

# Cultural Diversity: Is It Present In American Law Schools And The Legal Profession?

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## ABSTRACT

*The issue of diversity is certainly not a new concept. This topic has been the focus of many corporate retreats and board room discussions. However, one of the most reputable and esteemed professions is falling short of the bar in maintaining a diverse profile. Research indicates that minority groups experience significant underrepresentation in law schools and the legal profession in general. To address this issue, this research will focus on examining the value of diversity to the legal profession, the roles of the law school, law firm, judiciary and government in balancing cultural diversity, and the recommendations for each to achieve diversity.*

**Keywords:** Cultural Diversity; Minorities in Legal Profession

## INTRODUCTION

Diversity is arguably the most influential concept shaping the daily lives and professions of the American people. Recent studies have shown that racial and ethnic groups are vastly underrepresented in law schools and the legal profession in America (CAIS Scorecard, 2012). As racial and ethnic groups continue to grow and more marginalized groups are making their voices heard, it is critical that the legal profession address the effects of diversity on the profession as a whole (“The Next Steps,” 2010).

In examining the state of diversity in the legal profession, it is important to recognize the recent trends, disappointments, and new directions the profession is taking. Despite efforts to diversify the profession, racial and ethnic minorities represent less than fifteen percent of all lawyers. Today, the legal profession is less racially diverse than any other American profession. Previous attempts to encourage a more diverse profession have continually failed and racial and ethnic groups are more vastly underrepresented than ever before (Parker & Redfield, 2005).

Moving forward, all members of the legal profession must take responsibility in promoting the advancement of diversity. The societal demand for multi-cultured and diverse professionals is transforming the legal profession, as we know it. In the following section, focus will be placed on understanding, analyzing, and evaluating the affects of diversity on the American legal profession.

## RATIONAL FOR INVESTIGATION

The American legal system is based on fairness, productivity, and intelligence. Diversity plays an integral role in shaping the basis of the legal system. A diverse mix, in any group, often leads to better questions, analyses, solutions, and processes among professionals. To better understand the significance of diversity to the future of the legal system, it is important to articulate the various rationales behind this investigation. In a recent report by the American Bar Association (ABA), four rationales for creating greater diversity in the legal profession are formulated. Listed below are the four rationales presented by the ABA, followed by a brief description of how each rationale provides conceptual and normative context as to why diversity is such a critical issue in the legal profession.

### **Democracy Rationale**

The democracy rationale addresses the responsibility of lawyers, judges, and other legal professionals in sustaining a political system that encompasses participation by all its citizens. The American legal system is highly valued for its commitment to equality, its permissive political participation, its social mobility, and its opportunity for political representation of all groups of people. Advancing diversity in the legal profession is essential to sustaining a legal system that accurately represents the voice of the American people. Furthering diversity in light of the democracy rationale is critical in promoting trust and fairness in the legal profession.

### **Business Rationale**

The business rationale concentrates on the idea that the world is essentially becoming flat as globalization of local markets occur and businesses expand internationally. The opportunity for corporations to expand into international markets has drastically transformed the demand for more diverse legal professionals. Legal professionals with advanced skills and knowledge of international business are highly sought in the current workforce and are considered more qualified than individuals lacking these qualities. A diverse workforce in the legal profession provides different perspectives, life experiences, linguistic and cultural skills, and knowledge of international markets. The advancement of diversity is imperative in furthering the business rationale to meet the demands of the American society.

### **Leadership Rationale**

The leadership rationale considers the importance of a legal education and the opportunities created for graduates. Many individuals with law degrees often possess the communication and interpersonal skills that are required for managerial and leadership positions throughout the community. In the Supreme Court decision of *Grutter v. Bollinger*, 539 U.S. 982 (2009), Justice O'Connor explained that law schools serve as the training ground for leadership, and therefore access to the profession must be broadly inclusive. Promoting diversity in law school admissions may potentially create diversity among future leaders of America.

### **Demographic Rationale**

The demographic rationale broadly encompasses the American society as a whole. With rising populations of minority groups in the American culture, it is important the legal profession accurately represents the American society as a whole. The 2008 United States census revealed that out of the estimated three hundred million people living in the United States, one hundred twenty-eight million were either Hispanic, African American, or Asian American (United States Census Bureau). A legal profession accurately representing the American minority population is principle to furthering the American legal system. The demographic rationale must be satisfied to promoting equality and fairness throughout the legal profession.

The following review attempts to analyze reasons why racial and ethnic groups are so highly underrepresented in the legal profession and proposes recommendations needed to advance the American legal profession and preserve a just, productive, and intellectual legal system.

## **LITERATURE REVIEW**

The legal profession has continually failed to accurately reflect the vibrant and expanding racial and ethnic population in the American society (Redfield, 2009). Recognizing the underrepresentation of minority groups in the legal profession has prompted numerous law schools, private practitioners, corporate legal departments, government offices, and legal institutes to develop organizational efforts to promote diversity in the workplace.

This review is a critical analysis of four major segments of the legal profession and their efforts to advance diversity in the American legal system. Specifically, the following sections examine the organizational efforts being made to balance cultural diversity in (1) law schools, (2) law firms in the private sector, (3) the judiciary and government offices, and (4) national bar associations.

### **Balancing Cultural Diversity in Law Schools**

Law schools play a particularly important role in advancing the value of diversity in the legal profession. Law schools are responsible for hiring faculty, developing legal curriculum, and identify the knowledge, skills, and values that shape future lawyers of America. Because law schools play such an integral role in forming and transforming the intellectual capital, the group identity, and the culture of legal professionals, it is critical that they contribute in the effort to balance diversity in the legal profession (“The Next Steps,” 2010).

Historically, minority group members have been underrepresented in law schools and the legal profession (Law School Admission Council, 2013). According to the most recent report on the employment of law school graduates, members of racial and ethnic minority groups represent about twenty percent of the nearly thirty-eight thousand graduates of the American Bar Association (“The Road to Law School and Beyond,” 2003). In recent years, law schools have struggled to recruit and graduate a more diverse student population (Bannai, 1997). Despite the numerous efforts to promote diversity enrollment, law schools have not found an approach to advance diversity in a meaningful way (Redfield, 2009).

Law schools continue to contribute to the ongoing transformation of the legal profession by attempting to develop a more diverse student body encompassing different perspectives, cultures, and abilities. Some schools have attempted to advance diversity by modifying departments, including admissions, administration, faculty, staff development, and career services. A common trend in many schools has been on concentrating on reevaluating the admission process by actively seeking non-traditional students from diverse groups (Parker & Redfield, 2005).

Law schools possess significant influence over the power to change perceptions and challenge stereotypes in the legal profession by promoting diversity in student bodies. Schools must be held responsible for creating diverse learning environments in an attempt to shape young lawyers into future leaders. It is the duty of law schools to advocate for greater inclusion, equity, and diversity in their student populations in order to accurately reflect the rate of change in American demographics (Institute for Inclusion in the Legal Profession). As Justice O’Connor explained in *Grutter*, “It is critical to acknowledge the need for a diverse and representative legal profession because of its leadership role within the American society” (539 U.S. at 982). As law schools strive to promote racial and ethnic cultures within their student populations, they will, in turn, strengthen the awareness of diversity in the legal profession (“The Next Steps,” 2010). Encouraging educational and management practices that support equality and inclusion are imperative to advancing the role of underrepresented groups in the legal profession.

### **Balancing Cultural Diversity in Law Firms and Private Practices**

Given that a large percentage of the legal profession is employed in private practice, it is necessary that private firms take steps to promote diversity in the legal profession (Parker, 2005). In order for diversity and inclusion to be meaningful, it must be incorporated into a firm’s practices and made a priority amongst management (Center for Legal Inclusiveness). Firms must be committed to diversity and inclusion and support and encourage the various thoughts, ideas, and values that underlie those differences.

Recruitment of minority attorneys traditionally has been the biggest challenge to law firms (“Creating Pathways to Diversity: A Set of Recommended Practices...”). The lack of racial and ethnic lawyers in the legal workforce poses a great threat to the future of the legal profession. Law firms have continually recognized the heightened demand for multi-dimensional diverse lawyers in order to be competitive in the current market. The globalization of American markets and changing demographics in the United States has shifted the need for more diverse lawyers that can effectively serve a wide range of clientele. The creation of a diverse workforce among private practices is essential to compete in the transforming legal market (“The Next Steps,” 2010).

In light of the financial challenges presented by the current economy, private firms have found it difficult to promote diversity through costly employee training programs and financial ventures. Although the current economy has burdened private practitioners’ attempts to support diversity in their practices, there are other mechanisms to advance diversity in the workforce with little financial expense. Many firms are altering and addressing existing practices in the workplace to endorse the need for diversity. Some firms have found success in using advancement

and retention incentives to gain awareness among employees (“Creating Pathways to Diversity: A set of Recommended Practices...”).

Private practitioners’ continued support of efforts to promote cultural diversity in the workforce is fundamental in advancing racial and ethnic minority representation in the legal profession. The active participation by private law firms is essential to the expansion and encouragement of diversity in the American legal profession.

### **Balancing Cultural Diversity in the Judiciary and Government**

Advancing diversity and inclusion in the judiciary and government is especially important for the legitimacy of the American legal system. Most Americans agree that racial and ethnic diversity is important to the legal system. These segments administer and represent the democratic rule of law in the American society. Diversity in judiciary and government positions furthers trust and fairness in the legal system by the American people (“Judges’ Journal,” 2009).

Historically, racial and ethnic groups have been vastly underrepresented in the judiciary and government sectors of the legal profession. Despite the reelection of President Barack Obama and the appointment of Supreme Court Justice, Sonia Sotomayor, the actual state of diversity among judicable and government offices remains “woefully inadequate.” Addressing the problems with diversity in the judiciary and government sectors requires internal institutional work and alliances with organizations and individuals outside the judiciary and government offices (Law School Admission Council, 2013).

Institutionally, it is imperative to advocate on behalf of the process that allows the appointment and election of judges and government officials to be more transparent and equitable. Externally, members of judiciary and government offices should make the advances in diversity aware to members of the community. Creating public awareness to underrepresented groups in the community will create participation among racial and ethnic minority groups. It is imperative that judiciary and government officials seek to diversify their workforce for the authenticity and trustworthiness of the American legal system.

### **Balancing Cultural Diversity in Bar Associations**

Bar associations play an integral role in furthering the reality of diversity in the legal profession (“The Next Steps,” 2010). Bar associations continuously work to create a unified body of legal professionals on national, state, and local levels. Efforts by bar associations to prioritize diversity in the workplace create awareness and introduce lawyers to a legal environment that values the presence and distinctive skills of diverse groups that have been historically underrepresented. A failure to prioritize diversity may potentially create a legal atmosphere excluding minorities and marginalizing underrepresented racial and ethnic groups. A socially diverse bar association promotes accurate representation of the American society and improves the advancement of an equal and unified legal profession (National Bar Association).

## **MANAGERIAL IMPLICATIONS FOR THE LEGAL PROFESSION**

It is necessary for law schools, private legal offices, the judiciary, government entities, as well as national bar associations, to work collectively to advance diversity in the legal profession (“The Road to Law School and Beyond,” 2003).

The following provides numerous recommendations to improve diversity in each major segment of the legal profession. Specifically, this section addresses efforts to be made in (1) law schools, (2) private law firms, (3) the judiciary and government offices, and (4) national bar associations. The following recommendations are suggested to encourage the advancement of an accurate representation of racial and ethnic minorities in the legal profession and educate legal professionals about the importance of diversity in the American legal system.

### **Recommendations for Law Schools**

Encouraging law schools to further advance diversity, as an integral part of their mission and educational philosophy, is the first step to creating a diverse legal profession. Law schools must create awareness for the need for diversity and hold individuals accountable. Administration, faculty, staff, and students must actively take visible roles in promoting diversity programs. Some law schools have established diversity-oriented centers or offices to focus resources on increasing the enrollment of diverse students and to engage in outreach to students earlier in the educational pipeline.

Several recommendations to advance racial and ethnic representation in law schools include:

1. Require training for administration, faculty, or students that have had little exposure to diversity.
2. Re-evaluate hiring and retention practices among faculty.
3. Encourage involvement by professors in more diverse functions and activities by using monetary incentives.
4. Law school admission departments must actively seek minority students and promote a diverse student body.
5. Admissions departments must also support diverse candidates in the application process.

Other recommendations for promoting a diverse student body include creating academic support programs for minority students and encouraging career service professionals to inform diverse students about various career opportunities. Some schools have implemented mentoring programs that link diverse professionals with diverse students. Schools provide incentives for these professions to help mentor and work with diverse students. It is necessary for schools to encourage minority students to actively participate in local bar associations. Using these recommendations, law schools have the ability to enhance their existing diversity programs (“Increasing Diversity in the Profession”).

### **Recommendations for Law Firms**

For law firms to effectively advance diversity in the legal profession, they must promote awareness of the issue. Law firms serious about increasing diversity must extend their efforts past the recruitment stage to provide opportunities for all associates to get challenging assignments, work with important clients, and obtain critical feedback on their work. Existing diversity programs within law firms need to be reevaluated. Current programs to advance the representation of racial and ethnic groups in the legal profession have proven themselves ineffective (“Creating Pathways to Diversity: The Myth of Meritocracy”).

It is important when reevaluating existing diversity programs in law firms to collect the most recent statistical information on racial and ethnic representation in the legal profession. After conducting extensive research, a thorough analysis of the gathered information allows firms the ability to update their diversity program’s existing goals and objectives in an accurate manner. Once these goals are updated, they should be implemented into the daily routines of the firm. Some law firms have incorporated diversity goals into their annual employee evaluations. Other firms have gone as far as hiring a full-time diversity professional as part of their management team to actively establish the firm’s diversity credentials when representing the firm externally (“Examining the Role of the Law Firm Diversity Professional,” 2009). A recent study on diversity recruiting efforts reports that many firms have had success in creating diversity by recruiting through summer internship programs (CAIS Scorecard, 2012).

Several recommendations for establishing diversity within the law firm include:

1. associate compensation to diversity goals
2. sponsor regular diversity training programs for employees
3. review the firms attorney evaluation process to ensure it is free of any ethnic or racial bias
4. develop more detailed hiring, retention, and advancement policies that correspond with participation in diversity programs

5. encourage lawyers to participate in externship and mentoring programs with diverse students at local schools
6. promote diversity awareness in the community thru involvement by law firm employees
7. stress to law firm partners and those in upper level positions to set an example for employees to follow

Using these recommendations, law firms have the opportunity to create awareness for diversity and further the goal of developing a more equally represented legal profession (“Creating Pathways to Diversity: The Myth of Meritocracy”).

### **Recommendations for the Judiciary and Government Offices**

Advocating transparency is the process of selecting judges and influential government employees and stressing that a diverse and inclusive representation of these segments is essential to the credibility of the legal institution. This is the main priority in advancing diversity in the judiciary and government offices (“The Next Steps,” 2010).

To increase the number of judges and government officials from underrepresented groups it is crucial to develop, implement, and evaluate initiatives promoting diversity. Awareness for the need for diversity must be effectively communicated among members of local bar associations and legal groups. Several recommendations for developing more diverse judiciary and government offices are:

1. identifying and reevaluating judicial systems that hinder diversity among the bench
2. encouraging participation by existing members of the judiciary in organized events discussing the value of diversity
3. publically expressing the importance of diversity in the government and how it is significantly related to the voice of underrepresented groups in the community (“Sustaining Pathways to Diversity,” 2009)

These suggestions should provide guidance to members of the judiciary and government offices in advancing the need for a more diverse legal profession.

### **Recommendations for Bar Associations**

An effort by bar associations to establish a universal definition and a common understanding of diversity is the first step in creating awareness throughout the legal profession (ABA Center for Racial and Ethnic Diversity). The ABA has recognized the significant underrepresentation of racial and ethnic groups in the legal profession, and has taken the initiative to promote a more diverse and wholesome profession. Promoting full and equal participation in the national bar association and eliminating bias in the legal profession and justice system are some of the current goals the ABA has established.

Adopting formal diversity statements and establishing a nation-wide plan to address the issue of diversity will encourage other bar associations to join the effort. Coordinating the development of a diversity plan with national, state, and local bar associations is critical to the advancement of diversity in the legal profession. Several recommendations for bar associations to centralize and coordinate efforts in securing a more diverse legal profession include:

1. instituting continuing legal education regarding the effects of diversity in the workforce and coordinating efforts to centralize data collection and reporting about diverse populations within the legal profession
2. continuing to support the development of pipeline programs for diverse students by partnering with local schools and universities
3. encouraging law schools to integrate diversity into their curriculum using various teaching mechanisms (ABA Center for Racial and Ethnic Diversity)

Reaching diversity in the legal profession is a long-term goal. However, a unified and prioritized effort by national, state, and local bar associations to advance diversity in the legal profession significantly affects the

opportunity for success. Therefore, it is imperative that national bar associations collaborate in an effort to advance diversity throughout the legal profession.

## CONCLUSION

The legal profession has continuously been behind the curve in the area of diversity. Currently, numerous programs in America have been developed to encourage the growth of diversity in the legal industry. Law schools, private law practices, corporate legal departments, the judiciary, government entities, and legal organizations proactively pursue diversity in the legal profession.

However, the legal profession cannot recruit racial and ethnic lawyers that do not exist. Law schools, and even our university system, will play a critical role in providing opportunities and the necessary academic development to pursue the rigors of the legal profession.

Diversity still manages to challenge the American legal profession in every aspect. Diversity should play a role in every aspect of the legal profession. The increasing changes in American markets and demographics make it critical for members of the legal community to work collectively, proficiently, and purposely to include diversity in every aspect of the law.

Diversity in the legal profession is a journey requiring stakeholders to evaluate, modify, and improve the legal profession on a daily basis. The goal of a more diverse legal system is on the horizon. It is up to all members of the legal profession to make a coordinated attempt to achieve the success of diversity.

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