

PRELIMINARY REPORT



Diversity in the Legal Profession: The Next Steps?

**SUMMARY OF DISCUSSIONS FROM THE
NATIONAL PRESIDENTIAL DIVERSITY
SUMMIT, HELD JUNE 18-20, 2009 AT
THE GAYLORD HOTEL IN NATIONAL
HARBOR, MARYLAND**

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American Bar Association
National Presidential Summit

PRELIMINARY REPORT

DIVERSITY IN THE LEGAL PROFESSION:
THE NEXT STEPS?

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INTRODUCTION

In June 2009, ABA President H. Thomas Wells, Jr., convened a National Summit on Diversity entitled, **"Diversity in the Legal Profession: The Next Steps?"** This Summit was the next step in the ABA's year-long national examination of the state of diversity in the profession. It was a rare gathering of thought-leaders and decision-makers in the legal community who are committed to ensuring that the relevance, changing meaning and viability of diversity remain under constant scrutiny in the 21st century. The Summit presenters and participants addressed diversity from a race, ethnicity, gender, sexual orientation, and disability perspective.

Much of the "work" of the Diversity Summit was accomplished in the Breakout Sessions (BOS). These small-group settings provided the forum for robust discussion and most importantly, allowed participants to play a critical role in shaping the Summit outcomes.

The Preliminary Report herein reflects a summary of comments and suggestions received from the BOS participants. This initial summary has not yet been analyzed, prioritized, or studied by any ABA entity. This summary report—along with other data and information gathered in this year-long project – will be used in preparation of the comprehensive Diversity Summit report that is scheduled to be released prior to the 2010 ABA Midyear Meeting.

In the interim, we invite your input on the state of diversity in the legal profession and the next steps the profession should take. Visit the Diversity Summit website (<http://www.abanet.org/diversity/summit/home.html>) to offer your comments and get up-to-date information on this ABA project that continues in 2009-2010.

Breakout Session 1A:

LAW FIRMS AND CORPORATE LAW DEPARTMENTS

Topic 1: *Educational Pipeline Initiatives*

What specific pipeline strategies should the private legal sector take on, and why?

- Supporting and using an ABA database of tool kits, best practices, and funding opportunities for pipeline programs.
- Sponsoring and leading “crash courses” for 3Ls on how to survive and thrive at work.
- Leading new partnerships between law firms, bar associations and the corporate sector to fund a scholarship/mentoring program that guarantees payment for three years of college, payment for three years of law school, and a job upon graduation.
- Convene a conference to teach lawyers from under-represented groups how to “rain make.”
- Convene meeting of firms which are minority owned and those which are not in order to establish joint ventures.
- Use technology – like Twitter and Facebook – to support diversity programming.
- Develop resume and interview coaching for 3Ls from under-represented groups.
- Sponsor “bring a child to work” days for diverse youth to see different legal employment settings.
- Support local debate and civics clubs and seek funds from the ABA to establish and support clubs at community centers.
- Get involved in ABA Law Day and ACS’s Constitution Day
- Develop models based on successful programs like:
 - ✓ MLK advocacy program and national competition;
 - ✓ Crump Law Camp;
 - ✓ Street Law.
- Encourage minority bars to establish Youth Day, where, in the city of the bar association’s convention, they bring 40-50 middle school students to the conventions and send delegates out to do work in the city.
- Promote disability accessible websites in the legal profession, as noted in the ABA’s August 2007 resolution, so students and lawyers with disabilities can access information on law firms and departments.

Bearing in mind the current economy and the evolving profession, why should law firms and law departments finance pipeline initiatives?

- Convince employers that the attrition of minorities (approximately 80%) can and should be reversed, thereby saving employers’ resources.
- Support for diversity need not require firms’ resources. Firms can support and encourage attorneys’ service beyond the firm.
- Furloughed or deferred associates can be put to work on pipeline projects.

What questions and concerns remain?

- Most law firms have ten or fewer attorneys. How do small firms join in the conversation about pipeline programs?

Topic 2: *Accountability for Diversity Goals***What are the most promising ways for legal professionals to establish accountability for meeting diversity goals?**

- Clients should withhold a percentage of pay until baselines for diversity are established and met.
- The ABA should establish diversity metrics and publish a “best for diversity” list.
- Lawyers’ bonuses should be tied to the achievement of diversity goals.
- Billable hours’ credit should be given for time spent on work to attain diversity goals.
- The ABA should adopt a diversity pledge much like Rick Palmore’s “Call to Action.”

Who has the clout to make accountability happen, and what will prompt them to support diversity now and going forward?

- Only large clients can hold firms accountable. Corporate America has the clout.

What questions and concerns remain?

- How can senior management be convinced that diversity work should be done by everyone?
- How can the financial “carrots and sticks” be actually put into practice?

Breakout Session 1B: LAW SCHOOLS AND THE ACADEMY

Topic 1: *Researching Diversity*

What are the most exciting and promising areas today for research in diversity and inclusion?

- *"Why diversity is important?"* What's the answer when asked by non-minority legal professionals...
- Look to new paradigms in terms of why diversity – focus on the notion that lawyers are leaders and diversity is about funding, building and renewing leadership in our communities.
- Analysis of justice disparities (similar to concept of health disparities in medicine) as foundation for "why diversity?"
- "26 competencies" study (M. Schultz)-- a study on what it takes to, not just succeed in law school, but to become a good lawyer
- Business case as the country reaches 'majority minority' point:
- Where are students going to come from?
- How do we address this issue now?
- Get more information out about pipeline programs that work
- How do we address the highly important issue of "losing students" in elementary, middle and high school? Engineers start early in middle school (with programs like MentorNet, etc.)
- Come up with a program that will allow lawyers to go out into the community like "foot soldiers" and be in the "face" of young children
- Quantify how/whether a diverse class vs. homogenous class is better—If so, how?

Where are there data and informational gaps and other big holes in our understanding?

- ABA take leadership role to inventory and connect the data.
- Be aware of data that already exists (LSAC data, etc.).
- Coordinate the data bases: NALP, NCBE, ABA.
- Portals/sources that need to be connected. Use LSAC identification number to "thread" data.
 - ✓ Cost
 - ✓ Scores
 - ✓ What happens in law school
 - ✓ Bar passage
 - ✓ After grad
- Study how to reduce cost of law school.
- Need research to effectuate teaching curriculum.
- Race/Gender professors utilize student input (from their own classes) to gather important data/information about diversity.

What innovations or next steps did panel members suggest that require more data or further qualitative study?

- Study connection US News rankings and minority admissions.
- Study connection between LSAT, grades, & success as a lawyer.
- Study the “why” of any real grades gap.
- Online learning.
- Treat law degree as a depreciable asset/deductible cost?
- No tenure for law professors.

How can leaders of the profession, such as the ABA and heads of academic institutions, help to connect research results more quickly to law school curricula and real life diversity practices?

- Partnering with law associations.
- HNBA is doing a study of Latinas in major law firms; studies could potentially be replicated to focus on other ethnicities/gender/demographic groups.
- Leverage state and local bar associations to interface pipeline programs and law school outreach.
- Partnering with other professions, especially medicine, “Roadmap to Diversity” assessment tool—AMA publication about student admissions as a model (medical school).
- Ranking/ US News crucible (rewards wrong behaviors—how to impact this?).
- ABA can set-up process to analyze and recommend changes in law school rankings (US News) – populate study committee with lawyers and judges, not just educators.
- ABA should speak out on this issue and the range in which it affects the profession.
- Employers now use rankings database to identify who will be interviewed.
- Data need to be public and transparent.
- For the first time, U.S. News & World Report Law School rankings included a piece on the diversity at a school, but did not factor a school’s diversity into its overall ranking.
- There’s an “intentional” effort by some schools to “downgrade and denigrate” other schools to affect the rankings in their favor.
- Diversity rankings can be “jimmied” just to make the school look better from outward appearances; employers even use the U.S. News & World Report law school rankings to determine who they will interview (or not)...even worse, the students, themselves, tend to make a determination about what school they will go to based on current hiring practices.

Topic 2: *Teaching Diversity*

Should diversity be a course, or a component of law school curriculum? Why or why not?

- Make law school diversity training mandatory part of curriculum.
- Provide training on teaching in a diverse classroom collaborating with practitioners to make material relevant to lawyering.
- Teach diversity in a similar manner (i.e., problem based) to teaching ethics.

- Develop inclusiveness techniques, for example, examine privilege.
- Teach the demographic realities that will change U.S. society and legal profession.

What changes in law schools would do the most to advance diversity?

- ABA can impact what is going on in the classroom and how diversity is conceived & articulated
- LEARN (Legal Education Analysis Research Network) – Helps students see that they have something “valuable” to bring to the table. LEARN group (from Carnegie study) is possible resource/partner for ABA.
- ABA leadership can give clear message to law schools about importance of race/diversity in classroom: NOT a ‘sidebar’ issue, but a crucial part of what lawyers should be learning.
- Have legal employers follow the “Call to Action” model and hold law schools more “accountable” for the student body make-up from a diversity perspective.
- Two things lead to change in law schools: “Top-down Leadership” & “Bottom-Up Pressure.” The employment world is a very effective tool in getting schools to change their thinking on who they accept into their school.
- ABA can facilitate better communication between employers and law schools re: diversity (teaching of it; working in diverse environment; etc) and employer expectations
- ABA can create and promote linkages, such as:
 - ✓ The link between the profession itself and legal academia. There is a significant cadre of minority faculty who have studied various aspects of diversity-related matters (Critical Race Theory, Latina/o Critical Legal Theory, etc.); there is a “big gap” between what is going on with the ABA and scholars doing diversity work. ABA should tap the expertise on diversity.
 - ✓ The link between students and legal practitioners. Students tend not to feel as though they there are learning what they need to be learning. Mentoring should be linked to classroom work for diverse students so they can understand real world legal problems.
- Bar associations can be more involved with law schools: We need to bring people in (as faculty and students) who are representative of what we want in an inclusive and diverse profession.

Consider changes to the curriculum.

- Make the school’s diversity commitment integral to the school’s embedded philosophy (on the website, materials, etc.) and it will begin making a difference.
- If you put financial incentives for diversity work as part of faculty pay, it may be more of a catalyst.
- Move away from competitive educational model to collaborative one.
- Teambuilding focus groups enable people to “value” difference of opinion and diversity of thought, while not paying as much attention to identity.
- One of the “richest” classroom experiences occurred when a student from an impoverished background described how the legal issue being discussed impacted a low-income family.

- One law school invited Cornell West to give a speech and created a one-credit course for students who wished to study his works.
- Examine the reward structure in law schools including grades: what's the value of an "A" in Torts to good lawyering and a diverse profession? Where are the skills and knowledge connected to diversity assessed and given a grade?
- Add "Street law" courses and reach out to young people in law school pipeline programs.

Consider changes to the law school structure and administration (including admissions policies).

- Need to teach many law professors to value and understand diversity. Make diversity a part of the strategic thread of the curriculum, both formal and informal.
- Diversity among the faculty needs to be brought more to the forefront; the students need to see more of "themselves" in the classroom as well
- Looking in new places for faculty is also a "student pipeline issue"-- it runs head on into the lack of "desired" students; schools are currently unequipped to deal with the retention issues that will invariably be complicating future needs for diverse lawyers.
- AALS study showed "differential tenure" rates between various ethnicities and non-minorities. Right now it is more of a "boutiquey" approach to diversity in the classroom; when there are so few in the class, those in the minority feel "isolated" and are impeded in making contributions.
- Need for diverse faculty/recruitment (and data on correlation between diverse faculty and diverse class).
- ABA can collaborate with SALT, AALS, and other faculty-of-color organizations to create web-based resources on diversity tool kits.
- After passing the bar, create a "professional development" system that will allow "up and coming" diverse attorneys to hone their skills while being a good economic value to potential clients. There is concern that too many law school graduates (1st and 2nd Year Associates) are "unequipped" to deal with the rigors of the profession. Teach law practice realities and skills for success--young attorneys and law students need to learn how to bill, how to manage time—practical skills.
- Teach students about the business of law; not just philosophy. Our law students are coming into the practice of law clueless and not fully informed on the factors that will affect their professional lives.

Consider new partnerships law schools could forge to reduce tuition and help alumni manage debt burden.

- Students leave school with so much debt, what can we do? Four Options:
 - ✓ alternative delivery systems – distance learning; ability at the front end to produce lower-cost models;
 - ✓ reduce the length of law school;
 - ✓ pay for credit; and
 - ✓ tax issue – acquisition of a law degree could be seen as a "capital asset."
- ABA and firms can provide jobs prior to college (summer).

Using their prestige and power, leaders in the ABA and the Academy should take steps to explain why diversity is essential in legal education, and to advance equitable access.

- A prevalent “colorblind” philosophy results in a coercive assimilationist learning and work environment that dilutes the benefits of diversity.
- The older generation of leaders need diversity training.
- ABA’s Bar Foundation – should revise its priorities and make diversity issues funding and publishing priorities.
- The message needs to be made clear to the ABF that more monetary changes/incentives need to be applied to law school faculty who are doing diversity-related work.

Breakout Session 1C: GOVERNMENT AND THE JUDICIARY

Topic 1: *Seizing the Moment: Exploring What Diversity Will Mean in President Obama's Era*

How will the fact that the President, Attorney General, Secretary of State, and the latest Supreme Court nominee are women and/or people of color affect legal professionals' diversity efforts?

- Their example provides an obvious opportunity to encourage members of underrepresented groups to apply for clerkships, judgeships, and jobs in government.
- Lawyers from under-represented groups need to participate in local and state bar judiciary screening committees.
- The dialogue around Judge Sotomayor's nomination provides an excellent case study regarding popular assumptions that white men are unbiased, whereas people from under-represented groups must prove that they are not biased in favor of their own communities.
- Distinguish between identity diversity and viewpoint/perspective diversity.

What might this new diversity in positions of power mean for laws, court decisions, or policies that will be issued?

- The White House could – and should be encouraged to – put pressure on congressional delegations to incorporate diversity into their appointments and judicial recommendations, and to make these processes more transparent.
- The criteria and questions for judicial candidates should be modified to be more inclusive (e.g., not just rely on trial experience).

What new opportunities do members of the legal profession serving in the government have to progress understanding and growth of diversity in their sector, and in American life in general?

- Deal with state judicial systems that hinder diversity on the bench, and promote reforms such as public financing.
- Establish mentorship, application reviews, and mock interviews for potential candidates long before they are ready to actually become a viable candidate.
- Identify and shape data, goals, and selection processes for the judiciary at state and local levels.
- Emphasize the importance of transparency and non-transparency in the process of selecting judges, appointments, and government employees. The process of choosing such employees must be transparent to the public, but the identities of applicants (which are often inferred from surnames, photographs, etc.) should at times be concealed from those evaluating applications.
- Identify and reach out to segments of government that are not already convinced of the importance of diversity.

- Encourage participation of lawyers from under-represented groups in local and state bar associations' judiciary committees.

Topic 2: Clarifying the Moment: Facing the Challenges Still in Place

Briefly identify key challenges and barriers to making government and the judiciary more diverse and more responsive to constituents and diverse communities. What specific steps can the legal profession take to address these challenges and overcome the barriers?

- We must identify the importance of, and the difference between "viewpoint" and "representative" diversity.
- We cannot allow the perception to continue that diverse candidates are hired first and foremost because they are diverse.

Seeking to maximize the current political realities, how can the legal profession give voice to those still unheard in government; those who still do not receive justice?

- Loan forgiveness for government employees is important.
- Government employees and bar associations should establish programs that encourage law students from under-represented groups to seek government work. Similar programs can assist government employees in rising through the ranks.
- Establish a norm of contacting all minority bar and law student organizations regarding all government job openings and judicial appointment processes.

How can we most effectively communicate the diversity message to future leaders of the legal profession?

- We can overcome "identity politics" and "diversity fatigue" by stressing that diversity in government and the judiciary is a matter of institutional credibility.

Breakout Session 1D: BAR ASSOCIATIONS – SUMMARY

Topic 1: *Leveraging the Power of Bar Associations*

Collaborate between the ABA, mainstream bar associations and diverse bar associations.

- The ABA should promote its abundant diversity programming resources—e.g., the ABA Center for Racial and Ethnic Diversity, and successful diversity initiatives in the ABA General Practice / Solo and Small Firm Division and Young Lawyers Division—to help state and metropolitan bars and other ABA groups develop their diversity efforts with knowledge of successful models and best practices. This may include diversity plans, engagement options, quick speed networking, long term leadership, academic preparation, fellow programs, nomination processes and scenarios for discussion.
 - ✓ Such efforts could educate minority bar members about why membership in the ABA is useful and important, i.e., make the ABA feel relevant and safe for diverse lawyers.
 - ✓ Also, “understanding precedes inclusion,” i.e., bars should invite others to their events in order to help lawyers learn about each other’s diversity and bar associations.
 - ✓ Moreover, ABA board members and larger bar association leaders should join minority bar associations to share ABA methods and resources.

- The ABA should offer diversity training to its own leadership as well as other bar associations and encourage them to embrace diversity in staff hiring practices, programming, retention, membership and organization service goals and leadership development.

Institutionalize diversity efforts.

- Beyond individual leadership trainings, the ABA should encourage state bars and diverse affinity bars to collaborate and help them institutionalize the effort to make bar associations inclusive so that such efforts transcend individual leaders.
 - ✓ For example, bars can create a permanent advisory council on diversity, with the chair continuing for several years, to help the organization maintain its focus on both short-term goals and long-range planning while not letting annual leadership changes derail the effort.
 - ❖ Rather than segmenting different kinds of diversity, consider including all kinds of diversity should be included in one council, e.g., LGBT, Race, Gender, Disabilities, in order to develop inclusive, synergistic and ultimately successful strategies.
 - ❖ Such councils can help make diversity CLEs mandatory or help “service learning” qualify for CLE credit.

- ✓ Bars should develop strategic plans for to increase lawyer diversity, which demonstrate the bar leadership's commitment to diversifying the organization and legal profession, with have built-in assessment steps.
 - ❖ To attract diverse members, mainstream bars should ask what leadership development and assistance do they offer to diverse attorneys?
 - ❖ Also, how can larger bar associations help diverse attorneys transition to local leadership and larger bar associations without leaving behind the smaller / minority associations?
 - ❖ What are the organization's tangible diversity goals and what steps do they require?
- ✓ Larger bar associations might provide administrative support to minority bars that lack staff and donate pages to diversity bars in their publications several times a year.
 - ❖ State bars might create leadership academies for diverse bar leaders or develop coaching programs on how to apply for state bar leadership positions.
 - ❖ State and county bars could support the creation of regional "diverse bar coalitions."

Coordinate research on lawyer diversity.

- The ABA should help state bars, especially mandatory bars, develop a research protocol to collect, archive and distribute data on diversity amongst lawyers, bar associations and bar leadership, especially for lawyers with non/apparent disabilities, LGBT lawyers and other groups that lack adequate statistics and may feel pressure to under-report their diverse identities.
 - ✓ Since diverse bars are well positioned to survey their members about less obvious areas of diversity and the precise problems that minority lawyers face in mainstream legal practice, supporting them can produce research that can contextualize and validate research by mainstream bars.
 - ✓ Collaborations between the ABA, state bars and other influential associations can also promote diversity data collection from firms and bars that currently don't record such information.

Shift the paradigm of legal education and practice.

- To shift the paradigm of legal education and practice, bars should help the profession understand what criteria and skill sets actually account for successful practice, changing the traditional review of candidates in all levels of the pipeline and influencing the types of programs that train students and attorneys in these practical skills.
 - ✓ For example, bars could partner with law schools to develop and implement expanded curricula that train law students in law office management and practical issues and fill the void between law school graduation and bar exam passage rates.

- ✓ Bars could help train diverse lawyers in the business and client development that is necessary for any private practice and which tangibly impacts advancement in firms.
- The ABA can help all bars develop effective mentoring programs and pipeline initiatives by better informing bars of model efforts with proven success.
 - ✓ Leverage community based organizations for pipeline strategies.
- Also, to stay in the profession, diverse attorneys need adequate support and assistance. Lawyers Assistance Programs can provide this in a number of ways, including counseling for substance abuse, stress management and practice management.
 - ✓ The ABA should promote such programs and help reduce the stigma associated with getting help, especially for diverse lawyers who often feel a double stigma of how hard it was to get a seat at the table and how the oppression of their diversity category makes seeking help seem to reflect negatively on the group.
- Finally, because the expense of law school threatens legal diversity, new partnerships between the ABA, corporations, banks, and other relevant groups should explore how to make law school more affordable.

Topic 2: *Capturing the Power of the Bar Leaders in the Room*

Extend the Pipeline to Becoming a Leader in the Legal Profession

- The ABA Presidential Advisory Council on Diversity focuses on and promotes model pipeline programs, e.g., the Ohio State Bar's program.
- More bar associations should develop and fund scholarships, fellowship programs and pipeline initiatives for diverse students.
 - ✓ Bar associations should also work to make law school affordable and help with law school debt management.
- Bar leaders should demonstrate the value of their organization by sharing why they joined and what the organization can offer to different types of lawyers.
- Because self-nomination processes can exclude lawyers who do not think of themselves as leaders of a bar association, bars should be inclusive of small firms, disabled lawyers, etc., perhaps by creating leadership positions for the leaders of diverse bar associations and promoting those leaders at all-bar socials, perhaps hosted by a young lawyers section.
- Bar associations should provide business training and mentoring for new lawyers.

Promote diverse attorneys in employment

- Bar associations should examine the diversity or lack thereof of senior firm leadership and serve as a bridge between employers and the association's diverse members.
- Using a diversity pledge like that adopted by the ABA Commission on Mental & Physical Disability Law (specifying that diversity includes race, ethnicity, gender, disability, sexual orientation and gender identify), bar associations might ask local legal employers to pledge to hire and retain lawyers that reflect the diversity of the community.

- ✓ Working together with the state bar, such pledges and results could then be publicized on the state bar website.
- “Top down bottom up.” Top down – firm partners should recognize the demands they make of diverse lawyers, especially new attorneys. Bottom up – bar leaders should create opportunities for young and diverse lawyers to demonstrate their talent to firm partners by encouraging them to become active in the bar and spotlighting their accomplishments.
- We should all reach back to past practices that were developed by older groups during the civil rights movement, etc.

BREAKOUT SESSION 2A: RETAINING DIVERSITY IN OUR EVOLVING PROFESSION SUMMARY

Topic 1: *Institutional Strategies for Priming the Pipeline with Diverse Talent*

Law Schools' Professional Preparation, Career Management and Diversity Efforts

- Law schools need to do a better job of educating law students about the profession and providing more preparation for the actual practice of law.
 - ✓ For example, law schools might teach career management, including the fundamentals of time management and time keeping.
 - ✓ Law schools should prepare students for professions in areas other than the big law firms.
 - ❖ For example, law schools might offer courses in how to set up a law practice.
 - ❖ However, for those students interested in law firm careers, law schools should help diverse students develop skills to stay in the firm and/or succeed in any firm, i.e., to lateral effectively.
 - ✓ Law schools might offer a post-graduate course in professional skills development with a rotating residency period of practical legal experience being required before becoming licensed.
- Law schools should outreach and recruit students from diverse communities, including those who do not have high GPA or LSAT scores.
 - ✓ The ABA should encourage practitioners to teach and mentor at local law schools in order to encourage diversity retention.
 - ✓ Schools should retain diverse law professors and administrators.
 - ✓ Law schools should help students develop interviewing and networking skills, especially for diverse lawyers, perhaps with online modules to help law graduates obtain employment between the time the student takes the bar and is waiting for the results, or by collaborating on events with local diverse bar associations.
- Law schools might establish a website that answers, "What is law school really like?"
 - ✓ The ABA could help provide prospective lawyers with information on what law school is really like as well as how the practice of law at various firms is like, which would also provide an opportunity to highlight successful diverse attorneys.

Law Firms' Management and Mentorship for Diversity

- Given law firms' focus on profit, the retention and promotion of diverse attorneys tends to be a secondary consideration.

- While hiring and promotion may seem like old school thinking, retaining diverse lawyers requires structural changes to the law firm.
 - ✓ The firm's top management should establish diversity goals, and department managers should be evaluated on how they improve the firm's diversity in terms of hiring, retention, mentorship, etc.
 - ✓ Statistics within the firm should show each practice group's demographic, and the firm's structure should ensure that diverse talent exists throughout the firm.
 - ❖ Diversity is important for the entire firm, i.e., IT level, administrative assistants and paralegals, associates, partners, etc.
- New school thinking includes:
 - ✓ Equitably distributing assignments and opportunities to develop business and improve the firm's reputation.
 - ✓ How to retain, develop and advance mid-level women and other diverse attorneys who should be the next generation of leaders has not been adequately addressed.
 - ✓ Law firms should manage case assignments to accommodate attorneys who want to be a parent, person and attorney by providing flexibility with respect to work time and places, e.g., evening hours and time off for family commitments.
 - ✓ Firms might encourage new lawyers to participate in grievance committees to learn firsthand how such disputes are handled and help resolve them.
- Diverse lawyers could benefit greatly from multiple mentors.
 - ✓ One mentor might provide regular supervisory feedback and substantive development; the other could provide additional resources for career development.
 - ✓ Mentorship assignment processes should be transparent and equitable in order to hold the law firm and those who run the different practice groups accountable.

Government Should Showcase the Value of Diversity in the Legal Profession

- Government should be a bully pulpit to articulate and showcase the value of diversity in the legal profession.
 - ✓ Public sector leaders should speak out to the private bar and encourage it to hire more diverse lawyers.
 - ❖ Collaboration between government and the private sector could promote the exchange of talent.
 - ✓ To improve retention and let the younger generation feel like it belongs, government should develop the talent of new diverse lawyers by providing opportunities for assignments, enhanced visibility and voice.
- Diversity goals should be integrated into performance standards and pay equity.

Concluding Thoughts

- Language is important. Some sectors use different terms, e.g., diversity, inclusion, LGBT, etc. All legal institutions should be willing to provide and receive direction on language and how it is important to advance the issue.
- The ABA should lead the identification of lawyers with disabilities and LGBT lawyers so the profession understands its true diversity. (Significant resources may be needed because sexual orientation and some disabilities are not apparent.)
- “Think young,” and “Ask people what they want; don’t dictate.”
- All sectors should consider the multiple competencies of effective lawyers.
- All sectors should recognize that new lawyers need mentors—perhaps more than one—for both career advice and substantive skill development.

Topic 2: *Individual Strategies: What We Need to Know to Leverage Our Own Diversity and Bring More Diversity into the Profession*

- “They need to understand what it’s [law practice] is gonna be like.”
- All attorneys should learn the rules of the game [legal profession], including generational differences, potential biases and the economic realities and competitive nature of the legal profession.
- All attorneys should identify what they individually bring to the table, i.e., how their life experiences provide them with skills and insights that are relevant to legal practice.
- Lawyers should be able to work in practice areas that are not their first choice, i.e., to diversify their skills, and adapt their pre-existing skills to a new practice area.
- Lawyers should try to prevent singling out particular kinds of attorneys and be able to communicate effectively across multiple differences.
- Diverse lawyers should promote themselves, e.g., a diverse lawyer who understands that she offers an important perspective as a woman of color in a firm and who can persuade others to understand how her reputation in her communities can benefit the firm and its business.
 - ✓ Diverse attorneys can develop “cultural translator” skills and help the profession recognize that business development, capitalism, diversity and profitability are all germane to legal practice.
- Law schools should teach career competencies such as:
 - ✓ How to articulate what legal diversity is
 - ✓ How to manage – not change – corporate firm culture; and
 - ✓ How to face economic realities, e.g., competition and profit.
- Finally, increasing the pipeline into the legal profession does not start at law school or college: lawyers must get to elementary and middle schools and mentor young people to pursue the profession.

Breakout Session 2B: PEERING DOWN THE PIPELINE FOR LEAKS AND CLOGS

Topic 1: *Fixing the Leaks in the Educational Pipeline*

- Pipeline – it is imperative that we pay attention to numerous points in the pipeline to become a lawyer: e.g., middle school, high school, law school, entrance tests, law school, bar examinations.
- Economy – no jobs right now for graduates leaving law school. What’s the argument for steering students to law school anymore with so much debt on the line and so few job opportunities? Should we begin reaching down in the paralegal field to begin filling a pipeline that way that only takes 6 months?

How can various sectors of the profession build on the many pipeline conversations and initiatives undertaken to date?

- What does current data show about leaks? For example, in NY, there’s a dramatic dropout rate for Puerto Rican and African-American students.
- Where is the money for pipeline programs? The pipeline needs more funding; all the programs in the world won’t make much of a difference if we don’t figure out how to pay for them.
- What is the curriculum that is needed to prepare students for legal education and the profession?
- How can pipeline programs teach skills and critical thinking and not just a preview of substantive law issues?
- What are needs at different points along the pipeline?
- How can programs be connected along the pipeline?
- How do we lower cost of legal education and debt burden for students? How do students assess costs and benefits of a legal career?
- What do we know about why people are not “sticking” with the profession (gender retention, minority retention, etc.)?
- Why do women of color have particular difficulty in the legal workforce?
- When did success in the profession become equated with a “big time” associate’s position?
- How does the profession involve employers in pipeline work?

What have been the most successful strategies that warrant replication; and what makes them successful?

- Ideally, pipeline programs are comprehensive and/or aligned: to address links at all points in the pipeline, or programs aimed at specific points will collaborate with other programs. Thus, the successful middle school program will effectively deposit participants in a high school program.
- Some examples of successful pipeline programs:
 - ✓ Renewed interest in civics combines with pipeline. Think of the NBA’s “Crump Law Camp,” which teaches approximately 200 high school students each year about the basics of the Constitution. One

suggestion is that the ABA could sponsor a 3-day law camp during President's Day weekend every year. The National Conference of Bar Association Presidents would then adopt a high school in their area with at least 20% minorities in it and have these students attend the camp. Law firms from the area would also attend and give the kids an opportunity to interact with practicing attorneys.

- ✓ "Law and Leadership" program –\$3.1 million program. Students learn skills that they will be able to take with them to law school or not. Chief justices, the public schools, former Attorneys Generals are all involved to develop a sustained fundraising effort.
- ✓ Mock trial programs: Marshall-Brennan program on Constitutional Literacy (American University).
- ✓ Ohio Bar Foundation: partnerships with bar, public schools.
- ✓ Legal Outreach in NYC
- ✓ University of New Mexico programs. Key features:
 - ❖ Partnership with medical school
 - ❖ Sustainability: Programs funded by private money, now funded by state
 - ❖ Parental/family involvement, bottom-up design
 - ❖ Cultural & linguistic sensitivity
- ✓ Michigan put together a database of diverse attorneys that allow prospective students to see that there are people like them in the profession.
- ✓ Dream Act: college opportunities for undocumented immigrant students.
- ✓ Adoption of local schools by law firms, law schools, and local corporations: an elementary school that feeds into a junior high school and into a high school. In the adoption of the three schools, there can be a cohort that can be followed into a college and into law school. The adoption would include mock trial, civics, and other activities geared toward building interest. The foundation of the adoption should be mentoring, reading and writing skills support. Scholarships need to be raised and given.

What are the most feasible next steps for each sector of the legal profession to take to address educational pipeline issues?

- American Bar Association
 - ✓ Expand database of programs and draft "best practices" (<http://new.abanet.org/PipelineDiversity/Pages/DirectoryHome.aspx>)
 - ✓ Provide for representation on the Board of Governors for all the diversity "Goal III" groups.
 - ✓ Develop metrics for measuring the participation of lawyers with disabilities, LGBT lawyers, and others (ethnicity, religion, e.g.) in bar activities and the profession.
 - ✓ Spread the word on Lawyer Assistance Programs. Diverse lawyers are vulnerable to "pressures of practice"; mental health and substance related conditions.

- ✓ Expand information on plethora of ways that persons can make use of a law degree in today's society.
- ✓ Support paralegal education and make paralegals part of the profession by further developing the non-professional affiliate category in the ABA.
- ✓ Develop model routes to success providing a career roadmap that guides skill development, networking, rainmaking, etc.
- ✓ Analyze increased mobility through career.
- Law Schools
 - ✓ Introduce the law firm business model and law practice management as a class of law school.
 - ✓ Look for new ways into profession: joint degree programs (like BA/MD programs in medicine).
 - ✓ Seek out information from employers on specific careers for each diverse group; what do LGBT, women, disabled, racial minorities all need?
 - ✓ Create partnerships with HBCUs.
- Law firms
 - ✓ Provide skill development and an introduction to the practice of law (the business model, billing, etc.).
 - ✓ Demonstrate how lawyers can survive in the profession and have a healthy work/life balance in today's law firm environment.
- Other Professions
 - ✓ The HBCUs determined that potential collaborations with pipeline efforts in other professions may be warranted.
 - ✓ Paralegals: encouraging students to try out legal work before committing to law school.

Topic 2: *Clearing the Clogs in the Professional Pipeline*

- Are the "clogs" the same for minorities, the disabled, LGBT and women?
- Overt/subtle discrimination against LGBT attorneys; benefits for same sex partners.
- Low employment rate for disabled attorneys.

Where are the biggest clogs in the pipeline?

- Native American reservation schools related interventions (50% drop out rate).
- More support could be given to first generation students whose parents are unable to really give them sound advice re: school.
- Accessibility for disabled—ABA House of Delegates resolution passed in 2007 urging accessibility of all websites of ABA entities and the legal profession for people with disabilities. Inability to communicate through electronic means is a clog in the pipeline

Law schools:

- Focus on programs designed to address skills/analytical skills/test taking, etc.
- Law school classroom is clog: "learned silence" syndrome.

Where do diverse attorneys get stuck on the pathway to success?

- Is it where personal relationships are established and nurtured? Is it where performance evaluations are made?
- Is it where partnership decisions are made?
- Is it where candidates for leadership are groomed?
- Different clogs for different components of diversity:
 - ✓ LGBT: hostile environment;
 - ✓ Women: lack of workplace flexibility and difficulty in re-entry;
 - ✓ Disabled: Lack of accommodations;
 - ✓ Racial/ethnic: Lack of mentoring, un/conscious bias, management and business building skills.

What specific biases, myths, attitudes, areas of ignorance, and institutional structures contribute most to clogging the professional pipeline?

- Law firms –micro-aggressions against diverse attorneys.
- New scholarship on “de-biasing.”
- “Unintended barriers” count a lot; people don’t generally intentionally discriminate against disabled attorneys, but their office may just be set up like that.

What specific initiatives can your sector of the profession bring to the task of clearing the clogs?

- Law firms and other employers
 - ✓ More focus and attention to the “exit interviews” so they could find out why people are really leaving the profession; perhaps add a “confidential” component to it.

Breakout Session 2C:

DIVERSITY IN THE DOWNTURN

Topic 1: The Legal Profession in Transition: Diversity at a Turning Point

The economic downturn has caused financial stress resulting in less aid for students. How do we continue to attract diverse students into law schools without overburdening them with debt?

- First and foremost, there must be a "Call to Action" from the ABA to make law school affordable. There must be teeth to this call and there must be action by not only law schools, but also firms, the government, and the corporate sector to help make legal education affordable.
- The ABA should also issue a call to law firms and corporate law departments for the funding of scholarships and fellowships for students from under-represented groups.
- Paid externships must be increased at firms and in government offices even in the midst of the downturn.
- Partnerships should be established between firms and schools to cover students' third year expenses and provide job placement after graduation.

How do we address the retention of diverse attorneys during the downturn?

- Having third-year residencies in law firms will increase the likelihood of success and thus increase retention.
- The ABA should stress the ineffectiveness of the billable hour paradigm and its impact on diversity programming.
- Incorporate diversity activities in the appraisal of employees and the setting of goals for firms.

Topic 2: The Cost of Building A New Diversity Paradigm: Resources and Research to Support a Cost-Effective, Inclusive Practice of Law

- During the session, a comment was made that the "deferred associates" for the most part are not "diverse" students because the diverse students were "further down the food chain" of desired jobs. That statement ignores the point that many students of color who are at the top of the law school classes cannot get jobs at big law firms.
- It is important to stress that the financial and social cost of *not* addressing diversity in the legal profession is far too high to bemoan the costs of supporting diversity programs.

Breakout Session 2D: NEW COALITIONS FOR RETAINING AND ADVANCING DIVERSITY

Topic 1: Intra-Diversity Coalitions: Maximizing the Diversity of Our Diversity

Each diversity community (racial/ethnic/gender/sexual orientation/disability) has a distinct record of struggles, achievements, and corps of champions in the legal profession.

Does emphasis on one component of the diversity community come at the expense of others? If so, how can we avoid this?

- Define goals of diversity—open profession.
- Describe approaches, formats, methods -- all initiatives (not just diversity initiatives) sponsored by ABA must be inclusive – gender, race, disability, sexual preferences, ethnicity.
- Define diversity by organization--the distinctive issues can be dealt with separately; the common issues cut across all groups.
- Particularize lessons from different groups.

How can we ensure that all diversity and inclusion champions have a fair voice, that resources are shared, and that all burdens are shouldered equitably?

- Best practices
 - ✓ Ask who is not here? Who is and who is not at the table?
 - ✓ Invite communities to be part of the dialogue.
 - ✓ Bring business/corporations in early: Address diversity in market terms—business development, performance measures, quality assurance, rewards for excellence.
 - ✓ Anticipate intra-group consonance and conflict.
 - ✓ Anticipate inter-group consonance and conflict.
- Emerging innovations
 - ✓ Devise Diversity Impact Statement (from Equal Justice Society, California)
 - ✓ Similar to Environmental Impact Statement: A tool for decision making, an EIS describes the positive and negative environmental affects of proposed agency action - and cites alternative actions.
 - ✓ An EIS typically has four sections: 1) An introduction including a statement of the purpose and need of the proposed action. 2) A description of the affected environment.

3) A range of alternatives to the proposed action. Alternatives are considered the "heart" of the EIS. 4) An analysis of the environmental impacts of each of the possible alternatives.

What lessons can all diversity leaders learn from the successes and disappointments of the various diversity communities?

- Identify core values
 - ✓ Access
 - ✓ Fairness
 - ✓ Inclusion
- Use size of law firms as an aspect of diversity
 - ✓ Create links between firms with different characteristics
 - ✓ Create mentor partnerships among different types of firms

Are there ways that these communities can work together more effectively to contribute to the enterprise of growing diversity?

- Mentor across diversity groups and subject matter.
 - ✓ Create materials to help mentoring
 - ✓ Develop database of mentors and mentoring
 - ✓ Rely on technology
- Identify similarities/differences across groups.
- Analyze common challenges and where group-interests align.
- Ask: "who benefits when diverse groups turn on each other?"

How can leaders in various sectors of the legal profession harness the spirit and gain from the experience of different diversity communities in ways that serve the whole enterprise of a better legal profession?

- Use power of cross-generational diversity and comfort level of young generations with diversity
 - ✓ Purposely create partnerships between minority and older white male (see Dear Sisters, Dear Daughters, book about Japanese-Filipino woman whose mentor was a white male).
 - ✓ Collect stories cross-generational success and efforts.
 - ✓ Consciously include young lawyers and law students.
- ABA can begin by describing when "silos" contribute to diversity and when they don't and then model inclusiveness.
 - ✓ Consider town hall events on diversity issues.

ABA Presidential Summit: *Diversity in the Legal Profession: The Next Steps?*

Proposed Take-Away Points

The following outline summarizes key points from the discussions held in Breakout Sessions at the ABA June 2009 Diversity Summit. This is a preliminary summary, which has not been presented to the ABA House of Delegates or Board of Governors, and therefore should not be construed as representing ABA policy. A comprehensive Diversity Summit report will be released prior to the 2010 ABA Midyear Meeting.

Legal organization's self-reflection:

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

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

A paradigm shift for the legal profession:

What forces are causing the profession to change?

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

Pipeline projects: An alignment of projects to ensure educational inclusion and excellence; from grade school to high school, college, law school, bar exam and into the profession.

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

- As a champion and voice for diversity, disseminating rationales and data that support diversity, access and success.
- As a lobbyist at federal and state levels for effective educational reform and investment to create the equal opportunity.

- As a repository for best practices of “plugging the leaks” and “clearing the clogs.”
- As a clearinghouse of data.
- As a promoter of innovations.

**Reproducing what works and linking scholarship with work “in the streets.”
How can larger organizations, including academia, help develop valid metrics and evaluation methods to measure the effectiveness of diversity work in various locales?**

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

**Fragmentation of diversity projects and continual re-learning wastes effort.
Can the ABA (and/or another national organization) lead a public debate about diversity and the roles of lawyers in the 21st century?**

- Is there a model that bridges the chasms between legal practice, theory, teaching, and research? If not, can the ABA develop such a model?
- What can the ABA learn from and share with other professions such as medicine?
 - ✓ For example, clinical psychologists have espoused both scientist-practitioner and scholar-practitioner models.

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

- Law firms and corporations—employers of diverse attorneys.
- Law schools—educators, where diversity norms, knowledge and skills are inculcated.
- Minority/specialty bar associations—large pools of diverse lawyers.
- Professors—experts on issues of identity and diversity—scholars of color, feminists, GLBT, disabled.
- Other professions with analogous methods and approaches to diversity.
- Public schools—setting for pipeline projects.

ABA 2009 PRESIDENTIAL DIVERSITY SUMMIT

Excerpts From:

TRENDS, DISAPPOINTMENTS AND NEW DIRECTIONS: AN OVERVIEW FROM ABA REGIONAL MEETINGS AND SURVEYS*

Trends:

- The recession is drying up monies for diversity initiatives and creating cutbacks that may disproportionately and negatively affect lawyer diversity—thereby undoing the gains of past decades.
- Similarly, the increasing cost of legal education makes attending law school and the debt burden exceedingly difficult for poor and working class people. Because income and wealth converge disproportionately with race, ethnicity, gender, sexuality and disability, the cost of legal education in our current economy must be a central site for advocacy in the interest of a diverse legal profession.
- Consensus on the need for the legal profession to help dramatically improve the P-20 pipeline appears to exist. Students, lawyers, judges, and clients are increasingly involved in pipeline activities.
- Relatively well-established diversity bar associations have now accumulated enough resources to institutionalize their programmatic work. Conversely, newer diversity organizations operate on shoestring budgets, over-rely on individual charismatic volunteer leaders, or find it difficult to access collaborations with majority bar associations. Similarly, local bar associations, especially those in rural locales, often lack resources to engage diversity initiatives beyond the efforts of exceptional individuals.

Disappointments:

- Diversity programs may sometimes be little more than box checking on forms or seem like costly and time-wasting training sessions.
- While some firms and law schools now empirically review the results of their diversity programs, for many years such programs lacked theoretically grounded ways to measure their goals and effects, and today relatively few diversity programs are designed with self-assessment mechanisms.
- Law schools and law firms still tend to chase the top part of the diverse applicant pool rather than focus on increasing the size of the pool.
- By presuming the centrality of law firms, the legal profession has failed to address the reality that the majority of lawyers are in solo practices or very small partnerships; hence diversity efforts have been significantly stymied.

**Original Trends Report prepared by the Diversity Summit Team of Scholar/Reporters—Professors Margaret Montoya, Marc-Tizoc González, & Tucker Culbertson—and the ABA Diversity Summit Planning Committee. The full Trends Report is available at <http://www.abanet.org/diversity/summit/home.html>.*

- All agree that it is crucial to establish quantitative measures with which we can assess our progress and assign accountability. However, we must define these quantitative measures in a sophisticated manner that takes into account the multidimensionality and locality of identities. Moreover, quantitative measures alone are insufficient if they are not coupled with qualitative data drawn from direct communication with applicants, employees, and clients.

New Directions:

- Understanding diversity work as ongoing and evolving rather than static allows for a different approach to programming which may circumvent “diversity fatigue.” If we understand equal access and inclusion as tasks uniquely charged to the legal profession throughout U.S. culture and history, diversity work is less likely to be viewed as incriminating and hostile, and more likely to be viewed as a core function of the profession itself.
- Moreover, the legal profession increasingly recognizes that: (1) diversity encompasses identities beyond race and gender, and (2) race and gender cannot be addressed adequately under rubrics of “white/non-white” and “male/female.”
- Different types of law firms need different types of diversity programs and policies. Large law firms and corporate general counsel offices have different opportunities and challenges than small firms and solo practitioners. Minority owned firms, as well as women-, LGBT-, and disabled attorney-owned firms also face unique opportunities and challenges in advancing diversity.
- Training programs for prospective judges beginning five and ten years prior to their actual pursuit of a judgeship exist and should be supported.
- Similarly, some law schools’ diversity efforts include tried and tested conditional admissions programs that provide opportunities to students whose LSAT scores would normally prevent their admission; those students’ academic success have defied their predicted grades.
- Some law schools are developing alliances with other professional schools and adapting their diversity programs. Cultural competence education in medical schools is a notable example.
- Majority and minority bar associations are realizing the need to collaborate in ways that do not undercut the membership of either bar association while recognizing their different access to resources.
- Web-based databanks and social networking sites could become an invaluable asset for diversity work across the country, allowing individuals and organizations to share effective models, strategies, and structures. Similarly, not only “best practices” but also “preferred partners” could be publicized, thereby spreading “the best of the best” work on diversity informed by visitors’ unique professional, geographical, cultural, and demographical identities.

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The **American Bar Association** wishes to acknowledge the following organizations that understand the value of promoting and retaining diversity in the legal profession. The Diversity Summit would not be possible without their financial support.

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BUILDING UPON OVER 25 YEARS OF RACIAL & ETHNIC DIVERSITY AT THE ABA

1980 ABA President calls for “a better understanding of the concerns and problems of minority lawyers” to determine constructive and meaningful ways to address these problems.

1984 Task Force on Minorities in the Legal Profession created.

1986 Goal IX—*To promote Full and Equal Participation in the Profession by Minorities and Women*—adopted.

1986 Commission on Opportunities for Minorities in the Profession created to continue work of the Task Force.

1992 Presidential Task Force on Minorities in the Justice System created-later becomes the Council on Racial and Ethnic Justice.

1992 ABA President-Elect started hosting the annual Presidents-Elect meeting to bring together leaders of the four major national minority bar associations.

1995 Spirit of Excellence Award established to recognize individuals who have contributed to the advancement of racial and ethnic diversity in the profession.

2000 ABA Legal Opportunity Scholarship Fund created to encourage racial and ethnic minority students to attend law school and to provide financial assistance to those in need.

2000 ABA Presidential Advisory Council on Diversity created to focus on improving diversity in the pipeline to the profession.

2001 ABA Center for Racial and Ethnic Diversity created as coordinating body for diversity efforts throughout the ABA.

2008 ABA restructured its Mission & Goals, and identified diversity as one of only four Association priorities. The new Goal III is to:

“ELIMINATE BIAS AND ENHANCE DIVERSITY”

with the following objectives:

- Promote full and equal participation in the association, our profession, and the justice system by all persons.
- Eliminate bias in the legal profession and the justice system.

2009 ABA Presidential Diversity Summit
Diversity in the Legal Profession: The Next Steps?

Summit updates posted at
<http://www.abanet.org/diversity/summit/home.html>

For more information on upcoming ABA diversity programs, visit
<http://www.abanet.org/diversity>



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