

# **REPORT OF THE TASK FORCE TO INCREASE DIVERSITY IN THE LEGAL PROFESSION**

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## **NEW YORK COUNTY LAWYERS' ASSOCIATION TASK FORCE TO INCREASE DIVERSITY IN THE LEGAL PROFESSION**

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## **INTRODUCTION**

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In February 2000, the New York County Lawyers' Association created a Task Force to Increase Diversity in the Legal Profession. The Task Force was created to study and evaluate the current status of minorities in the legal profession and to develop recommendations to increase diversity at all levels.

The Chair of the Task Force is Hon. Juanita Bing Newton, Deputy Chief Administrative Judge for Justice Initiatives in the Unified Court System of the State of New York.

In order to ensure representation from all components of the legal profession, the composition of the Task Force includes federal and state judges, lawyers from law firms of various sizes, corporate in-house counsel, educators, and representatives from several government offices.

The members of the Task Force have brought varied backgrounds and experiences to the Task Force's work. It was NYCLA's intent to constitute a Task Force representative of the legal profession in New York City.

The Task Force has focused on three matters: (1) identifying barriers to diversity, (2) recommending concrete solutions to remove those barriers, and (3) establishing a permanent mechanism to monitor the success of programs and initiatives.

### **Objectives of the Task Force**

- Achieve a sustainable increase in minority representation in the legal profession (both in law schools and in public and private legal employment);
- Enhance public awareness of the issue by analyzing the nature and extent of the problem and identifying the specific barriers to greater diversity;
- Understand and identify the nature of professional success; and
- Identify qualities necessary for professional success as they relate to minorities (this objective includes debunking stereotypes, focusing on tangibles, and delineating appropriate standards and the groups to which they are applicable).

### **The Task Force's Activities**

The Task Force first met on April 11, 2000. At that meeting, the Task Force agreed to consider: (1) public awareness of diversity issues in the legal profession; (2) law schools; (3) financial issues, e.g., law school debt; (4) public and private employment; and (5) mentoring, retention, and quality of life. The Task Force also agreed that its focus would be in three principal areas:

- Pre-Law School
- Law School
- Post-Law School

The membership of the Task Force was divided into three subcommittees to address each of these areas. Each subcommittee is led by two co-chairs.

The co-chairs of the subcommittees met on May 9, 2000. There was extensive discussion at that meeting of appropriate goals to enhance diversity in each stage of the legal profession. For example, the subjects identified for the Post-Law School period included increased recruitment and hiring, retention and promotion, mentoring, and loan forgiveness. In addition, the subcommittee chairs identified various written materials on diversity in the legal profession that were thereafter compiled and distributed to the members of the Task Force.

Each subcommittee agreed to prepare a preliminary report containing an outline of its findings and recommendations. After meetings of the subcommittees and extensive work during the spring and summer of 2000, the preliminary reports of the three subcommittees were distributed to all members of the Task Force on September 7, 2000.

The full Task Force met again on September 12, 2000. At that meeting, the Task Force discussed the preliminary reports of the subcommittees and planned additional work to finalize the reports.

An additional meeting of the subcommittee chairs took place on September 25, 2000. The chairs determined at that meeting to hold an Evening Forum on Diversity in the Legal Profession at NYCLA on January 11, 2001. In line with the Task Force's goals of reaching out to a broad range of professionals and to examine all relevant material, the Forum presented an opportunity for discussion on this important issue.

The Task Force mailed a notice relating to the Evening Forum to all members of NYCLA. Other recipients of the notice included members of minority bar associations and the Judiciary. Thus, the Task Force mailed notices directly to approximately 10,000 lawyers and judges expressing the Task Force's interest in their views on these matters. Many additional lawyers and others were afforded an opportunity to comment through their bar associations and at the Evening Forum itself.

The Task Force sent letters to a substantial number of individuals whom the Task Force believed could make particular contributions to the Evening Forum because of their specific experience and expertise. Those letters invited the recipients to participate by oral or written

submission focusing on the following discrete areas: diversity programs and policies; best practices; what plans work and which do not and why; as well as any recommendations addressed both to minority attorneys specifically and to the profession as a whole to enhance diversity.

The Evening Forum took place as scheduled on January 11, 2001. An acknowledgement and listing of those who testified at the Forum is set forth in Appendix A. The subcommittees completed their investigation, research, and analysis after the Evening Forum.

### **Overview of the Task Force's Report**

The Task Force determined that the principal focus of its findings and recommendations would be on the legal profession after graduation from law school. The reason for this focus is quite simple: most members of the Task Force are practicing lawyers and judges and are most familiar with diversity issues during the post-law-school period. Summaries of the work done by the Task Force's Pre-Law School and Law School Subcommittees are attached as Appendices B and C, respectively.

The Report of the Task Force relating to Post-Law School issues is divided into four principal sections:

- Narrative and Statistical Analysis
- Issues and Problems
- Current Initiatives
- Recommendations

The first section of the report (Narrative and Statistical Analysis) discusses minority representation in different legal fields in both the private and public sectors during various time periods after graduation from law school. The second section (Issues and Problems) outlines the barriers to diversity in the legal profession.

The third section (Current Initiatives) summarizes some of the steps that are currently being taken to deal with these problems. The Task Force believes it is important to acknowledge the excellent work that is currently being done to enhance diversity in the legal profession. In addition, the Task Force has sought to develop recommendations for future action that are not duplicative of recommendations previously made by others. Accordingly, this section of the Task Force's Report considers initiatives being pursued by associations such as the

American Bar Association, the American Corporate Counsel Association, the Minority Corporate Counsel Association, and the Association of the Bar of the City of New York and other groups.

Finally, in the last section of its Report, the Task Force sets forth its recommendations in the following principal areas:

- Recruitment
- Retention
- Promotion
- Mentoring
- Training
- Support Groups
- Quality of Professional Life
- Best Practices
- Specific Proposals for Future Actions by Other Groups

The Task Force recognizes that some reports of this nature contain an executive summary that is often designed to provide a few "sound bites" conveying the thrust of the report. We have deliberately refrained from including such a summary. The recommendations set forth in this Report constitute a comprehensive proposal for enhancing diversity in the legal profession. Many elements of our proposal are interdependent. Thus, a focus on only a few of these elements might divert attention from the fact that broad-based and multi-dimensional efforts are necessary to make meaningful progress toward enhanced diversity in the legal profession. A brief example illustrates our reasons for not highlighting a few elements of this Report. Many law firms have increased their efforts to recruit minority lawyers in recent years and have achieved some success in hiring recent law school graduates who are members of minorities. Law firms have not, however, been nearly as successful in retaining and promoting those recent graduates, often because of a lack of mentoring and training and a generally poor quality of professional life. To achieve meaningful and lasting improvements, we believe it is essential to simultaneously address all of the major barriers to diversity in the legal profession. Accordingly, our comprehensive proposal for doing so is set forth hereinafter.

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## **Narrative and Statistical Analysis**

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### **Diversity in the Legal Profession: The Numbers**

#### **Introduction**

In the first year of the 21<sup>st</sup> century, the hiring and retention of minority<sup>(1)</sup> attorneys and other legal professionals remains an important and unfinished goal. While progress has been made during the last decade, many challenges and obstacles still remain. In 1963, President John F. Kennedy summoned 200 of the nation's leading lawyers to the White House and issued a challenge to combat racism.<sup>(2)</sup> Thirty-six years later, President Clinton renewed that call.<sup>(3)</sup> Recognition by the Bar and Bench of the constant under-representation of minorities in the legal profession is just the first step in the effort to effect a remedy. Additional efforts must be made to ensure that the legal profession reflects our diverse society.

It is important to realize, however, that not only does more need to be done, but the lenses through which we examine this issue must be adjusted so that it can be appreciated in all its complexities and according to modern realities. To further refine the 'lens' metaphor, perhaps it would be helpful to consider the numbers set out below with a new pair of bifocals: lenses that sharpen the focus on and reveal (1) the need for minority retention to become as important a goal as minority hiring,<sup>(4)</sup> and (2) the need to adjust the concept of diversity to include not only numbers and programs, but to encompass attitudes and principles to permeate subtle resistance.<sup>(5)</sup>

In order to fully understand the importance of this issue, and to chart the progress being made, it is crucial to realize that the numbers tell only part of the story. Hiring qualified minority and female attorneys is the first step; appreciating the experience of an attorney once hired, and, indeed, understanding the reasons why attorneys decide to leave a position, should never be far from a complete analysis. With these thoughts in mind, let us examine the available data.

## The American Bar Association

In examining the issues of racial, ethnic, and gender bias in the legal profession, it is helpful to start by viewing the profession at the national level. The American Bar Association ("ABA") has contributed to the body of literature by producing a series of reports. The first, entitled *Miles to Go: Progress of Minorities in the Legal Profession*, was released in 1998, by the ABA's Commission on Opportunities for Minorities in the Profession.<sup>(6)</sup> It reported on the status and numbers of minorities in the legal profession from 1986 through 1998. In the summer of 2000, the ABA's renamed Commission on Racial and Ethnic Diversity in the Profession released *Miles to Go 2000: Progress of Minorities in the Legal Profession*<sup>(7)</sup> (the "2000 Report"), which adds some new and some updated information. The 2000 Report also examines more closely the problem of high attrition rates among minority and female associates in law firms. While reporting the gains made over the years, it cautions that "the legal profession-already one of the least integrated professions in the country-threatens to become even less representative of the citizens and society it serves."<sup>(8)</sup> The highlights from the ABA reports, as well as the Minority Corporate Counsel Association's ("MCCA") national survey results on minority in-house counsel, will be discussed below.

The ABA report begins by examining minority representation in other professions-something the 1998 report did not do. For example, the 2000 Report reveals that while African-Americans and Hispanics make up 14.3% of all accountants, 9.7% of physicians, 9.4% of college and university teachers, and 12.5% of all professionals generally, they made up only 7.5% of all attorneys.<sup>(9)</sup> The 2000 Report also begins by discussing gains made. Whereas the Miles to Go 1998 report revealed that in 1986 minorities made up only 5.5% of all attorneys, and 10% by 1996, the 2000 Report reveals that minority representation among associates reached 13% in the nation's largest firms and 12% nationwide, in 1999.<sup>(10)</sup> The 2000 Report also reveals that minority representation in corporate law departments is increasing, and currently stands at 9% nationally.<sup>(11)</sup>

The 2000 Report identifies areas that still require improvement. It reports that minority entry into the profession as well as minority advancement in law firms has been recently stalled.<sup>(12)</sup> More than half of all minority associates leave their firms within the first three years of practice.<sup>(13)</sup> Of note, minority representation among partners in most cities is less than 3%. And "[a]mong partners, minorities tend to

be clustered 'at the bottom of the firm's financial and status pecking order.'" [\(14\)](#)

The 2000 Report examines the distribution of lawyers within various employment sectors. Since the 1960s, the distribution of lawyers by employment type has remained stable, with about 85% of all lawyers practicing in the private for-profit sector (business and private practice) and 15% working in the not-for-profit sector (the government, judiciary, public interest, and education). [\(15\)](#) The career paths of male and female lawyers and of minority and white lawyers appear to be converging. For example, in 1980, 58.9% of all female attorneys practiced in the for-profit sector, compared to 73.3% of all male attorneys; by 1991, 72% of female attorneys and 77.6% of male attorneys practiced in the private for-profit sector. [\(16\)](#) While there is no national data on the distribution of minority attorneys, a 1998 national survey of new graduates revealed that minority attorneys were more likely than whites to enter government, public interest practice or business and less likely to enter private practice. [\(17\)](#) In 1987, 61% of minority law school graduates entered the private for-profit sector, compared to 72.6% of all white graduates. By 1998, 64.7% of all minorities and 70% of all white graduates entered the for-profit sector. [\(18\)](#)

Minority representation among associates in law firms grew from 6.8% in 1991 to 13% in 1998. Asian-American associates are now the best-represented and fastest-growing group among minorities-making up 6.1% of the 13%. [\(19\)](#) Indeed, nearly half of all minority associates in the nation's 250 largest law firms are Asian-American. [\(20\)](#) Minority representation is highest in the nation's largest law firms: in firms with 100 or fewer lawyers, minorities made up 10.65% of all associates; in firms with 101-250 lawyers, minorities made up 11.1% of all associates; and in firms with more than 251 lawyers, minorities made up 12.75% of all associates. [\(21\)](#) While the data indicates that minorities have made strides at the level of entry into the profession, minority representation among partners at law firms remains low. There may be many different factors contributing to this reality, but the one that is identified in the ABA report is the high level of attrition among minority attorneys. [\(22\)](#)

Some evidence suggests that to a certain extent, attrition rates reflect lateral mobility, given that inter-firm competition is fierce. [\(23\)](#) Most evidence suggests, however, that minority attrition is high because "associates face social and professional isolation in law firms and have difficulty gaining access to mentors and quality work assignments." [\(24\)](#)

In any case, minority associates tend to leave law firms before being considered for partner. Therefore, the correlation between high attrition rates and low minority representation among partners remains a strong one.<sup>(25)</sup> In 1998, New York's largest law firms promoted 14% more associates to partner than in the previous year, but the numbers of women and minorities in that group remained static.<sup>(26)</sup> In 1998, 12 of the 197 associates promoted to partner were minorities and 37 were women. The partner class was 94% white and 81% male.<sup>(27)</sup> A survey conducted by the *New York Times* of the 12 highest-grossing law firms in the United States reveals that minority lawyers accounted for approximately 5% of the new partners in recent years at the seven firms which provided such information, and that at some firms the percentage was significantly less.<sup>(28)</sup> According to the National Association for Law Placement, last year only 3.4 % of all partners at all law firms were minority lawyers, i.e., 1,608 lawyers, up less than a percentage point since 1993.<sup>(29)</sup> In 1996, the *Wall Street Journal* cited a San Francisco County Bar Association report that revealed that while the Bay Area's largest law firms "hire quite a few minority attorneys, they do a relatively poor job of retaining and promoting them: Members of minority groups make up more than 18% of the associates at the firms . . . but less than 5% of the partners."<sup>(30)</sup>

Evidence suggests that minorities that *do* make partner are leaving majority firms at increasing rates and going to corporate law departments and government, and also to partnership positions at minority-owned firms.<sup>(31)</sup> For those minority partners that remain at their firms, there is often a struggle to generate business from corporate clients. "As a result, minority partners tend to be clustered at the bottom of the firm's pecking order."<sup>(32)</sup> In addition, minority partners tend to hold few leadership positions within their firms and a low number achieve equity partner status.<sup>(33)</sup> A recent study of large firms in major cities found that the level of minority representation "positively affects the rate of integration among associates, independent of other firm characteristics."<sup>(34)</sup> The conclusion to be drawn is that more minority associates tend to be hired and retained at firms where there are more minority partners.<sup>(35)</sup> The 2000 Report, in discussing obstacles to "full and equal" participation of minority associates, discusses the problems that affect all associates and all firms regarding attrition issues. It concludes that there are systemic management problems in place at many firms which must be addressed. Problems such as inadequate supervision, feedback, and mentoring, as well as the time demands of large firm practice, continue to be cited as the main reasons associates leave their firms.

It seems then that to address the problem of associate attrition in general and minority attrition in particular, law firms need to address these management issues in a more comprehensive manner. As one diversity consultant observed:

The most important and perhaps most difficult step for a firm to take is to commit to the process of long-term change. The pressures of profitability make it hard for partners to see the benefits of investing time in management issues, even in light of the high attrition rates.<sup>(36)</sup>

### **The Association of the Bar of the City of New York (the "Association")**

In 1991, the Association, acting through its newly formed Committee to Enhance Professional Opportunities for Minorities in the Profession (renamed the Committee to Enhance Diversity in the Profession in 1994), adopted a *Statement of Goals of New York Law Firms and Corporate Legal Departments for Increasing Minority Representation and Retention* (the "Statement").<sup>(37)</sup> The Statement established goals and outlined specific steps for hiring, retaining, and promoting minority attorneys in each of the law firms and corporate legal departments that were signatories to the Statement.<sup>(38)</sup>

The Association's Task Force on Minorities recognized early on that retention issues are as important as—indeed, they are inextricably tied to—issues of hiring and opportunity.

The Association's Diversity Committee formed a Subcommittee on Recruitment and Retention (the "Subcommittee"), which issued a report (the "Task Force Report") in 1992. While the Subcommittee recognized that efforts to recruit minorities at law schools and law firms were increasing, it was troubled to learn that among the 35 firms represented on the full Diversity Committee, only 19 African-Americans had become partners.<sup>(39)</sup> "Almost a third of the firms represented [on the full Diversity Committee] had no minority partners, twelve firms had one minority partner and only four firms had more than one. Recently, two additional firms . . . made their first minority partners."<sup>(40)</sup>

The Subcommittee conducted a survey of minority associates and former associates at firms represented on the full Diversity Committee "in an effort to determine the factors that they believed were relevant to success in a competitive law firm."<sup>(41)</sup> While only 59 attorneys responded (23 African-Americans, 21 Asian-Americans, 9 Hispanic-

Americans, 3 identified as Other, and 3 who did not indicate a particular group), the survey revealed a particular pattern among African-American attorneys: that their experiences differed from their non-minority colleagues.<sup>(42)</sup> Only 9% of Asian-Americans and no Hispanic-Americans believed that their experiences differed from their non-minority colleagues. The survey results are admittedly not scientific, yet the report concludes that such perceptions "apparently are contributing to, or causing, the disparate levels of retention even among minorities, distinguishing African-Americans from Hispanic-Americans and Asian-Americans."<sup>(43)</sup>

The report concludes by offering some recommendations: (1) the need to establish direct and honest communication mechanisms and make them available to all young associates; (2) firms should consider engaging in diversity training; (3) starting at orientation and furthered by a diversity committee, new associates should be assisted and mentored throughout their employment period; (4) re-examination of the evaluation process, and addressing potential problems early on by establishing clear and consistent criteria, used also to improve communications; and (5) establishing a position of "Assistant" to act as a resource for any firms desiring information and assistance regarding diversity issues.<sup>(44)</sup>

The Task Force's Report states that the overall goal of focusing attention on minority hiring in the profession has been met; but the Statement's success in increasing retention has been mixed.<sup>(45)</sup> In light of evidence that more progress can be made in minority promotion and retention, the Report and Recommendations suggests, among other things, that the Statement be re-adopted for another five-year period, and that the 10% hiring goal be replaced with a goal of achieving 10% minority representation of all attorneys employed by each firm, to encourage firms to focus more on retention efforts.<sup>(46)</sup> The Report also concludes, as did the ABA's 2000 Report, that while minorities as a whole have made progress, "different Minority groups have had different experiences, with Asian-American associates increasing at a more rapid rate than African-American and Hispanic associates."<sup>(47)</sup> The Report also states that it is unclear whether smaller increases in employment levels for African-Americans and Hispanics, compared to Asian-Americans, are attributable to lower hiring rates, higher attrition rates or a combination of both factors.<sup>(48)</sup>

The Task Force Report concludes with a set of recommendations and reiterates the Statement's pledge to pursue the goal of increasing retention and promotion rates, specifically, by ensuring that the work

environment is as hospitable to minorities as non-minorities and that minorities have opportunities to pursue significant work assignments and receive mentoring, guidance and training in order to grow professionally.<sup>(49)</sup>

### **Minority Corporate Counsel Association<sup>(50)</sup>**

The Minority Corporate Counsel Association ("MCCA") was founded in 1997 to advocate for the "expanded hiring, promotion, retention and management of minority attorneys in corporate law departments and the law firms that serve them."<sup>(51)</sup> In 1998, the MCCA conducted its first national survey on diversity and found that minority attorneys practicing in-house continue to confront barriers beyond entry level positions. The survey revealed that minority representation among in-house counsel of Fortune 1000 law departments had reached 11.1%.<sup>(52)</sup> Of the 1,175 in-house attorneys who supervised others, 233 or 19.83% were "ethnic minorities."<sup>(53)</sup> When asked whether the general counsel who reports to the company's chief executive officer was a member of an ethnic minority, 3% of the companies surveyed responded affirmatively.<sup>(54)</sup> 38% of the responding companies had minority attorneys who reported directly to general counsel.

MCCA's 1999 survey of Fortune 1000 corporate law departments reveals that minority representation of corporate counsel had increased 1.8% to 12.9% from 1998.<sup>(55)</sup> Although this number tracks the national figure for minority representation at large law firms, MCCA warns that the number may be inflated, because only 41 companies responded and these companies tended to be the more diversity-minded of the group.<sup>(56)</sup> For the most part, the numbers remained static since the 1998 survey: 38% of corporate law departments have minority attorneys that report directly to general counsel, 54% have minority attorneys who manage other attorneys, and nearly half of the respondents said they have a diversity plan in place.<sup>(57)</sup>

The ABA's 2000 Report suggests that in-house careers are especially attractive as attorneys get to "just practice law" without the pressures of business development, which continues to be a trouble spot for new minority attorneys who may not have access to the social circles necessary for such business development.<sup>(58)</sup> Of note, however, minority in-house counsel confront the same problems as do their law firm counterparts, such as lack of mentoring and few opportunities for promotion to top positions.<sup>(59)</sup> On the other hand, "in-house practice may open up a number of non-legal avenues for advancement, such as promotion to other business functions outside of the law department.

Such opportunities cannot be measured by looking only at law departments."<sup>(60)</sup> It remains to be seen, however, whether law departments actually offer more opportunities for advancement than law firms.

Most generally agree that minority representation among in-house counsel is increasing.<sup>(61)</sup> But regional surveys reveal that minority representation differs depending on the region. Data compiled from 1992 to 1996 demonstrates that minority representation in corporate law departments in New Jersey in 1992 was 1.4%, while in San Francisco it was 12.3% in 1990 and had increased to 19.1% in 1995. In New York City in 1996, minority representation in corporate law departments was 8.9%: the same percentage of all in-house counsel as the percentage of supervising in-house attorneys in New York City.<sup>(62)</sup> The disparate distribution of minority representation among various regions and the slow rate of increase illustrates the need to continue addressing pervading attitudes of ambivalence in dealing with the issue of diversity.

It has been suggested that, due to the nature of some in-house corporate work, such as writing contracts and advising on intellectual property matters, companies and their legal departments do not suffer from the lack of diversity any more than they would benefit from it.<sup>(63)</sup> A legal recruiting firm president in Washington D.C. states that those who do the hiring for many in-house positions-often the company's general counsel-"do not seek out minority candidates because they see no 'hard-and-fast evidence that it adds to the bottom line.'"<sup>(64)</sup> Not only is this premise refutable-indeed there is strong evidence that diversity is good for business<sup>(65)</sup>-it points up the need to address lingering biases and assumptions that are not only incorrect but unprofitable.

There is evidence that although minority and female representation among general counsel is considerably lower than one should expect given the percentage of minority and female representation in the legal profession, the numbers are increasing. Recent data suggests that of the Fortune 500's general counsel, there are only 14 minorities; but 11 of the 14 were named within the last three years.<sup>(66)</sup> It has been suggested that if this trend continues, "the number of minority general counsel could double within the next ten years."<sup>(67)</sup> And despite continued gender bias, the numbers of women serving as general counsel are on the rise. Of the Fortune 500 general counsel, women held 44 (8.8%) of the positions, according to recent data.<sup>(68)</sup> Of these 44 positions, 38 have been appointed since 1990, and 22

since 1996. If this trend continues, the total number of women general counsel in Fortune 500 corporations should double in the next three years.<sup>(69)</sup>

General counsel can exert significant influence on diversity efforts at law firms. For example, a group of general counsel, about 300 so far, recently sent letters to their outside firms informing them of general counsel's efforts to increase diversity. The goal is to strongly encourage outside firms to do the same; and this encouragement carries a particular incentive: future business. For these letters more than imply that the outside firms' own efforts to increase diversity will "factor heavily in whether they land corporate work."<sup>(70)</sup>

## **The Federal Courts**

### **The Second Circuit Report (1997)**

In 1993, the Second Circuit Judicial Council voted unanimously to create a Task Force on Gender, Racial, and Ethnic Fairness, in an effort to identify bias in all forms and prevent it from becoming "a danger to the effective administration of justice in federal courts . . . ."<sup>(71)</sup> As a benchmark, the Task Force's report (the "Committees' Report"), using 1990 Census Bureau statistics revealed that of the total population of 21,840,329 in the Second Circuit, which covers New York, Connecticut and Vermont, 15,803,177 (72.4%) were White, and 6,037,152 (27.6%) were Minority.<sup>(72)</sup> While the Second Circuit's report is comprehensive, only the data concerning minority and female judges and attorneys will be discussed below.

### **The Judiciary in the Second Circuit**

The Report reveals that in 1991 there were 94 Article III judges<sup>(73)</sup> in the Second Circuit; of these, 87 (92.6%) were White.<sup>(74)</sup> Of the seven minority judges (7.4% of the total), six (86%) were African-American/Black. By 1996, the total number of Article III judges serving in the Second Circuit was 105; of these 95, or 90.5% were white.<sup>(75)</sup> Of the 10 minority judges, seven (70%) were African-American/Black.<sup>(76)</sup> The Second Circuit's data reveals that during the period between 1991-1996, the numbers of African-American/Black judges remained roughly the same, while the numbers of Hispanic/Latino and Asian-American judges each increased by one.<sup>(77)</sup>

In the states comprising the Second Circuit, women make up 52% of the population.<sup>(78)</sup> In 1991, of the 60 Active Article III judges, 53, or

88% were Male, and of the 34 Senior judges, 32, or 94% were Male. <sup>(79)</sup> By 1996, of the 64 Active judges in the Second Circuit, 48, or 75% were Male, and of the 41 Senior judges, 37, or 90% were Male. <sup>(80)</sup> The Committees' Report indicates that before 1990, women judges at the federal district level in the Second Circuit were rarities. <sup>(81)</sup> Between 1991 and 1996, however, the number of female district court judges in the Second Circuit more than doubled -rising from nine to 20; <sup>(82)</sup> 11 of the 20 judges were from the Southern District in New York. <sup>(83)</sup> The Committees' Report explains that, to a certain extent, this pattern bears out the changing demographics in the legal profession and the fact that "[w]omen are comparative latecomers to the law," constituting only 3 to 5% of law school graduates in the 1960s and about 44% today. <sup>(84)</sup> Interestingly, although minority women make up a small percentage of all female lawyers in the Second Circuit, three of the six female Article III judges appointed before 1987 were minorities. <sup>(85)</sup> Between 1987 and 1996, of the 14 female judges added to the district court bench, two or 14%, were minorities. <sup>(86)</sup>

### **Attorneys Practicing in the Second Circuit** <sup>(87)</sup>

The Committees' Report, again relying on 1990 Census Bureau statistics, reveals that of the 747,077 lawyers in the United States, 691,313 or 92.5% were identified as White; of the remaining 7.6%, 25,067 or 3.4% were African-American/Black; 18,612 or 2.5% were Hispanic/Latino; 10,513 or 1.4% were Asian-American; 1,417 or 0.2% were American Indian; and 155 were identified as Other. <sup>(88)</sup> In the Second Circuit, there were 104,858 attorneys practicing, and the racial and ethnic statistics tracked the national numbers. <sup>(89)</sup>

As mentioned above, women make up 52% of the population in the three states that comprise the Second Circuit, but only 27.3% of all attorneys. <sup>(90)</sup> Of the 28,575 female attorneys, 25,078 or 88%, were White. The total number of White attorneys equaled 97,585. <sup>(91)</sup> Therefore, while White female attorneys comprised 88% of all female attorneys, they made up only 25.7% of all White attorneys. Although Minority female attorneys made up only slightly more than 12% of all female attorneys, they comprised 48.1% of all minority attorneys. <sup>(92)</sup> The Committees' Report cites ABA data that indicates that the number of minority women attorneys tripled between 1980 and 1990; <sup>(93)</sup> and in the Second Circuit, minority women are a more prominent part of the bar than their national counterparts. <sup>(94)</sup>

## **The New York State Courts**

## **The New York State Judicial Commission on Minorities**

In 1987, then Chief Judge Sol Wachtler met with members of the Coalition of Blacks in the Courts to discuss the treatment and under-representation of African-Americans within the judiciary and the legal profession.<sup>(95)</sup> In response to reports of bias, the Chief Judge established the New York State Judicial Commission on Minorities in 1988. The Commission's mandate was threefold: (1) to examine how the public and the courts perceive the treatment of minorities in the courts, and the extent to which minorities voluntarily use the courts; (2) to examine whether there was under-representation of minorities in non-judicial positions in the courts, such as court officers, clerks, etc.; and if found, to recommend ways to increase such numbers; and (3) to examine the selection processes for judges-elective and appointive-and determine which results in greater minority representation.<sup>(96)</sup> The Commission's overall mandate was, and still is, to identify all problems affecting minority treatment and representation in the legal profession, and act to effect necessary changes.

## **The Judiciary in New York State Courts**

The Commission Report reveals that in 1991, there were 1,129 judges sitting in the courts of New York State.<sup>(97)</sup> Of these, 9%, or 93 judges were minorities: there were 71 African-Americans, 19 Hispanics, three Asian-Americans and no Native American judges.<sup>(98)</sup> The Commission Report's findings yielded no conclusion in response to the third part of the Commission's mandate-to examine the judicial selection process.<sup>(99)</sup> When the Commission released its five-year report in 1996, it reported "[t]oday, we have more minority judges, lawyers and jurors-particularly in New York City-than ever before."<sup>(100)</sup>

The Five-Year Report reveals that by 1997, of the 1,163 judges throughout New York State, 132 or 11.35%, were minorities. The report highlights that "no minority judge has ever been appointed as an Associate Justice of the Appellate Division of the Supreme Court, Third Department."<sup>(101)</sup> Of the 39 new minority judges added between 1991 and 1997, 18 were Latino (a 95% increase), 16 were African American (a 22.5% increase), and five were Asian American (up from three, representing a 166.7% increase).<sup>(102)</sup> These increases have been distributed throughout New York's court system, from the Court of Appeals to the local courts.<sup>(103)</sup>

## **Attorneys Practicing in New York State Courts**

In 1991, when the Commission Report was released, minorities accounted for 25% of New York State's population, but only about 5% of all attorneys in the state; the remainder were white.<sup>(104)</sup> Although the Commission Report does not provide specific numbers, it states that the representation of black attorneys in large law firms actually had decreased since 1979, while representation of Hispanic attorneys saw nominal increases and Asian-Americans enjoyed sizable increases during that period.<sup>(105)</sup> Data suggest that minorities were especially under-represented in more influential positions and that minority attorneys "lack access to positions of prestige, power and high remuneration."<sup>(106)</sup> According to a 1987 survey, there were 3,731 partners at large firms in New York State; of these 48 or 1.3% were minorities.<sup>(107)</sup> A similar survey conducted in 1989 found that 70 or 1.7% were minorities, of the 4,086 partners.<sup>(108)</sup>

The Five-Year Report cites earlier-mentioned data that reveals the increases in minority attorney hiring at New York City's largest law firms-"with minorities comprising 17.5% of the total number of associates hired in this period."<sup>(109)</sup> Progress was made in the public sector during this period as well with minorities comprising over 20% of Assistant District Attorneys in New York City.<sup>(110)</sup> The proportion of minority partners at law firms throughout the state, however, remained low at 2.98%.<sup>(111)</sup> Of the minorities that have achieved partner status, very few have become equity partners: thus, racial disparities persist even among partners.<sup>(112)</sup> In citing a 1996 *National Law Journal* survey of the nation's 250 largest law firms, the Five-Year Report reveals that 46.2% of all minority partners are of the "non-equity variety," drawing income only, as opposed to sharing a firm's profits, whereas only 30% of all white partners are non-equity.<sup>(113)</sup>

## **Perceptions<sup>(114)</sup>**

### **The Baruch Study**

As part of the Second Circuit's efforts at addressing racial/ethnic and gender fairness, the Task Force on Gender, Racial, and Ethnic Fairness commissioned a survey of perceptions of the key players in the Second Circuit. In the survey (the "Baruch Study"), lawyers, judges, and courtroom deputies were asked about the ways in which gender, race, and ethnicity affect the administration of justice in Second Circuit courts, generally, and how these factors influenced the treatment of lawyers, judges, parties, and witnesses specifically. The Baruch Study reports whether and to what extent "there are systematic and significant differences in the beliefs and attitudes associated with the

gender, race, and ethnicity of these players."<sup>(115)</sup> Here, we will examine the Baruch Study's findings as to the treatment of judges, lawyers, the parties and witnesses. Although this study was conducted in the federal court system in the Second Circuit, its findings are significant to a discussion of diversity in the state court system as well as the legal profession in general.

### **The Treatment of Judges**

When judges were surveyed about the treatment of fellow judges, the vast majority of male and female judges reported that they "do not ever hear disparaging comments about the competence of female or minority judges."<sup>(116)</sup> Less than 1% of all male judges surveyed reported hearing disparaging remarks from colleagues regarding the competence of female judges; and less than 2% reported hearing disparaging remarks about the competence of minority judges.<sup>(117)</sup> When female judges were asked the same questions, 11% reported hearing disparaging remarks about minority judges and 7% reported hearing similar remarks about other female judges.<sup>(118)</sup>

When attorneys were asked about the treatment of judges, the responses were dramatically different. For example, 82% of white male attorneys who work for the government reported hearing disparaging remarks about the competence of white male judges in the Second Circuit.<sup>(119)</sup> When minority attorneys were surveyed, 74% of male and 77% of female attorneys reported that they had heard disparaging remarks about white male judges.<sup>(120)</sup> Roughly 75% of minority male and female attorneys in private practice reported hearing disparaging comments about minority male judges.<sup>(121)</sup>

### **The Treatment of Lawyers**<sup>(122)</sup>

Judges were surveyed and asked about the treatment of all attorneys—female, male, minority and white—and specifically asked whether lawyers are treated "very fairly" or if lawyers are "ever disadvantaged" depending on their gender, race or ethnicity. The majority surveyed reported that attorneys are treated "very fairly" regardless of gender or race. 96.6% of male judges and 96% of female judges believe that white male lawyers are treated very fairly. 88.9% of male judges and 72% of female judges believe that white female lawyers are treated very fairly. 88.8% of male judges and 80% of female judges believe that minority male lawyers are treated very fairly. 87.9% of male judges and 75% of female judges believe that minority female lawyers are treated very fairly. With respect to the question of whether judges

believe that attorneys are ever disadvantaged in court proceedings, the following results were obtained. 2.6% of male judges and 0% of female judges believe that white male lawyers are disadvantaged. 5.3% of male judges and 18.5 % of female judges believe that white female lawyers are disadvantaged. 7.5% percent of male judges and 3.7 % of female judges believe that minority male lawyers are disadvantaged. 6.1% of male judges and 15.4 % of female judges believe that minority female lawyers are disadvantaged. [\(123\)](#)

When attorneys were asked about the treatment of attorneys, the questions were framed differently: attorneys were asked whether an attorney's status (minority, female, etc.) ever provides an advantage or disadvantage generally, and when representing clients in the Second Circuit specifically. [\(124\)](#) 72% of white male attorneys in private practice reported that minority males are neither advantaged nor disadvantaged and 49% of white female attorneys believed that "being a woman in the Second Circuit can be a disadvantage to the overall fairness of a proceeding...." [\(125\)](#) When minority male attorneys were asked whether minority male attorneys faced a "disadvantage," 46% reported that they did, and they reported that 48% of female attorneys also confronted a "disadvantage." [\(126\)](#)

### **Gender Bias** [\(127\)](#)

When asked about observations of gender bias, almost all white male judges reported that there was no observable sexually-biased treatment by other attorneys toward female attorneys (only 1.8% thought there was), while 16.7% of female judges reported that female attorneys were interrupted or ignored by other lawyers. [\(128\)](#) In this part of the survey (on the question of gender bias), court employees were also asked their opinions. In most cases, white female and male court employees reported that they did not observe biased treatment of women. 5.5% of white male employees, 11.7% of white female employees, and 20.5% of minority employees reported observing female attorneys being ignored, interrupted, or not listened to by other attorneys. [\(129\)](#)

Roughly half of the female attorneys reported experiencing gender-biased behavior. [\(130\)](#) 63.2% of white female lawyers and 62.3% of minority female lawyers reported instances where they were mistaken for a non-lawyer. One white female government attorney commented "I think judges take me less seriously as a woman. . . . I think that happens a lot, with minority women as well as [with] white women." [\(131\)](#) Notably, more than half of the attorneys in all groups reported

observing biased treatment of lawyers based on gender, with most lawyers reporting two or three such incidents. [\(132\)](#)

### **Racial/Ethnic Bias** [\(133\)](#)

Most judges reported that they do not observe incidents of racial or ethnic bias directed at attorneys. For example, none of the male judges and only 4 % of the female judges reported hearing derogatory racial or ethnic comments made by lawyers about other lawyers; and only 2.7% of male judges and 4% of female judges reported observing a minority lawyer mistaken for a non-lawyer by other lawyers. [\(134\)](#) The observations of court employees differ dramatically based on racial and ethnic background. 1.5% of white male employees and 2.2% of white female employees reported observing the competence of a lawyer challenged by other lawyers, which they attributed to racial or ethnic bias, compared with 23.8% of minority employees who reported that same observation. [\(135\)](#) 3.7% of white male employees and 5.1% of white female employees reported observing a minority lawyer mistaken for a non-lawyer by other lawyers, contrasted with 19% of minority employees reporting this observation. [\(136\)](#)

Attorneys reported observing incidents of racial or ethnic bias directed at attorneys in much higher percentages than the judges and court employees. 40.8% of white male lawyers, 58.9% of white female lawyers, 77.9% of minority male lawyers and 84.9% of minority female lawyers reported observing biased treatment of other lawyers based on race or ethnicity. Most of the lawyers reported observing 2 or 3 such incidents. 11.8% of white male lawyers, 21.3% of white female lawyers, 39.1% of minority male lawyers, and 38.5% of minority female lawyers reported observing that lawyers had been subjected to derogatory racial or ethnic remarks. 7.2% of white male lawyers, 12.6% of white female lawyers, 40% of minority male lawyers, and 41.5% of minority female lawyers reported observing biased treatment of other lawyers based on race or ethnicity by judges. 10.4% of white male lawyers, 25.3% of white female lawyers, 28.4% of minority male lawyers, and 18.9% of minority female lawyers reported observing biased treatment of other lawyers based on race or ethnicity by court employees. 27.5% of white male lawyers, 48.4% of white female lawyers, 53.7% of minority male lawyers, and 60.4% of minority female lawyers reported observing biased treatment of lawyers based on race or ethnicity by other lawyers. [\(137\)](#)

### **The Treatment of Parties and Witnesses** [\(138\)](#)

Finally, the survey sought to examine the treatment of parties and witnesses that appear before the Circuit's courts. On the question of whether parties were treated in a biased manner due to their gender, more of the female judges observed such treatment than male judges. Only 5.4% of the male judges reported that they have observed parties or witnesses ignored, interrupted, or not listened to by lawyers due to gender bias, whereas 26.9% of the female judges made this same observation. 6.3% of the male judges and 26.9% of the female judges observed incidents where a female party or witness was helped or coached in a patronizing manner by attorneys. <sup>(139)</sup> White female and male court employees also reported few incidents of sexual bias toward parties or witnesses. 3.1% of white male employees and 8.5% of white female employees observed parties or witnesses helped or coached in a patronizing way by judges or lawyers due to gender bias. 15.6% of minority employees, however, made this same observation. <sup>(140)</sup>

Most lawyers questioned also said that they did not observe incidents of gender bias with respect to parties and witnesses. The percentages for white female, and male and female minority attorneys, are notably higher than for white male attorneys. 4% of white male lawyers, 12.8% of white female lawyers, 26.3% of minority male lawyers, and 17% of minority female lawyers observed female parties or witnesses helped or coached in a patronizing way by judges. When it came to the treatment of parties and witnesses by fellow attorneys, 11% of white male lawyers, 25.3% of white female lawyers, 32.6% of minority male lawyers, and 49.1% of minority female lawyers observed parties or witnesses helped or coached in a patronizing way by lawyers because of gender bias. <sup>(141)</sup>

On the question of whether parties and witnesses were treated in either a racially or ethnically biased manner, the majority of male judges reported that they had not observed such treatment, with only 1% reporting observing lawyers imitating or parodying the manner of speech of a party or witness, and 8% reporting observing lawyers helping or coaching parties or witnesses in a patronizing manner. Female judges reported observing some witnesses being interrupted, ignored, or not listened to (26%) and incidents where parties and witnesses were helped or coached in a patronizing manner (19%). <sup>(142)</sup> White female and male court employees also reported very few incidents where parties and witnesses were treated with racial or ethnic bias, while some minority court employees observed parties and witnesses being ignored, interrupted, or not listened to (13%), or

incidents where parties and witnesses were helped or coached in a patronizing manner (13%). [\(143\)](#)

Few attorneys, regardless of gender, race, or ethnicity, reported racially or ethnically biased treatment of parties or witnesses by judges. For example, 1.7% of white male lawyers, 2.1% of white female lawyers, 9.5% of minority male lawyers and 0% of minority female lawyers observed racial or ethnic comments about parties or witnesses by judges. Attorneys from all groups reported more observed incidents of biased treatment of parties or witnesses by fellow attorneys. 17.6% of white male lawyers, 12.6% of white female lawyers, 29.8% of minority male lawyers, and 17% of minority female lawyers, observed racial or ethnic comments about parties or witnesses by lawyers. [\(144\)](#)

## **Conclusion**

The Baruch Study effectively illustrates the fact that, at times, there is a vast difference among and between judicial officers of the court (judges vs. lawyers) and non-lawyers (court employees) when it comes to beliefs about the fairness of treatment received by all parties in the Second Circuit's courts. What is significant about the Perceptions Survey is that people's perceptions vary greatly depending on their role in the court system, whether they are male or female, and their racial/ethnic background. Indeed, the authors of the Baruch Study state that while the majority of judges surveyed agreed that it is their responsibility to "always" intervene when instances of bias are directed at attorneys or parties and witnesses, the "overall pattern of these findings also make clear that these same judicial officers in general believe situations which require such intervention do not occur." [\(145\)](#)

If biased behavior and attitudes are not recognized by those in positions of power, they will persist and intensify within the system. The level of awareness concerning these issues and experiences must be heightened so that all people who use and work in the court system will be treated equally and fairly, and with the respect they deserve. Likewise, the legal profession must work not only to increase the number of minority lawyers hired in all areas of the public and private sector, but to increase its awareness of the way lawyers perceive and treat one another as attorneys and people. [\(146\)](#)

## **Issues and Problems** [\(147\)](#)

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## **Recruitment**

- Many law firms and businesses do not appreciate that hiring and promoting attorneys from all backgrounds increase their organization's capacity, service, and adaptability to meet the demands of a global economy. They are not committed to the goal of increasing diversity in the legal profession.
- Minority attorneys are more likely to enter government, public interest, and business and less likely to enter private practice. This is especially true for minority women.
- Since minority representation among partners at law firms is extremely low, especially among partners in leadership positions, minority attorneys often feel there is no meaningful future for them in private law firms.
- Some hiring attorneys, most of whom are non-minority, recruit attorneys from backgrounds similar to theirs and consequently do not make the effort to recruit talented attorneys from diverse backgrounds.
- Law firms and businesses do not always appreciate and acknowledge the benefits of hiring talented attorneys from diverse backgrounds and consequently do not actively recruit minority attorneys.
- Minority law students and attorneys do not always have the range of contacts that non-minority law students and attorneys have in the legal profession, making it difficult for them to pursue a broad range of employment opportunities.
- Some publicly funded Assigned Counsel programs, in particular those connected with the federal courts (which pay higher rates), do not have significant minority attorney participation.

## **Retention**

- More than half of all minority associates leave their law firms within the first three years of practice.
- Minority attrition is high because associates face social and professional isolation in law firms and have difficulty gaining access to mentors and quality work assignments.

- Minority associates are often excluded from business and social interactions with senior and "rain making" partners. Minority associates feel that they are assigned to work with the least influential partners and do not receive challenging assignments. Thus, minority associates do not have access to developmental opportunities and are not able to maximize their full potential.
- Minority associates are presumed to be less qualified than their non-minority peers. Thus, minority associates must consistently and significantly outperform non-minority associates in order to be judged equal. Mistakes made by minority associates are attributed to their inferior skills whereas mistakes made by non-minority associates are attributed to their lack of experience.
- Minority associates are skeptical that they will be made partners. They are also concerned that they lack access to the kind of clients which would make them attractive for partnership.
- Minority law firm partners are leaving firms at increasing rates and going to corporate law departments, government and partnerships at minority-owned firms; therefore, there are few role models available for minority associates.
- Minority partners often encounter difficulty generating business from corporate clients. They may be less likely to "inherit" clients from senior partners and may be bypassed for internal referrals and excluded from firm marketing initiatives.
- Few minority partners hold leadership positions within their firms.
- Inadequate supervision, feedback and mentoring, as well as onerous time demands, increase attrition of all associates - and may have a particular impact on minority associates.
- In addition to the problems outlined above, minority women attorneys are further isolated by firms' white, male-dominated culture.
- Although retention of minority attorneys is less of a problem in the public sector than in law firms, minority attorneys who work in the public sector sometimes believe they are not offered opportunities for advancement equal to their non-minority colleagues, and consequently do not continue in public service as long as they might otherwise.

## **Promotion**

- Law firms and other legal organizations often focus much attention and effort on recruiting minority lawyers, but not on providing the opportunity for them to advance to higher levels in the organization.
- There are few minority attorneys who are in partnership or significant managerial positions. Studies show that minority lawyers comprise fewer than 3% of law partners in most cities.
- Most minority partners tend to be at the lower levels of managerial power and financial remuneration.
- A law firm or legal organization which does not have minority leadership among its partners or managerial staff signals that diversity is a low priority in its organization.
- Few role models at the higher partnership levels in law firms causes minority associates to be discouraged about future career advancement and results in higher levels of attrition.
- Many minority partners in law firms leave for jobs in corporate law departments and government due to limited opportunity for advancement.
- Minority attorneys in law firms often experience a lack of client access and contacts, and are not given the necessary support by the firm to develop these contacts, resulting in the inevitable difficulty of advancing to partner status.

## **Mentoring**

- Minority associates encounter problems in obtaining effective mentoring.
- A particular problem is that because of the paucity of minority partners in law firms, few role models are available.
- Some believe that minority women have particular problems finding effective mentors.
- Many minority attorneys who work in solo practices or in small firms have little or no mentoring opportunities.

## **Training**

- Law organizations which undertake diversity programs sometimes declare defeat too early because the programs do not provide proper instruction and guidance about the difficulties presented by such programs.
- Problems often arise when a law organization chooses diversity consultants who do not have experience in working for other law organizations or who are not compatible with the law organization's personnel and strategies.

### **Support Groups**

- If a firm has few minority lawyers, they may naturally be less comfortable within the workplace and may require support groups that are unnecessary for non-minority lawyers.
- Support groups may be an important factor in a firm's ability to retain minority lawyers.
- Access to support groups for minority attorneys who work in solo practices or in small firms is especially important to provide opportunities to network and share experiences and ideas.

### **Quality of Professional Life**

- Although an increase in the number of minority attorneys employed by a law firm or legal organization is crucial, it is equally important to promote and foster a work environment where people's differences are appreciated and valued.
- The low number of minority attorneys in leadership positions in all segments of the legal profession creates an atmosphere which is exclusive and unfriendly to those who do not fit the standard profile of those in positions of power. Such an environment discourages attorneys from aspiring to the highest levels in the organization.
- Minority attorneys often do not have the support systems which their non-minority counterparts do. They also sometimes feel that they are being judged more harshly and not given the guidance and opportunities needed to develop their full potential and advance in the organization.
- Many attorneys, minority and non-minority, especially in law firms, feel that they are valued more for the amount of billable hours they

generate, than the unique talents and perspective they can bring to a legal matter. They feel that their work environment is dehumanizing and does not allow for a balanced life.

## **Current Initiatives**

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### **Ongoing Research Projects**

- "Pathways to Creating Diversity Research Project" being conducted by Minority Corporate Counsel Association (MCCA) and Hubbard and Revo-Cohen, Inc. (human resources firm specializing in diversity). Three year project, results to be available shortly.
- MCCA has already conducted a number of surveys and roundtable discussions to develop information on the state of diversity, case studies of companies that have been successful in diversity efforts, model plans for effecting diversity in corporate legal departments. Available in "Diversity Team Leader Panel Discussion Briefing Materials" (draft dated 5/20/00).
- NALP Foundation published study in March 1998 regarding associate attrition patterns, "Keeping the Keepers: Strategies for Associate Retention in Times of Attrition". Updated report on attrition released in 2000.

### **Commitment**

- "Diversity in the Workplace Statement of Principle", part of BellSouth project initiated by Charles Morgan. More than 250 corporations have committed. BellSouth is continuing its follow-up to Statement.
- "Statement of Goals of New York Law Firms and Corporate Legal Departments for Increasing Minority Representation and Retention", adopted 1991, renewed 1998, ongoing project of Committee to Enhance Diversity in the Profession, Association of the Bar of the City of New York.

### **Networking, exposure, mentoring**

- ABA Minority Counsel Program (structured networking, meetings).

- ABA Conference of Minority Partners in Majority Corporate Law Firms (Directory of Minority Partners in Majority Firms).
- ABA Minority In-House Counsel Group (projects to help in-house counsel gain exposure, such as directory, job listings).
- National and Local Minority Bar Associations, e.g., National Asian Pacific American Bar Association, National Bar Association, Hispanic National Bar Association, Asian American Bar Association of New York (networking, mentoring opportunities).
- Further information and recommendations on the subject of guidelines to creating mentoring programs in firms can be found in *The Lawyer's Guide to Mentoring* by Ida O. Abbott, Esq., sponsored by the New York Women's Bar Association Foundation, published by National Association for Law Placement, January 2000.

### **Recommendations on how to achieve diversity**

- Often available as part of completed/ongoing research projects, such as MCCA's "Diversity Team Leader Panel Discussion Briefing Materials" (Draft dated 5/20/00); ABA "Miles to Go 2000: Progress of Minorities in the Legal Profession".
- Available from consulting firms.
- Available from bar association committees, e.g., posting on ABA Young Lawyers website.

## **Recommendations**

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### **Recruitment**

- The legal profession must demonstrate its commitment to diversity by ensuring that individuals are not denied employment or career advancement opportunities because of their sex, race, religion, national origin, sexual orientation, age, or disability. The legal profession should examine its hiring processes and practices to eliminate any subtle or overt barriers to fair and equal entry by under-represented groups.

- Most differences between people, e.g., race, gender, religious background, do not indicate the level at which an individual will perform in a job. The legal profession must ensure that hiring decisions are not affected by any latent prejudgments which may exist about people based on individual differences in background.
- To increase familiarity and enhance the comfort level with people from different backgrounds, members of a law firm should be encouraged to initiate, or participate in committees, programs or projects that involve diverse individuals such as a joint committee or project of a majority with a minority bar association.
- There must be a recognition by all sectors of the legal community that focusing on a diverse and inclusive group of potential employees will result in an expanded talent pool from which to hire.
- With the globalization of business and the increasingly diverse population of the United States, a diverse group of lawyers, whether in the public or private sector or academia, is beneficial and desirable.
- All sectors of the legal profession must expand their search efforts for a diverse group of potential employees. For example, lawyers should be recruited from a broad range of law schools to increase the pool of lawyers from which to hire, and recruited laterally from the public sector to work in private firms and corporations. Lateral hiring would help increase the number of experienced role models and mentors for new minority associates.
- Recruiters should be pro-active in reaching out to a diverse group of legal talent, and network with individuals and organizations with access to a broad range of candidates, such as minority bar associations and job fairs. In addition, job opportunities for lawyers should be listed on employers' websites so that information about such opportunities will be available to the widest possible audience.
- Summer programs should be utilized to attract talented minority lawyers. They should be exposed to all aspects of the legal organization's practice and made to feel that their talents would be fully developed and appreciated if they accepted a permanent job offer.
- Law firms and public and private sector legal organizations must attract minority lawyers by showing a commitment to diversity such as

by issuing a diversity policy statement, and conducting training and workshops for all employees.

- All sectors of the legal profession must actively promote and create a work environment where all employees will be able to reach their full potential for professional growth and success in a supportive and inclusive atmosphere.
- Government operated programs, such as Assigned Counsel programs, must recruit a diverse group of attorneys and provide qualifying training programs to ensure minority attorney participation.

## **Retention**

- Firms and legal organizations should monitor attorney development and promotion practices, and develop action plans to eliminate barriers to fair and equitable attorney advancement.
- Firms with more minority partners will be better able to retain minority associates.
- Law firms need to address the problems which increase attrition for all associates if they wish to improve minority retention because the systemic problems affecting all associates will have a disproportionate impact on minority associates.
- Law firms should conduct formal diversity training (such as an intensive, structured workshop led by a professional diversity specialist) for all professional and non-professional employees.
- Law firms should improve all of their communication processes.
- Improvement of the evaluation process (such as development of clear and consistent criteria and expanded communication) will improve retention.
- To encourage firms to focus more on retention efforts, diversity goals should focus on the percentage of minority attorneys employed by law firms, not just on the number of minority attorneys hired.
- Law firms should insure that minority associates have opportunities to pursue significant work assignments and receive guidance and training to grow professionally.

- Law firms should prepare diversity policy statements which should be adopted by the firms. There should be meaningful broad-based participation in the process that leads to the preparation of the statement and its submission to the firm for adoption. The firm should include the diversity policy statement in the firm's personnel manual, website, recruiting materials, and other communications.
- Corporate clients should forcefully communicate to law firms their diversity expectations.
- Law firms should undertake formal diversity benchmarking exercises, including maintaining accurate records relating to the retention and promotion of minority attorneys within their firms. In addition, firms should establish an annual budget for diversity activities and ensure that funding is available to support the firm's diversity initiatives for several consecutive years.

## **Promotion**

- Differences among people should be respected and valued and not used to adversely impact upon whether someone is promoted.
- A legal organization's diversity policy or mission statement should address the need to not only recruit minority attorneys, but also to promote them to meaningful managerial positions.
- Law firms and public and private sector legal organizations should recognize that a diverse group of law partners and individuals in significant leadership roles will enhance the work environment and work product by providing a leadership group with a broader range of experiences and perspectives, and will result in a more informed body of leaders for the organization.
- Law firms and public and private sector legal organizations should recognize achievement by minority attorneys through promotion to positions of prestige and power within the organization. It is important that the titles of these positions signal to clients and other members of the firm that these persons hold significant positions within the organization.
- Efforts should be made by law firms to provide meaningful client access to minority lawyers to assist in advancing minority attorneys to partnership status. For example, activities by minority attorneys outside the firm, such as membership in professional and business

organizations, should be encouraged and supported by the law firm to assist minority attorneys in establishing contacts and building a client base.

- Opportunities to develop legal skills, such as participation in major cases and training and leadership seminars, should be provided by private and governmental organizations, to promote leadership by minority attorneys at the highest levels.

## **Mentoring**

- Associates should be mentored throughout their employment period.
- Time devoted to providing and receiving mentoring should be given the same credit as billed time.
- Mentoring programs should involve both senior and junior lawyers to assist minority lawyers.
- Mentors should be selected carefully; they should be seriously committed to the legal organization's diversity program; and they should receive diversity awareness training to make sure that they appreciate the implications of diversity issues for the mentoring process.
- The mentoring process and the performance by individual mentors should be periodically assessed and measured. Successful mentoring efforts should be reflected in the mentor's compensation.
- Mentors should assist minority lawyers in receiving and performing high quality work; in forming good relationships with people within the firm and with important clients; in receiving regular and meaningful feedback; and in developing some area of legal expertise that will lead to stature within the firm and to distinction outside of it.
- Mentors should devote particular attention to helping minority associates acquire business development skills.
- Bar associations should develop mentoring programs to enable attorneys who work in solo practices or small firms to interact with more experienced attorneys who work in the same practice area.

## **Training**

- Diversity training programs should be tailored to the particular needs and characteristics of each legal organization.
- Effective diversity programs focus on diversity awareness education and training as well as on increases in numerical representation of diverse groups. Law firms and public and private sector legal organizations probably will not be able to achieve and sustain numerical diversity unless they provide training with respect to attitudes and behavior.

### **Support Groups**

- Firms should provide funding for support groups (for example, if a support group is to meet once a month for dinner, the firm should arrange an appropriate venue and pay for the dinner).
- Support groups should devote particular attention to helping minority lawyers generate their own business.

### **Quality of Professional Life**

- The law firm or legal organization must foster mutual respect and appreciation for the differences among people, and recognize that those differences enrich the work environment and enhance the work product of the organization.
- The inclusion of attorneys from a variety of backgrounds at all levels of a legal organization creates an environment which shows by example that diversity is valued and promotes a feeling of comfort and belonging for people from all groups.
- Minority attorneys must have full and complete access to all the opportunities which their non-minority colleagues have to develop professionally, in both the public and private sector. This includes participation in the most important and complex cases, establishing relationships with major clients, participation in social events which foster closer ties with clients and supervisors, and participation in training seminars.
- Law firms in particular need to recognize that there is an increased level of job dissatisfaction among all associates. They must offer associates opportunities to participate in outside activities, such as pro bono work and bar associations, and find ways to reach a meaningful

balance between professional and personal obligations and commitments.

- Law firms and legal organizations should establish a formal diversity policy which sets forth their commitment to diversity principles and the ways in which they will achieve their diversity goals. All members of the organization should fully participate in this endeavor.

### **Best Practices**

- Detailed recommendations of numerous best practices for diversity programs in law organizations are set forth in Chapter 39 on "Diversity" (§§ 39:31-55) of *Successful Partnering Between Inside and Outside Counsel* (Robert L. Haig ed.) (West Group & ACCA 2000). This Task Force supports those recommendations.

### **Specific Proposals For Future Actions By Other Groups**

- Corporate counsel organizations like the American Corporate Counsel Association should encourage their members to communicate their diversity expectations to law firms.
- Organizations should develop and communicate the business case for diversity.
- Law firms and legal organizations should develop a diversity program which sets forth specific goals and a plan to achieve those goals, and monitor their progress on a regular basis.
- Bar associations should take steps to insure that their leadership and committees are diverse.
- Bar associations must promote diversity throughout all segments of the legal profession by forming committees which specifically study and report on diversity in the legal profession.
- Bar associations must educate the legal community and the public about diversity issues by issuing reports, holding public forums, and conducting CLE courses.
- Bar associations should develop mentoring programs and provide networking opportunities in which minority attorneys who work in solo practices or in small firms can participate.

- Pursuant to the oversight responsibilities of the office, the Chief Judge should implement a voluntary program requesting law firms and law organizations of 50 or more attorneys to provide an annual statement setting forth pertinent demographic information relating to the retention and promotion of minority and women attorneys and such data should be available to and reviewed by the relevant committees of the bar associations in the State on a regular basis.
- The bar associations, acting through their presidents, should convene a round-table of the managing partners of the largest firms in New York to discuss the "diversity imperative" within private firms in New York State.
- Law schools should forgive loans to students who become employed by public interest or government law offices.
- Corporate clients should require law firms to report the number of hours devoted to their matters by minority lawyers and the corporations should report the amounts of legal fees which the corporations pay for services rendered by minority lawyers.
- Law firms should host meetings of minority bar associations and should encourage the firms' own lawyers to attend the meetings to sensitize their lawyers to diversity issues.

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## ENDNOTES

1. <sup>1</sup>The term "minority" and its implications are open to some debate. For example, some of the diversity literature includes women (the Report of the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts (1997) treats the categories of "women" and "minorities" separately and equally) and some does not. The ABA's report by Elizabeth Chambliss, *Miles to Go 2000: Progress of Minorities in the Legal Profession* discussed *infra*, focuses only on African-Americans, Hispanics, Asian-Americans, and Native Americans. *See id.* at ix. The Report further distinguishes the category "African-American" as excluding Caribbean blacks, and points out that "Hispanic," "Asian-American," and "Native American" represent aggregations of many groups. *See id.* at n.1. Suffice it to say that all of the valid substantive and semantical arguments and exceptions that could be raised in a report such as this one will not be addressed. The Task Force fully recognizes that diversity issues also involve gender, gays and lesbians, and persons with disabilities. This report will use the four minority categories defined by the ABA. To the extent that statistics on women,

gays and lesbians, and persons with disabilities in the legal profession exist, they will be reported separately.

2. <sup>2</sup>See *President Clinton, ABA Call for Renewed Commitment to Racial Justice* (describing President Clinton's July 1999 Call-to-Action to the ABA urging a renewed commitment to racial justice in an effort to ensure continued faith in the legal system), at <http://www.diversityinc.com/News/abaclinton.cfm> (visited May 4, 2001).

3. <sup>3</sup>See *id.*

4. <sup>4</sup>See notes 23-48 and accompanying text for a discussion on Retention issues.

5. <sup>5</sup>See Marion A. Cowell, Jr. and W. Randy Eaddy, *Diversity*, in *Successful Partnering Between Inside and Outside Counsel*, Chapter 39:1-5 (Robert L. Haig, ed.) (West Group & ACCA 2000), (discussing the need to clarify what an effective diversity initiative should seek to accomplish, compared to an affirmative action program, and how workplace diversity initiatives are not complete and will be unsuccessful unless they are expanded to include diversity attitudes and principles). The authors suggest that "[d]iversity in the workplace refers to both tangible numerical diversity and an intangible atmosphere of respect for and appreciation of the 'self-defining' differences among people." *Id.* at 1:5 (footnote omitted). The authors ultimately argue that the diversity principle and its implementation in the workplace are "good for business, regardless of whether it is an imperative for social or other reasons." *Id.* at 5:22 (footnotes omitted).

6. <sup>6</sup>Elizabeth Chambliss, *Miles to Go: Progress of Minorities in the Legal Profession*, ABA Comm. on Opportunities for Minorities in the Profession, Report (1998) [hereinafter *Miles to Go 1998*].

7. <sup>7</sup>Elizabeth Chambliss, *Miles to Go 2000: Progress of Minorities in the Legal Profession*, ABA Comm. on Racial and Ethnic Diversity in the Profession, Report (2000) [hereinafter *2000 Report*]. With an interesting play on the report's name, ABA President William G. Paul, commented "We've got a long way to go in the legal profession." *Bar Association Study Finds Little Diversity*, N.Y. TIMES, July 9, 2000, at A22.

8. <sup>8</sup>*Id.* at x.

9. <sup>9</sup>See 2000 Report, *supra* note 8, at ix; *see also id.*, Table 2, at 2 (describing the statistics for African-American and Hispanic representation in other major professions).
10. <sup>10</sup>See Miles to Go 1998, *supra* note 7, at ix; 2000 Report, *supra* note 8, at ix.
11. <sup>11</sup>See 2000 Report, *supra* note 8, at ix.
12. <sup>12</sup>As to entry, the 2000 Report states that recent changes in admissions policies in various law schools have affected minority enrollment, especially in states that have banned affirmative action programs, and that in 1999, the number of minority law school graduates dropped for the first time since 1985. *See* 2000 Report, *supra* note 8, at ix n.11 (citing data on file with the ABA Commission on Racial and Ethnic Diversity in the Profession).
13. <sup>13</sup>*See id.* (citing National Association for Law Placement, *Keeping the Keepers: Strategies for Associate Retention in Times of Attrition: A Best Practices National Research Study on Lawyer Careers* (1998), at 54-55. *See also*, National Association for Law Placement, *Beyond the Bidding Wars: A Survey of Associate Attrition, Departure Destinations and Workplace Incentives* (2000) (follow-up study to *Keeping the Keepers*, indicating that there has been minimal but not significant change in overall attrition).
14. <sup>14</sup>See 2000 Report, *supra* note 8, at ix (citing David B. Wilkens, *Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. STUD. LEGAL ETHICS 15, 20 (1999)).
15. <sup>15</sup>See 2000 Report, *supra* note 8, at 3.
16. <sup>16</sup>See *id.* Table 10, at 5.
17. <sup>17</sup>See *id.*; Table 13, at 6.
18. <sup>18</sup>See *id.* at 4; Table 13, at 6.
19. <sup>19</sup>See *id.* at 6; Table 18, at 8.
20. <sup>20</sup>See *id.*
21. <sup>21</sup>See 2000 Report, *supra* note 8, at 6; Table 19, at 9.

22. <sup>22</sup>See *id.* at 6-8; Table 23, at 11. Table 23 reveals that within three years, 43% of all associates have left their employers. This includes 41.5% of all male associates, 45.2% of all female associates, 51.7% of all minority female associates, and 54% of all minority male associates; see also *NALP Foundation Study Reveals Associate Attrition Patterns*, March 1998 (revealing that when NALP conducted focus groups to gather qualitative data on attrition rates among all associates, the data revealed that while compensation was one of the top factors initially attracting associates into private practice, personal and professional satisfaction soon became a competing consideration), at <http://www.nalp.org/Foundation/keepers.htm> (last visited May 4, 2001). In addition, the study offered evidence that decisions to leave or stay at a firm were influenced, among other factors, by development opportunities, work assignments, the amount of feedback received, availability of mentoring, and the often unspoken policies of balancing life and practice. *Id.*

23. <sup>23</sup>See *id.* at 7 (citing Ritchenya Shepard, *Law Firm Management: To Recruit Minorities, Retain*, NAT'L L. J., Nov. 2, 1998, at 17).

24. <sup>24</sup>*Id.* at 7.

25. <sup>25</sup>See *id.*; see also *The Statement of Goals-Six and One-Half Years Later*, Association of the Bar of the City of New York, Comm. to Enhance Diversity in the Profession, Report (1998), at n.6 (pointing out that because of the typical 7-8 year partnership track at most law firms, minority representation among partners would not be expected to increase until 2001 or 2002). In 1991, 144 New York law firms and 42 corporations signed the *Statement of Goals of New York Law Firms and Corporate Legal Departments for Increasing Minority Representation and Retention*.

26. <sup>26</sup>See Anna Snider, *Minorities, Women Remain Static*, N.Y.L.J., Mar. 2, 1998, at 1.

27. <sup>27</sup>See *id.*

28. <sup>28</sup>Jonathan D. Glater, *Few Minorities Rising to Law Partner*, N. Y. Times, Aug. 7, 2001, at A1.

29. <sup>29</sup>*Id.*

30. <sup>30</sup>Kathryn Kranhold, *Minority Attorneys Say Partnerships Still Elusive*, *Wall Street Journal.*, Oct. 23, 1996, at

<http://people.we.mediaone.net/deneve/Firms.html> (last visited May 4, 2001); see also 2000 Report, *supra* note 8, Table 21, at 10 (disclosing the numbers as of 1999). For San Francisco law firms that reported data to NALP, minorities made up 5.25% of all partners, 20.24% of all associates, and 27.62% of all summer associates. *Id.*

31. <sup>31</sup> See 2000 Report, *supra* note 8, at 7.

32. <sup>32</sup> *Id.* at 8.

33. <sup>33</sup> See *id.*

34. <sup>34</sup> *Id.* at 8 (citing Elizabeth Chambliss and Christopher Uggen, *Men and Women of Elite Law Firms: Reevaluating Kanter's Legacy*, 25 *Law & Social Inquiry* 41 (2000)).

35. <sup>35</sup> See *id.*

36. <sup>36</sup> *Id.* at 27 (citing Verna Myers, *Building the 21<sup>st</sup> Century Law Firm: Embracing Diversity Means Bracing for Change*, *THE RECORDER*, January 31, 2000).

37. <sup>37</sup> See Report and Recommendations with Regard to the Statement of Goals for Increasing Minority Retention and Promotion [hereinafter the Task Force Report] (a.k.a. "The Statement of Goals--Six and One-Half Years Later") (providing an update and status report on progress made between September 1991 and December 1997) (last visited May 4, 2001), at <http://www.abcny.org/minority.htm>. In the Statement, the signatories agreed to the following goals:

Achieving "participation of Minority lawyers at all professional levels in its law firm or corporate legal department." (emphasis added).

Achieving the goal of hiring Minority lawyers "equal to 10 percent of the total number of all lawyers hired by such firm or corporate legal department during the period 1992-1997."

Promoting or inviting to partnership or senior corporate counsel positions Minority lawyers who meet the Signatory's requisite criteria so that "the number of Minority partners and senior corporate counsel will correspond more closely to the percentage of Minority lawyers hired by the firm or corporate legal department."

*Id.*

38. <sup>38</sup> See Task Force Report, *supra* note 36.

39. <sup>39</sup> See Report on the Retention of Minority Lawyers in the Profession, by the Subcommittee on Retention of the Committee to Enhance Professional Opportunities for Minorities, 48 THE RECORD 355, 356 (1992).

40. <sup>40</sup> *Id.* at 356.

41. <sup>41</sup> *Id.* at 357.

42. <sup>42</sup> See *id.* at 358.

43. <sup>43</sup> *Id.* at 361.

44. <sup>44</sup> See *id.* at 363-64. An "Assistant" was hired in November 1992. See *id.* at 355.

45. <sup>45</sup> See Task Force Report, *supra* note 36. At 25 of New York City's largest law firms, minority hiring increased from 13.2% in 1992 to 17.5% in 1997. See *id.*

46. <sup>46</sup> See *id.* The Task Force on Minorities that issued the Report and Recommendations also recommends that the Association publish an annual or interim report on minority hiring and retention, and further recommends a strengthening of the commitment by the Association and the signatories to promote minority attorneys to partnership and senior corporate counsel positions. See *id.*

47. <sup>47</sup> *Id.*

48. <sup>48</sup> See *id.*

49. <sup>49</sup> See *id.*

50. <sup>50</sup> See MCCA National Survey at <http://www.mcca.net/site/data/corporate/BP/Watch/1998Survey.htm> (last visited May 4, 2001) [hereinafter MCCA Survey]. MCCA, along with the National Bar Association, the National Pacific Bar Association, and the Hispanic Bar Association, sent a one-page survey to every Fortune 1000 corporation; 21% of the corporations responded. In addition, Noelle-Elaine Media Consultants conducted a telephone survey of the Fortune 500, consisting of one question: "Is the general counsel who reports directly to the chief executive officer a member of

an ethnic minority?" 498 of the 500 corporate law departments responded.

51. <sup>51</sup> See Minority Corporate Counsel Association, *Diversity Team Leader Panel Discussion Briefing Materials*, at 1 (May 20, 2000) (discussing the results of recent surveys and goals and strategies for promoting diversity), at <http://www.mcca.net/data/BestPractices/bp2000.pdf> (visited Aug. 8, 2000) [hereinafter MCCA Briefing Materials].

52. <sup>52</sup> See 2000 Report, *supra* note 8, at 8 (citing the MCCA National Survey and MCCA Briefing Materials, *supra* note 50, at 6).

53. <sup>53</sup> See MCCA Survey, *supra* note 49 (considering African-American, Asian American, Latino, and Native American ethnic minorities).

54. <sup>54</sup> See *id.* This question comprised the telephone portion of the survey.

55. <sup>55</sup> See 2000 Report, *supra* note 8, at 8 (citing the MCCA National Survey and MCCA Briefing Materials, *supra* note 50, at 8).

56. <sup>56</sup> See 2000 Report, Table 18, *supra* note 8, at 8 (indicating that minority representation as of 1998 stood at 13%); see also MCCA Briefing Materials, *supra* note 50, at 4.

57. <sup>57</sup> See MCCA Briefing Materials, *supra* note 50, at 5.

58. <sup>58</sup> See 2000 Report, *supra* note 8, at 9 (quotations in original).

59. <sup>59</sup> See *id.* at 10.

60. <sup>60</sup> *Id.*

61. <sup>61</sup> See 2000 Report, *supra* note 8, at 8.

62. <sup>62</sup> See 2000 Report, *supra* note 8, at 8; Table 28, at 13.

63. <sup>63</sup> See Siobhan Roth, *In-House Lawyers are Still Mostly White*, N.Y.L.J., Aug. 8, 2000, at 5.

64. <sup>64</sup> *Id.* at 8, 34.

65. See *id.* at 34 (describing how having a diverse legal staff "affects the bottom line" and especially with in-house employment law work,

having minority attorneys "can be a boon to the corporation and beneficial to the bottom line."); see also Cowell, Jr. and Eaddy, *Diversity*, in *Successful Partnering between Inside and Outside Counsel*, *supra* note 5, at 39:5, at 22 (arguing that diversity principles and programs are good for business apart from social policy justifications).

66. <sup>66</sup>See *id.* at 5; cf. MCCA Briefing Materials, *supra* note 50, at 8 (suggesting that according to their 1999 Survey of Minority General Counsel in the Fortune 500, there were 11 minorities (2.5%), eight of whom were appointed within the last three years).

67. <sup>67</sup>MCCA Briefing Materials, *supra* note 50, at 8.

68. <sup>68</sup>See *id.* at 9.

69. <sup>69</sup>See *id.*

70. <sup>70</sup>See Siobhan Roth, *In-House Lawyers are Still Mostly White*, N.Y.L.J., Aug. 8, 2000, at 34.

71. <sup>71</sup>*Report of the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts* (1997), at 1 [hereinafter the Report]. This Report borrows heavily from the *Report of the Working Committees to the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts* (1997) [hereinafter the Committees' Report] and should be consulted for a comprehensive look at the Second Circuit's study. The Second Circuit also included an extensive survey in the Report on the perceptions of all who use and are a part of the Second Circuit's courts. The Second Circuit's Reports can also be found at: 1997 ANN. SURV. AM. L. 11; 1997 ANN. SURV. AM. L. 124; 1997 ANN. SURV. AM. L. 419; 1997 ANN. SURV. AM. L. 529.

72. <sup>72</sup>See Table A, *id.* at 8. The Table does not define "White." Presumably, it refers to those who were self-identified as "White" in the 1990 Census. In New York State's four federal districts, the total population in New York State was 17,990,455; 12,818,633 or 71.3% were identified as "White." "Minority" includes the totals of all identified as African-American/Black (2,599,364, or 14.4% in New York's four federal districts); American Indian (49,552 or .28% in New York's four federal districts; the term American Indian is used by the Second Circuit, and the Committees' Report indicates that is preferred by the tribe members themselves. See Committees' Report, *supra*, note 70, at 20 n.46.); Asian-American (671,985, or 3.7% in New

York's four federal districts); Latino/Hispanic (any race) (2,153,126, or 12% in New York's four federal districts); and Other (26,798 or .15% in New York's four federal districts).

73. <sup>73</sup>Article III judges are appointed by the President and confirmed by the U.S. Senate. *See Report, supra* note 70, at 11.

74. <sup>74</sup>*See* Table 11, *id.* at 35. The source of the Table's data was taken from the Second Circuit Reports 1991-1995 and the Office of the Circuit Executive.

75. <sup>75</sup>*See* Table 13, *id.* at 36.

76. <sup>76</sup>*See id.*

77. <sup>77</sup>*See id.* Therefore, while some numerical increases can be identified, Hispanic/Latino, Asian-American, and American Indian judges are under-represented on the Bench at the federal level compared to general representation in society. Indeed, the 1996 data reveals that there were no American Indian judges in the Second Circuit. *See id.*

78. <sup>78</sup>*See* Committees' Report, *supra* note 70, at 26.

79. <sup>79</sup>*See* Table 6, *id.* at 30. Senior judges are those judges "who at age 65 or thereafter, upon the completion of 15 years of service (or a combination of years of service plus age equalling 80 [sic]), have elected senior status, thereby creating a vacancy among the active judges of the court." Report, *supra* note 70, at 12 n.12.

80. <sup>80</sup>*See* Committees' Report, Table 7, *supra* note 70, at 30.

81. <sup>81</sup>*See id.* at 30.

82. <sup>82</sup>*See id.* at 31.

83. <sup>83</sup>*See id.* at 32.

84. <sup>84</sup>*Id.* at 34.

85. <sup>85</sup>*See id.* at 40.

86. <sup>86</sup>*See* Committees' Report *supra* note 70, at 40.

87. <sup>87</sup>The Committees' Report explains that the data in this portion of the Report were not collected in the same manner as in other portions. Records on the ethnicity, race, and gender of attorneys practicing before Second Circuit courts are not kept. The names of the attorneys of record were obtained from docket sheets; they were contacted and asked to identify the name, race, ethnicity, and gender of all attorneys who worked on a given case. See Committees' Report, *supra* note 70, at 40-41.

88. <sup>88</sup>See Table 18, *id.* at 43.

89. <sup>89</sup>See *id.*

90. <sup>90</sup>See Table 17, *id.* at 42.

91. <sup>91</sup>See *id.*

92. <sup>92</sup>See *id.*

93. <sup>93</sup>See Committees' Report *supra* note 70, at 44.

94. <sup>94</sup>See *id.*

95. <sup>95</sup>See Report of the New York State Judicial Commission on Minorities (1991), Vol. 1, at 2 [hereinafter Commission Report].

96. <sup>96</sup>See *id.* at 2-3.

97. <sup>97</sup>See Commission Report, *supra* note 94, Vol. 4, at 94.

98. <sup>98</sup>See *id.*

99. <sup>99</sup>See *id.* at 95.

100. <sup>100</sup>Equal Justice: A Work in Progress, The Franklin H. Williams Judicial Commission on Minorities (1996), Five-Year Report, at 3 [hereinafter Five-Year Report]. In 1991, the New York State Judicial Commission on Minorities was established as a permanent entity and renamed the Franklin H. Williams Judicial Commission on Minorities. See *id.* at 8. The Commission is currently located at 25 Beaver Street, New York, NY 10004. The Five-Year Report also cites the progress made by minority judges at the federal level. Within President Clinton's first 17 months in office, "the percentage of African-American and Latino judges increased, respectively, from 5.4% to 7.8% and 4.0% to

4.6%; one Asian American and one Native American were also appointed." *Id.* at 20 (citing Sheldon Goldman & Matthew D. Saronson, *Clinton's Nontraditional Judges: Creating a More Representative Bench*, 78 JUDICATURE 68 (1994)).

101. <sup>101</sup>Five-Year Report, *supra* note 99, at 3.

102. <sup>102</sup>*See id.* at 20.

103. <sup>103</sup>*See id.* For a court-by-court breakdown of minority judge representation, see Chart A, Appendix, at 67.

104. <sup>104</sup>*See* Commission Report, *supra* note 94, at Vol. 4, at 81.

105. <sup>105</sup>*See id.* at 82.

106. <sup>106</sup>*Id.* at 82.

107. <sup>107</sup>*See id.*

108. <sup>108</sup>*See id.*

109. <sup>109</sup>Five-Year Report, *supra* note 99, at 3 (citing Bruce Balestier, *Large Firms Seen Meeting Minority Hiring Goals*, N.Y.L.J., Apr. 1, 1997, at 1).

110. <sup>110</sup>*See* Five-Year Report, *supra* note 99, at 4.

111. <sup>111</sup>*See* Five-Year Report, *supra* note 99, at 3 (citing National Association for Law Placement, *Women and Minority Representation in Law Offices*, Press Release (1996)).

112. <sup>112</sup>*See* Five-Year Report, *supra* note 99, at 22 (citing Ann Davis, *Big Jump in Minority Associate, But . . .*, NAT'L L.J., Apr. 29, 1996, at 1).

113. <sup>113</sup>*See id.*

114. <sup>114</sup>Because the Second Circuit devoted a substantial amount of effort to examining the perceptions and experience of racial, ethnic, and gender fairness, it will be treated here. Quotations and the material generally are used with the authors' permission. The Second Circuit enlisted the School of Public Affairs at Baruch College and Louis Harris and Associates, Inc. to conduct an extensive survey "to

understand . . . the key players in the federal courts of the Second Circuit [and to] describe the effect, if any, of gender and race/ethnicity on the administration of justice." **A Report of the Perceptions and Experiences of Lawyers, Judges, and Court Employees Concerning Gender, Racial and Ethnic Fairness in the Federal Courts of the Second Circuit of the United States**, at 1 [hereinafter the Baruch Study]. The Baruch Study points out that although some perceptions and observations may be real and others may be distorted, to the extent that there are systematic differences in the experiences of various classes (for example, white men versus women and racial/ethnic minorities), the differences "should be reported as one of the realities of life within the Second Circuit." *Id.* at 18. Indeed, "the premise of this study is that feelings about the way an institution works, or one's subjective experience of that setting, provide an essential lens for understanding a reality of how an institution operates in the eyes of various beholders." *Id.* (emphasis in original). For a blistering criticism of the draft version of the Second Circuit's report, see Jeffrey M. Duban, Banishing Bias: The Second Circuit's Draft Report on Gender, Racial and Ethnic Fairness in the Courts, N.Y. ST Bar Journal, December 1997, Vol. 69, No. 8 (describing the Report's mandate as dated and suggesting that the Report's statistical analysis "seeks to impart a hard-sciences cachet to what is essentially a sociological survey. Statistics prove too little by seeking to prove too much."), at <http://www.nysba.org/media/barjournal/duban.html> (last visited May 4, 2001).

115. <sup>115</sup> See Baruch Study, *supra* note 113, at 1. Because the report is 166 pages long and contains four Appendices and 37 Tables, only a summary of the Study's findings will be mentioned here. The complete report should be consulted for a comprehensive examination of the Perceptions Survey.

116. <sup>116</sup> Baruch Study, *supra* note 113, at 2.

117. <sup>117</sup> See *id.*

118. <sup>118</sup> See *id.*

119. <sup>119</sup> See *id.* at 3.

120. <sup>120</sup> See *id.*

121. <sup>121</sup> See *id.*

122. <sup>122</sup>This part of the survey covered four areas: (1) the overall treatment of lawyers; (2) whether there is any sexually biased treatment of lawyers; (3) whether there is any racially/ethnically biased treatment toward lawyers; and (4) lawyers' own experiences regarding sexually or racially/ethnically biased treatment. *See id.* at 3.

123. <sup>123</sup>*See id.* at 4.

124. <sup>124</sup>*See id.*

125. <sup>125</sup>Baruch Study, *supra* note 113, at 4.

126. <sup>126</sup>*See id.* at 5.

127. <sup>127</sup>In this part of the survey, judges, lawyers, and court employees were asked whether they observe "often," "occasionally," "seldom," or "never" the following indicators of sexual bias toward female attorneys: whether female attorneys were (1) ignored, interrupted, or not listened to; (2) mistaken for non-lawyers; (3) questioned about their sexual orientation; (4) coached or helped in a patronizing manner; or (5) challenged regarding their competence as an attorney *See id.* at 5.

128. <sup>128</sup>*See id.*

129. <sup>129</sup>*See id.* at 5-6.

130. <sup>130</sup>*See id.* at 6.

131. <sup>131</sup>*See* Baruch Study, *supra* note 113, at 6 (alterations in original).

132. <sup>132</sup>Fifty-four percent of white male lawyers, 76.8% of white female lawyers, 78.9% of minority male lawyers, and 80% of minority female lawyers reported observing gender-biased treatment of lawyers.

133. <sup>133</sup>Like the questions regarding observations of gender bias, judges, lawyers, and court employees were asked whether they observe "often," "occasionally," "seldom," or "never" the following indicators of racial/ethnic bias directed at attorneys: whether attorneys were (1) subjected to derogatory ethnic comments; (2) ignored, interrupted, or not listened to; (3) mistaken for non-lawyers; (4) coached or helped in a patronizing manner; (5) challenged regarding

his or her competence as an attorney; or (6) subjected to an imitation or parody of an accent. *See id.* at 6-7.

134. <sup>134</sup>*See id.* at 7.

135. <sup>135</sup>*See id.*

136. <sup>136</sup>*See id.*

137. <sup>137</sup>*See id.*

138. <sup>138</sup>Parties and witnesses were not surveyed directly. Rather, judges, lawyers, and court employees were asked about their observations of any sexually- biased treatment and/or racial or ethnic bias in the treatment of parties and witnesses. As to sexually- biased treatment, judges, lawyers, and court employees were asked whether they observed incidents where parties and witnesses were (1) ignored, interrupted, or not listened to; (2) helped or coached in a patronizing manner; (3) subjected to remarks on sexual orientation; or (4) subjected to derogatory comments about gender. *See id.* at 9. Judges, lawyers, and court employees were also asked whether they have observed incidents of racial or ethnic bias where parties or witnesses were (a) ignored, interrupted, or not listened to; (b) coached or helped in a patronizing manner; (c) subjected to derogatory racial or ethnic comments or (d) subjected to an imitation or parody of an accent. *See id.* at 11.

139. <sup>139</sup>*See id.* at 9-10.

140. <sup>140</sup>*See id.* at 10.

141. <sup>141</sup>*See id.*

142. <sup>142</sup>*See* Baruch Study, *supra* note 113, at 11.

143. <sup>143</sup>*See id.*

144. <sup>144</sup>*See id.* at 12.

145. <sup>145</sup>*Id.* at 12-13.

146. <sup>146</sup>The Post-Law School Subcommittee wishes to acknowledge the invaluable contributions of the Honorable Deborah A. Kaplan, Civil Court Judge and former Principal Court Attorney to the Honorable

Juanita Bing Newton and Counsel to the Task Force, and Kevin P. Cummins while a law student at Fordham Law School. Mr. Cummins is currently an associate at the firm of Wormser, Kiely, Galef & Jacobs in New York City.

147. <sup>147</sup> The Task Force acknowledges with appreciation the many facts and recommendations included in this Report which have been derived from Chapter 39 on "Diversity" of a new four volume publication entitled *Successful Partnering Between Inside and Outside Counsel*(Robert L. Haig ed.) (West Group and ACCA 2000).

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## Appendix A

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January 11, 2001 Evening Forum on Increasing Diversity in the Legal Profession

Scheduled Speakers:

Renaye Brown Cuyler President, Metropolitan Black Bar Association

Hon. George Daniels Judge, United States District Court

Francine James First Deputy, New York State Attorney General's Office

Lloyd M. Johnson Jr. Chair, Minority Corporate Counsel Association

Lynn M. Kelly Executive Director, MFY Legal Services, Inc.

Sandra Leung Member, Task Force

Beverly McQueary Smith Professor of Law, Touro College

Damaris Torrent President, Puerto Rican Bar Association

Paul T. Williams Jr. President, One Hundred Black Men, Inc.

Member, Task Force

Remarks of Paul T. Williams Jr., President of One Hundred Black Men, Inc.,

Evening Forum, January 11, 2001

Task Force to Increase Diversity in the Profession

Judge Newton and members of the Task Force, thank you for allowing me the opportunity to make a statement at these proceedings.

First, I wish to inform you that I appear here tonight really wearing three hats. Of course, I am a member of the Task Force. But, I also speak tonight as a partner in the law firm of Bryan Cave, LLP. Let me tell you, if I may, a little about my firm.

Bryan Cave is a corporate firm with nearly 600 lawyers. With offices in seven major cities in the United States and overseas offices in London, Hong Kong, Shanghai and the Middle East, we represent corporate clients in the full range of legal issues faced by business today.

Law is a profession, but it is also a business, and in New York City, it is a very big business. I think it is important for the Task Force to take note of the fact that no representatives of any of the large New York firms are in attendance tonight or to my knowledge have submitted remarks to the Task Force, despite ample notice and opportunity.

Which brings me to the third hat I wear tonight. I am also here in my capacity as president of One Hundred Black Men, Inc., which is a 38 year old charitable, civic organization founded here in New York City. Today, our New York organization is a chapter in a national and international organization encompassing over 7,000 men in over 80 cities. Here in New York, our group has been focused throughout the years on education, particularly programs aimed at young people attending our public high schools, economic development, and of course, civil rights.

As we have heard in some of the statements this evening, many proponents of diversity today make the 'business case' for diversity. As Lloyd Johnson's presentation made so clear, the Minority Corporate Counsel Association has been particularly effective and aggressive in this regard.

Make no mistake. I applaud and welcome those efforts.

But, if there is one thing I feel compelled to do tonight that is to remind the panel that the issue of diversity is not simply a business issue--but rather remains, principally, a moral issue for the legal

profession--and, as such, the pursuit of diversity must not be or become subject to curtailment or derailment due to cyclical or transitory budget constraints, economic trends or other fiscal factors that effect the allocation of time, money and resources within a business entity, whether that be a private law firm, a major corporation or agencies within the public sector.

In much of my lifetime, and for all of my parents lifetime, major institutions of the bar, including private firms in New York were off-limits to Blacks--and it didn't matter what school you attended; it didn't matter what grades you received; it didn't matter whatever your personal background.

Forget about applying to the American Bar Association for membership in the forties or, becoming an associate in a New York firm in the fifties or sixties. Even in the seventies, pervasive racial discrimination was evident at too many New York firms.

I graduated from Yale University as an undergraduate and then from Columbia University School of Law in 1977. In response to an inquiry I made to a firm, I was invited to speak with a partner. I thought I had been invited in for an interview, but within moments of our meeting, it was clear that I had been mistaken. Why, I asked, had he invited me in at all, if there was no legitimate interest in my hiring? Well, he said, I just wanted to see what one looked like...

Other colleagues at the time had to deal with the indignity of being offered salaries lower than their white counterparts. Has there been progress since then? Of course there has been progress, but not nearly enough.

I joined Bryan Cave as a partner just about three years ago. At the time, the firm had been in New York for 12 years. As I understand it, I was the first African-American attorney to work in any capacity in our offices in New York. Today, I am pleased to report that we have made progress--now, out of over 50 lawyers, we have eight attorneys of color. There is still room for growth, yet in terms of New York firms, both in terms of raw numbers and as a percentage of our attorney population, our office is well above the norm with respect to the issue of diversity.

In New York City of all places--a city which prides itself on its diverse racial and ethnic makeup; a city which thinks of itself as a great cosmopolitan center; a city which in fact is comprised of a majority of

residents who are racial or ethnic minorities--in New York City of all places, there are still too many 200-300 even 400 attorney firms with few, if any, Black and Latino associates, and fewer, if any, Black or Latino partners.

I submit that the issue today is not lack of talent. Until three years ago, a venerable New York 'white-shoe' firm of well over 300 lawyers had no Black partners ever, throughout its over 100 year history. But, over the course of 20 plus years, it managed to 'graduate' from its ranks after 3, 4, 5 or more years, attorneys who went on to distinguish themselves in practice, in each instance, in their future employment. Today, at last count, that firm had 1 Black partner, and the exodus of minority associates continues. That circumstance repeats itself time and again at too many firms in New York.

I submit that the issue is not one of talent, but there is a question of "will." Do the leaders of New York and the partners of influence in New York firms have the will to change the status quo, to find ways, not only to attract attorneys of color, but to retain them and promote them to the highest levels of the profession?

It is time for renewed and re-invigorated leadership on this issue--but if change is the outcome hoped for, then that leadership must be from the "top" down, not from the bottom, up.

With that perspective in mind, I propose that under the auspices of NYCLA, the courts, the Minority Corporate Counsel Association, and, perhaps, one or more of our leading civic groups such as One Hundred Black Men or the Association for a Better New York, that a roundtable of managing partners of the 10 largest firms in New York be convened to address, in particular, the issue of the retention and promotion of Black and Latino attorneys in New York's largest firms.

I am cautiously optimistic that such collective focus on this issue can spawn new solutions to a problem which is far too old and which has lingered far too long. Without such an effort, yet another generation of talented, ambitious attorneys, who happen to be Black or Latino, will be locked out of mainstream practice in New York, and the benefits that might be derived from them, to the profession, to the corporate clients we serve, and to our city, will be lost forever.

## THE BROWNING OF THE BAR: WHY LAWYERS SHOULD ACT

2001 By Beverly McQueary Smith <sup>(1)</sup>

Lawyers can help shape who gets to attend their alma maters, and they should. All of us who have attended and graduated from law schools in the United States of America must monitor who is getting a chance to enroll in our law schools in 2001. If we fail to be vigilant, then we may end up attending a law school reunion 30 to 50 years hence and find that our law school has lost its competitive edge because of its failure to admit students of color. In an increasingly diverse America, we need an educated and informed workforce that looks like all of America. Diverse students in our classrooms help to fashion a better-educated workforce. In America, where people peacefully decide disputes by deferring to the legal system and the rule of law, we need people who respect the institution and its members because its validity stems from a policy of inclusion, not exclusion. As rights-givers and rights-protectors, lawyers of goodwill work to protect the rights and interests of those who are unable or less able to defend and represent themselves. Viewed from this perspective, lawyers and members of the organized bar, must work to promote the rigorous implementation of ABA Standard 211<sup>(2)</sup> which requires law schools to provide full opportunities for the study of law and entry into the profession by qualified minority groups, notably racial and ethnic minorities, which have been victims of discrimination in various forms.

Data show that by 2030, approximately 40 percent of all Americans are projected to be members of minority groups.<sup>(3)</sup> Thus, schools' practices of excluding or limiting minority enrollment threaten disastrous consequences to those institutions themselves, to the legal profession as a whole and to our bar associations. After the passage of Proposition 209,<sup>(4)</sup> University of California at Los Angeles Law School enrolled only two Black students in its entering class in August 1999.<sup>(5)</sup> After *Hopwood v. Texas*,<sup>(6)</sup> Black enrollment at the University of Texas School of Law similarly dropped.<sup>(7)</sup> The enrollment numbers for members of other minority groups remain as dismal. Apart, from any narrow, parochial interest we may have in preserving our alma maters, other societal benefits flow from promoting diversity in our educational institutions.

In their empirical study, *The Shape of the River*, which examines thirty years of affirmative action among selective institutions of higher education that used race as a factor to admit students, William Bowen

and Derek Bok conclude that affirmative action led to striking gains in the representation of minorities in the most lucrative and influential occupations.<sup>(8)</sup> They also found that "[t]he growth of minority managers and professionals has been encouraged by a widespread recognition of the pressing need for greater diversity at all levels of responsibility and in all walks of life. Evidence of this recognition is provided by the actions of leaders throughout government, business, and the professions. "<sup>(9)</sup> Moreover, they assert that government officials will have difficulty producing enlightened policies and find it hard to enjoy the confidence of the minority community if an overwhelmingly white cabinet and Congress are making the decisions affecting the lives of such an increasingly diverse, multiracial society. Business leaders know that minorities generate more than \$600 billion in purchasing power and that they make-up more than one-third of all new entrants to the workforce. In this marketplace, a diverse corporate leadership can be valuable both to understand the markets in which many companies sell and to recruit, manage, and motivate the workforce on which corporate performance ultimately depends. Business executives who understand the bottom-line, state that corporations will not be healthy unless the society is healthy, and a healthy society in the twenty-first century will be one in which the most challenging, rewarding career possibilities are perceived to be, and truly are, open to all races and ethnic groups.<sup>(10)</sup> In sum, therefore, lawyers must work to ensure that our institutions of higher learning admit, retain and graduate people of color.

Here are some concrete action steps that persons of goodwill can take to promote diversity in the legal academy. Note that the American Bar Association inspects accredited law schools every seven years.

- Volunteer to serve on an accreditation team and to determine whether the law school complies with Standard 211.
- At meetings of the alumni association, pointedly ask your deans or their representatives how many minority students are enrolled, dismissed or graduated.
- Determine the number of minority students who need financial aid and endow a fund to help them avoid the perils of work-study which diverts their attention away from focusing on their academic performance.

- Contribute money to help defray the tuition costs for minority students. Under the leadership of ABA President Bill Paul, the ABA setup a scholarship fund for minority students.
- Serve as mentors for minority students.
- Provide jobs, externships, or internships for minority students so they will gain useful and practical instruction on how to survive in law school and as a member of the profession.
- Write the dean of your alma mater a letter inquiring about the state of its hiring of minority faculty and other administrators and its recruitment, admission and retention of minority students.
- Help open the pipeline by having your bar association adopt a high school, junior high school or elementary school. Lawyers can reach back to serve as role models for students who can hardly see the proverbial light at the end of the tunnel. Each one should reach one and teach one! The New York County Lawyers' Association adopted the Ralph Bunche High School last year under the leadership of then President Stephen Hoffman.
- Work to close the technology gap or the digital divide in the public schools in your community by implementing a Computers in Our Communities Action Plan. As you upgrade your computer equipment, recycle your office or personal computers by donating them to deserving students. In 1998, the National Bar Association, the nation's oldest and largest Black bar association launched its Computers in Our Communities Action Plan. Last year, NBA affiliates in Rochester, NY and St. Louis, Missouri donated additional computers to needy students.
- Help state and local governmental agencies remove the barriers which prevent them from recycling computers and other office supplies and equipment to deserving students.
- Fund a program that teaches minority students how to upgrade, repair or maintain the donated computers.
- Have your bar association establish a program to attract, recruit, retain and promote minority lawyers to law firms, corporate law departments and the like. The Association of the Bar of the City of New York screens and places minority students who have just completed their first year of law school in law firms.

- Promote computer literacy by having your bar association, law firm or corporation provide free or low cost training to members of the minority community.

While this list is not exhaustive, it illustrates that lawyers and members of the organized bar can do much to promote diversity in our colleges and universities. We can not stand idly by and watch the educational opportunities our generation of people enjoyed evaporate into nothingness. Secure the blessings of liberty by promoting educational opportunity for the next generation of lawyers, judges, legal scholars and law students.

1.

(Formerly Beverly M.M. Charles) Professor of Law, Touro College; Jacob D. Fuchsberg Law Center; President, National Bar Association 1998-99, Member, ABA Committee on State Justice Initiatives, Member, Executive Council, National Conference of Bar Presidents, Secretary, Council on Legal Education Opportunity. B.A. , Jersey City State College (now New Jersey City University); M.A., Rutgers--The State University; J.D. New York University School of Law; LL. M., Harvard Law School.

2.

American Bar Association, Standards for the Approval of law schools & Interpretations, Standard 211 (1995) provides:

Consistent with sound legal education policy and the Standards, a law school shall demonstrate, or have carried out and maintained, by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups, notably racial and ethnic minorities, which have been victims of discrimination in various forms. This commitment typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and a program that assists in meeting the unusual financial needs of many of these students, but a law school is not obligated to apply standards for the award of financial assistance different from those applied to other students.

ABA, Standards for the approval of law schools and interpretations, 1999, A.B.A. Sec. On Legal Education and Admissions to the Bar, 38.

3.

William g. Bowen and Derek Bok, *The Shape of the*

*River*, (1998) pp 11-12 citing U.S. Bureau of the Census 1997, tab. 19, p. 19.

4.

West's Ann. Cal. Const. art. 1 section 31 provides in pertinent part:

Sec. 31. (a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) This section shall apply only to action taken after the section's effective date.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

(f) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

5.

See generally, Kimberle Williams Crenshaw, *Opening Remarks: Reclaiming Yesterday's Future*, 47 UCLA L. Rev. 1459, 1465 and information contained in note 1.

6.

Hopwood v. State of Tex., 78 F.3d 932, 64 USLW 2591, 107 Ed. Law Rep. 552 (5th Cir.(Tex.), Mar 18, 1996) (NO. 94-50569, 94-50664), *cert. denied*, 116 S. Ct. 2581 (1996)

7.

See, Christy Hoppe, "*Hopwood Ruling Hindering Minority Recruitment, UT says; Numbers Rising Too Slowly, Officials Contend*", Dallas Morning News, May 27, 1998, Wednesday Home Final Edition , Section: News, pg. 28A.

8.

*See supra* note 1 at 10.

9.

*Id.* at 11.

10.

*Id.* at 12.

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## Appendix B

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# PRE-LAW SCHOOL REPORT

## Issues and Problems

The obvious question is why are fewer minorities enrolling in law school and entering the legal profession. Is it unequal access to primary, middle, and secondary schools where minorities can obtain the academic skills necessary to enter the profession? Is it unequal access to career counselors and practicing lawyers who can better explain the legal profession and the skills necessary to succeed in the profession? Is it a fear of the unknown, including a belief that they do not have the necessary academic skills to pursue a legal career? Is it dissatisfaction with the profession based on media bashing?

## Current Initiatives

### Adopt-a-School Programs

- The New York County Lawyers' Association has adopted the High School for the Humanities in Chelsea.
- Several of the larger law firms have adopted schools, independent of the efforts of the New York County Lawyers' Association and the City Bar.

### Internship Programs

- The City Bar's Thurgood Marshall Summer Law Internship Program provides summer jobs for inner-city high school students with law firms and other law-related employers.
- The Kings County District Attorney's Office conducts an internship program for college students during the fall, spring, and summer semesters. Students receive either a stipend or school credit.
- The New York County District Attorney's Office conducts an internship program for high school, college, and law students.
- The Richmond County District Attorney's Office's internship program is for college and law school students.

**SAT Preparation Course** Legal Outreach Inc. conducts summer refresher courses for middle and high school students, as well as

provides tutoring for the SAT exam. Legal Outreach, Inc. provides an impressive model for increasing diversity by conducting moot court competitions, lectures by individuals in the legal profession, career counseling, and academic counseling, as well as the tutoring and refresher courses mentioned above.

## **Educational and Mentoring Programs**

- New York County District Attorney's Office: The Assistant District Attorneys work closely with the Community Affairs Unit in a series of educational initiatives for young students sponsored by the office. One of these programs is called LEGAL BOUND. The program is designed to introduce elementary, junior high, and high school students to the criminal justice system. Prosecutors volunteer their time, give classroom presentations, coach mock trials, lecture about legal career opportunities, and act as mentors to young people
- Bronx District Attorney's Office: The Explorers Legal Program provides motivated students with an opportunity to explore a career in law. The Office of the Bronx District Attorney works with the Boy Scouts of America to reach out to Bronx high school students who have expressed an interest in the field and may be interested in participating in the program. Explorers meet with assistant district attorneys to discuss legal careers. Students are divided into teams with an assistant district attorney serving as a coach/mentor. The students use debating techniques to develop their advocacy skills. The program culminates in a moot court competition.
- Richmond County District Attorney's Office: On a regular basis, Assistant District Attorneys visit local schools and give classroom presentations on the criminal justice system, careers in law enforcement, and drug prevention.
- Kings County District Attorney's Office: Legal Lives brings the criminal justice system to Brooklyn's elementary school classrooms. District Attorney's staff work to teach students about the law and its role in their lives.

## **Recommendations**

**Create awareness in the legal profession about the value of diversity.**

- Encourage participation by all organizations and firms in programs geared to increasing diversity. Majority and minority law firms, corporations, government offices, bar associations, and the judiciary (state and federal) should be encouraged to implement and participate in programs designed to increase diversity. The Office of Court Administration and the New York County Lawyers' Association are two organizations suited to carrying out some of the programs listed below. Both would probably welcome the invigorated participation of their members. They also both have the personnel to assist in the implementation. Both organizations currently work together in the New York County Lawyers' Association's successful Minority Judicial Internship Program. This program was created in 1989 by Task Force members Suzanne Baer and the Honorable Harold Baer Jr. The program is open to law students from all New York City law schools. Students spend eight weeks of their summer vacation interning with a judge handling either criminal or civil cases. The number of students offered internships each year is based upon available funding. Beginning in February of each year, first and second year law students are interviewed by the Association's Committee on Minorities and the Law. The committee then selects those students who will take part in that summer's internship program. Each intern is carefully matched to a New York State

Supreme Court Justice, United States District Court Judge or United States Court of Appeals Judge. This program provides a unique opportunity for minority law students to take part in a paid summer judicial internship.

- Create a working compliance/implementation committee, similar to that of the Network of Bar Leaders. This group should meet at least twice a year, at the beginning of each academic semester, and be charged with developing and coordinating mandatory program guidelines for internships and the adopt-a-school program, as well as focusing on the implementation of and compliance with the other recommendations.

### **Make pre-K, elementary, and secondary school minority students better aware of the legal profession and what being a lawyer is all about.**

- Adopt a School. Adopt-a-school programs provide the students with two important resources: instruction and mentoring. The teaching/instruction component is conducted at the school and generally includes a mock-trial program and career day offering law-

related courses and workshops. Until recently, participation was purely voluntary and resulted in sporadic participation. Organizations and firms involved in the program have now coordinated their teaching/instruction offerings with the Board of Education so that students can obtain school credit for their participation. The offering of school credit has also led to greater structure and focus by both the students and the facilitators of the programs. The mentoring component varies depending upon the time commitment of the individual participant. Ideally, the mentor will bring the student "on site," as it were, where the student can observe the operation of a law office, prosecutor's office, or judge's chambers and courtroom. Courtroom visits to see trials and oral arguments in the appellate courts should also be encouraged.

It is recommended that the existing programs be further reviewed and evaluated and that a "model plan" be developed, a basic package that would be given to law firms and other organizations. The package should include course materials for mock trial programs, career day functions, workshops, and classes. On the mentoring side, sample itineraries should be developed. As stated below, the mentoring relationship should be periodically monitored and evaluated.

- Shadow a Lawyer. A shadow-a-lawyer program allows the interested or partially interested minority student to accompany a lawyer, judge, or other legal professional in his/her daily routine and helps the student acquire a sense of what is required to do the job. Commentary by the judge or attorney during a calendar call, witness testimony, and conference, and discussion of legal points with chambers or law office staff provides a keen insight into the work life of these professionals. The length of the shadowing "experience" can be a few hours, morning, afternoon, whole day, or greater time period. The judge, attorney, or other professional can schedule the shadowing so as not to conflict with matters that would not be conducive to the student's experience.
  
- Lunch with a Judge/Attorney. This program is designed to give the student a better idea of the activities of individuals within the legal profession and allows discussion of the day-to-day routine in a relaxed atmosphere. The New York County Lawyers' Association employs such a program; it is geared to law students participating in the summer Minority Judicial Internship Program and summer associates in firms. The model should be expanded to include primary, high school, and college students. The most effective site would most probably be a law

office or courthouse, however, a school or community center could also be used.

- Tours of neighborhood law offices or neighborhood law firms. Pre-school students and kindergartners have traditionally visited neighborhood fire houses to learn about fire safety. The same model can be employed by having them visit law offices and observe members of the community engaged in the practice of law.

### **Develop programs to assist minority students in obtaining the academic and social skills necessary to succeed in law school.**

- Institute a comprehensive mentoring program. All minority attorneys, especially those few at majority law firms, should be encouraged to mentor minority middle and high school, as well as college students. Ideally, the mentor should commit to the student for a specific time period. Continuing Legal Education (CLE) credit should be considered to encourage greater participation by attorneys.
- Institute internship programs. Internship programs for high school and college students should be set up with compensation in the form of salary, stipend, or school credit. Most of the existing programs are geared to law students; however, high school and college students are capable of participating in internship programs and should be encouraged to do so. Summer law clerk/ internship programs appear to be rare in the private sector. The programs that do exist should be explored, broadened, and better publicized to minority students.
- Institute a summer law clerk program. A summer law clerk program for junior high school as well as high school seniors should be instituted. The program should consist of intensive training and mentoring. Students should be placed in law firms as well as public interest and government offices.

**Expand outreach efforts.** There should be greater contact between practicing attorneys and students. Most bar associations, government offices, legal defense offices, and public interest firms participate in Law Day activities, address students at career day functions, and conduct visits to schools to speak to students regarding the legal profession. Greater outreach is necessary, especially from majority law firms to minority students. Government offices have taken the lead in this area.

**Institute SAT preparation course.** An SAT preparation course for junior high school students should be instituted with a scholarship fund to underwrite costs. Attorneys as well as others in the legal profession should be encouraged to volunteer (in exchange for CLE credit) to conduct academic refresher classes for high school juniors and seniors.

**Provide career counseling.** Career counseling for high school juniors and seniors through a partnership with university counseling staff should be implemented.

**Subsidize college and law school trips.** A program providing college and law school trips for minority high school students, through donated frequent flyer miles by attorneys and others in the legal profession, should be implemented.

**Student representation at bar association functions.** Minority high school students should be encouraged to attend bar association functions. Bar associations should be encouraged to schedule programs that are geared to informing minority primary, middle, high school, and college students about careers in the legal profession.

**Encourage a dialogue with minority primary, secondary, and college students to get their opinions, suggestions, and recommendations about how to increase diversity in the profession.**

- Compile data from primary, secondary, and college students about their opinions of the legal profession. Questionnaires can be sent to schools and the responses collected and analyzed as an aid in establishing additional programs and models or refining the existing programs.
- Conduct symposiums. Local bar associations should be encouraged to conduct town meetings or symposiums geared to minority students who are considering entering the profession, as well as students who have no desire to enter the profession.

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## Appendix C

# LAW SCHOOL REPORT

## Introduction

This sub-committee's assignment was to research and describe aspects of minority representation in law schools in New York State. In the continuum that charts an individual's path into the legal profession, there are five identifiable and unavoidable checkpoints:

- 1) Taking the LSAT,
- 2) Applying to and gaining admission to a law school,
- 3) Graduating from law school,
- 4) Passing the Bar exam, and
- 5) Finding employment in the legal profession.

From one perspective, law school can be viewed as a discrete point--or set of points--on the arc of one's career. However, a more organic perspective admits that law schools have a role in each of these phases. Our sub-committee chose to approach the topic of law schools' participation in the demographic makeup of the legal profession with this long view. As such, our report presents findings regarding the presence and status of minority groups in the legal profession in New York State. In approaching this topic, several questions guided our research:

- What is the average LSAT score for law school applicants?
- What is the average GPA for law school applicants?
- What is the demographic profile of law school applicants?
- What is the demographic profile of the student bodies at law schools in New York?
- What do New York State's law schools do to recruit, admit, mentor, and support minority law students, both before and during law school?
- What are bar passage rates for minority groups?

- What is the demographic breakdown of initial employment of law school graduates?
- In the public sector, what percentages of lawyers are from minority groups?
- At private law firms, what percentages of lawyers are minorities, among associates and among partners?
- What is the demographic breakdown of lawyers working for public-interest employers?

## Findings

### *Population (TABLES A, B and C)*

*Tables A and B* display population statistics by race for New York State and for the United States, as reported by the U.S. Census Bureau from 2000 and 1990 Census figures, respectively. In New York State in 2000, white non-Hispanics make up 62% of the population, while non-whites comprise 38% of the total population. Hispanics and Latinos are the largest minority group in the State, constituting 15.1% of the total population. Blacks and African-Americans, the next largest minority group, are 14.8% of the population; Asians are 5.5%; American Indians and Alaska Natives make up 0.3%; other races and individuals that identify themselves as two or more races make up the final 2.3% of the population.

*Table C* calculates population growth from 1990 to 2000, for both New York State and the United States. These calculations of population growth are used for comparisons throughout this study. In the ten-year period from the 1990 to the 2000 Census, the total population of New York State grew 5.5%. This growth was fueled by a 56.7% growth among the non-white population, and was in spite of a 12.1% drop in the white population in New York State.

### *Law School Applicants (TABLE D)*

The Law School Admission Council (LSAC) tracks individuals who apply to at least one American Bar Association (ABA)-approved law school in an application cycle. Each year, the LSAC calculates the average GPA and average LSAT score for applicants by ethnic group.

In the fall 2000 application cycle, the LSAC counted 74,550 applicants to ABA-approved law schools. Among these applicants, 27.7% were minorities. Whites constituted the majority of applicants to law schools in fall 2000, making up 65.3% of the total applicant pool. Blacks were the second largest group of applicants at 11.4% of the total, while Asians made up 7.1% of the total applicant pool. In addition, Hispanics were 4.0% of applicants, Puerto Ricans were 2.6%, Chicano/Mexican Americans were 1.8%, and American Indians were 0.8%. Comparing the percentage of the pool of total applicants represented by each ethnic group to that group's percentage of the United States population in 2000, Asians claimed a larger portion of the pool of law school applicants (7.1%) than their percentage of the total population (3.7%). Using the same comparison, Hispanics and Latinos made up only 8.4% of law school applicants, while comprising 12.5% of the total United States population. Likewise, black and white applicants to law schools did not reach the level of their representations in the United States population. Blacks were 11.4% of applicants while 12.1% of the population, and whites were 65.3% of applicants while 69.1% of the population.

From the application cycle for academic year 1995-6 to the application cycle for fall 2000, the total number of applicants fell 2.8%, while the total number of minority applicants increased 7.4%. The ethnic groups that experienced decreases in the number of law school applicants during this period are: American Indians (-13.7%), Chicano/Mexican Americans (-10.9%), whites (-7.7%), and blacks (-3.7%). In contrast, the number of Puerto Rican applicants rose 21.4% during this period, Hispanic applicants rose 10.2%, and Asian applicants rose 2.3%.

Among all applicants to ABA-approved law schools in fall 2000, the average GPA was 3.15. White applicants had an average GPA of 3.21, which was the highest average GPA, while Asians had the second highest average GPA, 3.18. Among fall 2000 law school applicants, whites and Asians were the only two ethnic groups with higher average GPAs than the average GPA for all applicants. Puerto Ricans had an average GPA of 3.07, Chicano/Mexican Americans had an average GPA of 3.03, and Hispanics had an average GPA of 3.02. The average GPA for American Indians was 2.99, while blacks had the lowest average GPA (2.85) among major ethnic groupings in this analysis.

Among all applicants to ABA-approved law schools in fall 2000, the average LSAT score was 151.4. <sup>(1)</sup> White applicants had an average LSAT score of 153.6, which was the highest average LSAT score for

any ethnic group. Asians had the second highest average LSAT score (153.0), while Chicano/Mexican Americans had an average LSAT score of 148.7. Among the other four major ethnic groups, American Indians had an average LSAT score of 148.2, Hispanics had an average score of 147.7, blacks had an average score of 142.6, and Puerto Ricans had an average score of 139.2. As with the average GPA's, whites and Asians were the only two ethnic groups with average LSAT scores greater than the average LSAT score for all applicants.

Two notable discrepancies between the average GPA and average LSAT scores are for the Puerto Rican and American Indian ethnic groupings. Puerto Ricans had the third highest average GPA, but the lowest average LSAT score in fall 2000. In contrast, American Indians had the second lowest average GPA, but were in the middle of the pack with their average LSAT score. Interestingly, over the past five years, the average LSAT scores for each ethnic group has remained almost exactly the same, while the average GPA's have increased slightly for all of the major ethnic groups.

With regard to the oft-repeated claim of the LSAT's score gap among ethnic groups, a study of admissions to University of California (UC) at Berkeley's law school, Boalt Hall, was conducted by the non-profit education research group, Testing for the Public. "The study...looked at 1,366 minority students who had attended Harvard, Yale, Stanford, UC Berkeley and UC Los Angeles (UCLA) and who sought admission to Boalt Hall between 1996 and 1998. Each student from a minority group was matched with all white applicants from the same college whose four-year UGPA's<sup>(2)</sup> differed by no more than one tenth of a point, on a four-point scale. The LSAT score gap between white and minority group applicants with similar grades was 9.3 points for African-Americans, 6.87 for Chicanos and Latinos, 3.77 for Native Americans, and 2.48 for Asian-Americans."<sup>(3)</sup>

### ***Law School Enrollment (TABLES E and F)***

For the academic year 1999-2000, 13,946 students were enrolled in the 15 law schools in New York State. Of that total, 22.3% were minorities. Asian and Pacific Islanders had the strongest presence among New York State's law students, encompassing 8.4% of the total. Blacks and African-Americans were the second largest minority group, making up 7.7% of the total law student population. Hispanics comprised 5.8% of the total student body and Latinos and Native American and Alaskans constituted 0.3%. (TABLE E)

Comparing these figures to population estimates, it is evident that black/African-Americans<sup>(4)</sup> and Hispanic/Latinos are underrepresented in New York State's law schools. Black/African-Americans' percentage of the total population in New York State is 14.8%, which is 7.1 percentage points higher than their 7.7% representation in the law school student body. Moreover, Hispanic/Latinos comprise 15.1% of the total state population, but only 5.8% of the law student population. Minorities as a group are underrepresented in law schools, since they make up 38.0% of the state population but only 22.3% of the law student population. Conversely, Asians are disproportionately represented among New York States' law schools, since the minority group holds only 5.5% of the total population, but makes up 8.4% of the law student total.

Of note is the presence of a gender gap in law school enrollment among all four minority groups, with women making up a greater percentage of each minority group's representation in law student bodies. This gender gap is widest among the minority group of black/African-Americans: 10.1% of the total number of women enrolled in New York State law schools are black/African-Americans, yet only 5.5% of the total number of males in law schools are black/African-Americans.

In 1999, 125,184 students were enrolled in ABA-accredited law schools, of which 20.2% (or 25,253 students) were minorities. In 1990, there were 17,330 minority students enrolled in ABA-accredited law schools, making up 13.6% of the total number of enrolled law students (127,261.) In the nine years from 1990 to 1999, minority law students steadily increased their numbers and their presence as a percentage of the total body of law students. In that period, the number of minorities enrolled in ABA-accredited law schools increased by 45.7%, which contrasts with the 1.6% decline in the total number of enrolled students. Although this increased enrollment of minorities in law schools appears to be a positive trend, this is tempered with the knowledge that the number of non-whites in the United States population increased by 77.2% from 1990 to 2000. Thus, the growth of minorities in the United States population outpaced the growth in minorities enrolled in law schools. This reality is further reflected in the increased gap between the proportion of minorities in the total population and the proportion of minorities enrolled in law schools. In 1990, minorities comprised 13.6% of enrolled law students, yet made up 19.7% of the United States population. By 1999, this gap had widened from a 6.1 percentage-point difference to a 10.7 percentage-

point difference, with minorities comprising 20.2% of enrolled law students and 30.9% of the U.S. population. (TABLE F)

### ***Law School ([Questionnaire and Chart of Survey Results](#))***

To find out what law schools in New York State do to recruit, retain, mentor, and support minority law students, we sent a survey to the 15 law schools in the state. Because the survey allowed for open-ended responses, law schools replied with different degrees of specificity and thoroughness. A shortcoming of this survey was that some schools gave brief responses that only mentioned a couple of minority recruitment practices, while other schools provided lengthy typewritten reports detailing every action taken to recruit and mentor minorities at their schools. Consequently, some schools looked comparably more aggressive in their recruitment of minorities, when the reality was that the other schools may be following similar practices but failed to list those strategies in their survey responses.

To compensate for the incomplete summary of practices reflected in the survey responses, we re-contacted each law school and asked them to fill out a questionnaire consisting primarily of Yes/No questions. We received responses to this questionnaire from all but one of the law schools in New York State, and created a chart to compare the response information. This chart is a reliable indicator of prevalent practices among schools for recruiting minorities. In addition, the responses to this questionnaire generated a wealth of ideas for different approaches and practices that can be used to increase the representation of minorities in the law schools in our state. These ideas are gathered into a Summary of Responses, which are listed below:

[Summary of Responses to Survey:](#) (number of schools that gave affirmative response/total number of responding schools--or name of school given for unique programs)

- 1) A senior administrative position is dedicated to recruiting minority students. (7/14)
- 2) A web site was created for minority applicants to find out more about activities and programs for minorities at the law school. (1/14)
- 3) The law school is a member of the Council on Legal Education Opportunity (CLEO). (12/14)

- 4) A recruitment brochure was created for minority applicants. (7/14)
- 5) Minority student prospects receive a targeted informational mailing. (13/14)
- 6) The law school has an active presence in local minority bar associations. (10/10)
- 7) The application fee is waived for underrepresented applicant populations. (6/8)
- 8) The admissions committee solicits the input of minority students regarding issues concerning minority applicants and minority admissions. (12/14)
- 9) Minority student leaders are encouraged to participate in minority recruitment and admissions activities. (14/14)
- 10) Recruitment visits are scheduled at historically black colleges and universities. (13/14)
- 11) Admissions representatives attend minority law school admissions forums sponsored by college and national minority student organizations. (14/14)
- 12) Admissions representatives occasionally participate as guest speakers at minority law school admissions forums. (14/14)
- 13) Recruiters are sent to Law School Admissions Council (LSAC) law school forums, where 55% of prospects are minorities. (14/14)
- 14) The law school hosts a minority recruitment forum. (11/14)
- 15) On-campus minority recruitment program introduces minority admission prospects and other guests to the law school. (11/14)
- 16) Minority admission prospects are invited to applicant workshops and social functions held by minority student organizations at the law school. (12/14)
- 17) Scholarships are offered to select admitted minority students. (10/14)

- 18) Current minority students contact accepted minority students to answer questions about the law school. (13/14)
- 19) Events are held on campus to encourage admitted minority students to enroll at the law school. (14/14)
- 20) Minorities are alerted to the opportunity to take a free summer course, which introduces incoming students to law school. (7/14)
- 21) A mentoring program pairs upper-class students with first-year students who are experiencing difficulty in law school. (13/14)
- 22) Dialogues on race and ethnicity are set up among students, faculty, and staff. (9/13)
- 23) The curriculum emphasizes public interest law and the importance of legal access for everyone. (13/13)
- 24) A special legal experience program is available for several minority students that combines legal education and legal experience for the first year of law school. (Cardozo)
- 25) The law school hosts a law school mentoring competition for local public high school students. (Cornell and Fordham)
- 26) Students from United Negro College Fund institutions have the opportunity to obtain a six-year joint undergraduate diploma and law degree, with the additional provision of full tuition funding and a monthly stipend. (St. John's)
- 27) A delegation of students is sent to Mississippi during winter break each year to work with civil rights organizations on civil rights violations. (CUNY)
- 28) The faculty established a task force to examine any disproportionate impact of grading and Bar results on students of color. (CUNY)
- 29) The law school initiated and developed a pilot program to provide monetary support and mentoring to graduates in solo or small-firm practices that provide access to justice in underserved communities. (CUNY)

***Law School Graduates (TABLE G)***

In 1999, 39,054 individuals graduated from ABA-accredited law schools, of which 19.3% (7,532 individuals) were minorities. African-Americans constituted the largest percentage of minority graduates (6.7% of total), with 2,617. Asian/Pacific Islanders made up 6.3% of graduates in 1999 with 2,460; Hispanics represented 5.4% of the total with 2,109; Native Americans made up 0.9% with 351. Comparing these figures to each groups' representation among the total population of the United States, it is again the case that minorities as a whole are underrepresented. Non-whites comprise 30.9% of the total United States population in 1999, yet only made up 19.3% of law school graduates. Aside from Asians, which as a group represent 6.3% of graduates but only 3.7% of the U.S. population, individual ethnic groups graduated a smaller percentage of lawyers than their proportion of the population. Notably, Hispanics comprised 12.5% of the U.S. population but only 5.4% of law school graduates in 1999, and Blacks made up 12.1% of the population but only 6.7% of law school graduates.

### ***Bar Pass Rates and JD Degrees Awarded ([TABLES H and I](#))***

Limited data are available on the minority status of individuals who take and pass the Bar exam. The following agencies were contacted while trying to locate information on Bar pass rates for minorities, all to no avail: the American Bar Association, Law School Admission Council (LSAC), New York State Bar Association, Association of the Bar of the City of New York, Office of Court Administration (which is part of the New York State Unified Courts); and Secretary of Statistics in the First Judicial Department of the Appellate Courts. According to the ABA's Commission on Opportunities for Minorities in the Profession's report entitled "Miles to Go: Progress of Minorities in the Legal Profession," "State bar associations resist collecting race and gender data from bar applicants, for fear of invading applicants' privacy, or creating the appearance of discrimination. Most analysts are critical of this policy, because such data are essential for addressing racial disparities in performance and admission to the profession."<sup>(5)</sup>

In the same report, statistics were provided on national Bar pass rates for minorities in 1991, which are included here in light of the dearth of recent, New York-specific minority pass rates. Of the 22,767 individuals who took the bar exam in 1991, 15.3% were minorities. The total percentage of minorities breaks down to 6.0% African-American, 4.6% Hispanic, 4.2% Asian-American, and 0.5% Native-American. Notably, the racial group pass rates differ from the proportion of each group taking the exam. Whites had the highest pass

rate, at 96.7%. The pass rate for all minority groups combined was 84.7%, which is significantly lower than the rate for whites. Asian-Americans had a pass rate of 91.9%, followed by the pass rate of 87.7% for Hispanics, 82.2% for Native-Americans, and 77.6% for African-Americans. (TABLE H)

Although recent Bar pass rates are not available, the number of J.D. degrees annually awarded by the ABA can serve as a proxy for bar passage. In 1999, the ABA awarded 39,071 J.D. degrees, of which 7,532 were awarded to minorities. Reflecting the steady increase in minority enrollment since 1990, the number of J.D. degrees awarded to minorities has grown from 11.3% of the total in 1990 to 19.3% in 1999. However, minority representation in the U.S. population has continued to expand during this period, from 19.7% of the total population in 1990 to 30.9% in 2000. Strikingly, the number of J.D. degrees awarded to minorities increased by 82.5% from 1990 to 1999, while the total number of J.D. degrees awarded by the ABA in the same period only increased 7.4%. (TABLE I) This is an encouraging sign of increasing diversity in the legal profession, since the growth in J.D. degrees awarded to minorities (82.5%) outpaced the growth of the non-white population in the U.S. (77.2%) from 1990 to 1999.

### ***Initial Employment (TABLE J)***

Between minority and non-minority lawyers, there is a noticeable difference in initial employment type after passing the bar exam. The first job of 57.1% of non-minority attorneys is in private practice, while 49.5% of minority attorneys go into private practice. The next largest type of initial employment for minority attorneys is in government at 17.1%, followed by business/industry at 14.5%, and clerkships at 10.2%. Among non-minorities, government, business/industry, and clerkships attract nearly equal percentages of attorneys for initial employment: 13.0%, 12.9%, and 12.4%. The final three types of initial employment are public interest, academia, and other. All three attract small numbers of lawyers for initial employment; however, in each area, a slightly larger percentage of minorities take these jobs than non-minorities.

### ***Private Sector Employment (TABLES K and L)***

Minorities constitute 16.0% of associate lawyers in New York City law firms and 12.1% of associate lawyers in law firms nationwide. The percentages of minorities among partners in law firms are lower than among associates: 3.2% of partners in New York City law firms are

minorities, and 3.3% of partners in law firms nationwide are minorities. At the associate level, both in New York City and nationwide, Asian/Pacific Islanders have the largest representation, followed by African-Americans, then Hispanics.

### ***Public Sector Employment ([TABLES M and N](#))***

In the public sector, which is the second largest initial employer for lawyers, minorities have higher levels of representation than among private law firms. Of Assistant District Attorneys (ADA's) in New York City, 23.4% are minorities, and throughout New York State, 16.0% of ADA's are minorities. Third and fourth among minority representation of lawyers are the New York City Law Department (12.2%) and U.S. Attorneys in New York State's four districts (12.1%). (TABLE M)

Finally, among public service employers across the United States, 19.4% of staff attorneys are minorities and 10.5% of supervising attorneys are minorities. At the level of staff attorney, 9.3% are African-American, 5.8% are Hispanic, and 4.0% are Asian/Pacific Islander. This proportional order of representation persists at the level of supervising attorney, but with lower percentages of minorities in every racial category. (TABLE N)

### ***Academic Employment ([TABLE O](#))***

Over the past six academic years, the proportion of minorities in faculty positions at law schools has gradually increased from 12.3% in 1994-1995 to 13.6% in 1999-2000, representing a 20% increase in absolute terms.

## **Conclusions**

### ***Law School Applicants***

Comparing the percentage of the pool of total applicants represented by each ethnic group to that group's percentage of the United States population in 2000, the largest minority groups (except for Asians) were underrepresented.

### ***Law School Enrollment in New York State***

Minorities as a group are underrepresented in New York's law schools, since they make up 38% of the state population, but only 22.3% of the law student population. Specifically, black/African-Americans and

Hispanic/Latinos are underrepresented in New York State's law schools, while Asians are overrepresented compared to their percentages in the general population..

### ***LSAT Score Gap***

There is a score gap between whites and minorities who take the LSAT, ranging from a high of 9.3 points for African-Americans to a low of 2.48 for Asian-Americans.

### ***Law School Enrollment in the United States***

From 1990 to 1999, the growth of minorities in the United States population outpaced the growth of minorities enrolled in law schools. In that period, the number of minorities enrolled in ABA-accredited law schools increased by 45.7%, while the number of non-whites in the United States population increased by 77.2%. This trend is also reflected in the increased gap between the proportion of minorities in the total population and the proportion of minorities enrolled in law schools. By 1999, this gap had widened from a 6.1 percentage-point difference in 1990 to a 10.7 percentage-point difference, with minorities comprising 20.2% of enrolled law students and 30.9% of the U.S. population.

### ***Law School Graduates***

Minority law school graduates are underrepresented in comparison to their percentage of the total population of the United States. Non-whites comprise 30.9% of the total United States population in 1999, yet only 19.3% of law school graduates.

### ***National Bar Pass Rates***

Of the 22,767 individuals who took the Bar exam in 1991, 15.3% were minorities. The pass rate for all minority groups combined was 84.7%, which is significantly lower than the rate for whites (96.7%).

### ***J.D. Degrees Awarded in the United States***

One encouraging sign of increasing diversity in the legal profession is the growth in J.D. degrees awarded to minorities (82.5%), which outpaced the growth of the non-white population in the U.S. (77.2%) from 1990 to 1999. Reflecting the steady increase in minority enrollment since 1990, the number of J.D. degrees awarded to

minorities has grown from 11.3% of the total in 1990 to 19.3% in 1999. However, minority representation in the U.S. population has continued to expand during this period, from 19.7% of the total population in 1990 to 30.9% in 2000.

### ***Initial Employment Type***

Between minority and non-minority lawyers, there is a noticeable difference in initial employment type after passing the Bar exam: 57.1% of non-minority attorneys go into private practice, compared to 49.5% of minority attorneys.

## **Recommendations**

From the data gathered in this report, it is clear that minorities are underrepresented in comparison to their proportion of the total State and national population at nearly every juncture in the path to and through the legal profession. This disappointing reality demands the involvement of leaders and individuals in every area of the profession to work to increase the diversity of the legal profession and, more broadly, of the law.

Since no one approach to increasing diversity produces instant or complete results, we recommend that schools establish as many different programs as possible to reach a variety of minority groups and individuals. Moreover, these efforts should be sustained over a period of years to realize the fullest benefits. In surveying the law schools in New York State, we generated a comprehensive list of practices employed to recruit, accept, and mentor minority law students. This list is reproduced in the section of this report entitled *Law School*, as well as in the Chart that follows the text and graphs of the report. The list of practices along with the chart of survey results and the law school contacts (listed below) should be sent to all law schools in New York State. The schools can refer to these resources for ideas on how to increase diversity, as none of the schools surveyed currently uses all of the ideas.

Our study revealed different levels of involvement in the legal profession among ethnic groups. This means that law schools and lawyers cannot create recruitment and mentoring programs that treat minorities as a homogeneous group. Instead, racial and ethnic groups should be addressed differently as we strive to increase diversity in law schools and in the legal profession. Creating diversity plans for

specific groups ensures that cultural norms and values will also be considered, which will increase the effectiveness of these efforts.

### **LAW SCHOOL CONTACTS**

Albany Law Dawn Chamberlaine Admissions 518-445-2326

Cardozo Robert Schwartz Admissions 212-790-0357

Brooklyn Law Dean Henry Heneisteik Admissions 718-780-7906

Buffalo Jack Cox Admissions 716-645-2907

CUNY Yvonne Cherena-Pacheco Dir. of Admissions 718-340-4291

Columbia Venetta Amory Asst. Dean 212-854-2674

Cornell Henry Granison Admissions 607-255-5141

Fordham Prof. Michael Lanzarone Professor 212-636-6837

Hofstra Cassandra Williams Dir. Multicultural Student Affairs 516-463-4239

NY Law Tom Matos Director of Admissions 212-431-2890

NYU Kenneth Kleinrock Asst. Dean of Admissions 212-998-6063

Pace Gail Fillion Exec. Asst. to Dean David Cohen 914-422-4407

St. John's Dean Robert Harrison Admissions 718-990-6611

Syracuse Margery Connor Dean's Office 315-443-2524

1.

LSAT scores can range from a low of 120 to a high of 180.

2.

UGPA means *Undergraduate* Grade Point Average.

3.

<http://fairtest.org/examarts/fall98/lsat.htm>

4.

Throughout this report, the categorical terms used in the data sources are copied. Therefore, the source for the data in Table B uses the term 'Asian and Pacific Islanders.' The source for Table A, however, uses the umbrella term 'Asians.'

5.

"Miles to Go: Progress of Minorities in the Legal Profession," by the American Bar Association, Commission on Opportunities for Minorities in the Profession, 1998: Page 22, Footnote 27.

### **Questionnaire for Law School Admissions Offices Regarding Minority Recruitment**

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Follow-up to survey request by Odalys C. Alonso, Co-Chair of the Law School Sub-Committee of the New York County Lawyers' Association Task Force to Increase Diversity in the Legal Profession. The survey and this questionnaire concern practices and approaches to enhancing minority student representation in law schools in New York State.

1. What % of your law school student body are students of color? (Ideally, figures for Class of 2003)
2. What % of faculty are people of color?
3. What % of the law school admissions committee are people of color?
4. Does the law school have an administrative position for the recruitment of minority students?
5. Do you have a law school web site for minority applicants?
6. Is the law school a member of the Council on Legal Education Opportunity (CLEO)?
7. Do you have a brochure for minority applicants?
8. Do you have a mailing targeted to minority students?

9. Does the law school have an active presence in the local minority bar associations?
10. Does the law school waive the application fee for underrepresented applicant populations?
11. Does the admissions committee solicit the input of minority students regarding issues concerning minority applicants and minority admissions?
12. Are minority student leaders encouraged to participate in minority recruitment and admissions?
13. Are recruitment visits scheduled at historically black colleges and universities?
14. Do admissions representatives attend minority law days and professional school admissions forums sponsored by college and national minority student organizations?
15. Do admissions representatives ever participate as guest speakers at minority law days and admission forums?
16. Does the law school send recruiters to the Law School Admissions Council (LSAC) Law School Forums?
17. Does the school host a minority recruitment forum?
18. Does the law school conduct an on-campus minority recruitment program to introduce minority admission prospects and other guests to the school?
19. Are minority admission prospects invited to applicant workshops and social functions held by minority student organizations at the law school?
20. Are scholarships offered to select admitted minority students?
21. Do current minority students contact accepted minority students to answer questions?
22. Does the law school have on-campus events to encourage admitted minority students to enroll at the school?

23. Does the law school offer a free summer course that introduces incoming students to law school? Are minorities made aware of this opportunity?
24. Does the law school have a mentoring program, in which upper-class students mentor first-year students who are experiencing difficulty in law school?
25. Does the school set up dialogues on race and ethnicity between students, faculty and staff?
26. Does the law school curriculum emphasize public interest law and the importance of legal access for everyone?
27. What is the relative size of the law library's collection in the areas of public interest, civil rights and human rights?