of obtaining Mansfield Rule certification. In fact, while only 60 law firms participated in Mansfield 2.0, as of 2023, there are 340-plus U.S. and Canadian law firms, 20-plus U.K. law firms, and 75-plus legal departments participating in the certification process to implement the Mansfield Rule.

While the creation of a diverse workplace is the first step for law firms, they cannot simply stop there. Law firms need to take the necessary steps to foster a respectful work environment in which diverse employees feel valued and included. An emphasis on inclusion will signal to employees that their different viewpoints and experiences are encouraged. Further, promoting inclusion among their employees will lead to more effective communication, fewer misunderstandings, more effective motivational methods, increased recruitment and employee retention, better formed expectations, and increased productivity and teamwork.

Law firms can promote a respectful and inclusive work environment by creating diversity & inclusion committees and hosting training sessions geared towards educating employees about the importance of diversity and challenging implicit biases.

Overall, while diversity within the legal profession has improved over the last few years, progress has been slow, and law firm leadership must be further educated on the importance of diversity and inclusion so they will take greater steps toward enhancing diversity among leadership and increasing transparency of their firm's diversity, equity and inclusion practices.

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Diversity in the Legal Profession: A Hopeful Perspective From a Young, Black Female Attorney

The Legal Intelligencer

February 27, 2023 Monday

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Byline: KIMBERLY-JOY WALTERS Special to the Legal

Body

S weet relief washed over me when I found my name on the July 2022 Pennsylvania Bar examination successful applicants list. Seeing my name was surreal. I was grateful. I was hopeful. I felt as if maybe, just maybe, my success would help increase the statistic that only 5% of attorneys are Black.

When I was applying to college, admissions committees promoted their colleges as inclusive and diverse. As the child of Jamaican immigrants those words rang welcome bells for me. I continued on the path of seeking diverse and inclusive spaces while in law school. I joined affinity groups such as BLSA and worked as a member of its executive board to provide resources and opportunities for our members. Creating spaces of power for my fellow students of color was my priority. Continuing this work and finding a workplace with the same mission of inclusivity and diversity was important to me.

So, now the question is: what does diversity mean to me, within the context of the legal profession?

I considered this question for days as I chewed on the word diversity, and I have an answer. Diversity is a continuous learning curve with no plateau in sight. Not because a plateau is impossible, but because the path of diversity and inclusion is a lifelong, collaborative effort. Diversity is the amplification of marginalized voices in spaces where they are not the majority. While creating these spaces, there must be opportunity for discomfort. Discomfort is the catalyst of growth and learning. When listening to minorities within the legal profession who are speaking their truth, it is important to be uncomfortable while listening to their stories, because discomfort means you are listening. Discomfort means you are working with a perspective that is not your own, but you are trying to create common ground. You are trying to understand, to be a better advocate for your peers, and clients, who may have different backgrounds from your own.

I began my legal career at State Farm Insurance during my 2019 1L Philadelphia Diversity Law Group (PDLG) summer internship and worked with this office throughout my law school career and now as a lawyer. Despite not being in person for the first few years due to COVID, I both learned from the attorneys who went above and beyond to cultivate my learning how to be a lawyer and we learned from each other more about diversity, inclusion and allyship.

When George Floyd died in the summer of 2020, I found it incredibly difficult to work. It was hard to concentrate when the world was shut down and there was nothing to distract me from the constant onslaught of video footage of his death. At this time, as a young Black lawyer-to-be, I was hyper-vigilant of responses to this tragedy. What did people do? What did they not do? I was relieved, and grateful, when our office held a discussion to share how we

felt about the tragedy. A space was created to grieve, to process, to talk about what we should and could do moving forward. The space was uncomfortable, but purposeful. As we engaged in difficult conversations about race in America, I felt seen, heard, and validated by my coworkers. These conversations were necessary and it made me feel safe in my new workplace environment. It felt safe to know my identity would be uplifted and heard.

I returned the following summer to State Farm. I was happy to be working with the office again not only for their work ethic and commitment to my development, but also for the manner in which they handled Floyd's death and the subsequent civil rights events by carving out time to hold a discussion on what to do moving forward. That stuck with me. This past summer, I collaborated with our office's diversity and inclusion committee on a project about Juneteenth. I presented on the holiday and afterwards I hosted a discussion with my coworkers. The main topic was on allyship and what being an ally looked like. Our discussion was robust. My co-workers brought meaningful questions and sought advice on how they could be better allies to marginalized communities. This moment was again monumental for me and solidified my decision to work with this company after graduation.

These moments of intentional inclusivity are important in the legal profession. Remember the statistic I mentioned earlier? Only 5% of attorneys are Black. That statistic reminds me that I am one of the few. I will see more peers that do not look like me than those who do. It was important for me to find a workplace where I could feel safe and comfortable in my skin. Fostering diversity in the legal profession should follow the example I experienced. Creating spaces. Hosting uncomfortable conversations and collaborating to reach mutual understanding.

As attorneys we are advocates first and foremost. Advocacy, to me, requires an intimate understanding of those for whom you are advocating. It requires having an open mind that is willing to listen and learn from those who are different from you. It is the key to effective, impactful advocacy. The legal profession should continue to strive to make diversity and inclusion a necessary part of the practice of law. I am thankful that as a young, Black, aspiring lawyer-to-be, I experienced diversity and inclusion not just as buzzwords, but as a sincerely held belief and practice.

Continue creating these spaces. May they be made with power, love, and a genuine desire to learn and uplift. That is how we as a legal profession can excel in the future. That is what diversity and inclusion in the legal profession can and should be.

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Readers' Poll Sheds Light on Attitudes, Approaches Hindering Diversity in Legal Profession

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Body

The Legal's most recent poll asked readers whether their law firms or organizations prioritized racial, ethnic and gender diversity and inclusion as part of their culture.

While an overwhelming majority (65 percent) of the 37 respondents said their employers did place emphasis on diversity, 59 percent also said their organizations did not consider diversity when making decisions on promotions.

In addition, 49 percent of respondents to the The Legal's poll said they viewed their employers' stated emphasis on diversity as mere "window dressing."

The same questions were asked of readers in Texas, Connecticut and Florida. View the graphic below to see how those responses compared to Pennsylvania's results.

While it's important to note that the responses to Pennsylvania's poll represent a very small sample size, some of the open-ended answers left by respondents, most of whom chose to remain anonymous, do provide some insight into the troubling attitudes and approaches toward diversity that can stifle progress within an organization.

One commenter complained about their firm "retaining underperforming minority lawyers when 'non-diverse' lawyers with the same performance would almost certainly have been fired."

While that same respondent acknowledged that a "lack of diverse lawyers in the pipeline is a real issue," they added that "the elephant in the room is that diverse lawyers, and [their] advocates, want to be held to a different, lower, standard than everyone else. The fact that firms aren't willing to adjust their standards is not indicia of devaluing diversity."

Other commenters said they've witnessed pushback on diversity efforts within their own organizations.

"Some senior members are very committed to actual improvements in diversity, but small pockets of resistance stymie any real progress," said one.

Another said firm leaders currently have little financial incentive to devote more than lip service to the issue of improving diversity.

Jamila Lee

"Law firm profits are booming without meaningful diversity, especially at senior levels," the commenter said. "Unless and until that changes, doubtful that any significant progress will be made in terms of improving racial or gender diversity."

Even those who said they believed many law firms were committed to diversity pointed out flaws in their approach.

"I truly believe that most firms care about diversity in 2019. The problem is that all the top firms are going after the same candidates, who are of a limited number," one commenter said, adding that firms tend to focus too much on recruitment and not enough on retention.

Another commenter said law firms and other organizations that want to make real progress on diversity need to do more to counter-resistance within their ranks.

"I do think many firms value diversity, but they fail to realize that it takes courage and making others uncomfortable to be effective," they said. "If it didn't make the majority uncomfortable, diversity wouldn't be an issue in the first place. Also, I think some people hide behind substantial gender diversity to cover for the fact that they have made poor progress in the areas of racial and other diversity. There are few (if any) firms that do not have a lot more work to do in this area."

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United States: The Path To Diversity In The Legal Profession

Mondaq Business Briefing

September 21, 2023 Thursday

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Byline: Hon. Carlos Moreno (Ret.)

Body

I am the son of Mexican immigrants who, like so many others, came to the United States in the early part of the last century seeking a better life for themselves. I grew up in Los Angeles, a product of its public schools, and was fortunate enough to attend college and law school with substantial financial assistance from those schools.

Unlike a number of my peers, who knew early on that they wanted to be a lawyer, I made that decision after I had graduated from college, thinking it was a good option to develop a career in law or some other profession, even though I had never met a lawyer or even a judge. I have never looked back.

Over the years, first as an attorney and later as a judge, I have been committed to building a pipeline to the legal profession, starting with children in middle school and continuing into their college years. Hispanics are significantly underrepresented in the legal field, and in order to change that, it is crucial that we bring awareness of opportunities in the legal profession to students at an early age. One startling statistic is that 38% of the California population is Hispanic/Latino, yet only 6% of the attorneys in California are Hispanic/Latino. Of course, there are many reasons why minorities and people of color are disproportionately underrepresented in our profession, but that should not deter us from taking these first steps.

The Justice Carlos R. Moreno Courtroom pays tribute to Justice Moreno's remarkable 25-year career, marked by over 140 precedent-setting majority opinions.

It is undisputed that diversity in all aspects of our justice system is essential in building trust and confidence in that system and that such representation adds to the appearance as well as the substance of fairness and due process. The benefits for society, our global economy and the development of future leaders in the public and private sectors are obvious.

Pipeline programs are the key to diversifying the legal profession. They provide foundational knowledge about what lawyers do in the broad arena of the law; they offer direct access to lawyers and judges as mentors; they enhance lawyerly and test-taking skills; they open access to internship and financial aid opportunities; and they provide overall academic support to and build confidence in participants in the programs.

Throughout my career, through my service on various boards and equal access commissions, I have had the privilege of witnessing various programs and initiatives that actively support the advancement of diversity within the legal profession. My hope is that these examples serve as not only inspiration but also a guide for others who want to foster diversity in the legal field:

JAMS Diversity Fellowship Program: As part of our commitment to increasing the pool of diverse neutrals, JAMS offers training, mentorship and sponsorship opportunities to aspiring alternative dispute resolution (ADR) professionals from diverse backgrounds. In addition to increasing opportunities in dispute resolution, the fellowship also assists with diversity recruitment in key JAMS markets.Diversity pledges: JAMS partnered with other ADR providers to support diverse neutrals through the signing of the Ray Corollary Initiative (RCI) Pledge. The initiative encourages ADR providers to include at least 30% diverse neutral candidates and drive accountability by tracking selections from those slates or rosters.Affinity bar associations: JAMS actively supports numerous affinity bar organizations. These organizations seek to improve the business opportunities available to their members by publicizing job opportunities in the private and public sectors, as well as by supporting member efforts to be appointed to serve in the judiciary.

In addition, I am honored that MLG Attorneys at Law recently named their state-of-the-art mock courtroom after me. The grand opening of the Justice Carlos R. Moreno Courtroom will foster collaboration, diversity and the highest standards of legal advocacy within the legal community, which is something I am passionate about. This cutting-edge facility will allow attorneys to refine trial strategies with the goal of more effectively representing clients. I'm proud to have my name on this Costa Mesa, California facility.

I often reflect on my path in the legal profession: starting as a deputy city attorney, working in private practice and then serving on the judiciary for 25 years. Certainly, I received much advice and timely assistance in the process. But there is no question in my mind that I would have been better informed and greatly benefited from the kinds of legal pipeline programs that seek to build a path to greater diversity in our legal profession.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel

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DIVERSITY IN THE LEGAL PROFESSION: PERSPECTIVES FROM MANAGING PARTNERS AND GENERAL COUNSEL

Deborah L. Rhode & Lucy Buford Ricca***

INTRODUCTION

Within the American legal profession, diversity is widely embraced in principle but seldom realized in practice. Women and minorities are grossly underrepresented at the top and overrepresented at the bottom. What accounts for this disparity and what can be done to address it are the subjects of this Article. It provides the first comprehensive portrait of the problem from the vantage of leaders of the nation's largest legal organizations. Through their perspectives, this Article seeks to identify best practices for diversity in law firms and in-house legal departments, as well as the obstacles standing in the way.

Part I begins with an analysis of the challenges confronting the American bar with respect to diversity and the gap between the profession's aspirations and achievements. Part II sets forth the methodology of the survey of law firm leaders and general counsel. Part III explores the survey's findings, and Part IV concludes with a summary of best practices. "We can and should do better"[1] was how one participant in the study described his firm's progress, and that view is the premise of this Article.

I. CHALLENGES[2]

According to the American Bar Association (ABA), only two professions (the natural sciences and dentistry) have less diversity than law; medicine, accounting, academia, and others do considerably better.[3] Women

* Ernest W. McFarland Professor of Law and Director of the Center on the Legal Profession, Stanford University. This Article is part of a larger colloquium entitled *The Challenge of Equity and Inclusion in the Legal Profession: An International and Comparative Perspective* held at Fordham University School of Law. For an overview of the colloquium, see Deborah L. Rhode, *Foreword: Diversity in the Legal Profession: A Comparative Perspective*, 83 FORDHAM L. REV. 2241 (2015).

** Executive Director, Center on the Legal Profession, Stanford University.

1. Telephone Interview with Ahmed Davis, Nat'l Chair of the Diversity Initiative, Fish & Richardson P.C. (May 6, 2014).

2. Analysis in this part draws on DEBORAH L. RHODE, THE TROUBLE WITH LAWYERS (forthcoming 2015).

3. ELIZABETH CHAMBLISS, ABA COMM'N ON RACIAL & ETHNIC DIVERSITY IN THE LEGAL PROFESSION, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 6–7 (2005). For example, minorities account for about 25 percent of doctors and 21 percent of

constitute over one-third of the profession but only about one-fifth of law firm partners, general counsel of Fortune 500 corporations, and law school deans.[4] Women are less likely to make partner even controlling for other factors, including law school grades and time spent out of the work force or on part-time schedules.[5] Studies find that men are two to five times more likely to make partner than women.[6] Even women who never take time away from the labor force and who work long hours have a lower chance of partnership than similarly situated men.[7] The situation is bleakest at the highest levels. Women constitute only 17 percent of equity partners.[8] Women are also underrepresented in leadership positions, such as firm chairs and members of management and compensation committees.[9] Only seven of the nation's one hundred largest firms have a woman as chair or

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accountants but only about 12 percent of lawyers. Sara Eckel, *Seed Money*, AM. LAW., Sept. 2008, at 20; *Lawyer Demographics Table*, ABA, http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf (last visited Mar. 25, 2015) (estimate of minority lawyers drawn from 2010 U.S. Census data).

4. *See generally* ABA COMM'N ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN LAW (2014), *available at* http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_july2014.authcheckdam.pdf; *MCCA Survey: Women General Counsel at Fortune 500 Companies Reaches New High*, MINORITY CORP. COUNSEL ASS'N (Aug. 3, 2012), http://www.mcca.com/index.cfm?fuseaction=Feature.showFeature&FeatureID=350&noheader=1; *Women in Law in Canada and the U.S: Quick Take*, CATALYST (Dec. 10, 2014), http://www.catalyst.org/knowledge/women-law-us.

5. Theresa M. Beiner, *Not All Lawyers Are Equal: Difficulties That Plague Women and Women of Color*, 58 SYRACUSE L. REV. 317, 328 (2008); Mary C. Noonan et al., *Is the Partnership Gap Closing for Women? Cohort Differences in the Sex Gap in Partnership Chances*, 37 SOC. SCI. RES. 156, 174 (2008).

6. A study of young lawyers by the American Bar Foundation (ABF) found that women attained equity partner status at about half the rate of men. *See* RONIT DINOVITZER ET AL., NAT'L ASS'N FOR LAW PLACEMENT FOUND. FOR CAREER RESEARCH & EDUC. & THE ABF, AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 63 (2009), *available at* http://law.du.edu/documents/directory/publications/sterling/AJD2.pdf. A study by the Equal Employment Opportunity Commission (EEOC) found that male lawyers were five times as likely to become partners as their female counterparts. *See* EEOC, DIVERSITY IN LAW FIRMS 29 (2003), *available at* http://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/lawfirms.pdf.

7. Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 142 (2004); *see also* Kenneth Day Schmidt, *Men and Women of the Bar, the Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49, 100–02 (2009) (comparing the respective likelihoods that men and women become partner).

8. NAT'L ASS'N OF WOMEN LAWYERS (NAWL) AND THE NAWL FOUND., REPORT OF THE EIGHTH ANNUAL NAWL NAT'L SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 7 (2014); *see also* Vivia Chen, *Female Equity Partnership Rate Is Up! (Just Kidding)*, CAREERIST (Feb. 25, 2014), http://thecareerist.typepad.com/thecareerist/2014/02/nalp-report-2014.html.

9. Jake Simpson, *Firms Eyeing Gender Equality Should Adopt a Corporate Culture*, LAW360 (Apr. 22, 2014), http://www.law360.com/articles/530686/firms-eyeing-gender-equality-should-adopt-corporate-culture (subscription required); *see* Maria Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends*, 19 HASTINGS WOMEN'S L.J. 53, 71 (2008); *see also* JOAN C. WILLIAMS & VETA T. RICHARDSON, PROJECT FOR ATT'Y RETENTION & MINORITY CORP. COUNSEL ASS'N, NEW MILLENNIUM, SAME GLASS CEILING? THE IMPACT OF LAW FIRM COMPENSATION SYSTEMS ON WOMEN 14 (2010).

managing partner.[10] Gender disparities are similarly apparent in compensation.[11] Those differences persist even after controlling for factors such as productivity and differences in equity/non-equity status.[12]

Although blacks, Latinos, Asian Americans, and Native Americans now constitute about one-third of the population and one-fifth of law school graduates, they still only account for fewer than 7 percent of law firm partners.[13] The situation is particularly bleak for African Americans, who constitute only 3 percent of associates and 1.9 percent of partners.[14] In major law firms, about half of lawyers of color leave within three years.[15] Attrition is highest for women of color; about 75 percent depart by their fifth year and 85 percent before their seventh.[16] Compensation in law firms is lower for lawyers of color, with minority women at the bottom of the financial pecking order.[17]

The situation is somewhat better for women in-house. Women hold the top legal job at 21 percent of Fortune 500 companies.[18] That number increased from 17 percent in 2009.[19] Interestingly, women seem to be doing best at the nation's largest companies: four women are general counsel at the seventeen largest companies.[20] But only 17 percent of general counsels in the Fortune 501–1000 are female.[21] Minority representation in the general counsel ranks of the Fortune 500 is 10

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10. Kathleen J. Wu, *"Bossy" is "Bitch" on Training Wheels*, TEX. LAW. (Apr. 29, 2014), http://www.texaslawyer.com/id=1202653144141/Bossy-Is-Bitch-on-Training-Wheels?slreturn=20150202171343 (subscription required) (referring to Law360 survey).

11. BARBARA M. FLOM, NAWL & NAWL FOUND., REPORT OF THE SEVENTH ANNUAL NAT'L SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 15–16 (2012); Karen Sloan, *ABA Issues Toolkit, Aiming to Eliminate Gender Pay Gap*, NAT'L L.J. (Mar. 18, 2013), http://www.nationallawjournal.com/id=1202592488273/ABA-issues-toolkit-aiming-to-eliminate-gender-pay-gap-?slreturn=20150203201645 (subscription required) (noting that women law firm partners earn about $66,000 less than male partners). Women also have lower billing rates than their male counterparts. *See* Jennifer Smith, *Female Lawyers Still Battle Gender Bias*, WALL ST. J. (May 4, 2014), *available at* http://www.wsj.com/articles/SB10001424052702303948104579537814028747376.

12. Marina Angel et al., *Statistical Evidence on the Gender Gap in Law Firm Partner Compensation* 2–3 (Temple Univ., Legal Studies Research Paper No. 2010-24, 2010); Ronit Dinovitzer, Nancy Reichman & Joyce Sterling, *Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyer's Incomes*, 88 SOC. FORCES 819, 835–37 (2009).

13. *Women and Minorities in Law Firms by Race and Ethnicity—An Update*, NALP (Apr. 2013), http://www.nalp.org/0413research.

14. Julie Triedman, *The Diversity Crisis: Big Firms' Continuing Failure*, AM. LAW. (May 29, 2014), http://www.americanlawyer.com/id=1202656372552/The-Diversity-Crisis-Big-Firms-Continuing-Failure?slreturn=20140825135949 (subscription required).

15. NANCY LEVIT & DOUGLAS O. LINDER, THE HAPPY LAWYER 14 n.55 (2010).

16. DEEPALI BAGATI, WOMEN OF COLOR IN U.S. LAW FIRMS 1–2 (2009).

17. ABA COMM'N ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY 28 (2006).

18. Sue Reisinger, *Top Women Lawyers in the Fortune 500*, CORP. COUNS. (Mar. 18, 2014), http://www.corpcounsel.com/id=1202647358761/Top-Women-Lawyers-in-the-Fortune-500?slreturn=20150110161812 (subscription required).

19. *Id.*

20. *Id.*

21. *Id.*

percent.[22] Five percent of Fortune 500 general counsel are African American, 2 percent are Asian, and 2 percent are Hispanic.[23]

II. METHODOLOGY

Between May and June 2014, a request to participate in this survey was sent to the managing partner or chair of the nation's one hundred largest firms[24] and the general counsel of Fortune 100 corporations. Telephone interviews were scheduled with all of those who indicated a willingness to be surveyed. In some instances, the organization's managing partner or general counsel identified someone else in charge of diversity initiatives to be contacted, and interviews were conducted with that person instead of, or in addition to, the managing partner or general counsel. Thirty firms and twenty-three corporations agreed to participate. Thirty spoke on the record; eleven requested anonymity; eleven requested that any quotations be cleared; and one did not indicate any preference. To gain additional perspectives, the authors interviewed members of a national search firm and a consultant on diversity, as well as in-house counsel of some smaller corporations. A list of survey participants appears as Appendix A.

By definition, those who were willing to take the time to participate in the study had a strong commitment to diversity. Moreover, they came from the sectors of the profession with the most resources available to invest in the issue. The findings therefore do not represent a cross section of the profession. Rather, they reflect the experience of those with the greatest willingness and ability to advance diversity in the profession. These participants' insights can help illumine the most effective drivers of change.

III. Findings

A. Diversity As a Priority

For the vast majority of survey participants, diversity was a high priority. Although this comes as no surprise, given the self-selected composition of the study, the strength of that commitment was striking.

Among firms, several members spoke of diversity as one of their core values or as part of the firm's identity.[25] A number of individuals stressed

22. AMENA ROSS, EXECUTIVE SUMMARY OF 2014 FORTUNE 500 GENERAL COUNSEL DIVERSITY (n.d.), *available at* http://www.leldnet.org/media/uploads/resource/Executive_Summary_of_Amena_Ross_Fortune_500_General_Counsel_Diversity.pdf.

23. *Id.*

24. Based on *The American Lawyer*'s ranking.

25. For core values, see Telephone Interview with Nicholas Cheffings, Chair, Hogan Lovells (July 2, 2014); Telephone Interview with Robert Giles, Managing Partner, Perkins Coie LLP (July 18, 2014); Telephone Interview with Thomas Milch, Chair, Arnold & Porter LLP (June 25, 2014); *accord* Telephone Interview with Carter Phillips, Chair of Exec. Comm., Sidley Austin LLP (June 13, 2014) (one of firm's top three or four priorities). For firms' identity, see Telephone Interview with Joseph Andrew, Global Chairman, & Jay Connolly, Global Chief Talent Officer, Dentons (July 30, 2014); Telephone Interview with Maya Hazell, Dir. of Diversity & Inclusion, White & Case LLP (June 24, 2014); Telephone Interview with Larry Sonsini, Chairman, Wilson Sonsini Goodrich & Rosati (July 21, 2014);

that it was not just the "right thing to do," but also critical to firms' economic success.[26] In elaborating on the business case for diversity, many firm leaders indicated that diversity was central to providing quality service to clients:

- "A diverse team is a more effective team; it has a broader base of experience . . . and the client gets a better product."[27]
- "You can't get the best work without the best talent."[28]
- "This is a talent business. You need to cast the net broadly."[29]
- "The client base is changing and if we don't change with it, our bottom line will be impaired as a result."[30]
- "We're in the human capital business. [Diversity is a way to get] the best people and the best decision making."[31]

Some leaders also spoke of matching the clients and communities they served.[32] One noted, "a diverse profile is important to our clients."[33] Larry Sonsini, Chair of Wilson Sonsini, noted that sixty different languages were spoken in Silicon Valley.[34] Diversity, he said, is "inherent in what we do and who we represent. . . . Diversity is not a 'check the box' issue in this firm."[35] Joseph Andrew, the Global Chair of Dentons, made a similar point. Because the firm did not have a single nationality, its clients were diverse and the firm needed to follow suit.[36]

Whether leaders' views of diversity were fully shared within firm partnerships was, however, less clear. As the chair of one firm's diversity initiative noted, "It is apparent to me that there are people in the firm who if they had their druthers, there would be less focus on diversity. They keep that view to themselves."[37]

Firm leaders communicated their commitment in multiple ways. Many gave periodic updates to leadership and the partnership and included it in their state of the firm speeches and speeches to summer associates.[38] One

26. *See* Telephone Interview with Nicholas Cheffings, *supra* note 25; Telephone Interview with Brad Malt, Chair, Ropes & Gray LLP (May 8, 2014); Telephone Interview with Wally Martinez, Managing Partner, Hunton & Williams LLP (July 22, 2014); Telephone Interview with Thomas Reid, Managing Partner, Davis Polk & Wardwell LLP (July 31, 2014).

27. Telephone Interview with Guy Halgren, Chair of Exec. Comm., Sheppard, Mullin, Richter & Hampton LLP (July 23, 2014).

28. Telephone Interview with Greg Nitzkowski, Global Managing Partner, Paul Hastings LLP (June 3, 2014).

29. Telephone Interview with Wally Martinez, *supra* note 26.

30. Telephone Interview with Thomas Reid, *supra* note 26.

31. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

32. Telephone Interview with Nicholas Cheffings, *supra* note 25.

33. Telephone Interview with Ahmed Davis, *supra* note 1.

34. Telephone Interview with Larry Sonsini, *supra* note 25.

35. *Id.*

36. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25.

37. Telephone Interview with Ahmed Davis, *supra* note 1.

38. *See* Telephone Interview with Guy Halgren, *supra* note 27; Telephone Interview with Lee Miller, Global Co-Chairman, DLA Piper (June 23, 2014); Telephone Interview

made sure that every presentation to partners discussed diversity.[39] Some included an update or a "come to Jesus" presentation at firm retreats.[40] Many had a formal statement on their website and some put diversity information in their newsletters or annual reports.[41] Diversity often figured in a firm's strategic plan.[42] One chair mentioned it in every major speech in an effort to keep it at the "forefront of peoples' attention."[43] One had a partners' meeting focused on the topic; another had a conclave on the issue for firm leadership, practice group leaders, office managing partners and other key people; and a third held diversity retreats annually.[44] Some emphasized it in required training for firm leadership or new partners.[45]

General counsel also stressed the importance of diversity, although some were slightly more reluctant to rank it among priorities.[46] As one noted, "I don't want to give you pablum. Every company says it's a high priority. The issue is whether you are doing something about it."[47] Most emphasized the same reasons as law firm leaders. Diverse teams provided a more diverse perspective; they avoided "group think."[48] Corporations wanted to "reflect and represent the communities in which we operate."[49] It is the "right thing to do and smart business."[50] It was not just a "check the

with Larren Nashelsky, Chair & Chief Exec. Officer, Morrison & Foerster LLP (June 24, 2014); Telephone Interview with Thomas Reid, *supra* note 26; Telephone Interview with Nadia Sager, Global Chair of Diversity Leadership Comm., Latham & Watkins LLP (May 7, 2014). Some leaders, including several who spoke off the record, had the diversity officer make a presentation at partner meetings. *See, e.g.*, Telephone Interview with John Soroko, Chairman and Chief Exec. Officer, Duane Morris LLP (July 24, 2014).

39. Telephone Interview with Carter Phillips, *supra* note 25.

40. Telephone Interview with Ahmed Davis, *supra* note 1 ("come to Jesus" talk); Telephone Interview with Robert Giles, *supra* note 25; Telephone Interview with Guy Halgren, *supra* note 27; Telephone Interview with Tyree Jones, Dir. of Global Diversity & Inclusion, Reed Smith LLP (July 2, 2014).

41. *See* Telephone Interview with Maya Hazell, *supra* note 25 (website and annual report); Telephone Interview with Lee Miller, *supra* note 38 (newsletter).

42. *See, e.g.*, Telephone Interview with Bob Couture, Exec. Dir., McGuireWoods LLP (June 30, 2014).

43. Interview by Deborah L. Rhode with participant (June 26, 2014) (on file with author).

44. For the conclave, see Telephone Interview with Lee Miller, *supra* note 38. For the diversity retreats, see Telephone Interview with John Soroko, *supra* note 38. The information about the partners' meeting came from an interview not for attribution.

45. Telephone Interview with Robert Giles, *supra* note 25 (leadership); Telephone Interview with Nadia Sager, *supra* note 38 (new hires).

46. These general counsel did not speak for attribution.

47. Telephone Interview with Stephen Cutler, Exec. Vice President & Gen. Counsel, JPMorgan Chase & Co. (Aug. 7, 2014).

48. Telephone Interview with Stephanie Corey, Chief of Staff for Gen. Counsel, Flextronics Int'l Ltd. (July 17, 2014); Telephone Interview with Charles Parrish, Exec. Vice President, Gen. Counsel & Sec'y, Tesoro Corp. (July 25, 2014).

49. Telephone Interview with Teri McClure, Chief Legal Comme'ns & Compliance Officer & Gen. Counsel, United Parcel Serv., Inc. (July 17, 2014); *accord* Telephone Interview with Tara Rosnell, Assoc. Gen. Counsel, Procter & Gamble Co. (June 6, 2014).

50. Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author).

box" program.[51] One mentioned being sued as a reason for focusing attention on the issue.

In terms of communication, corporations relied on more informal or indirect methods than law firms. The commitment could be conveyed through the leadership's involvement with minority bar associations or the Leadership Council on Legal Diversity.[52] Others stressed their diversity programming.[53] One noted leaders' emphasis on diversity to the people making hiring decisions.[54] Another pointed to its inclusion in performance evaluations.[55] Whatever the method of communication, it mattered that leaders were "personally and professionally committed."[56]

B. Diversity Initiatives

Diversity initiatives varied. Among law firms, some involved formal plans or goals.[57] Rarely did these specify numerical targets.[58] As the chair of one major Wall Street firm explained, "we don't want to be limited" or to "set up unrealistic expectations."[59] Most firms had a committee, council, or task force charged with coordinating diversity efforts.[60] For example, Wilmer Hale has a diversity committee with six partners representing the firm's six offices, each of whom is responsible for heading a separate committee on diversity in each office.[61] Orrick has an Inclusion Leadership Council, comprised of the heads of women's and diversity initiatives, two rising star partners, and two former members of the firm's board of directors.[62] In addition to sponsoring training, speakers' programs, and retreats, firms often had formalized mentorship or sponsorship initiatives. These sought to ensure that associates and junior partners of

51. Telephone Interview with Charles Parrish, *supra* note 48.

52. Telephone Interview with Gretchen Bellamy, Assistant Gen. Counsel, Wal-Mart Stores, Inc. (July 16, 2014); Telephone Interview with Debra Berns, Chief Compliance, Ethics & Privacy Officer & Senior Deputy Gen. Counsel, UnitedHealth Grp., Inc. (July 25, 2014); *see also* LEADERSHIP COUNCIL ON LEGAL DIVERSITY, http://www.lcldnet.org/ (last visited Mar. 25, 2015).

53. Telephone Interview with Susan Blount, Exec. Vice President & Gen. Counsel, Prudential Fin., Inc. (n.d.); Telephone Interview with Tara Rosnell, *supra* note 49.

54. Telephone Interview with Jonathan Hoak, Exec. Vice President & Gen. Counsel, Flextronics Int'l Ltd. (n.d.).

55. Telephone Interview with Mary Francis, Chief Corp. Counsel, Chevron Corp. (Apr. 29, 2014).

56. Telephone Interview with Debra Berns, *supra* note 52.

57. Telephone Interview with Brad Malt, *supra* note 26.

58. Telephone Interview with Lee Miller, *supra* note 38 (goals and objectives, not quotas for recruitment, retention, and promotion). *But see* Telephone Interview with Nicholas Cheffings, *supra* note 25 (global diversity plan that aspires to having women be 25 percent of partners in 2017 and 30 percent in 2022).

59. Interview by Deborah L. Rhode with participant (June 26, 2014) (on file with author).

60. Some had a committee and a smaller steering council. *See* Telephone Interview with Guy Halgren, *supra* note 27.

61. Telephone Interview with Peggy Giunta, Chief Legal Pers. & Dev. Officer, & Kenneth Imo, Dir. of Diversity, Wilmer Cutler Pickering Hale & Dorr LLP (July 28, 2014).

62. Telephone Interview with Mitch Zuklie, Global Chairman & Chief Exec. Officer, Orrick, Herrington & Sutcliffe LLP (May 9, 2014).

underrepresented groups had the professional development opportunities and assistance necessary to ensure retention and promotion.[63] McGuireWoods is piloting a reverse mentoring program in which diverse associates mentor department chairs; the firm also gives a diversity and inclusion award at its annual partnership retreat.[64] Some firms have adopted policies that conformed to best practices developed by outside groups, such as the Project for Attorney Retention.[65] One firm required a slate that included at least one diverse candidate for every open lateral position.[66] That practice is modeled on the Rooney Rule, which the National Football League established to ensure that minority candidates were considered for coaching positions.[67]

Most firms had a dedicated budget for diversity; others financed their efforts with funds allocated for other purposes, such as business development or recruiting. Thomas Reid, managing partner at Davis Polk, explained his firm's preference for an integrated approach: "I don't want people thinking of this as just a cost. Diversity is part of business development efforts. If it's seen as something we just have to do, it will not be sustainable."[68]

General counsel reported similar initiatives. Some have also adopted a modified Rooney Rule to guarantee diverse slates of candidates. One large technology company has a numerical goal for female hiring and promotion because the company found it challenging to achieve diversity in the technology industry. Most general counsel, however, did not focus on numerical goals. Many corporations had mentorship and sponsorship programs as well as speaker programs and training on unconscious bias.[69] Also common were minority summer internships and other pipeline initiatives such as street law for high school students.[70] J.P. Morgan has recently established a legal reentry program targeting lawyers—generally women—who have been out of the workforce for at least a year.[71] After an

63. Telephone Interview with Carter Phillips, *supra* note 25.

64. Telephone Interview with Bob Couture, *supra* note 42.

65. Telephone Interview with Lee Miller, *supra* note 38.

66. Telephone Interview with Bob Couture, *supra* note 42.

67. Brian N. Collins, *Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule*, 82 N.Y.U. L. REV. 870, 871 (2007); Greg Garber, *Thanks to Rooney Rule, Doors Opened*, ESPN (Feb. 9, 2007, 3:03 PM), http://sports.espn.go.com/nfl/playoffs06/news/story?id=2750645.

68. Telephone Interview with Thomas Reid, *supra* note 26.

69. Telephone Interview with Susan Blount, *supra* note 53; Telephone Interview with Stephen Cutler, *supra* note 47; Telephone Interview with Bruce Kuhlik, Exec. Vice President & Gen. Counsel, Merck & Co., Inc. (July 18, 2014); Telephone Interview with Maryanne Lavan, Senior Vice President, Gen. Counsel & Corp. Sec'y, Lockheed Martin Corp. (July 17, 2014).

70. Telephone Interview with Debra Berns, *supra* note 52; Telephone Interview with Susan Blount, *supra* note 53; Telephone Interview with Maryanne Lavan, *supra* note 69; Telephone Interview with Teri McClure, *supra* note 49; Telephone Interview with Mary O'Connell, Head of Legal Operations, Google Inc. (June 5, 2014); Telephone Interview with Ashley Watson, Senior Vice President & Chief Ethics & Compliance Officer, Hewlett-Packard Co. (May 16, 2014).

71. Telephone Interview with Stephen Cutler, *supra* note 47.

eight-week internship, the company hopes to place them in permanent positions in the legal department.[72]

Evaluations of the success of diversity initiatives were mixed. Virtually all managing partners and general counsel were proud of their efforts but varied in their assessments of results. Those who spoke for attribution had particular reasons to put their best foot forward, and some were confident that their workplace was an inclusive meritocracy.[73] A number mentioned awards from clients and minority or women's organizations, as well as positive ratings from Working Mother Magazine or Yale Law Women.[74] Most felt that their numbers were better than their peers, and most general counsel felt that their offices were often more successful than their companies as a whole. Many firm leaders and general counsel cited progress for women at leadership levels as an example of success. Although women are still underrepresented at the top, a common perception was that this was on the path to being fixed. Some general counsel were also proud of their records in channeling increased business to women- and minority-owned firms, although it could be a challenge finding them in areas where the corporation had the greatest needs. On the whole, participants mentioned more success in recruiting than in promotion and retention. Many mentioned the lack of progress concerning African American partners as a continuing challenge. Some were particularly careful not to be complacent. Comments included:

- "We could be better."[75]
- "I don't think anyone is satisfied with the profession overall. And despite all the efforts, it's hard to see meaningful success in outside counsel."[76]
- "We do pretty good with hiring but we struggle with retention. It's a constant effort."[77]
- "With minorities, we are hiring but not keeping them."[78]

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72. *Id.*

73. For example, one participant felt confident that diversity efforts were successful because "there isn't any perception that people are here for any reason other than that they are doing a great job." Interview by Deborah L. Rhode with participant (July 30, 2014) (on file with author). Another noted, "I really do perceive a color-blind and gender-blind environment." Interview by Deborah L. Rhode with participant (June 30, 2014) (on file with author). One firm chair reported that "in terms of culture and inclusiv[ity], our feedback suggests we are very successful." Telephone Interview with Mitch Zuklie, *supra* note 62.

74. Telephone Interview with Tyree Jones, *supra* note 40; Telephone Interview with Brad Malt, *supra* note 26; Telephone Interview with Wally Martinez, *supra* note 26; Telephone Interview with Lee Miller, *supra* note 38; Telephone Interview with Jim Rishwain, Chair, Pillsbury Winthrop Shaw Pittman LLP (Aug. 2, 2014); Telephone Interview with Tara Rosnell, *supra* note 49; *see also* YALE LAW WOMEN, http://yalelawwomen.org/ (last visited Mar. 25, 2015).

75. Telephone Interview with Maryanne Lavan, *supra* note 69.

76. Telephone Interview with Susan Blount, *supra* note 53.

77. Telephone Interview with Robert Giles, *supra* note 25.

78. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

- "You look at the numbers and it's pretty depressing, but it's better than it would have been without initiatives."[79]
- "It's hard for us to walk away and say that we've moved the needle even though we've been trying. . . . It's not a lack of trying, it's a lack of impact."[80]
- "There's always room for improvement."[81]
- "The numbers [concerning African American partners] are pathetic."[82]
- "Not nearly successful enough, no question about it."[83]

C. Challenges and Responses

When asked about the challenges they faced in pursuing their diversity objectives, participants stressed common themes. With respect to minorities, the greatest obstacle was the limited pool of candidates with diverse backgrounds and the fierce competition for talented lawyers.[84] As one firm leader put it, "We hire many young diverse lawyers and then they often leave to go in-house, and then the clients come back and want diverse teams. That makes it difficult."[85] A director of diversity lamented that "[o]ur firm is a place where others come to poach."[86] Others complained about the difficulties of achieving diversity in lateral hiring, because "if firms have diverse lawyers, they work hard to keep them."[87] Corporate counsel noted that they often could not pay as much as large law firms. Carter Phillips, chair of the executive committee of Sidley Austin, expressed a common frustration: "It's tough even when you succeed in getting them in the door and giving them the best work, and they leave."[88]

A related frustration was that leaders were depending on a pipeline controlled by others. For example, across the technology industry, legal departments find it difficult to have a certain percentage of lawyers that meet their diversity goals because the entire pool of attorneys available to fulfill those goals is below that percentage.[89] Some put the blame squarely

79. Interview by Deborah L. Rhode with participant (June 30, 2014) (on file with author).

80. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

81. Telephone Interview with Teri McClure, *supra* note 49.

82. Telephone Interview with Thomas Reid, *supra* note 26.

83. Interview by Deborah L. Rhode with participant (July 18, 2014) (on file with author).

84. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25; Telephone Interview with Susan Blount, *supra* note 53; Telephone Interview with David Braff, Partner & Co-Chair of Diversity Comm., Sullivan & Cromwell LLP (July 31, 2014); Telephone Interview with John Soroko, *supra* note 38.

85. Telephone Interview with Bob Couture, *supra* note 42.

86. Telephone Interview with Kenneth Imo, *supra* note 61.

87. Telephone Interview with Robert Giles, *supra* note 25.

88. Telephone Interview with Carter Phillips, *supra* note 25.

89. Telephone Interview with Mark Chandler, Gen. Counsel, Cisco Sys., Inc. (July 24, 2014).

on law schools.[90] One law firm chair declined to participate in the study, explaining, "I simply believe that the academy is the principal problem and should be the focus of your inquiry. You're losing the war at the intake, and we are dependent upon you. . . . Fill our pipeline with diverse talent, and through sponsorship and other initiatives we'll know what to do with it."[91] Other participants put some of the responsibility on society: "A law firm alone can't make overnight changes; some of where we would like to be depends on [the] broader society."[92] To one managing partner, the situation regarding African American lawyers was "hopeless" given issues with the pipeline.[93]

With respect to women, the principle problem mentioned was a "culture that focuses heavily on hours as a metric of contribution."[94] According to one general counsel:

> Until law firms make certain fundamental changes in their business model, it's going to be hard to make meaningful statistical change. . . . When you look at women after forty years [of being in the pipeline] and look at leadership levels, law firms don't seem to be the right stewards on these issues. . . . To get beyond [current levels] firms will have to look at how people coach and invest in talent.[95]

A further challenge was "getting everybody to buy into the issue. Not all men see that there is a need to address women's issues. They see women partners and don't see inhibitions."[96]

Some firms identified broader attitudinal problems. They specified implicit bias, "diversity fatigue,"[97] and the difficulty of having an "honest conversation" on the issue.[98] "Keeping the dialogue fresh and avoiding platitudes" was a continuing challenge.[99] At Lockheed Martin, "the struggle is to avoid backlash and people just checking the box."[100] United Parcel Service worked hard to keep diversity as a "consistent focus . . . incorporat[ed] in the ways we do business, as opposed to . . . the next flavor of the month."[101] For one smaller company, not part of the study's sample, the biggest challenge was "pushback from white males. . . . We need to reassure [them that they] aren't being displaced, [and] get [them] engaged in the process."[102]

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90. Telephone Interview with Tyree Jones, *supra* note 40 (noting drop in diverse attorneys attending law schools).

91. Email from Peter Kalis, Chairman & Global Managing Partner, K&L Gates LLP, to Deborah Rhode, Professor of Law, Stanford Law School (June 13, 2014, 14:06 PST) (on file with author).

92. Telephone Interview with Nicholas Cheffings, *supra* note 25.

93. Interview by Deborah L. Rhode with participant (June 3, 2014) (on file with author).

94. Telephone Interview with Maya Hazell, *supra* note 25.

95. Telephone Interview with Susan Blount, *supra* note 53.

96. Telephone Interview with Nicholas Cheffings, *supra* note 25.

97. Telephone Interview with Kenneth Imo, *supra* note 61.

98. Telephone Interview with Ahmed Davis, *supra* note 1.

99. Telephone Interview with Mary Francis, *supra* note 55.

100. Telephone Interview with Maryanne Lavan, *supra* note 69.

101. Telephone Interview with Teri McClure, *supra* note 49.

102. Telephone Interview with Jonathan Hoak, *supra* note 54.

For some participants the biggest challenge was the location or nature of their organization. A few had their principal offices in Midwestern cities that "don't have a critical mass of racially diverse professionals."[103] Aetna has its corporate headquarters in Hartford, Connecticut, a city not all that "attractive to diverse groups."[104] Boston was reportedly less attractive to African American lawyers than other cities.[105] Some companies were in an industry not seen as "sexy" to "diverse lawyers [who] have a lot of options."[106] The general counsel of an oil and gas company noted that "[it's n]ot easy to recruit. You can't get any more old industry than us."[107]

Other participants expressed frustration with the pace of progress. Those in organizations where attrition was low had to realize that "change is very slow."[108] Pipeline programs took a long time to have immediate impact. "It's a marathon, not a sprint," said the Global Co-Chairman of DLA Piper.[109] The Chair of Morrison & Foerster agreed: "There's no magic bullet or overnight fix. . . . You never get a boulder up the hill."[110] The long-term nature of the struggle required a consistency in focus that was challenging to maintain. As one general counsel put it, "[W]hen [your] day job is putting out fires, [diversity] doesn't always make it to [the] priority of the day. Then six months out, you realize [you] haven't made much progress."[111]

Responses to these challenges took a variety of forms. Many firms invested in mentorship and sponsorship programs. Some took special steps to support their rising stars, such as pairing them with a partner mentor or sending them to outside leadership programs.[112] One placed "a thumb on the scale" for qualified diversity candidates for leadership positions.[113] Often the diversity officer sat in on evaluations and/or hiring decisions, or was notified when a diverse candidate received adverse performance ratings. One firm established a diversity challenge, which asked all attorneys to devote forty hours a year to diversity-related efforts, including recruiting, mentoring, participating in various events, and so forth. Some firms and clients partnered on diversity programs, which often increased their appeal. Some companies also offered internships or secondments for

103. Telephone Interview with Andrew Humphrey, Managing Partner, Faegre Baker Daniels LLP (July 18, 2014).

104. Telephone Interview with William Casazza, Executive Vice President & Gen. Counsel, Aetna, Inc. (June 30, 2014).

105. Telephone Interview with Brad Malt, *supra* note 26.

106. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

107. Telephone Interview with Charles Parrish, *supra* note 48.

108. Interview by Lucy Buford Ricca with participant (July 30, 2014) (on file with author).

109. Telephone Interview with Lee Miller, *supra* note 38.

110. Telephone Interview with Larren Nashelsky, *supra* note 38.

111. Telephone Interview with Mary O'Connell, *supra* note 70.

112. Telephone Interview with Diane Patrick, Co-Managing Partner & Chair of Diversity Comm., Ropes & Gray LLP (May 9, 2014).

113. Telephone Interview with Robert Giles, *supra* note 25.

minority law firm attorneys that could enhance their skills and build personal relationships.

Diversity training, particularly around unconscious bias, was common. One firm had lawyers take the implicit bias test or a refresher course before making promotion decisions.[114] Others required it for new hires or anyone involved in recruitment. Evaluations of its effectiveness were mixed. Some felt the programs were "not solving a problem that we had."[115] In one firm, the training had created a "bad tone around the subject. . . . It made people feel nervous."[116] In another firm, "people felt preached to and imposed upon."[117] The same program provoked disagreement in one firm. The firm's leader did not see the "value" of it; the firm's head of human relations disagreed.[118] According to the Chair of Hogan Lovells, "[M]ost people don't think they need it, but most take from the training the need for understanding the possibility of unconscious bias."[119] Another agreed: "[People] don't know what they don't know."[120] Lawyers were sometimes "pleasantly surprised" at the usefulness of the programs. A few leaders felt that it helped if programs were billed as something other than "diversity" initiatives, and many believed that the experience "helped with opening dialogue and making people aware."[121] No one had a concrete basis for his or her perception. As one chair of a diversity initiative acknowledged, "[I w]ould like to . . . know whether participants are taking away anything which affects practice. [I d]on't have any data."[122]

Another strategy involved affinity groups, variously named, which almost all firms and corporations sponsored.[123] Some groups included not just traditional categories based on race, ethnicity, sexual orientation, and gender, but also religion, disability, parent, and veteran status. Many of these groups were actively involved in recruiting, mentoring, and providing business development skills and opportunities. Some held retreats. Many had sponsors from the senior ranks of the organization. Their formality and usefulness varied.[124] One concern was that white men felt excluded or threatened, or that certain groups were better than others in getting their issues addressed. "I've always believed [that] separating people rather than

114. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25.

115. Telephone Interview with Brad Malt, *supra* note 26.

116. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

117. Telephone Interview with Diane Patrick, *supra* note 112.

118. Interview by Lucy Buford Ricca with participant (June 30, 2014) (on file with author).

119. Telephone Interview with Nicholas Cheffings, *supra* note 25.

120. Telephone Interview with Larren Nashelsky, *supra* note 38.

121. Interview by Deborah L. Rhode with participant (July 1, 2014) (on file with author).

122. Telephone Interview with Ahmed Davis, *supra* note 1; *accord* Telephone Interview with Carter Phillips, *supra* note 25 ("[It's] hard to tell how successful they have been.").

123. At most companies, the affinity groups were company-wide, not specific to the legal department.

124. At several law firms, the only formal group was the women's initiative/group.

bringing them together is not the way to go," said one firm chair.[125] One general counsel felt that the groups were "not as effective as people hoped they would be. . . . I don't think they've made a difference."[126] Others had received feedback that they were "incredibly" important. One company had had senior executives come out in LGBT forums.[127] At the very least, most participants believed that these groups provided a sense of community and an opportunity for raising concerns that should be communicated to management. They helped ensure that diversity was "front and center" in the workplace.

D. Accountability

Participants were asked a number of questions about the structures used to achieve accountability on diversity-related issues. The first was whether they did anything to monitor the experience of employees concerning diversity. Eleven firms and sixteen companies reported relying on surveys to assess experiences related to diversity.[128] "We survey ourselves up the wazoo," reported one general counsel.[129] Most included diversity-related questions as part of a general quality of life survey; some had conducted surveys just on diversity. Some organizations held focus groups as a supplement or substitute for surveys. However, many leaders appeared to see no necessity for formal assessments; they believed that the organization's "culture and open door policy" made people feel that they could raise concerns. One firm worried that the issues could be "somewhat uncomfortable, so we have left it to informal dialogue."[130] But it is precisely because of the discomfort connected with raising such issues openly that some organizations found anonymous surveys useful. Many firms also collected information from exit interviews and 360 performance reviews. One conducted "stay" interviews with minority attorneys to find out what factors were most important to their retention.[131]

Participants were also asked what, if any, measures were in place to hold employees accountable for progress on diversity issues. "Nothing that has teeth," said one general counsel.[132] "I wish there were some," responded another, "That's a good idea."[133] It is, in fact, an idea that many companies

125. Interview by Deborah L. Rhode with participant (June 24, 2014) (on file with author).

126. Interview by Deborah L. Rhode with participant (July 30, 2014) (on file with author).

127. Telephone Interview with Maryanne Lavan, *supra* note 69.

128. Some law firms did not conduct their own survey but relied on the responses of their attorneys to Vault or Am Law surveys. These were included in the survey number.

129. Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author).

130. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).

131. Telephone Interview with Andrew Humphrey, *supra* note 103.

132. Interview by Deborah L. Rhode with participant (July 16, 2014) (on file with author).

133. Interview by Deborah L. Rhode with participant (June 30, 2014) (on file with author).

and law firms have embraced in some form. Seventy-seven percent of companies and 80 percent of firms surveyed make some effort to assess individual employees' performance on diversity. Some used the data from employee surveys to assess the performance of managers. Others used 360 performance reviews or information submitted as part of lawyers' self-evaluations. Some allocated specific dollar amounts to diversity contributions.[134]

Participants divided on the usefulness of tying compensation to performance on diversity. Twenty-nine percent of companies and 43 percent of firms surveyed acknowledged that an individual's diversity efforts could play a role in compensation decisions. According to one firm leader, financially rewarding diversity efforts gets people's attention and makes them realize that diversity is part of their job. Other leaders disagreed. Hogan Lovells had "taken the view that artificially incentivizing people to do the right thing is not the right way. We want it to be part of the culture of the firm. . . . [But] commitment to diversity above and beyond what we would normally expect is something we would take into account."[135] Other organizations similarly made it a matter for those who had "gone [the] extra mile" on diversity issues.[136] One company had gone "back and forth" and was still debating the issue.[137] The general counsel wanted it to be "part of [the] culture" but was unsure if incentives were the way to get there.[138]

Corporate clients also had opportunities to hold law firms accountable by requiring data on diversity and allocating their business on that basis. Most companies reported asking for general information on firms' composition as well as specific information about the staffing of their own matters.[139] Rarely did general counsel report terminating representation over the issue, although some seemed prepared to do so.[140] As the chief of legal operations at Google noted, "as much as we encourage it, there isn't a penalty or reward."[141] Only one firm reported losing business over the issue. Some companies gave awards and some had targeted expenditures

134. Associates as well as partners were rewarded.

135. Telephone Interview with Nicholas Cheffings, *supra* note 25.

136. Interview by Deborah L. Rhode with participant (June 26, 2014) (on file with author).

137. Telephone Interview with Teri McClure, *supra* note 49.

138. *Id.*

139. One general counsel did not ask because "we are hiring individual lawyers and not basing on social criteria." Telephone Interview by Deborah L. Rhode with participant (July 24, 2014) (on file with author).

140. One had "moved matters from firms that didn't have the same commitment as we have." Telephone Interview with Teri McClure, *supra* note 49. Another recalled letting a firm go about eight years ago because of its record on women. Another said she would terminate a firm if she didn't see a "diverse slate." Telephone Interview with Maryanne Lavan, *supra* note 69. One said he would not take an existing matter away but would "decrease business and channel it to firms doing the right thing." Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author). Another said, "[W]e have not dropped a firm but it is a factor in who we approve." Telephone Interview with Ashley Watson, *supra* note 70.

141. Telephone Interview with Mary O'Connell, *supra* note 70.

on minority or women-owned firms. One leader reported experience with a bonus program allocating additional business to firms that had a certain number of minorities and women working on their matters.[142] Most general counsel thought, "[T]he firms get it. This isn't a hard sell."[143] Evaluations of the effectiveness of these accountability efforts varied. A number of general counsel felt frustrated by the lack of progress made by outside firms. The senior vice president and chief ethics and compliance officer at Hewlett Packard expressed common views with uncommon candor. "We've always tracked it . . . but we're not that great at [getting results]."[144] According to one general counsel, "they want to send glossy documents describing their programs. It's not very productive."[145] Some faulted themselves for not "following through" on the reports. One felt frustrated with firms that "want me to goad them into doing the right thing."[146]

For their part, firms found it "frustrating . . . when clients take a hard stick on this and then don't do anything in response. People are doing cartwheels to comply and then don't get an increase in business . . . ."[147] Some corporations "say this is important but don't pay attention to it."[148] "A lot of it is half-hearted. . . . Even the most detailed response to questions never gets a follow-up."[149] One firm chair noted that clients' concern ran the gamut; some made diversity their top priority while others got questionnaire results year after year "and that's the last we heard of it."[150] "It ebbs and flows. If you get a [general counsel] who is passionate about the issue, it gets a lot of traction. If that person leaves or gets preoccupied, it fades."[151] Most of the interest came from large corporations; midsize companies and individual clients showed little interest. One firm chair thought that clients on the whole had gotten more serious about their inquiries. "[This] has moved over the last five years from 'we want to be [seen as] doing this' to 'we want to see that it's happening.'"[152]

When asked if pressure from clients had changed firm practices, many leaders said it had not.

- "We would be doing it anyway."[153]

142. Telephone Interview with Ahmed Davis, *supra* note 1 (describing Microsoft's approach).
143. *See, e.g.*, Telephone Interview with Mary Francis, *supra* note 55.
144. Telephone Interview with Ashley Watson, *supra* note 70.
145. Telephone Interview with participant (n.d.) (on file with author).
146. Interview by Deborah L. Rhode with participant (July 18, 2014) (on file with author).
147. *See, e.g.*, Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).
148. Interview by Deborah L. Rhode with participant (June 23, 2014) (on file with author).
149. Interview by Deborah L. Rhode with participant (Aug. 6, 2014) (on file with author).
150. Telephone Interview with Guy Halgren, *supra* note 27.
151. Interview by Deborah L. Rhode with participant (July 21, 2014) (on file with author).
152. Telephone Interview with Nicholas Cheffings, *supra* note 25.
153. *Id.*

- "We expect as much from ourselves or more than our clients do."[154]
- "I'd like to believe [this] hasn't affected our commitment."[155]
- "We haven't been dragged to [the] conclusion" that diverse teams make for better lawyering.[156]

Other firm leaders registered a positive impact from the requirements. "Partners are responsive to anything clients highlight as a concern and follow up."[157] Some "wished there were more pressure. . . . It has helped to get people to see diversity as a bottom line issue. . . . It gets partners' attention."[158] Others similarly "welcomed" client interest because it "reinforces the importance of our own efforts."[159] At the very least, the "collective pressure from a lot of committed counsel has prevented things from being worse than they are."[160] According to Perkins Coie's managing partner, client pressure "really does help send the message home. . . . You get what you measure. It's a good thing to do, and if this [pressure] helps us achieve it, so be it."[161] Others agreed. Client inquiries had "raised awareness among partners—they were paying attention because they know clients care about it."[162] Senior lawyers who "may not have been all that committed listen when a client says we care about quality, cost, and diversity."[163]

E. Work/Family Issues

A final question asked leaders how they had addressed issues of work/life balance and how successful they had been. The vast majority claimed to have been successful. "If you don't want to lose good people, you have to be flexible."[164] A common view was that "we work hard but it's not a sweatshop."[165] Most organizations guaranteed fairly generous parental leaves, permitted flexible time and reduced hour schedules, and allowed telecommuting at least to some extent. A few had emergency childcare or on-site centers.[166] Law firms often were at pains to "demonstrate that you can be a successful partner with a balanced schedule—reduced hours or part time. This is important to attract the best talent: you don't need to be a

154. Telephone Interview with Jim Rishwain, *supra* note 74.
155. Telephone Interview with Andrew Humphrey, *supra* note 103.
156. Telephone Interview with John Soroko, *supra* note 38.
157. Telephone Interview with Maya Hazell, *supra* note 25.
158. Interview by Deborah L. Rhode with participant (July 1, 2014) (on file with author).
159. *Accord* Telephone Interview with Larren Nashelsky, *supra* note 38 ("Clients reinforce the message."); Telephone Interview with Diane Patrick, *supra* note 112 ("Some general counsel are active in pressing the issue. That's a good thing for us.").
160. Telephone Interview with Susan Blount, *supra* note 53.
161. Telephone Interview with Robert Giles, *supra* note 25.
162. Telephone Interview with Kenneth Imo, *supra* note 61.
163. Telephone Interview with Mitch Zuklie, *supra* note 62.
164. Telephone Interview with Lee Miller, *supra* note 38.
165. Telephone Interview with Guy Halgren, *supra* note 27.
166. Telephone Interview with David Braff, *supra* note 84 (emergency care); Telephone Interview with Thomas Milch, *supra* note 25 (on-site childcare).

staff attorney or [on a] different track."[167] Championing flexibility was also important in corporations. As one leader noted: "It's feasible for . . . caregivers to have a flexible work schedule; [they] really can do the work from anywhere."[168]

"But," she added, "there is the inherent obstacle in that in the legal profession [there is] a lot of work to do."[169] Many leaders made a similar point:

- "Everyone feels stressed. . . . It's the profession we've chosen. It's a client service profession and a demanding job."[170]
- "It's a tough environment to be part-time in."[171]
- "Clients expect availability twenty-four hours a day."[172]
- "We run a 24/7 business and it's international. We have a difficult and time-committed job."[173]
- "It's really difficult in the industry, especially for primary caretakers."[174]
- "It's a real tough [issue]. We do programs on the subject but I'm not sure people have time to attend. I don't think we've done anything really to address that issue."[175]
- "You have to be realistic. It's a demanding profession. . . . I don't claim we've figured it out."[176]

Although some leaders were sensitive to the problem of "schedule creep," and tried to avoid escalation of reduced hours, others saw the problem as inevitable. As one firm chair put it, "When you go on a reduced schedule, there are times when [you] have to work full-time to demonstrate [you] can do the job. [Lawyers] need a support system in place so that they can demonstrate the skills to be promoted. Sometimes people don't recognize that."[177]

Most general counsel felt that "corporations are easier places to combine work and family than law firms are."[178] As one general counsel put it, part of the reason "that lawyers move from firms to in-house is to achieve a

167. Telephone Interview with Joseph Andrew & Jay Connolly, *supra* note 25; *accord* Telephone Interview with Robert Giles, *supra* note 25 ("[We've] made a lot of people partner while [they were] on part-time status.").
168. Telephone Interview with Debra Berns, *supra* note 52.
169. *Id.*
170. Telephone Interview with Susan Blount, *supra* note 53.
171. Interview by Deborah L. Rhode with participant (July 1, 2014) (on file with author).
172. Interview by Deborah L. Rhode with participant (June 24, 2014) (on file with author).
173. Telephone Interview with Teri McClure, *supra* note 49.
174. Telephone Interview with Larren Nashelsky, *supra* note 38.
175. Telephone Interview with Stephanie Corey, *supra* note 48.
176. Telephone Interview with Andrew Humphrey, *supra* note 103.
177. Telephone Interview with Kenneth Imo, *supra* note 61.
178. Interview by Deborah L. Rhode with participant (July 30, 2014) (on file with author).

better work-life balance."[179] Another noted, "People could make more money in law firms. To counter that, we offer a better work/life balance as well as a competitive salary."[180] Because lawyers in-house do not bill by the hour, "no one is looking over your shoulder to make sure [you] are in [your] chair twelve hours a day. We just look to people to get their jobs done."[181] The general counsel of Cisco stated his belief that "the point is to measure output rather than input. We don't care how many hours are worked on a particular matter as long as the project gets done."[182] The general counsel of Aetna felt similarly: "We work pretty hard. But we let people do it at a time and place convenient to them."[183]

Leaders were of mixed views on whether to use their "family friendly" status in recruiting. Some were proud of their policies and their ranking by organizations like the Yale Law Women. Others opted for a lower profile. "I don't put it out there because I don't want to attract people who are coming for that reason," said one general counsel.[184] A firm chair similarly recalled that "we made the mistake of recruiting around work/life balance and got people who thought we weren't a 'type A' intense place."[185]

Whether organizations could do more to address the issue also evoked varied responses. Some leaders wished "we could stop talking about it because it raises the expectation that we can do something about it."[186] Others were less resigned. "The whole company, including the legal department, has room for improvement when it comes to work/life balance," said one general counsel.[187] Others similarly felt more change was inevitable, and desirable. "If we crack the code on work/life balance it will help women," said Mitch Zuklie, Chair of Orrick.[188]

IV. BEST PRACTICES

The findings from this study, together with other research and interviews with headhunters and a diversity consultant, suggest a number of best practices for advancing diversity in law firms and in-house legal departments.

179. Telephone Interview with Chan Lee, Vice President & Assistant Gen. Counsel, Pfizer, Inc. (July 29, 2014).

180. Telephone Interview with Gretchen Bellamy, *supra* note 52.

181. Interview by Lucy Buford Ricca with participant (July 30, 2014) (on file with author).

182. Telephone Interview with Mark Chandler, *supra* note 89.

183. Telephone Interview with William Casazza, *supra* note 104.

184. Interview by Deborah L. Rhode with participant (July 18, 2014) (on file with author).

185. Interview by Deborah L. Rhode with participant (June 12, 2014) (on file with author).

186. Interview by Lucy Buford Ricca with participant (July 21, 2014) (on file with author).

187. Telephone Interview with Charles Parrish, *supra* note 48.

188. Telephone Interview with Mitch Zuklie, *supra* note 62.

A. Commitment and Accountability

The first and most important step toward diversity and inclusion is to make that objective a core value that is institutionalized in organizational policies, practices, and culture. The commitment needs to come from the top. An organization's leadership must not only acknowledge the importance of diversity but also establish structures for promoting it and for holding individuals accountable. To that end, leaders need to take every available opportunity to communicate the importance of the issue, not just in words, but in recruiting, evaluation, and reward structures.

"What doesn't work is when leaders talk about the value of inclusion but fail to make it more than the seventh, eighth, or ninth priority," said Christie Smith, managing principal of Deloitte University Leadership Center for Inclusion.[189] So too, Miriam Frank, vice president of recruiters Major, Lindsey & Africa, saw "some companies purport to put it at the top of the list, but when push comes to shove, other qualities will creep up the ladder."[190] By contrast, true commitment from an organization's leadership can help stave off frustration or "diversity fatigue" that occurs when lawyers feel that programs are simply window dressing. What also does not work, according to Smith, are

> programs and initiatives around diversity without leadership expectations tied to [them]. . . . There are a lot of well-intentioned leaders who have abdicated responsibility to a few in the organization rather than making diversity and inclusion the responsibility of every leader in their organization. . . . [They] have stated values around inclusion but [they] don't live up to those values.[191]

To institutionalize diversity, a central priority should be developing effective systems of evaluation, rewards, and allocation of leadership and professional development opportunities. Women and minorities need to have a critical mass of representation in key positions such as management and compensation committees. Supervisors need to be held responsible for their performance on diversity-related issues, and that performance should be part of self-assessments and bottom-up evaluation structures.[192] Although survey participants were divided in their views about tying compensation to diversity, most research shows that such a linkage is

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189. Telephone Interview with Christie Smith, Managing Principal, Deloitte Univ. Leadership Ctrs. for Inclusion & Cmty. Impact, Deloitte & Touche LLP (July 23, 2014).

190. Telephone Interview with Miriam Frank, Vice President, Major, Lindsey & Africa (June 9, 2014).

191. Telephone Interview with Christie Smith, *supra* note 189.

192. *See* BAGATI, *supra* note 16, at 49; Deborah L. Rhode & Barbara Kellerman, *Women and Leadership: The State of Play*, *in* WOMEN AND LEADERSHIP: THE STATE OF PLAY AND STRATEGIES FOR CHANGE 1, 27–28 (Barbara Kellerman & Deborah L. Rhode eds., 2007); Cecilia L. Ridgeway & Paula England, *Sociological Approaches to Sex Discrimination in Employment*, *in* SEX DISCRIMINATION IN THE WORKPLACE 189, 202 (Faye J. Crosby et al. eds., 2007); Robin J. Ely, Herminia Ibarra & Deborah Kolb, *Taking Gender into Account: Theory and Design for Women's Leadership Development Programs*, 10 ACADEMY OF MGMT. LEARNING & EDUC. 474, 481 (2011); JOANNA BARSH & LAREINA YEE, UNLOCKING THE FULL POTENTIAL OF WOMEN AT WORK 11 (McKinsey & Co. 2012).

necessary to demonstrate that contributions in this area truly matter. Performance appraisals that include diversity but that have no significant rewards or sanctions are unlikely to affect behavior.[193]

Pressure from clients to hold firms accountable is also critical. Such initiatives need to include not just inquiries about diversity, which most clients make, but also follow-ups, which occur less often. Good performance needs to be rewarded; inadequate performance should carry real sanctions. This kind of pressure ensures that "regular partners have to think about it."[194]

B. Self-Assessment

As an ABA Presidential Commission on Diversity recognized, self-assessment should be a critical part of all diversity initiatives.[195] Leaders need to know how policies that affect inclusiveness play out in practice. That requires collecting both quantitative and qualitative data on matters such as advancement, retention, assignments, satisfaction, mentoring, and work/family conflicts. Periodic surveys, focus groups, interviews with former and departing employees, and bottom-up evaluations of supervisors can all cast light on problems disproportionately experienced by women and minorities. Monitoring can be important not only in identifying problems and responses, but also in making people aware that their actions are being assessed. Requiring individuals to justify their decisions can help reduce unconscious bias.[196]

C. Affinity Groups

Affinity groups for women and minorities are extremely common, but data on their effectiveness is mixed. Survey participants generally agreed with research suggesting that, at their best, such groups provide useful advice, role models, contacts, and development of informal mentoring relationships.[197] By bringing lawyers together around common interests, these networks can also forge coalitions on diversity-related issues and

193. Frank Dobbin & Alexandra Kalev, *The Architecture of Inclusion: Evidence from Corporate Diversity Programs*, 30 HARV. J.L. & GENDER 279, 293–94 (2007); Frank Dobbin, Alexandra Kalev & Erin Kelly, *Diversity Management in Corporate America*, CONTEXTS, Fall 2007, at 21, 23–24, *available at* http://scholar.harvard.edu/files/dobbin/files/2007_contexts_dobbin_kalev_kelly.pdf.

194. Telephone Interview with Thomas Reid, *supra* note 26.

195. PRESIDENTIAL INITIATIVE COMM'N ON DIVERSITY, ABA, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 23 (2010).

196. Stephen Benard, In Paik & Shelley J. Correll, *Cognitive Bias and the Motherhood Penalty*, 59 HASTINGS L.J. 1359, 1381 (2008); Emilio J. Castilla, *Gender, Race, and Meritocracy in Organizational Careers*, 113 AM. J. SOC. 1479, 1485 (2008).

197. *See* Rhode & Kellerman, *supra* note 192, at 30; Alexandra Kalev, Frank Dobbin & Erin Kelley, *Best Practices or Best Guesses: Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589, 594 (2006); Cindy A. Schipani et al., *Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking*, 16 DUKE J. GENDER, L. & POL'Y, 89, 131 (2009).

generate useful reform proposals.[198] Yet their importance should not be overstated. As one senior vice president put it, "[There's] only so much progress you can make by talking to people just like you. [You are] preaching to the choir."[199] The only large-scale study on point found that networks had no significant positive impact on career development; they increased participants' sense of community but did not do enough to put individuals "in touch with what . . . or whom they [ought] to know."[200]

D. Mentoring and Sponsorship

One of the most effective interventions involves mentoring and sponsorship, which directly address the difficulties of women and minorities in obtaining the support necessary for career development. Many organizations have formal mentoring programs that match employees or allow individuals to select their own pairings. Research suggests that well-designed initiatives that evaluate and reward mentoring activities can improve participants' skills, satisfaction, and retention rates.[201] However, most programs do not require evaluation or specify the frequency of meetings and set goals for the relationship.[202] Instead, they permit a "call me if you need anything" approach, which leaves too many junior attorneys reluctant to become a burden.[203] Ineffective matching systems compound the problem; lawyers too often end up with mentors with whom they have little in common.[204] Formal programs also may have difficulty inspiring the kind of sponsorship that is most critical. Women and minorities need advocates, not simply advisors, and that kind of support cannot be mandated. The lesson for organizations is that they cannot simply rely on formal structures. They need to cultivate and reward sponsorship of women and minorities and monitor the effectiveness of mentoring programs.[205]

E. Work/Family Policies

Organizations need to ensure that their work/family policies are attuned to the needs of a diverse workplace, in which growing numbers of men as well as women want flexibility in structuring their professional careers. To

198. Bob Yates, *Women and Minorities: The Retention Challenge for Law Firms*, CHI. LAW., Feb. 2007.

199. Telephone Interview with Ashley Watson, *supra* note 70.

200. Dobbin, Kalev & Kelly, *supra* note 193, at 25.

201. Rhode & Kellerman, *supra* note 192, at 30; *see also* IDA O. ABBOTT, THE LAWYER'S GUIDE TO MENTORING 32–33 (2000); Kalev, Dobbin & Kelly, *supra* note 197, at 594; Schipani et al., *supra* note 197, at 100–01.

202. *See, e.g.*, MINN. STATE BAR ASS'N, DIVERSITY AND GENDER EQUITY IN THE LEGAL PROFESSION, BEST PRACTICES GUIDE 65–79 (2008).

203. *Id.* at 77.

204. IDA O. ABBOTT & RITA S. BOAGS, MINORITY CORP. COUNSEL ASS'N, MENTORING ACROSS DIFFERENCES: A GUIDE TO CROSS-GENDER AND CROSS-RACE MENTORING (n.d.), *available at* http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=666; Leigh Jones, *Mentoring Plans Failing Associates; High Attrition Rates Still Hit Firms Hard*, NAT'L L.J. (Sept. 15, 2006), http://www.nationallawjournal.com/id=900005462642/Mentoring-plans-failing-associates.

205. CATALYST, THE PIPELINE'S BROKEN PROMISE 5 (2010).

that end, organizations should ensure that they have adequate policies and cultural norms regarding parental leave, reduced schedules, telecommuting, and emergency childcare. Most of the organizations surveyed had such formal policies. But existing research shows a substantial gap between policies and practices. One study found that although over 90 percent of law firms reported having part-time policies, only approximately 4 percent of lawyers actually use them.[206] Those who choose reduced schedules too often find that they aren't worth the price. Their hours creep up, the quality of their assignments goes down, their pay is not proportional, and they are stigmatized as "slackers."[207]

Surveying lawyers and collecting data on part-time policy utilization rates and promotion possibilities are critical in educating leaders about whether formal policies work in practice as well as in principle. Too many organizations appear resigned to the idea that law is a 24/7 profession.[208] Too few have truly engaged in the kind of self-scrutiny necessary to develop effective responses. As one survey participant noted, his firm's policies were "a work in progress." Other leaders need to take a similar view, and to subject their practices to ongoing self-assessment.

F. Outreach

Organizations can also support efforts to expand the pool of qualified minorities through scholarships, internships, and other educational initiatives, and to expand their own recruiting networks. The ABA's Pipeline Diversity Directory describes about 400 such initiatives throughout the country.[209] Many survey participants were undertaking such programs in recognition of their long-term payoffs. Some organizations had also cultivated contacts with organizations that support diverse talent. As one general counsel noted, "[I]f we are creative and think outside the box about the skills and experience needed to succeed in a position, we can find more qualified talent, including qualified diverse talent, for the pools from which we hire."[210]

CONCLUSION

Implementing these practices requires a sustained commitment and many leaders expressed understandable frustration at the slow pace of change. What is encouraging about this study, however, is that such a commitment

206. Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1056 (2011).

207. *Id.* at 1056–57.

208. *See* discussion *supra* Part III.E. (discussing work/family issues).

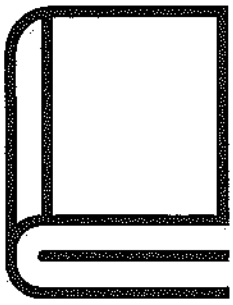
209. *See Search the Pipeline Diversity Directory*, ABA, http://apps.americanbar.org/abanet/op/pipelndir/search.cfm (last visited Mar. 25, 2015). For a discussion of such programs, see Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 294–99 (2014).

210. Email from Bevelyn A. Coleman, Exec. Vice President & Deputy Gen. Counsel, Wells Fargo & Co., to Deborah L. Rhode, Professor of Law, Stanford Law School (Aug. 14, 2014, 10:24 PST) (on file with author).

appears widely shared. That, in itself, is a sign of progress. As one chair noted, "Ten years ago, it wasn't uncomfortable to walk into a room with a non-diverse team. The temperature of the water has changed. It's hard to succeed without a commitment to diversity."[211] Leaders of the profession recognize that fact. The challenge now is to translate aspirational commitments into daily practices and priorities.

211. Telephone Interview with Greg Nitzkowski, *supra* note 28.

Appendix A: Participant List	
Fortune 100 Companies	***Am Law 100 Firms***
Aetna, Inc.	Arnold & Porter LLP
Am. Int'l Grp., Inc.	Davis Polk & Wardwell LLP
Chevron Corp.	Dentons
Cisco Systems, Inc.	DLA Piper
Comcast Corp.	Duane Morris LLP
ConocoPhillips Co.	Faegre Baker Daniels LLP
Google Inc.	Fish & Richardson P.C.
Hewlett-Packard Co.	Hogan Lovells
Intel Corp.	Hunton & Williams LLP
Johnson Controls, Inc.	Holland & Knight LLP
JPMorgan Chase & Co.	Kirkland & Ellis LLP
Lockheed Martin Corp.	Latham & Watkins LLP
Merck & Co., Inc.	McGuireWoods LLP
Pfizer, Inc.	Morgan, Lewis & Bockius LLP
Prudential Fin., Inc.	Morrison & Foerster LLP
Tesoro Corp.	Nixon Peabody LLP
The Coca-Cola Co.	O'Melveny & Myers LLP
Procter & Gamble Co.	Orrick, Herrington & Sutcliffe LLP
UnitedHealth Grp., Inc.	Paul Hastings LLP
United Parcel Serv., Inc.	Perkins Coie LLP
Verizon Commc'ns	Pillsbury Winthrop Shaw Pittman LLP
Wal-Mart Stores, Inc.	Proskauer Rose LLP
Wells Fargo & Co.	Reed Smith LLP
	Ropes & Gray LLP
	Sheppard, Mullin, Richter & Hampton LLP
	Sidley Austin LLP
	Sullivan & Cromwell LLP
	White & Case LLP
	Wilmer Cutler Pickering Hale & Dorr LLP
	Wilson Sonsini Goodrich & Rosati
Additional Participants	
Major, Lindsey & Africa	
Deloitte & Touche LLP	
Flextronics Int'l Ltd.	
NetApp	



Publications

How We Built a Mentoring Program that Actually Works

Women's Initiative Newsletter

August 14, 2018

Since its inception in 2005, the Baker Donelson Women's Initiative has included a mentoring component for the Firm's women attorneys. Over the years, our Women's Initiative has listened to the concerns of our women attorneys and learned how to best equip them with the mentoring relationships most beneficial to them and their career development. Based on this feedback, the Firm introduced a revamped, multi-faceted program in 2015. With a few years and even more feedback under our belt, we hope our journey to develop a robust mentoring program will help you create or expand women's mentoring networks at your company.

The need for formal mentoring relationships for women is supported by strong statistical evidence. Research shows there is a positive correlation between strong mentoring programs and women's advancement in law firms. It should be no surprise that more support from accomplished women can contribute to one's success and advancement. The 2014 National Association for Women Lawyers (NAWL) report identified the key obstacles to the retention and promotion of women in law firms, including lack of mentors for women in leadership, attrition as women leave firms for better opportunities, work-life balance issues, and lack of business development opportunities. With these obstacles in mind, we set out to create a mentoring program that (1) ensures every woman lawyer and advisor has multiple options and avenues for mentoring at the Firm; (2) creates an environment in which women receive feedback and advice to help them take ownership of their careers and advance within the Firm and the profession; and (3) develop a Firm culture that supports and values mentoring.

After conducting several focus groups throughout the Firm's offices and honing in on our women attorneys' concerns, we found there is not a "one-size-fits-all" model. In the same way that each person has different ideas and ex[illegible]ons about their careers, each person has different mentoring needs. Reports from our focus groups revealed the[illegible] varying opinions, interest levels, and requested types of mentoring. We concluded that the best approach is

to offer our women attorneys and advisors a menu of options and opportunities in order to develop meaningful mentoring relationships. The Women's Initiative constructed four overarching options and avenues for mentoring.

One-on-one mentoring. Baker Donelson facilitates a robust mentoring program for our associates, staff attorneys, and of counsel when they join the Firm, and many individual lawyers have organic one-on-one mentoring relationships. In addition, some of our women attorneys and advisors expressed they would appreciate an additional, dedicated Women's Initiative mentor. The idea is simple – mentors and mentees can discuss their careers and obtain advice and encouragement on an ongoing basis. The focus here is on *productive* relationships. The Women's Initiative was careful not to make anyone feel pressured to say "yes" to one-on-one mentoring merely because it is offered. In fact, surveys revealed many of our women prefer larger mentoring groups (discussed more fully below), rather than an assigned individual. For those who seek a dedicated mentor, the Women's Initiative endeavored to pair each interested individual with a mentor after discussion about that individual's preferences and needs. For example, a mentee may prefer a mentor in her practice area or located in another office to help expand her network.

Topic mentors. The Women's Initiative asked our male and female shareholders to let us know if they would be willing to provide advice on specific topics, including work-life balance, business development, community and professional associations, and leadership. All of our attorneys and advisors are encouraged to contact topic mentors, who we list on the Firm's intranet. Serving as a topic mentor is a great option for attorneys interested in serving as a mentor, but who may not feel they are able to commit to dedicated, individual mentoring assignments.

Mentoring circles. The mentoring circles provide opportunities for peer mentoring and broader discussions of issues of concern and interest for participants. The Women's Initiative Mentoring Committee provides our Women's Initiative Office Leaders with guidance on the frequency and timing of meetings, monthly discussion facilitation guides, and best practices from other offices. Our mentoring circles vary in size, with some offices including all women attorneys and advisors and others hosting smaller circles that may include five members. Our Office Leaders adjust the frequency and timing of meetings based on regular feedback we solicit from our women attorneys. Some circles host "Coffee and Cocktail Talks," which alternate between morning meetings at coffee shops near the office and happy hours at new, hip bars or restaurants. Other circles host "Cupcake Breaks" and walk to local bakeries mid-afternoon for discussions over sweet treats.

Random lunch groupings. Modeled after a program developed in the Firm's Atlanta office, the Women's Initiative works with each office's managing shareholder and Women's Initiative Office Leader to implement quarterly lunch groupings of three to four lawyers, including men and women. The Women's Initiative's focus groups revealed that these periodic, random lunch groupings build camaraderie, aid the integration of women attorneys, and provide opportunities for lawyers in different practice groups at varying stages of their careers to connect as well as potentially foster natural mentoring relationships. Every other month, small groups of attorneys chosen at random are asked to have lunch together and the most junior attorney in the group is tasked with scheduling. Attorneys are encouraged to get to know one another, discuss their practices and clients, and actively pursue opportunities to collaborate. Notably, this program requires no budget and minimal time commitment.

All of these offerings take work and commitment. With 22 offices, we face challenges to coordinate and maintain momentum. We are fortunate to have strong support for our Women's Initiative mentoring program, as well as lots of fantastic mentors willing to share their experiences and provide advice and counsel. We continue to make adjustments as we monitor what is working and what is not, and will strive to listen to and meet the changing needs of our lawyers.

Beyond the basic tenets of our mentoring program, we receive questions frequently about how the program truly works. Here are the questions that we receive regularly:

Why offer mentoring through the Women's Initiative when the Firm already has a mentoring program facilitated by the Professional Development Department?

Mentoring is important to the development of women lawyers. A national survey conducted by NAWL revealed a lack of mentors for women was a key obstacle to retention and promotion of women in the workplace.

What are some of the ways that mentoring can enhance one's career options?

- Mentoring helps attorneys develop expertise, knowledge, skills, and abilities.
- Mentors are critical to successful integration into the Firm.
- Mentors can provide behind-the-scenes information about organizational politics that more junior attorneys may not be privy to typically.
- Mentees benefit tremendously from one-on-one support.
- Mentoring allows an attorney to have an advocate with a larger voice within the Firm.

Are mentoring relationships successful when the mentor and mentee are located in different offices of the Firm?

Yes. The Women's Initiative found that inter-office mentoring can be very successful. It may be the case that the lawyer who is the "best" fit to mentor a mentee is in another office. Among other benefits, these mentor-mentee pairings provide the mentee with the opportunity to expand her network and offer a fresh viewpoint.

I'm interested in establishing a mentoring program at my workplace. Can I contact you for more information about mentoring best practices?

Please contact klroberts@bakerdonelson.com to discuss your workplace's mentoring needs.

How can attorneys participate in mentoring without overstretching themselves?

Attorneys concerned about overcommitting should consider being willing to take questions now and then. We introduced our topic-mentoring program to allow busy attorneys to make themselves available, as needed, to provide

one-on-one advice and answer questions on specific topics on an ad hoc basis. Attorneys tap into topic mentors periodically, so this role should not be particularly burdensome.

What topics should mentors discuss with their mentees?

We have found that successful mentoring relationships take many different forms, and each mentoring pair should communicate regularly to chart their own path. Mentoring discussions may include goals and plans for the future, strategies for developing new client relationships, how to balance competing workplace demands, how to become more involved in the community and/or bar associations, and how to develop leadership skills. The sky is the limit! Mentees should be proactive in letting the mentor know of particular mentoring needs or areas of concern and interest. Each month, we disseminate discussion topics to the Firm's Women's Initiative Office Leaders, with the goal of sparking mentoring conversations.

How often should mentors and mentees meet?

The frequency of meetings is purely at the discretion of each mentor-mentee pairing, although the advice and encouragement mentors provide should be ongoing.

Ultimately, we have found that the need for mentoring relationships ebbs and flows throughout a career, and different needs arise dependent upon the phase of life. We believe that knowing they have a support system available helps our women attorneys and advisors to combat issues that may otherwise lead to attrition and encourages our attorneys to take charge of their own careers. We hope that these lessons aid in the development of a mentoring program that works for your organization.

Related Files

- Women's Initiative Newsletter – Issue 2, 2018

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LEGAL

TALENT ACQUISITION AND RETENTION

What makes lawyers happy? Keys to attract and retain talent in 2023

February 23, 2023 · 6 minute read

While new concerns may be replacing the talent war, it is important that firms take action to keep their talent happy.

According to a 2021 Thomson Reuters report, lawyer recruitment and retention was cited by 51% of respondents as a top concern. **In the last year**, this concern fell off greatly as a perceived risk factor, with just 28% citing it as a high risk to profitability in 2022.

Jump to:

Creating a sense of meaning and purpose in work

Understanding generational preferences

Legal tech is the foundation

Learn more about legal trends

Here are three key tactics that you should consider this year to keep lawyers happy:

1. Giving employees more personal control over their working arrangements

For decades, law firms seemed to resist the idea of letting their teams work from home, believing that most of the work they did could only be done in person. But, when everyone got sent home at the beginning of the COVID-19 pandemic, those teams proved that they could do nearly everything from home that they could at the office—provided that they had access to the right technology. According to a **2022 survey** conducted by the American Bar Association, 44% of lawyers surveyed would leave their place of employment for a greater ability to work remotely elsewhere.

Having shown that they can succeed in a remote environment has created an expectation among employees that this kind of flexibility will become permanent. In the **2022 Thomson Reuters Law Firm Business Leaders Report**, 42% of respondents will definitely support remote work to improve performance.

Whether for **work-life balance**, wellness, or simple flexibility in working hours, the idea of flexible work is a benefit that many top-performing team members want from their firms.

2. Providing growth and development opportunities – early and often

Legal professionals who are just beginning their careers are anxious to use what they learned in school as well as experience what it's like to work in the real world.

While it's great to have new bodies to research case precedent, that kind of work has the potential to lead to burnout sooner than later. Especially if they **don't have the best technology** to complete their research. Not only does it take them longer to complete their assignments, but it can also make them feel like the firm does not value them.

By providing the most current technology, they can get more legal research done in less time. And they can learn more about the law in the process.

Find out more about the capabilities of today's legal research tools in the white paper, **"The past, present and future of legal research"**.

There are other ways you can make new team members' earliest days with the firm more engaging, such as:

- Adding them to the team that is handling the matter: They can see how planning meetings work and get firsthand input on what the rest of the team needs from them. And, perhaps more importantly, they will feel more of a sense of ownership of the matter.
- Building formalized development programs: In addition to mentoring, new team members like to know what career paths are available to them at the firm. Setting up development plans allows them to visualize where they are likely to be in two, five, or 10 years. Being able to see their futures with the firm can help to reduce turnover and encourage people to stay with the firm longer if they like what they see.

3. Creating a sense of meaning and purpose in work

The people entering the workforce today share a commitment to making a difference in the world. In addition to giving their time to their favorite organizations, they want their time spent on the job to mean something as well.

Consider where your firm naturally makes the biggest impact on the world – your purpose. Articulate that as part of your recruitment and onboarding process. Make sure you're regularly showcasing work that aligns with your purpose, so existing staff are reminded that what they do matters.

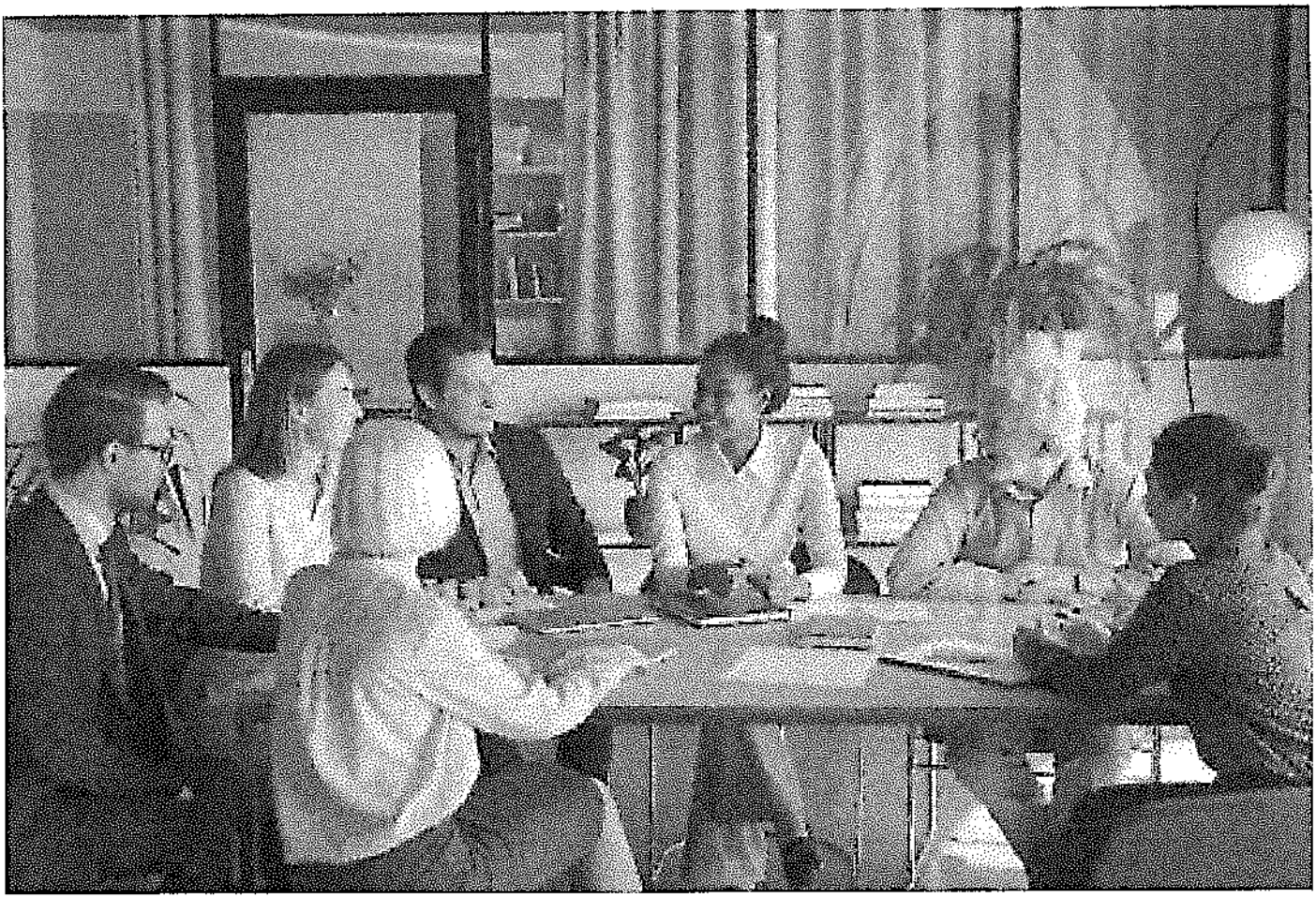
Learn about what excites them on an individual level and steer them toward work for clients where there is a common interest. Let new team members use the firm's technology and resources for pro bono activities. Encourage them when they want to pursue a matter that might be a bit outside the firm's regular scope. Let them be passionate. And embrace their passion.

Understanding the generational differences in prospective hires

These keys are especially important considering the number of millennials and zoomers—as Gen Z has come to be known—dominating the workforce. The oldest millennials are over the age of 40, and the oldest zoomers are in their mid-20s.

While some of the earliest millennials remember not having cell phones and high-speed internet, they readily embraced the technology once it became available. Zoomers, on the other hand, have never known a time when they didn't have immediate access to the latest technology.

Using cutting-edge technology is second nature to both of these generations, and it has become a near-prerequisite for them as they consider where they want to work. With most new associates being zoomers and millennials beginning to take on leadership positions at their firms, the demand for and focus on state-of-the-art technology will only continue to increase.



We designed this guide to help law firm leaders develop strategies and programs to build a diverse, inclusive, and welcoming workplace for all generations.

Read white paper

Legal tech is the foundation

The battle for top talent has become as fierce as the battle for clients' business. You need to create a culture that is attractive to millennials and zoomers in order to give your firm any chance of winning talent – and keeping talent around.

While aligning with personal values is going to be key, the argument could be made that having the most up-to-date legal tech is table stakes. By taking the time now to evaluate your firm's current legal tech stack, you set yourself up to be a stronger competitor as candidates evaluate your opportunity against others.

Not only that, you'll also gain all the business benefits that come with using technology that allows the firm to operate at maximum efficiency, productivity, and profitability.

Learn more about legal trends

As we continue through 2023, new concerns will surely arise. Make sure that your firm has the best talent, and that this talent is equipped with the right tools to tackle future problems and come out as a leader against the competition. Learn about the latest in legal research technology and how it's **evolved to meet your changing needs.**

TALENT ACQUISITION AND RETENTION TECHNOLOGY

A leadership guide for multigenerational law firms

Does the culture at your law firm cater to all generations? We designed this guide to help multigenerational law firms develop strategies and programs to build a diverse, inclusive, and welcoming workplace.

Read guide

EXPERT OPINION

Seven Ways Law Firm Leaders Can Retain Talent

At Hall Booth Smith, we have strategized using the following methods to help with improving retention.

June 06, 2023 at 08:01 AM

Expert Opinion

By Juanita Kendall | June 06, 2023 at 08:01 AM

In today's competitive job market, retaining top talent has become a crucial challenge at Hall Booth Smith (HBS). A loyal and committed workforce not only contributes to a law firm's long-term success but also reduces recruitment costs.

Firm managers and partners play a pivotal role in nurturing employee loyalty and boosting retention rates. By embodying certain traits and taking specific actions, they can create a positive work environment that encourages loyalty and engagement among their team members. The pandemic has reshaped the way we work, triggering the implementation of strategies addressing the desires of young employees while fostering engagement and collaboration in the office environment.

At HBS, we have strategized using the below methods to help with improving retention:

Effective Communication

Clear and open communication is essential for building trust and loyalty within a team. Law firm leaders should encourage transparency and frequent communication with their employees, actively listening to their concerns, ideas and feedback.

Regular team meetings and one-on-one sessions can help facilitate open dialogue. By addressing concerns promptly and providing constructive feedback—demonstrating that they value employee input—managers can foster a culture of trust and respect, which leads to higher employee loyalty and retention.

Empathy and Support

Managers and partners who demonstrate empathy and support for their team members create a nurturing work environment. Recognizing the individual needs, aspirations and challenges of employees builds strong relationships based on understanding and compassion. Law firm leaders should make an effort to know their employees on a personal level, show genuine interest in their well-being and provide support when needed.

By offering flexible work arrangements, promoting work-life balance and offering resources for personal and professional development, law firm leaders can foster a sense of belonging and loyalty among employees. Law firms should also provide training to their managers and partners on emotional intelligence, as being a compassionate manager or partner can go a long way.

Recognition and Rewards

Recognizing and appreciating employee contributions is vital to boosting loyalty and retention. Managers and partners should acknowledge and celebrate their team members' achievements and milestones. Implementing a formal recognition program that highlights exceptional performance, providing opportunities for growth and advancement, and offering competitive benefits and compensation packages are key steps that law firms can take to show employees that their hard work is valued and rewarded.

Regular feedback sessions and annual performance evaluations also help employees understand their strengths and areas for improvement, motivating them to stay committed to their roles.

Professional Development

Investing in employees' development not only enhances their skills but also demonstrates a commitment to their growth. Managers and partners should provide opportunities for continuous learning, such as workshops, training sessions and mentorship programs. By identifying and nurturing employees' potential, law firm leaders can help their team members acquire new skills, expand their knowledge and progress in their careers.

Promoting internal mobility and offering challenging assignments that align with employees' interests and goals are further actions managers can take to retain top talent and foster loyalty. Stay interviews are a great way to understand an employee's needs and goals.

Flexible Hybrid Models

Recognizing the benefits of remote work, law firms can offer flexible hybrid models that blend in-office and remote work options. This allows younger employees to maintain some degree of flexibility as they are gradually

reintegrating into the office following the pandemic. By establishing clear guidelines and expectations, law firms can strike a balance between remote and in-person work that suits the needs of both individuals and the firm.

Mentorship and Collaboration

Younger employees often value mentorship and opportunities for collaboration. Law firms can facilitate these connections by organizing mentorship programs and cross-functional projects that encourage interaction among employees of different experience levels.

Regular team meetings, brainstorming sessions and social events can foster a sense of camaraderie and create opportunities for knowledge sharing. By emphasizing the value of in-person interactions, law firms can nurture personal and professional growth and make the office a hub for networking and learning.

Communicating the Benefits of In-Office Work

Law firms should communicate the advantages of working in person to younger employees. Highlighting the benefits of face-to-face collaboration, mentorship opportunities and professional development that arise from in-person interactions can motivate employees to return to the office.

It is essential to emphasize the social aspects of working in an office environment, such as building relationships, fostering a strong firm culture and maintaining a work-life balance. Sharing success stories and showcasing how being in the office has positively impacted the careers of senior employees can also inspire younger professionals to embrace in-office work.

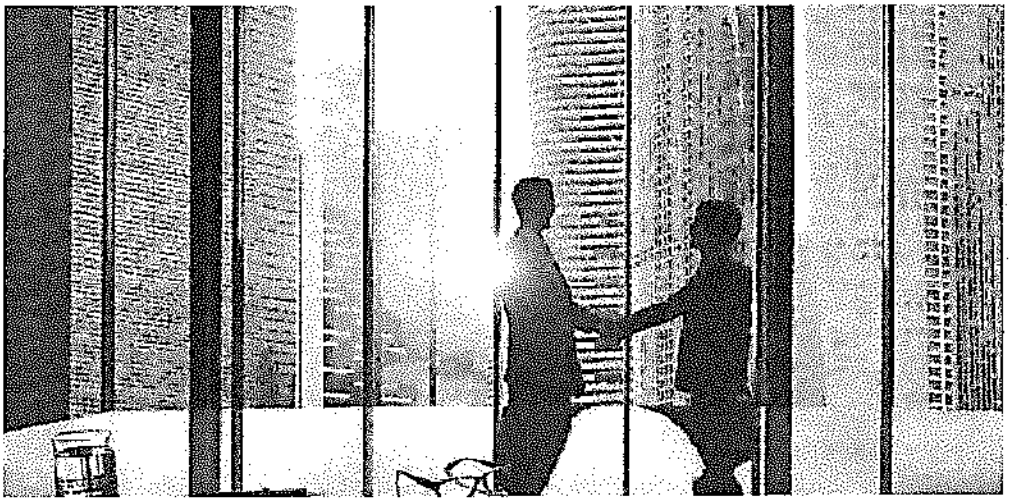
Bringing younger employees back to the office requires a thoughtful approach that balances flexibility, collaboration and clear communication of the benefits of in-person work. By implementing these strategies, law firms can foster engagement and create an attractive workplace environment.

Juanita Kendall is chief human resources officer at Hall Booth Smith, where she focuses on talent acquisition, compensation and benefits, employee training and relations, performance management and strategic planning.

How to Improve Law Firm Hiring and Retain Top Talent

by: Bill4Time of Bill4Time -

Posted On Friday, June 17, 2022



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Attracting and hiring young talent is a big, and necessary investment for a law firm. After going through the process of recruiting, screening, hiring, and training candidates, it's important for law firms to do all they can to keep lawyers in the long term. If a young lawyer is brought in and leaves for better opportunities, law firms have to start from scratch and put the time and money into hiring another. In total, law firm hiring costs the industry around $1 billion a year.

Attracting and retaining lawyers and bringing in fresh grads is competitive. Law firms looking to get to the top of the pool of talent need to focus on flexibility, diversity, positive company culture, growth opportunities, mentorship, and technological innovation.

Hiring is Competitive for Law Firms

In 2021, lateral hiring moves among law firms grew to 41%, an uncommon and record high for the legal industry. While many experts found this trend unsustainable and anticipate it will cool down this year, there is still a great effort among law firms to raise salaries and adjust their hiring practices to align with the market.

This trend of salary increases leaves new lawyers and associates with a flood of options. Unprecedented salaries are now more common, so other factors like work-life balance and hybrid work are at the forefront. Flashy salaries may draw lawyers in, but it's the quality that the employer brings to their life that makes them stay.

The Importance of Company Culture and Law Firm Hiring

Younger lawyers come out of law school with different priorities than they did years ago. These new lawyers are seeking out firms with opportunities for support and mentorship from experienced lawyers. They want to know they're making a choice that has a positive impact on their legal career.

Law firms can attract these lawyers by nurturing a positive culture that's as current on trends and innovations as possible. One of the most important aspects of this culture is the technology that supports time management and work-life balance.

Ongoing Support and Mentorship

As mentioned, young lawyers are looking for law firms that will serve their future. Law firms can be competitive environments in a dog-eat-dog industry, but these new lawyers aren't looking for that kind of grind. They don't want to be the hotshot – they want opportunities to learn and grow in their careers.

Firms that want to attract these lawyers should offer opportunities for growth and demonstrate an investment in their recruits. This may include career planning guidance, CLE training, professional development, and coaching services. These

Better Work-Life Balance

Like all young professionals entering the workforce, young lawyers put more emphasis on flexibility and work-life balance than on the hustle culture. They don't want to be the "first in, last out" type or married to the job. They want to have a healthy personal life with time for family, travel, or hobbies.

No matter what, personal and professional lives can overlap and impact each other, but law firms can try to give associates time and space to manage their personal lives. In doing so, firms gain more productive and efficient lawyers who are loyal and satisfied with their jobs.

Law firms should also keep in mind that young lawyers are more open to remote and hybrid work environments. These options allow lawyers to balance their time better, skip the long commute and traffic, and be more productive overall.

The Need for Cutting-Edge Technology

Legal technology is an excellent way for law firms to attract law students or young lawyers. The legal industry is largely traditional, but it's slowly shifting to adopt more innovation that improves processes or helps young lawyers maintain the flexibility they crave.

For example, young lawyers looking for remote or hybrid work can make the most of their work time with features like mobile apps, document management, and cloud-based access and storage. They can work from anywhere – field, home, or office – and have the same access to the information and documentation they need.

Young lawyers are digital natives and can adapt to new technology solutions quickly. They know that they can gain more flexibility and fewer long hours with tools for automation, time tracking, and remote communication. Firms that remain traditional are less likely to attract this top talent.

Leaving a Positive Impact In and Out of Your Law Firm

Younger lawyers have many different priorities than their predecessors, including a desire to make a difference in the world. This generation lived through a lot of historical events, suffered strife, and wants to create a positive impact with their law practice – even more than fame, status, or salary.

Law firms can attract this kind of talent with programs like impactful pro bono work and a commitment to justice, not just attracting the biggest and most expensive clients. They give back to the community and show their investment in others, whether through donations, volunteer programs, scholarships, or pro bono work.

Attractive law firms offer different paths and opportunities to make partner. Young lawyers can rest assured that they won't have to put their lives on hold, such as waiting to get married and start a family, just to get their promotion. Firms can give associates the flexibility and freedom to choose when they want to take the next steps in their careers.

Alternatively, not every young lawyer wants to be on track to partner. If young lawyers aren't seeking a partnership or leadership position, law firms can offer alternative career paths through professional coaching and training programs.

For example, young lawyers may wish to take their legal expertise and combine it with business areas to assist in running a firm, such as business management, legal technology, or human resources. This allows lawyers to find the best combination of skills and responsibilities for their needs.

Lawyers should also have the freedom to explore different practice areas and widen their skill set before investing a lot of time and energy into a practice area that doesn't satisfy them.

Adopt Modern Processes to Enhance Your Law Firm's Hiring

Attracting and retaining young lawyers and law students is difficult in a competitive market, but law firms can create an environment of support, continued learning, and technological innovation that keeps lawyers loyal and satisfied.

CURRENT LEGAL ANALYSIS

ROAD TRIP: Pro Se Plaintiff Ordered to Drive from Iowa to Florida for

firm must also nurture the client service skills," "In a big firm, you can get around that because you may have a relationship lawyer who deals with the client, so a very good technician behind the scenes works in that setting. A small firm does not have that luxury because we can't be everywhere. Small firms need to have their structure correct in order to avert leverage issues and be confident with leveraging down to those who can also handle some client contact."

MOVING FORWARD

Despite the competition, smaller law firms stand a good chance of establishing a truly diverse culture and managing it successfully. While many of these firms may not have formal diversity programs in place, a good number have found ways to reach out to and retain minorities, such as bonuses and impressive work/life balance cultures that in many ways rival, if not exceed, those at larger firms. Regina Petty of Wilson Petty Kosmo and Turner says that her firm is equally proud of its work/life culture as it is of its stance on diversity. "We do a better-than-average job of achieving work/life balance because we don't have extraordinarily high billable hours and we take an individualized approach to managing the professional and personal goals of our lawyers," she states.

Additionally, Gonzalez at Gonzalez, Saggio, Harlan LLP states that being open to hiring diverse attorneys has helped the firm get some excellent results for their clients because the attorney had a different perspective than that of an attorney at the more traditional, larger law firm.

These firms are unique in that they reflect all races. They show respect for different cultures and individuals who, with their differences, bring fresh insights to the table. While these firms may not offer the prestige of a big name or big salaries, what they do offer is something that many attorneys find most important: a place where they can thrive.

Donna Burgess Dick is a freelance writer based in Montclair, N.J.

NOTES

1. See "Women and Attorneys of Color at Law Firms-2004," The National Association for Law Placement (NALP Bulletin, Feb. 2005), at http://www.nalp.org/content/index.php?pid=253.

From the July/August 2005 issue of Diversity & The Bar®

SMALL FIRMS, BIG ISSUES: HOW TO COMPETE ON THE DIVERSITY FRONT

BY DONNA DICK | DONNA DICK

SHARE:

LEADERS OF DIVERSE SMALL FIRMS SHARE THEIR SECRETS

Big money. A glamorous, big city location. Compelling cases. The promise of partnership for the brightest and best. For many minority law students, the lure of large law firm employment is enticing. Today, these firms are increasing efforts to recruit at minority job fairs, provide mentors and internship programs for minority students, and diversify their summer programs. How, then, are small firms to compete?

For many small firms across the country, recruiting and retaining diverse lawyers is just as big a priority as for large firms-but it is a much bigger challenge. According to a 2004 study by the National Association for Law Placement (NALP), in law firms with more than 500 attorneys, 5.43 percent of partners and 17.90 percent of associates were minorities, while in firms with fewer than 100 attorneys, 4.44 percent of partners and 11.35 percent of associates were lawyers of color.[1]

despite these challenges, small majority-owned firms have successfully recruited and retained minorities, and, in the case of minority-owned firms, white attorneys. Diversity & the Bar® spoke with partners at some of these successful firms about the specific challenges they faced in attempting to diversify, the obstacles they overcame, and the advantages that diverse attorneys may have in working for smaller practices.

FOCUS AND COMMITMENT

Keith Simmons is the managing partner at Bass, Berry & Sims PLC, a Nashville-based multi-specialty business firm. The firm employs 183 attorneys in its four Tennessee offices, seven of whom are African American. Of the firm's 81 partners, none are minorities. Although the firm has long been committed to diversity, when other pressing concerns have arisen, the focus has tended to shift-something Simmons feels is probably true for most majority-owned firms.

Bass, Berry & Sims has been pursuing minority candidates for more than a decade, but only in the past four years has the firm established a formalized committee to promote its diversity initiatives and, more importantly, to keep pressure on management to ensure that diversity hiring remains a high priority. But it is the composition of the committee-four senior white attorneys, including Simmons, and four African Americans who drive the committee's efforts-that Simmons believes places his firm at an advantage. Having minorities on its diversity committee, with whom potential hires can relate, has been extremely beneficial to the firm's diversity efforts. "It's a lot easier to reach out to a group like the Black Law Students Association at Vanderbilt University when you have young black lawyers in your firm," says Simmons. "Ten years ago, when we approached them, they didn't see a group of role models. Now they do."

GETTING INVOLVED, BREAKING BARRIERS

Simmons says that the firm has begun to be "much more intentional and proactive" about its minority recruiting. The firm is now an enthusiastic participant in minority job fairs both locally and around the country. He notes that when majority-owned firms recruit, they tend to use very conventional hiring standards like grades, class rank, and law journal contributions to evaluate potential hires, although these attributes are not always necessarily the best predictors of success. A few years ago, the partners at Bass, Berry & Sims realized that if the firm was going to be successful in being diverse, it would need to adopt a broader outlook when assessing candidates. Now, when evaluating hires, the firm focuses much more on broader predictors of success and uses "behavioral interviewing" to unearth characteristics in interviewees that are not necessarily apparent on their resumes. Simmons knows that diversity hiring is a challenge, but thinks that many firms complain about obstacles to rationalize being neglectful. "Yes, it is tough to hire minorities in a firm where there are none,

who looks like them, they become very skeptical about whether or not they can be successful in the environment," he points out.

Bass, Berry & Sims is also involved with local organizations, such as the Napier-Looby Bar Association, Nashville's minority bar association. "We believe that the more we can develop relationships in places where people are trying to do something about diversity, we are going to increase our visibility," Simmons adds. "We face a lot of challenges, but we have to attack this on several different fronts, including educating members of the firm that this is important. Words that just put a good spin on a firm's efforts do not substitute for action. Diversity is important. It brings a deeper cultural fabric to the firm and makes us a better organization," he continues.

"One of our goals in hiring diverse lawyers is that we think more viewpoints create better problem-solving for our clients. In addition, we want our firm to look like the communities we serve." **- George Soule**

Minneapolis, Minnesota-based Bowman and Brooke LLP has six offices across the country, made up of approximately 150 litigators. Thirty are minorities, a number the firm keeps working to increase. Bowman and Brooke is one of three small firms to become members of the Twin Cities Lawyers Group (TCLG), a newly formed collaborative effort of area-based firms that will take a leadership role in identifying, recruiting, advancing, and retaining lawyers of color in Minnesota's legal community. TCLG will also promote the Twin Cities as a good place for lawyers of color to develop professionally and personally. Founding Partner George Soule, a Native American who currently serves as president of the Minnesota Indian American Bar Association, indicated that although the firm does not have a formal diversity program, inclusiveness is still a high priority goal. The firm has developed relationships with all of the city's minority bar associations and participates in minority law school conferences. Its lawyers also volunteer in external programs and organizations that promote diversity and work to increase opportunities for minorities. "One of our goals in hiring diverse lawyers is that we think more viewpoints create better problem-solving for our clients," Soule explains. "In addition, we want our firm to look like the communities we serve."

AVERTING ATTORNEY ATTRITION

At Potter Anderson & Corroon LLP, an established Delaware firm specializing in corporate, business, and litigation work, Joshua Martin spearheads the firm's diversity efforts. Although the firm has long embraced diversity, of its 77 attorneys, only five are minorities-two partners and three associates. In fact, Martin himself is a trailblazer. He is the first African American male to make partner in the firm's 179-year history. Martin's arrival at Potter Anderson & Corroon in March marked the beginning of a new phase at the firm. He will use his experiences

had moderate success in attracting minorities to the firm, we've not been successful in retaining many of these lawyers," Martin says. "And quite frankly, Potter Anderson & Corroon wants to lead the charge in making law firms in Delaware, and the region, more diverse."

Martin thinks that a small firm needs to offer a "very welcoming and nurturing" environment for associates, particularly if it is located in a state like Delaware, which does not offer the social lifestyle of a big city. For Potter Anderson & Corroon, the challenge is to get lawyers of color to see that they can have a very successful practice with the firm, as well as a personally satisfying lifestyle. "When I first came to Delaware in 1974 as a patent attorney, I really didn't think that I was going to stay because I didn't think Delaware would welcome me," Martin recalls. "But things fell into place. I had a principal mentor as well as several others, and over time, I have seen many changes for the better. I think Potter Anderson & Corroon could bring about that same kind of change in the legal profession." Martin, who is currently reviewing the firm's mentoring program, also suggests that while a structured mentoring program is a key to the success of a firm's diversity goals, young lawyers should be encouraged to seek other mentors outside of the structured mentoring process. He also advises that they develop relationships with other attorneys with whom they feel comfortable enough to discuss any concerns-professional and personal.

COMPENSATION COMPETITION

One of the biggest challenges facing any small firm today in recruiting talented and diverse attorneys is compensation. Carlos Rincon, a partner at Delgado, Acosta, Braden & Jones PC-a Texas-based firm that employs 20 lawyers in its four offices-believes that the issue of compensation is controlled more by region and practice area than by firm size. According to Rincon, lawyers who practice intellectual property litigation in big cities like New York and Los Angeles, both high-paying legal markets, are going to command salaries that others cannot.

While Simmons' firm is larger than Rincon's, it too faces "big-city market" competition. "Today, students are graduating from law school with huge debts to repay, so if they can get them, many opt for jobs with firms in large cities. In addition, cities the size of Nashville compete with larger areas for social and lifestyle opportunities for people of color. The environment in which a black professional operates in Atlanta in most cases is probably much more comfortable than in Nashville. So often, at firms like ours, the associates all have connections to the area, whether it is family or former school ties," he concludes.

Wilson Petty Kosmo Turner LLP is a San Diego-based litigation firm with 19 attorneys, founded in 1991. The firm evolved to become a woman and minority-owned business under the leadership of Regina A. Petty and Claudette Wilson. The firm's partnership base is unique in that six of its eight partners are women, two of whom are women of color. Named to the "50

not experience difficulties attracting and retaining diverse attorneys because of its status as a woman and minority-owned firm. However, she does believe that the attraction of large firm salaries plays a significant role in the challenges that many small firms have in hiring diverse attorneys. Petty shared that during the late 1990s, large firms competing for talented young lawyers initiated a "price war," which then trickled down to small and mid-sized firms. Salaries increased so dramatically, small firms could not keep up without enormous fee increases to their clients. Many young, talented lawyers were drawn by big paychecks and chose to begin their careers in large-firm practices. But according to Petty, these young attorneys may not have realized the potential pitfalls. "One of the things that graduating law students are generally ill-prepared for when they choose to start their careers in a large firm is realistic, long-term financial planning," Petty maintains. In counseling new lawyers, she stresses, "Few lawyers today ultimately spend their entire career in positions at the highest end of the market, so it is important to maintain financial flexibility to pursue other opportunities which involve lower compensation."

In 1995, Thomas Chan founded the Chan Law Group LC, a Los Angeles-based firm with four lawyers, whose client base ranges from entrepreneurs and emerging industry leaders, to Fortune 500 corporations, foreign enterprises, and individuals. Chan suggests that if a firm cannot afford to pay large salaries, it may be able to deliver supplemental compensation in the form of sizable bonuses, something he can do due to the firm's low overhead. "With lower overhead and no debt, the firm does not get into trouble financially, so we tend to be more stable and can afford to reward our attorneys at the end of the year," Chan shares.

"Few lawyers today ultimately spend their entire career in positions at the highest end of the market, so it is important to maintain financial flexibility to pursue other opportunities which involve lower compensation." **-Regina A. Petty**

BUDGET BLUES

With limited funds to spend on recruitment, small firms must strategically focus their outreach efforts. Typically, most do not participate in career days at law schools or minority hiring fairs-it is cost-prohibitive both in terms of money spent and time away from the office. Furthermore, most small firms do not hire at the entry-level because of the time, cost, and manpower involved in training new graduates. At Wilson Petty Kosmo and Turner, the firm's practice is to hire lawyers with three or more years of experience, believing that the expense of effectively providing good training is more manageable within the budgets of larger firms. The firm recruits via networking or newspaper ads.

Lynn Luker and Associates, LLC, a New Orleans-based, woman-owned litigation firm, has two African American and one Hispanic attorney on its six-member team. Luker, who is Caucasian, says that because of her firm's size, she does not employ specific recruiting practices. Rather,

Approximately half of the 35 attorneys at the Midwest firm of Gonzalez, Saggio, Harlan LLP are minorities. Gerardo H. Gonzalez, a founding partner, stresses that in hiring lawyers, the firm actively seeks to recruit individuals from all ethnic backgrounds. Gonzalez believes if a firm is truly committed to diversity and wants to grow its business, it must find ways around perceived obstacles to minority hiring. For example, he suggests that if a firm is located in an urban area, the firm's managing partner or senior representative should meet with area and national minority bar associations, such as the Hispanic Bar Association or the National Bar Association. "They need to know the leaders of those organizations and make them aware of their firm's search efforts," Gonzalez states. "If they do that as a natural part of their recruitment effort, it will go a long way to show that they are truly interested in diversity. Furthermore, if they actually do hire a minority candidate, they will then benefit from that person's network."

Chan Law Group, which recently lost two lawyers-an African American and a Latino-is doing just as Gonzalez suggested. Chan, who is Asian, wants to replace those attorneys. With limited recruitment funds, his search is much more personal and focused. He has been reaching out to local bar associations and networking with industry contacts to find the "right" candidate-a lawyer who has the right mix of legal, marketing, and business skills.

LEVERAGE ISSUES

Practices that specialize in certain niche industries must hire attorneys that address specific client needs. While diversity is often on a client's wish list, industry-specific skills are also foremost. Herein lies the challenge-finding the candidate with everything. Chan, whose firm handles patents and litigation lawsuits for the technology and science industries, shares that it has been difficult finding African Americans or Latinos with the required background since, in his experience, there are fewer minorities with undergraduate degrees in technology and the sciences.

For The Delaware Counsel Group LLP, a Wilmington firm with a sophisticated corporate transactional practice focused on Delaware law for corporations and alternative business entities in the state, the biggest challenge is finding someone with the appropriate business background who can also serve as an ambassador for the firm. Founded in February 2004, the three attorneys at the Caucasian woman-owned boutique all began their careers and rose to partnership and senior positions in larger established Delaware firms. Partner Heather Jefferson says, "In addition to having solid legal backgrounds, potential hires must also possess strong business acumen, as the firm's work is very specialized. In addition, if you do find the right person with the right background, he or she must have a solid work ethic, understand and respect the needs of your corporate clients, can deliver client trust, integrity, efficiency, effectiveness-all the things that a small firm tries to impart through the firm to the

because you may have a relationship lawyer who deals with the client, so a very good technician behind the scenes works in that setting. A small firm does not have that luxury because we can't be everywhere. Small firms need to have their structure correct in order to avert leverage issues and be confident with leveraging down to those who can also handle some client contact."

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From the July/August 2005 issue of Diversity & The Bar®

AM I READY TO BE A MENTOR?

CONSIDER...

- Do I have the actual time to commit to my mentee? How much time?
- Am I willing to share my challenges, as well as my successes?
- What do I hope to gain from this experience? What do I hope to teach?
- What aspect(s) of my career path puts me in a unique position to mentor?

HOW CAN I BE A GOOD MENTOR?

- Come on time to appointments; respond within 48 hours to emails.
- Show personal interest in your mentee.
- Give positive and constructive feedback.
- Create a welcoming & inclusive environment.
- Consider barriers mentee faces in his/her career, and provide advice and support accordingly.

HOW CAN I BE A GREAT MENTOR?

- Come early to appointments; respond within 24 hours to emails.
- Read about the mentee's interests prior to your next meeting.
- Ask for feedback on being a mentor.
- Initiate dialogue regarding barriers and facilitators to creating an inclusive and supportive environment.
- Ask the mentee what kind of proactive support he/she needs to overcome barriers.

HOW DO I FIND A MENTEE?

The WSBA MentorLink webpage
www.wsba.org/connect-serve/mentorship/be-a-mentor
is a great source of information on how to be matched.

Please contact us at **mentorlink@wsba.org** or **800-945-9722**.

WASHINGTON STATE
BAR ASSOCIATION

QUICK TIPS *FOR SEEKING MENTORS AND ADVISORS*

MAKE A PLAN

Before you start researching or contacting potential mentors and advisors, assess your goals and most critical needs. Ask yourself:

1. What are my three most pressing questions or concerns? For example:
   - *Communicating with clients and opposing counsel?*
   - *Managing a solo practice?*
   - *Understanding court rules & procedures?*
   - *Questions about a specific area of law?*
2. What would be most helpful to discuss with a more experienced attorney vs. doing research to find some answers?
3. What am I going to ask for? For example:
   - *Ongoing email contact?*
   - *Coffee date(s)?*
   - *Skype phone call to bridge the miles?*
   - *One day of shadowing at office or court?*
4. Is my resume and short bio updated and ready to send?

FIND A MENTOR

Once you have a clear idea of your goals, you can take the next step to researching potential mentors based on such criteria such as: geography, practice setting and area of law. In addition to reviewing the **WSBA Legal Directory** for updated information, strategies for locating potential mentors and advisors might include:

- Asking around! Someone in your current network might know someone and be able to make an introduction.
- Attending events put on by sections, minority bar associations, local bar associations, specialty bar associations, and/or law school alumni programs.
- Reviewing legal publications for article authors or references to specific individuals in your practice area.
- Attend a **MentorLink Mixer.**
- Sign up and create a profile on **ALPS Attorney Match.**

TAKE ACTION

Many potential mentors and advisors are happy to help, and just need to be asked! However, it's important that the mentee take the lead in reaching out and following-up, while being respectful of the mentor's time and schedule. Strategies might include:

- *Sending an initial letter or email:* who you are, what you want, why you're asking them, and how soon you're hoping to meet.
- *During meeting:* be specific on how they can help and find out what works for them.
- Clarify expectations about ongoing contact.
- Send thank you notes and stay in touch!

IMPORTANT GUIDELINES TO REMEMBER

Mentoring sessions may involve only generalized questions that do not involve the disclosure of details from a specific case or client. A mentor-mentee relationship does not create an attorney client relationship, and the discussions are not privileged or confidential. In other words, assume your conversations are completely public.

Consistent with R.P.C. 1.6, the mentee will not identify any client to the mentor or reveal to the mentor any information related to the representation of the client, nor will the mentee seek professional or legal advice from the mentor about specific legal matters or clients such that protected communications are revealed. Subject to the limits of the previous paragraph and pursuant to R.P.C. 1.6 (b)(4), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to secure legal advice about the lawyer's compliance with the Rules of Professional Conduct. Discussions, if any, about substantive legal matters between the mentee and mentor will be limited to hypothetical situations.

ADDITIONAL RESOURCES:

- **WSBA Mentorship Resources**
  Information on mentoring opportunities that currently exist across our state's legal community, in addition to other mentoring resources to support WSBA members at **www.wsba.org/connect-serve/mentorship**
- **WSBA Ethics Line 800-945-WSBA, ext. 8284**
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REVERSE MENTORING ADVANCES THE FUTURE OF THE PROFESSION

Hon. Tanya R. Kennedy, Appellate Division, First Department

In September 2015, I was among a few individuals from the legal community who attended a daylong summit where various leaders from the corporate, entertainment, and sports world gathered to learn how to effectively market their products and services to millennials. I learned that millennials (born 1981-1996 as per the U.S. Census Bureau), who constitute a majority of the workplace, seek constant feedback from their employer; demand work/life balance and a workplace culture that align with their values and offer meaningful work opportunities. I considered my relationships with various students and young attorneys and sought to enhance my engagement with them once I realized that they embody the same values that I cherish.

I am similarly fond of Gen Zers (born 1997-2013 as per the Pew Research Center), and my experience with this demographic aligns with the March 20, 2023, McKinsey & Company Report that describes them as persons who are more politically and socially active; advocate for what they believe in through social media; demand greater accountability; and are more interested in belonging to an inclusive, supportive community. Gen Zers also demand authenticity, which I value.

While I have been privileged to serve as a mentor to high school, college, and law school students as well as young attorneys during my 30-year career (including nearly 17 years as a judge), I now benefit from receiving the wisdom and perspectives of millennials and Gen Zers through reverse mentoring.

Reverse mentoring, in which an older and more experienced individual is mentored by a younger and less experienced individual, has gained momentum in recent years since its introduction in the business arena, and I encourage those in the legal community to embrace this concept.

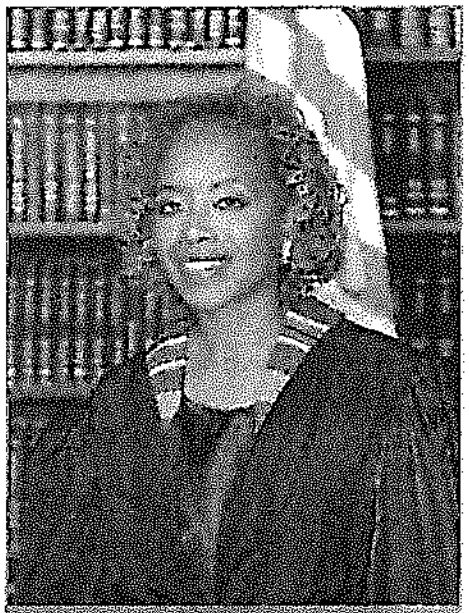
My personal and professional life has been enhanced through reverse mentoring, enabling me to form meaningful intergenerational relationships. My engagement with younger individuals has allowed me to broaden my perspective, which allows for better decision making, and is essential for furthering diversity and inclusion at the workplace and in the profession.

Reverse mentoring has also helped me to understand technology and social media. Technology has revolutionized the legal community, and it is tech-savvy younger generations who will lead the charge in leveraging technology to formulate innovative solutions to existing problems, as well as to anticipate future challenges and opportunities.

I believe that many of the threats against the rule of law, the independence of the judiciary, and societal unrest exist because of the absence of civics education and the lack of knowledge regarding the roles of our branches of government. Millennials and Gen Zers value and are committed to the pursuit of justice, which is beneficial to the profession and can be utilized to advance and to further civic engagement.

Therefore, we need to embrace the perspectives of these younger generations and invite them to write articles, serve on and plan various continuing legal education programs and initiatives, and further leverage social media to recruit their colleagues and to educate the public. We should also expand our reach into elementary, junior high, high school, college, and law schools, and include younger generations in the profession to join us, when sharing our knowledge with students about the legal system and the judiciary.

While it is essential that we mentor those with less experience in the profession, we must be open and humble enough to acknowledge that we can learn much from them. This will enable our profession to stay ahead of the curve, adapt to the changing needs of our society and advance justice in this emerging legal landscape.



Hon. Tanya R. Kennedy

THE FORGOTTEN: NYC AND SCHOOL SEGREGATION

Deja Graham[†]

Abstract

School segregation is an issue of the past and present. Generations of Black and Brown Americans have attended schools that were inadequate and unequal to their white counterparts. This inequity in access to quality education has caused issues with diversity in professional fields, like the medical and legal fields. The lack of diversity in these fields are the results of decades of school segregation due to the government's failure to eradicate the dual system of education. Since the landmark case of Brown v. Board of Education, little progress has been made in providing Black and Brown children in metropolitan cities adequate or equal education to their white counterparts. New York City is just one example of how school segregation in metropolitan cities has decreased a minority's chance at success in obtaining higher education and, as such, entering the professional work force. The diversity issues that are seen in these professional fields starts on the first day a child is enrolled into kindergarten. The chances of a Black or Brown child achieving success decreases with every year they continue to receive a separate and unequal education.

INTRODUCTION

Though decades have passed, segregation is not only prevalent but palpable in our education system. It has been almost 70 years since the landmark decision of *Brown v. Board of Education*, which ruled segregation in schools unconstitutional.[1] Before 1954, the entire country was split into black and white in every aspect from water fountains to schooling. In the unanimous majority opinion, Chief Justice Warren declared that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational

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1. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

facilities are inherently unequal."[2] Even so, the doctrine of separate but equal still reigns in the modern-day education system.

New York City has a reputation as one of the most culturally diverse cities in the world yet remains the most segregated place to attend school as a black person.[3] Even though its schools are culturally diverse, the population of an individual school is predominantly one specific racial demographic.[4] Attempts were made to address the issue of segregation in NYC public schools with, for example, Mayor Bloomberg's "School Choice" initiative.[5] At the conception of "School Choice," segregation in NYC schools was beyond just the simple choice of a student. Segregation was engrained in the foundation of the school system itself due to the governments inaction to truly address the integration of schools post-*Brown*. This failure by the government to truly integrate schools has resulted in less diverse professional spaces.

I. HISTORY

In May 1954, the Supreme Court took a step toward creating equity in access to education for all Americans.[6] *Brown* was a class action lawsuit brought to expose and address the inequity in access to education between black and white students.[7] Black students were not receiving the same resources or education as white students, showing the true hypocrisy of the doctrine of "separate but equal."[8] Justice Warren went as far to say that separate schools are "inherently unequal."[9] Warren implied that as long as schools are segregated, students are not on an even playing field.[10] *Brown* held that state-sanctioned, also known as *de jure*, segregation is unconstitutional.[11] Though the Supreme Court's ruling in *Brown* seems clear, states spent

2. *Id.* at 495.

3. DANIELLE COHEN, NYC SCHOOL SEGREGATION REPORT CARD: STILL LAST, ACTION NEEDED NOW 1 (June 2021), https://escholarship.org/uc/item/5fx616qn.

4. *Id.* at 2.

5. *See Mayor Michael Bloomberg's 2004 State of the City Address*, GOTHAM GAZETTE (Nov. 27, 2022, 4:49 PM), https://www.gothamgazette.com/city/964-mayor-michael-bloombergs-2004-state-of-the-city-address (allowing students to choose the high school they attend outside of their "zone" school based on address).

6. Brown, 347 U.S. at 495.

7. *Id.*

8. *Id.*; *see generally* Plessy v. Ferguson, 163 U.S. 537 (1896).

9. Brown, 347 U.S. at 495.

10. *Id.*

11. *Id.*

the next two decades, and beyond, trying to elude school integration.[12] Political leaders fought against integration by implementing both anti-busing laws and other laws promoting segregation.[13] The citizens in these communities met students who were attempting to integrate schools with violence.[14]

Congress passed the Civil Rights Act in 1964 because progress toward ending discrimination and segregation was "too slow."[15] Congress believed that the government needed to intervene because states were not making enough progress toward eliminating segregation on their own.[16] Title IV of the Civil Rights Act focuses on the desegregation of public education.[17] Specifically, Title IV calls for the dismantling of *de jure* or state-imposed segregation.[18] Within the language of Title IV, there is a "racial imbalance" loophole, which states that desegregation does not mean "the assignment of students to public schools in order to overcome racial imbalance."[19] Under this loophole, there is no government intervention when schools are segregated based on the demographics of a neighborhood.[20]

Neighborhoods, at the time, were separated by distinct racial lines. As such, this loophole made the Civil Rights Act ineffective in tackling the desegregation of schools.[21] For the government to intervene under Title IV, there must be an action by a school board that imposed segregation of public schools.[22] Segregation would continue unchecked as long as the school board did not take adverse action. The unique construct of Northern cities, and the racial

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12. *See Resistance to School Desegregation*, EQUAL JUST. INITIATIVE (Mar. 1, 2014), https://eji.org/news/history-racial-injustice-resistance-to-school-desegregation/; *see also* Bill Kovach, *Governor Signs Anti-Busing Bill: Curb on Scholarships Is Passed*, N.Y. TIMES (May 3, 1969), https://www.nytimes.com/-1969/05/03/archives/governor-signs-antibusing-bill-curb-on-scholarships-is-passed.html.

13. *See Resistance to School Desegregation*, *supra* note 12; Kovach, *supra* note 12.

14. *See Resistance to School Desegregation*, *supra* note 12.

15. *See* Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

16. *Id.* (stating "in the last decade it has become increasingly clear that progress has been too slow and that national legislation is required to meet a national need.").

17. 42 U.S.C. § 2000d, et seq.

18. *Id.*

19. *Id.*

20. *Id.*

21. *See* Terry Gross, *A 'Forgotten History' of How the U.S. Government Segregated America*, NPR (May 3, 2017), https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated -america.

22. *See* 42 U.S.C. §2000d.

imbalance loophole in Title IV, meant that segregation could remain in place even if the school board took no adverse action. Title IV of the Civil Rights Act acted as a blockade between states and the federal government in addressing the segregation of schools in the North. The lines drawn for school districts and neighborhoods allowed segregation to continue while the states technically remained compliant with Federal law.

A. *New York's History with Anti-Integration Measures*

In 1964, fifteen thousand white parents protested the desegregation of schools and the use of busing, which "shaped the wording of the Civil Rights Act."[23] Scholars argue that the Civil Rights Act's language, specifically the "racial imbalance" loophole, not only allowed segregation to continue to exist but allowed for its expansion in the North.[24] Specifically, it states that "these early 'busing' protests and the resulting 'antibusing' provision in the Civil Rights Act limited the federal authority and political will to uproot school segregation in the North."[25] White parents began protesting the use of busing before it was used as a desegregation tool by school boards or courts.[26] These protests, and the subsequent pressure placed on politicians, "influenced the amendments ensuring that the Civil Rights Act would not apply to school segregation and 'busing' in the North."[27] Protests deterred and delayed school boards from taking action to integrate schools.[28]

In May 1969, Governor Nelson Rockefeller signed into law the most influential anti-busing law of its time.[29] The State of New York enacted this law in response to large protests and outcries by white parents over the fear of their children attending integrated schools.[30] This law was the prototype for the anti-busing laws legislators in the

23. *See* MICHAEL F. DELMONT, WHY BUSING FAILED: RACE, MEDIA, AND THE NATIONAL RESISTANCE TO SCHOOL DESEGREGATION 28 (2016) (highlighting how white parents protesting school integration influenced politicians' input on the 1964 Civil Rights Act).

24. *Id.* at 29.

25. *Id.* at 28.

26. *Id.*

27. *Id.* at 52.

28. *Id.* at 28-29.

29. Kovach, *supra* note 12.

30. DELMONT, *supra* note 23, at 28.

Southern states enacted to circumvent school integration.[31] Indeed, "the Lent-Kunzeman 'neighborhood schools' bill generated national interest among integration opponents and became a model for similar 'freedom of choice' school legislation in several southern states."[32] This law, and the laws that followed in the South, allowed for state governments to remain compliant with the holding in *Brown* while also avoiding school integration.[33] The North Carolina statute that the Supreme Court ruled unconstitutional in *Swann v. Charlotte-Mecklenburg* was modeled after New York's anti-busing law.[34] In *Swann*, the Supreme Court ruled that busing is an appropriate remedial measure to tackle school segregation.[35] This had no effect on the Northern cities due to the racial imbalance loophole in the Civil Rights Act and the already racially divided neighborhoods in these cities.[36] New York, upon Governor Rockefeller's signing of the anti-busing bill, became the case study of how to accomplish segregation while still being compliant with Federal Law.[37]

B. *Supreme Court's Derailment of Desegregation in* Milliken v. Bradley

In the early 1970s, after it was found that most of the black students in a North Carolina school system attended schools that were 99% black, the Supreme Court ruled that busing of students is an appropriate remedy to promote the integration of schools.[38] The concept of school zones and districts promoted segregation as black students did not live in the same neighborhoods or zones as their white counterparts, busing was a necessary tool for integration.[39] The decision in *Swann* was a step toward progress, but it was also the furthest the Supreme Court was willing to go to eradicate school segregation.[40]

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31. Richard L. Madden, *High Court Overturns New York's Antibusing Statute*, N.Y. TIMES (May 4, 1971), https://www.nytimes.com/1971/05/04/ archives/high-court-overturns-new-yorks-antibusing-statute.html.

32. DELMONT, *supra* note 23, at 52.

33. *Id.* at 39.

34. *See* Madden, *supra* note 31; Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 29-30 (1971).

35. See, *e.g.*, Swann, 402 U.S. at 29-30 (1971).

36. DELMONT, *supra* note 23, at 28.

37. *Id. at 52.*

38. *See, e.g.*, Swann, 402 U.S. at 7, 29 (1971).

39. *Id.*

40. *See* Milliken v. Bradley, 418 U.S. 717, 744 (1974).

In *Milliken v. Bradley*, a class action suit was filed alleging that the Detroit public school system was racially segregated.[41] The district court ordered "state officials to submit desegregation plans encompassing the three-county metropolitan area."[42] This plan included fifty-two outlying, predominantly white, districts that were not party to the action and were not accused of committing constitutional violations.[43] When the outlying school districts intervened in this action, the district court supported its order stating, "[s]chool district lines are simply matters of political convenience and may not be used to deny constitutional rights."[44]The court of appeals agreed that the remedy to integrate schools would have to go beyond the city of Detroit.[45] The district court found that the board of education's construction of schools promoted segregation, stating, "Detroit school construction generally tended to have a segregative effect with the great majority of schools being built in either overwhelmingly all-Negro or all-white neighborhoods so that the new schools opened as predominantly one-race schools."[46]

The Supreme Court held that the court could not impose this order on the outlying school districts because there was no evidence these districts were segregated or promoted segregation policies.[47] The lower court introduced evidence of Detroit's use of school districts as a device to segregate students.[48] The court reasoned that "this isolated instance effecting two of the school districts would not justify the broad metropolitan wide remedy contemplated by the District Court and approved by the Court of Appeals, particularly since it embraced potentially 52 districts having no responsibility for the arrangement and involved 503,000 pupils in addition to Detroit's 276,000

41. *Id.* at 717.
42. *Id.*
43. *Id.* at 717-18.
44. *Id.* at 717.
45. Bradley v. Milliken, 484 F.2d 215, 251-52 (6th Cir. 1973).
46. Milliken, 418 U.S. at 726.
47. *Id.* at 752-53.
48. *Id.* at 749-50 ("During the late 1950s, Carver School District, a predominantly Negro suburban district, contracted to have Negro high school students sent to a predominantly Negro school in Detroit. At the time, Carver was an independent school district that had no high school because, according to the trial evidence, 'Carver District . . . did not have a place for adequate high school facilities.' . . . In 1960 the Oak Park School District, a predominantly white suburban district, annexed the predominantly Negro Carver School District, through the initiative of local officials. There is, of course, no claim that the 1960 annexation had a segregative purpose or result or that Oak Park now maintains a dual system.").

students."[49] In this ruling, the Supreme Court effectively guaranteed that there would never be an adequate plan to integrate metropolitan areas.[50]

Justice Douglas wrote in his dissent, "when we rule against the metropolitan area remedy we take a step that will likely put the problems of the blacks and our society back to the period that antedate the 'separate but equal' regime of Plessy v. Ferguson."[51] He suggested the only adequate way to tackle segregation in metropolitan areas is through the use of a plan similar to the district court's plan.[52] Justice Douglas highlighted the usage and division of school districts as "either maintain[ing] existing segregation or caus[ing] additional segregation."[53] The state's use of restrictive covenants created rigid racial neighborhood boundaries ensuring that black students would attend predominantly black schools.[54] Douglas argued that the district court acted properly in ordering a multi-district plan to integrate schools. He reasoned that the segregation was attributable to the actions of the state of Michigan as a whole and not the individual district.[55] He believed Michigan's line drawing of school districts created segregated schools, and the holding of the Court would allow segregation to continue unchecked.[56]

Justice White's dissent echoes a lot of the concerns highlighted by Justice Douglas.[57] Justice White noted that the majority ignored "the legal reality that the constitutional violation, even if occurring locally, were committed by governmental entities for which the State is responsible and that it is the State that must respond to the commend of the Fourteenth Amendment."[58] The dissenting opinions in *Milliken*

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49. *Id.* at 750.

50. *Id.* at 759 (Douglas, J., dissenting).

51. *Id.*

52. *Id.*

53. *Id.* at 761.

54. *Id.* ("Restrictive covenants maintained by state action or inaction build black ghettos. It is state action when public funds are dispensed by housing agencies to build racial ghettos . . . the State creates and nurtures a segregated school system, just as surely as did those States involved in, Brown v. Board of Education, when they maintained dual school systems.").

55. *Id.* at 761-62.

56. *Id.* at 762 (". . . since Michigan by one device or another has over the years created black school districts and white school districts, the task of equity is to provide a unitary system for the affected area where, as here, the State washes its hands of its own creations.").

57. Milliken, 418 U.S. at 763.

58. *Id.* at 770.

highlight how the majority's narrow district-by-district view of addressing school desegregation in metropolitan areas impede integration efforts in cities post-*Brown*.[59]

The Supreme Court's decision in *Milliken* obliterated Northern cities' trend toward integrated schools.[60] Unlike the concurring and dissenting opinions, the majority did not explain why these outlying districts were not technically segregated: because "white flight" to the suburban areas surrounding Detroit led to predominantly white schools.[61] The same "white flight" phenomenon occurred in cities around the country during the migration of Black southerners to Northern cities, leaving many inner-cities predominantly black.[62] These districts did not have black schools or white schools because the drawing of the imaginary school district lines overlapped with the drawing of racial segregation lines for neighborhoods.[63] Simply put, there is no need to have "black" or segregated schools if there are few, if any, black families residing within the district.[64] The segregation of neighborhoods through the use of redlining and the *Milliken* ruling made the integration of Northern schools improbable.[65]

There was an immovable barrier standing in the way of integrated schools. The desegregation of education in any metropolitan city would have required the inclusion of surrounding, predominantly white, neighborhoods and districts. As stated by Justice Marshall in his *Milliken* dissent, the Court's ruling preserved the "very evil" that *Brown*'s decision intended to remedy for the future.[66] The decision in *Milliken* allowed the suburbs to act as an escape from the Court's mandate in *Green v. New Kent County* to eradicate the dual system of

59. *Id.* at 759-815.

60. *Id.* at 750.

61. *Id.* at 752-802.

62. *See* William Voegeli, *The Truth About White Flight*, CITY JOURNAL (Aug. 2020), https://www.city-journal.org/white-flight-from-cities; *see generally* ISABEL WILKERSON, THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION (2011).

63. *See generally* Mike Wilkinson, *Segregation Then and Now: Metro Detroit*, BRIDGE MICHIGAN (Dec. 6, 2016), https://www.bridgemi.com/urban-affairs/segregation-then-and-now-metro-detroit.

64. *Id.*

65. *See Redlining*, EQUAL JUST. INITIATIVE, (Dec. 19, 2019), https://eji.org/news/history-racial-injustice-redlining/

66. Milliken, 418 U.S. at 802.

education.[67] This allowed for the Northern cities to remain segregated and unchecked. As a result, *Green's* ruling was completely ineffective in the North, even though it was not overturned. *Milliken* allowed this dual system to remain, creating a barrier to educational equity between black and white students in metropolitan cities.

II. NYC'S SEGREGATED METROPOLITAN SCHOOL SYSTEM

In 1964, thousands of white parents marched to the New York City Board of Education and City Hall to protest against the busing of students to integrate schools.[68] These parents were protesting the end of the traditional neighborhood school system due to the threat of the use of school pairing or busing.[69] This protest was only a few weeks before the Board of Education was planning to announce that over fifty schools would be matched to increase the racial balance in the school system.[70] These protests were instrumental in pressuring representatives in Congress to implement the racial imbalance loophole in the Civil Rights Act definition of desegregation.[71] While *Brown* ruled *de jure* segregation unconstitutional, it was then replaced with its more resilient counterpart, *de facto* segregation.[72] *De facto* segregation is segregation that is not officially state-sanctioned, which makes it harder to document and eradicate. The *de facto* segregation that remained following *Brown* is now a self-sustaining system as citizens now self-segregate into the patterns that have existed for almost seventy years.[73]

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67. Green v. Cnty. Sch. Bd. of New Kent Cnty., 391 U.S. 430, 440 (1968); *see also* U.S. v. Jefferson Cnty. Bd. of Educ., 380 F.2d 385, 389 (5th Cir. 1967) ("[B]oards and officials administering public schools . . . have the affirmative duty under the Fourteenth amendment to bring about integrated, unitary school system in which there are no Negro schools and no white schools – just schools"); *see also* Will Stancil, *The Radical Supreme Court Decision That America Forgot*, ATLANTIC, https://www.theatlantic.com/education/archive/2018/05/the-radical-supreme-court-decision-that-america-forgot/561410/ (last visited Apr. 23, 2023).

68.Fred Powledge, *More Than 10,000 March in Protest on School Pairing*, N.Y. TIMES (Mar. 14, 1964).

69. *Id.*

70. *Id.*

71. DELMONT, *supra* note 23, at 27-28.

72. Brown, 347 U.S. at 495.

73. *See* Gus Ispen, *Note, New York's School Segregation Crisis: Open the Court Doors Now*, 87 BROOK. L. REV. 1045, 1045-46 (2022).

The segregation of schools has been recognized as an issue within the NYC public school system since the 1950s.[74] In 1958, parents in Harlem boycotted a junior high school "claiming their children were not receiving a quality education."[75] Some of the parents were found guilty of violating New York law on compulsory education.[76] Judge Polier dismissed the case against two of the parents and established a parents right to equal education for their child.[77] This decision called out the NYC Board of Education for providing inferior education to black students.[78] Since *Brown*, there has never been a city-wide desegregation lawsuit against NYC.[79] As such, New York City has never been ordered by a court to desegregate the school system.[80]

In 1964, the Board of Education announced a plan to desegregate schools through the use of a Free Choice Transfer program and the rezoning of schools.[81] This plan would have paired white and black schools to create more racially balanced and integrated schools.[82] This plan received a lot of backlash from white parents, resulting in the creation of the "Parents and Taxpayers organization (PAT)." This outrage by white parents and their attempt to thwart integration efforts resulted in one of the largest boycotts "to protest segregation and inequity in education."[83] This same school integration plan is what led to the aforementioned 1964 march of white parents onto the Board of Education.[84] Throughout the late 20th and early 21st Century, Black and Latinx students in New York City continued to attend schools that were heavily segregated.[85]

Since the 1960s, New York City's schools have become more segregated; NYC is the #1 segregated school system for black students and #2 for Latinx students.[86] This is due to New York's participation

74. PUB. EDU. ASSOC. & N.Y.U. RSCH. CTR. FOR HUM. RELS., THE STATUS OF THE PUBLIC SCHOOL EDUCATION OF NEGRO AND PUERTO RICAN CHILDREN IN NEW YORK CITY, (1955).

75. COHEN, *supra* note 3, at 21.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *See* Junius Griffin, *N.A.A.C.P. Plans Protests May 18 All Over State*, N.Y. TIMES (Apr. 13, 1964); COHEN, *supra* note 3, at 22.

84. DELMONT, *supra* note 23, at 28.

85. COHEN, *supra* note 3, at 53.

86. See*, e.g.*, COHEN, *supra* note 3, at 2.

in *de facto*–that is, not officially state-sanctioned–segregation.[87] In 2002, Mayor Bloomberg appointed Joel Klein as school chancellor; Klein subsequently closed over a hundred schools and replaced them with charter schools.[88] Charter schools are found to promote segregation as they are predominantly located in inner-city low-income areas.[89] In 2007, the Supreme Court struck down the use of race as a tool in admissions to create racially balanced schools.[90] As such, schools in NYC, which had previously achieved racial balance by using race in admissions, had reverted to majority white.[91] As a result of this decision, Mayor Bloomberg decided to revamp the school choice program as a tool for school admission.[92] This program, available for high school students, allowed them to attend schools outside of their zone schools, as the zone schools represented a uniform racial demographic depending on the neighborhood.[93] This program was meant to deal with the longstanding issue of segregation in the NYC public school system and give students the opportunity to attend better schools outside of their zone. This program was only made available to high school students, meaning students attending elementary and middle schools were required to attend their segregated zone school or a segregated charter school.[94]

A. *Bloomberg "School Choice"*

Under Bloomberg's school choice system, eighth grade students participate in an application process which would allow them to attend any school within the NYC public school system if accepted.[95] Bloomberg's school choice plan was meant to improve the education in the public school system and cure inequities in access to quality

87. Ispen, *supra* note 74, at 1046 (2022) (citing Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 208 (1973)).

88. COHEN, *supra* note 3, at 22.

89. *Id.* at 57.

90. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).

91. COHEN, *supra* note 3, at 22 (citing N. MADER, C. HEMPHILL, & Q. ABBAS, THE PARADOX OF CHOICE: HOW SCHOOL CHOICE DIVIDES NYC ELEMENTARY SCHOOLS (2018)).

92. COHEN, *supr*a note 3, at 22.

93. *Id.*

94. *Id.*; Elizabeth A. Harris & Ford Fessenden, *The Broken Promise of Choice in New York City High Schools*, N.Y. TIMES (May 7, 2017).

95. *Id.*

education through integration.[96] Bloomberg's school choice has increased the high school graduation rate for Black and Latinx students but has failed to improve the integration of schools.[97]

As of 2018, "black and Hispanic students are just as isolated in segregated high schools as they are in elementary schools – a situation that school choice was supposed to ease."[98] The school choice system mirrors that of the college application process in which students placed their desired schools into an hierarchy.[99] Schools then decide on acceptance by reviewing the students' grades and test scores.[100] Under this system, "the most successful schools remain disproportionately middle class and white or Asian . . . low-income black or Hispanic children . . . are routinely shunted into schools with graduation rates 20 or more percentage points lower."[101] The most successful schools in the NYC public school system for preparing students for college are the specialized high schools.[102]

Specialized high school graduates often continue their education at Ivy League institutions.[103] The alumni include Nobel prize winners, politicians, and doctors.[104] These specialized high schools are predominantly white and Asian, while black and Latinx students are in schools with lower graduation rates.[105] The ability to get into these specialized high schools and succeed depends on how well the middle schools prepared students for the application process and these schools' curriculum.[106] "While top middle schools in a handful of districts groom children for competitive high schools that send graduates to the Ivy League, most middle schools, especially in the Bronx, funnel children to high schools that do not prepare them for college."[107] The New York Times analyzed the inequity in access to education between top middle schools compared to middle schools in

96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. Mary Kay Linge, *High School Guide: The Specialized Elite 8*, N.Y. POST (Dec. 9, 2021), https://nypost.com/2021/12/09/high-school-guide-the-specialized-elite-8/.
103. *Id.*
104. *Id.*
105. *Id.*
106. Harris, *supra* note 94.
107. *Id.*

the Bronx, specifically Pelham Gardens.[108] The Times highlights that the public school system is designed in which "some children win and others lose because of factors beyond their control–like where they live and how much money their families have."[109]

Admission into a specialized high school is dependent largely on the Specialized High School SAT (SHSAT) exam, which is a standardized test similar to the SAT exam high school students take prior to college.[110] In the specialized high school admissions for 2022-23, though Asian students made up 31% of SHSAT test takers, they made up over 52% of specialized high school offers for admission.[111] Correspondingly, white students made up 17% of SHSAT test takers but made up over 27% of specialized high school admission offers.[112] Comparatively, Black and Latinx students were over 45% of SHSAT test takers but received only 9% of admission offers.[113]

Black and Latinx students are excluded from admissions to the schools best equipped to prepare them for college and their future.[114] Stuyvesant High School, the highest-ranking high school in New York City and the #36 public high in the nation, has been called out in regard to their exclusionary admission history.[115] In 2019, Stuyvesant High

108. *Id.*

109. *Id.*

110. *See Specialized High Schools*, NYC MY SCHOOLS, https://www.myschools.nyc/en/help/specialized-highschools/#:~:text=-Students%20must%20be%20residents%20of,.nyc.gov%2FSHS, (last visited Nov. 27, 2022, 5:14 PM).

111. *See* Jennifer Vazquez, *Nearly Half of NYC Students Who Took SHSAT Were Black or Latinx – Only 9% Got an Offer*, NBC N.Y., (June 16, 2022), https://www.nbcnewyork.com/news/local/nearly-half-of-nyc-students-who-took-shsat-were-black-or-latinx-only-9-got-an-offer/3737289/.

112. *Id.*

113. *Id.*

114. *Id.*

115. *See* Eliza Shapiro, *Only 7 Black Students Got Into Stuyvesant, N.Y.'s Most Selective High School, Out of 895 Spots*, N.Y. TIMES (Mar. 18, 2019), https://www.nytimes.com/2019/03/18/nyregion/black-students-nyc-high-schools.html#:~:text=Only%20seven%20black%20students%20were,to%20determine%20who%20gets%20in.; *see also* Eliza Shapiro, *This Year, Only 10 Black Students Got Into N.Y.C.'s Top High School*, N.Y. TIMES (Mar. 19, 2020), https://www.nytimes.com/2020/03/19/nyregion/nyc-schools-numbers-black-students-diversity-specialized.html; Eliza Shapiro, *Only 8 Black Students Admitted to Stuyvesant High School*, N.Y. TIMES (Apr. 29, 2021), https://www.nytimes.com-/2021/04/29/nyregion/stuyvestant-black-students.html; *Stuyvesant High School Ranking*, U.S. NEWS & WORLD REPORT, https://www.-usnews.com/education/best-high-schools/new-york/districts/new-york-city-public-schools/stuyvesant-high-school-13092#:~:text=Stuyvesant%20High%20School %202022%20Rankings,they%20prepare%20students%20for%20college (last accessed Nov. 27, 2022, 5:18 PM).

School admitted only 7 Black students out of 895 available spots.[116] In 2020, Stuyvesant High School admitted only 10 Black students; and in 2021, Stuyvesant high school admitted only 8 Black students.[117]

Bloomberg's school choice is analogous to the Freedom of Choice plans southern states used in the 1960s.[118] Under Freedom of Choice plans, "students were automatically re-enrolled in the same school every year but had the option to change their enrollment if desired, which meant that a Black child could enter a formerly all-white school."[119] These plans were popular in the Jim Crow south because they were ineffective at integrating schools.[120] The freedom of choice plans were ineffective due to the years of segregation that left schools "racially coded."[121] These plans, similar to Bloomberg's school choice, placed the burden of integrating schools on the students.[122] The use of choice as a tool to promote school integration was known to be ineffective, as it preserved segregation.[123] The ineffectiveness of "choice" was known in the 1960s and 1970s and should have been known by Bloomberg in the early 21st century.

III. THE CONSEQUENCES OF SCHOOL SEGREGATION

The segregation of schools hindered minority students' access to education equivalent to their white counterparts in 1954, and it still does almost 70 years later. In New York, students attend racially segregated schools.[124] Today, Black and Latinx students in NYC attend schools that are over 95% minority students.[125] Bloomberg's school choice was implemented on the promise that all students would be given a chance to attend a good school.[126] Yet, the best schools in NYC are not available to Black and Latinx students.[127] Black and

116. *Id.*
117. *Id.*
118. Stancil, *supra* note 67.
119. *Id.*
120.*Id.*; *see also* Richard W. Brown, *Freedom of Choice in the South: A Constitutional Perspective*, 28 LA. L. REV. 455, 457 (1968).
121. *Id.*
122. *Id.*
123. Brown, *supra* note 120.
124. COHEN, *supra* note 3, at 22.
125. *Id.*
126. Harris, *supra* note 94.
127. *See* Vazquez, *supra* note 111.

Brown students are not given the opportunity to attend the schools that will best prepare them for their future and further education.[128]

In the early 21st century in the Northeast, Black and Latinx students accounted for about 90% of students in extreme poverty schools.[129] Comparatively, white students alone in the Northeast accounted for 88% of students in low poverty schools.[130] The benefits to attending integrated and racially diverse schools have been continuously debated for the last 70 years, even as recent as 2022.[131] Scholars have long stated that attending racially diverse schools has benefits for all students.[132] However, students in the NYC public school system have never truly had the opportunity to attend integrated and racially diverse schools.[133] This inequity in access to education has resulted in lack of diversity in professional spaces such as the legal and medical field. The segregation of schools in NYC has led to students in these schools to have less access to opportunities to further their education, which has led to less students in these schools pursuing college degrees, and even less pursuing graduate or professional degrees.

The segregation in NYC public schools has created inequality between Black and Latinx students and their white and Asian counterparts.[134] In NYC, the white and Black segregation, which started in the 1960s, has morphed into a form of segregation where Black and Latinx students are separated from their white and Asian

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128. Shapiro, *supra* note 115.

129. *See* GARY ORFIELD & CHUNGMEI LEE, WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY 29-30 (2005), https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/why-segregation-matters-poverty-and-educational-inequality/orfield-why-segregation-matters-2005.pdf.

130. *Id.* at 27.

131. *See* Regents for the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978); *see also* Grutter v. Bollinger, 539 U.S. 306 (2003); Fisher v. Univ. of Texas, 579 U.S. 365 (2016); *Transcript of Oral Argument*, Students for Fair Admissions v. Univ. of N.C. (21-707); *see also The Benefits of Socioeconomical and Racially Integrated Schools and Classrooms*, CENTURY FOUND, (Nov. 27, 2022, 9:58 PM) https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/?agreed=1&session=1.

132. *See* ORFIELD & LEE, *supra* note 129, at 42.

133. *See* Powledge, *supra* note 68; *see also* Shapiro, *supra* note 115; Harris, *supra* note 94; DELMONT, *supra* note 23; COHEN, *supra* note 3.

134. *See* J. Farley et al., *How Have NYC's High School Graduation and College Enrollment Rates Changed Over Time?*, NYU STEINHARDT (Spring 2019), https://steinhardt.nyu.edu/research-alliance/research/spotlight-nyc-schools/how-have-nycs-high-school-graduation-and-college.

counterparts.[135] In 2018, Black and Latinx students graduated at a rate of 75% while their white and Asian counterparts graduated at a rate of 90%.[136] The best schools in NYC concerning college readiness are specialized high schools, which have been consistently inaccessible to Black and Latinx students.[137] NYC's schools are not only segregated by race but also by class, as the segregated schools also have a high number of low income students.[138] Race and class overlap in NYC, with 52% of Black students and 62% of Latinx students living near or in poverty.[139] In 2020, only 50% of Black and Latinx students graduating high school were found to be "college ready" compared to the over 75% of Asian and white students.[140] Since 1990, at least 75% of Black and Latinx students have attended schools that were intensely segregated apartheid schools.[141] Apartheid schools are schools that are almost entirely non-white with less than 1% white population.[142] According to the Civil Rights Project, in NYC, "1 in 4 Black students and 1 in 6 Latino students attend apartheid schools . . . twice the national average and well above the state average."[143]

This segregation of Black and Latinx students in NYC is further preserved through the use of charter schools.[144] Charter schools were created to allow elementary and middle school students to attend schools outside of their zone schools that were not racially diverse.[145] Early in his tenure as mayor, Bloomberg closed over 100 underperforming schools and replaced them with 150 charter schools.[146] The segregation that occurs in charter schools is more intense than the segregation in traditional NYC schools.[147] In fact, 95% of Black charter school students and 91% of Latinx charter

135. COHEN, *supra* note 3, at 1.

136. *See* J. Farley et al., *supra* note 134.

137. Shapiro, *supra* note 115.

138. COHEN, *supra* note 3, at 47.

139. *See Data Tool*, NYC.GOV (2023), https://www.nyc.gov/site/opportunity/poverty-in-nyc/data-tool.page (clicking "Children Under 18" under population, then "Race/Ethnicity" under poverty, and "In or Near Poverty" under poverty level).

140. *See Four-Year College Readiness Tool*, EQUITY NYC, https://equity.nyc.gov/outcomes/education/four-year-college-readiness (last visited Nov. 27, 2022).

141. COHEN, *supra* note 3, at 54.

142. *Id.*

143. *Id.*

144. *Id.* at 57.

145. *Id.* at 22.

146. *Id.*

147. *Id.* at 57.

students attend extremely segregated schools.[148] The charter school system is tainted with apartheid schools.[149] Indeed, "15% of Black students attend apartheid traditional schools, over half (51%) of Black students in charter schools are in apartheid charter schools."[150]

NYC specialized high schools further display the inequity in access to education that Black and Latinx students experience. In 2018, student enrollment in specialized high schools was 82% white and Asian and 15% Black and Latinx.[151] Similarly, in 2018, the gifted and talented schools had a school enrollment of 74% white and Asian students and 19% Black and Latinx students.[152] The rigorous curriculum given to students enrolled in specialized high schools prepares these students for college, while also making the graduates more appealing to college admission officers.[153] The eight specialized high schools in NYC have the highest college-readiness rating within the boroughs at 99%.[154] In 2018, graduates from specialized high schools averaged a combined SAT score of 1429 out of 1600.[155] Comparatively, the closest tier of traditional schools averaged a combined SAT score of 1178, which is considered slightly above the national average.[156] Graduates from specialized high schools are more likely to enroll in a College or University than graduates from other schools.[157] The success of a student in a specialized high school has been found to be linked to the academic achievements of the student in middle school.[158] As such, it is clear that the success of a student in NYC in attending college begins even before they enter high school.

Black and Latinx students have the lowest rate of success in higher education attainment.[159] Black and Latinx students are not pursuing education post-high school at the same rate as their white and

148. *Id.*
149. *Id.* at 57-58.
150. *Id.*
151. *Id.* at 83.
152. *Id.* at 85.
153. *See Specialized High Schools vs. Regular Public High Schools*, SYNERGY PREP (Sept. 21, 2019), https://www.synergy-prep.com/blog-1/2019/9/21/specialized-high-schools-vs-regular-public-high-schools; *see also* RAY DOMANICO, NEW YORK CITY'S SPECIALIZED HIGH SCHOOLS: NOT THE ONLY GAME IN TOWN 11 (Apr. 2019).
154. DOMANICO, *supra* note 153.
155. *Id.* at 10.
156. *Id.*
157. *Id.*
158. *Id.* at 12.
159. COHEN, *supra* note 3, at 38.

Asian counterparts.[160] Approximately, 60% of white New Yorkers and 43% of Asian New Yorkers have obtained a bachelor's degree or higher.[161] Comparably, only 25% of Black New Yorkers and 19% of Latinx New Yorkers have obtained a bachelor's degree or higher.[162] In New York City, only about 16% of the population twenty-five years old or older obtained a graduate or professional degree.[163] Black and Latinx students are not achieving educational success at the same rate as their fellow white and Asian New Yorkers.[164] This racial disparity of educational attainment starts from the moment students are first enrolled into school.[165]

Professional spaces, such as the legal and medical profession, have been highlighted as not demographically reflecting the world we live in.[166] In regard to the legal field, 4.5% of lawyers identify as Black, 5.8% of lawyers identify as Latinx, while 80% of lawyers are white.[167] In regard to the medical field, 5% of physicians identify as Black, 5.8% identify as Latinx, while 56.2% of physicians are white.[168] This lack of diversity stems from the inequity in access to education seen across the United States. New York is just one example of a story that can be told of many metropolitan cities in the

160. *Id.*

161. U.S. CENSUS BUREAU, 2016-2020 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES EDUCATIONAL ATTAINMENT, https://data.census.gov/cedsci/table?q=educational%20attainment%20in%20New%20York%20City%20&tid=ACSST5Y2020.S1501.

162. *Id.*

163. *Id.*

164. *See* Stephon Johnson, *Report Reveals NYC Racial Gap in Degree Attainment*, AMSTERDAM NEWS (Feb 11, 2021), https://amsterdamnews.com/news/2021/02/11/report-reveals-nyc-racial-gap-degree-attainment/.

165. Harris, *supra* note 94.

166. *See Diversity in Healthcare and the Importance of Representation*, UNIV. OF ST. AUGUSTINE FOR HEALTH SCI., https://www.usa.edu-/blog/diversity-in-healthcare/ (last visited Nov. 27, 2022); *see also ABA Survey Finds 1.3M Lawyers in the U.S.*, AM. BAR ASSOC., (July 18, 2022), https://www.americanbar.org/-groups/law_practice/publications/law_practice_magazine/2022/july-august/how-to-Improve-diversity-in-the-legal-profession/.

167. *See ABA Survey Finds 1.3M Lawyers in the U.S.*, *supra* note 166.

168. *See Diversity in Healthcare and the Importance of Representation*, *supra* note 166.

Northeast.[169] Unlike the rest of the country, the Northeast has made little to no progress regarding integrating their schools.[170]

The educational attainment gap is not a New York issue or Northeast issue but a national issue for many metropolitan cities. Detroit's population is 77% Black, and only 16% of persons twenty-five years or older have obtained a bachelor's degree or higher.[171] Philadelphia's population is 55% Black and Latinx, and only 31% of persons twenty-five or older have obtained a bachelor's degree or higher.[172] Houston's population is 68% Black and Latinx, and only 34% of persons twenty-five or older have obtained a bachelor's degree or higher.[173] Los Angeles County's population is 60% Black and Latinx, and only 33% of persons twenty-five or older have obtained a bachelor's degree or higher.[174] The city of Milwaukee's population is 58% Black and Latinx, and only 24% of persons twenty-five or older have obtained a bachelor's degree or higher.[175] Comparatively, cities that are predominantly white such as Portland (75% white) and Seattle (65% white) have a significantly larger population that have obtained a bachelor's degrees or higher.[176] According to the Census, 65% of Seattle's and 51% of Portland's population have obtained a bachelor's degree or higher.[177] Across the United States, Black and Latinx citizens in metropolitan cities are not obtaining bachelor's or professional degrees at the same rate as white citizens of metropolitan cities. This cycle of Black and Latinx citizens having lower educational attainment compared to their white counterparts will

169. *See* Erica Frankenburg, *What School Segregation Looks Like in the US Today, in 4 Charts*, CONVERSATION, https://theconver-sation.com/what-school-segregation-looks-like-in-the-us-today-in-4-charts-120061 (July 19, 2019)

170. *Id.*

171. *See Detroit, Michigan, Population Data*, U.S. CENSUS (2020), https://www.census.gov/quickfacts/fact/table/detroitcitymichigan/PST045221.

172. *See Philadelphia, Pennsylvania, Population Data*, U.S. CENSUS (2020), https://www.census.gov/quickfacts/fact/table/philadelphiacitypennsylvania,detroitcitymichigan/PST045221.

173. *See Houston, Texas, Population Data*, U.S. CENSUS (2020), https://www.census.gov/quickfacts/fact/table/houstoncitytexas/PST045221.

174. *See Los Angeles County, California, Population Data,* U.S. CENSUS (2020), https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia/PST045221.

175. *See Milwaukee, Wisconsin, Population Data*, U.S. CENSUS (2020), https://www.census.gov/quickfacts/fact/table/milwaukeecitywisconsin/PST045221.

176. *See Portland, Oregon, & Seattle, Washington, Population Data*, U.S. CENSUS (2020), https://www.census.gov/quickfacts/fact/table/portlandcityoregon,seattlecitywashington/PST045221.

177. *Id.*

continue if the issue of school segregation in metropolitan cities is left unchecked.[178]

IV. WHAT NOW?

This gap in educational attainment among races will be onerous to overcome. *Brown*, *Swann*, and *Green* were holdings that moved the needle toward progress in creating equity in education.[179] The court's holding in *Milliken* destroyed any progress made toward educational equity in metropolitan cities.[180] The dissenting opinions in *Milliken* represent the route that should have been taken.[181] The majority's distinct movement away from creating equity can likely be attributed to the retirement of Chief Justice Warren and Nixon's presidency.

The Warren Court has often been praised as the most liberal court in history due to the various landmark decisions the court issued, like *Brown*, *Bolling v. Sharpe*, and *Miranda v. Arizona*.[182] Contrarily, President Nixon ran his campaign on a southern strategy "designed to gain the votes of individuals who opposed school desegregation and the votes of northern whites who did not wish for their children to attend school with urban minorities."[183] Coincidentally, four out of the five Justices who signed onto the majority opinion, including Chief Justice Burger, were appointed by Nixon.[184] The decision in *Milliken* aligns closely to Nixon's southern strategy, and, as such, goes directly against *Brown*'s goal of providing equity in education. The dissenters were correct in their criticism of the majority for conflicting with the clear goals the court had set in the two decades prior.[185] The position

178. *See Study International, Parents' Education Levels Affect Children's Likelihood to Attend College – Study*, STUDY INT'L https://www.studyinternational.com/news/parents-education-levels-affect-childrens-likelihood-attend-college-study/ (Feb. 9, 2018)

179. *See* Brown, 347 U.S. at 495; Swann, 402 U.S. at 31-2; Green, 391 U.S. 440-41.

180. Milliken, 418 U.S. at 752-53.

181. *Id.* at 752-802.

182. *See* Tony A. Freyer, *American Liberalism and the Warren Court's Legacy*, 27 REV. AM. HIST. 133 (1999).

183. *See* Frank Brown, *Nixon's "Southern Strategy" and Forces Against Brown*, 73 J. NEGRO EDUC. 191, 191 (2004).

184. *See Nixon and the Supreme Court,* NAT'L ARCHIVES, https://www.nixonlibrary.gov/news/nixon-and-supreme-court#:~:text=Richard% 20Nixon%20nominated%20six%20justices,promise%20from%20the%20new%20President (last visited Apr. 19, 2023).

185. *See* Milliken, 418 U.S. at 752-802; *see also* Robert A. Sedler, *The Profound Impact of Milliken v. Bradley*, 33 WAYNE L. REV. 1693, 1722 (1987) (stating

of the dissenters is the way the court should have ruled in *Milliken* if they wanted to truly eliminate the doctrine of separate but equal from the innermost depths of our system.[186]

The *Milliken* decision is only the second example of the government's unwillingness to truly act on addressing school segregation. Title IV of the Civil Rights Act of 1964, like *Milliken*, was designed to appease white citizens while disregarding the rights of Black and minority citizens.[187] In the construction of the Civil Rights Act, metropolitan cities were left immune to desegregation efforts through the racial imbalance loophole.[188] The Civil Rights Act, which was signed a decade after the ruling in *Brown*, was the first instance in which the government should have taken action to secure equity in Education across the country.[189] The government, in its drafting of the Civil Rights Act, should have taken the opportunity to protect the rights of all citizens and eradicate the dual system of education. With the racial imbalance loophole, the Civil Rights Act punished the south for their use of *de jure* segregation but allowed the *de facto* segregation in the North to remain unchecked.[190]

The Civil Rights Act took a decade to come into fruition after *Brown*.[191] That is ten years in which the purpose of *Brown* went virtually unchecked by the government. Within those ten years, white Americans across the country began to mobilize against the possibility of school integration.[192] That decade allowed the white majority to organize and make efforts to hinder any progress toward the integration of schools.[193] This is a time in which Black citizens, who lacked the same political pull, also organized to bring attention to the

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"Justice Marshall's prophecy in his Milliken dissent has proven to be strikingly correct. The effect of the Milliken decision in Detroit has indeed been "to allow our great metropolitan areas to be divided up each into two cities – one white, the other black.").

186. Sedler, *supra* note 185, at 1721 ("If all the schools in the Detroit metropolitan area had been desegregated in 1975, the schools in Detroit, like the schools in the rest of metropolitan area, would reflect the socioeconomic composition of the entire area, and would not be attended predominantly by economically disadvantaged children.").

187. 42 U.S.C. § 2000d, et seq.

188. *See id*.

189. *See id*.

190. *See id*.

191. 42 U.S.C. §2000.

192. DELMONT, *supra* note 23, at 28.

193. *Id.* at 28-29; Powledge, *supra* note 69.

inequities through the use of boycotts.[194] The efforts by white Americans across the country, especially in New York, directly influenced the language in the Civil Rights Act.[195]

With the current state of educational attainment in the United States, it is safe to say the results of these efforts in the 1950s and 1960s surpassed their expectations. The Civil Rights Act is possibly the most important piece of legislation from the 20th Century and was intended to be a chance for the government to right the wrongs of segregation.[196] The Civil Rights Act was a chance for the government to move the needle and make progress in providing a truly level starting point for all citizens. Despite the intended purpose of the Civil Rights Act, its enactment was clearly muddied by the intentions of white Americans.[197] The Civil Rights Act should have worked for the benefit of all Americans, but Black Americans residing in the North were not protected in terms of school integration.

The Civil Rights Act spread a message: if there is school segregation in the South, the federal government will work to eradicate it, but if there is school segregation in the North, it is a problem for the North alone.[198] A decade later, *Milliken*'s holding echoed the same theme. However, the message was that integration of schools in cities is the goal, but the government cannot–or will not–do anything to help achieve this goal.[199] The government took too long after *Brown* to take action in addressing the inequities in education, and possibly too much time has passed for effective change.

The inequity in educational attainment in cities needs to be addressed by government action and desegregation plans that cross district lines. The federal government must make the integration of schools in metropolitan cities a priority, as state and local governments are ineffective of addressing these issues on their own.[200] Congress should enact legislation that begins with implementing guidelines and setting goals for cities to reach regarding the integration of their schools. This legislation should be rigorous in holding cities accountable for the continued segregation of their school systems. Legislators must create guidelines that cities would have to reach to

194. *See* COHEN, *supra* note 3, at 21*; see also* Griffin, *supra* note 83.
195. DELMONT, *supra* note 23, at 28-29, 52.
196. H.R. Cong. Res. 7152, 88th Cong. (1964).
197. DELMONT, *supra* note 23, at 52.
198. 42 U.S.C. §2000.
199. *See* Milliken v. Bradley, 418 U.S. 717 (1974).
200. *See generally* COHEN, *supra* note 3.

obtain certain federal funding regarding education.[201] This legislation should be enacted pursuant to the Spending and Necessary and Proper Clauses of the Constitution.

Cities like Detroit, Los Angeles, and New York City should be considered the priority for Congress to address, as they are some of the largest cities in the United States with the most segregated school systems.[202] Any plan for the integration of metropolitan cities must include the districts surrounding the cities, as white flight has made singular district integration impossible.[203] For example, the city of Detroit is currently predominantly Black and Latinx while majority of the surrounding districts are almost completely white.

Today, the integration of schools in Detroit, similar to in 1974, would require the inclusion of surrounding districts. Cities should implement plans similar to those in place in Cambridge, Massachusetts.[204] Cambridge has in place a controlled choice system in which "every school in the 6,700-student district has to have a balance of lower and higher income families that reflects the district's socioeconomic distributions as a whole."[205] Cambridge has also eliminated the use of zone or neighborhood schools completely, requiring families to "select and rank their top school choices, and the district makes a match that factors in their preferences and their socioeconomic standing to ensure parity at each school."[206] These are the type of plans that Congress should encourage to be implemented in all cities across America. Though these plans may be slightly challenging in larger districts, like NYC, that should not deter the government from creating such programs.

V. CONCLUSION

Separate and unequal is the current state of education not only in New York City but in cities across the country. This gap in education is due to the government's failure to take action in addressing the *de*

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201. U.S. CONST., art. 1, §8, cl. 18.

202. *Id.*; *Detroit, Michigan, Population Data*, U.S. CENSUS (2020), https://www.census.gov/quickfacts/fact/table/detroitcitymichigan/PST045221; *Los Angeles County, California, Population Data*, U.S. CENSUS (2020), https://-www.census.gov/quickfacts/fact/table/losangelescountycalifornia/PST045221.

203. *See generally* DELMONT, *supra* note 23.

204. *See* Carly Berwick, *3 Promising Models of School Integration*, EDUTOPIA.ORG (Oct. 26, 2018), https://www.edutopia.org/article/3-promising-models-school-integration/.

205. *Id.*

206. *Id.*

facto school segregation that occurred throughout the North prior to and following *Brown*.[207] Chief Justice Warren's statement in *Brown* that "[s]eparate educational facilities are inherently unequal" still reigns true today.[208] In terms of education, metropolitan cities are "divided up into two cities–one white, the other black."[209] The continued segregation of schools has led to issues with diversity in professional fields. Black and Latinx students are not given the same opportunity to succeed educationally as their white counterparts.[210]

In the current era, where there is a push to end the use of affirmative action policies in college admissions, it is even more critical we create an educational environment where everyone has the opportunity to succeed.[211] Hopefully, there will be a day where the conversation regarding diversity and integration is futile, but that is not today. We must act now if we ever want professional fields to mirror the world we live in.

207. *See generally* DELMONT, *supra* note 23.

208. Brown, 347 U.S. at 495.

209. *See* Sedler, *supra* note 185, at 1722; *see also* Milliken, 418 U.S. at 815 (Marshall J., dissenting).

210. DOMANICO, *supra* note 153.

211. *Transcript of Oral Argument*, Students for Fair Admissions v. Univ. of N.C., (2022) (No. 21-707).