

GOAL IX

TO PROMOTE FULL AND EQUAL PARTICIPATION IN THE LEGAL PROFESSION BY MINORITIES

Volume 10, Number 2, Spring 2004



Minority Law Student Organizations: Building Bridges

M i s h o n d a B a l d w i n
a n d T e d T a i



The Coalition of Bar Associations of Color (CBAC) was created to provide attorneys of color with a united forum for promoting key issues that confront all minorities. Key member organizations include the National Bar Association, the National Hispanic Bar Association, the National Asian Pacific American Bar Association, and the National Native American Bar Association. Although CBAC's successes are well noted and its work greatly appreciated, it is now time for law students to follow their members' footsteps and form a similar group with a similar goal—uniting all law students of color.

The National Black Law Students Association (NBLSA) was created in 1968 to give African American law students a cohesive and visible advocacy presence during a time when the need was obvious (the current name was adopted in 1983). The National Asian Pacific American Law Student Association (NAPALSA) followed, as has the recently formed National Latino/a Law Student Association (NLLSA), both created to protect the interests of their respective communities. During the past three years, communication among the three organizations has significantly increased. Plans to contact the National Native American Law School Association will commence shortly.

Minority law student associations

**Although bias
may take different
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nonetheless,
discrimination.**

are joining forces for several reasons. First, we recognize that students of color are still underrepresented in law school classrooms. There is strength in unity. When we join forces, we achieve progress. We share similar issues, such as discrimination, and similar goals. Although bias may take different shapes and forms, discrimination is, nonetheless, discrimination. Second, we see a paradigm shift within our generation. We are intuitively beginning to express our desire to help one another build stronger organizations. Forging these bonds will only further these goals.

As the oldest law student organization of color, NBLSA successfully created a strong presence on law

school campuses. Extending NBLSA's knowledge and experience to other organizations will help the entire fight against injustice. NBLSA has a generous history of joining with other student organizations. Within the African American community, NBLSA is a part of the Alliance of Black Student Professionals, an organization of black professionals developed to speak with one voice on issues that universally impact the black graduate and student professional population, and to advocate for societal change to benefit the communities it serves. This organization includes but is not limited to engineers, doctors, dentists, and social workers. NBLSA also works with the Canadian Black Law Student Association (BLSAC), which was formed fifteen years ago after students attended a NBLSA convention in the United States. The Alliance continues to work closely with various organizations and conferences in order to provide employment opportunities for African Americans. NAPALSA and NLLSA currently are in the process of forming similar connections within their respective communities.

Coalition building means facing challenges, sometimes from within our communities. Every student is not necessarily interested in joining

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Go West, Young Lawyer, Go West, With All Deliberate Speed

L a w r e n c e R . B a c a
C o m m i s s i o n C h a i r



... And when you get there, come join us at the 2004 Conference for the Minority Lawyer (San Francisco, June 17-18). As we planned for the 2004 Conference, we knew that it would be important to have our opening plenary session focus on education and how far we've come from segregated school systems to acceptance of diversity. May 17, 2004, celebrates the fiftieth anniversary of *Brown v. Board of Education I*,¹ and I have been reflecting on the role of California in the history of desegregation and diversity in public education.

I grew up in California because someone had given my father the same advice that Horace Greeley gave to a young writer named Samuel Clemens (later known as Mark Twain) (see title). I started school in 1955, the year of *Brown v. Board of Education II*,² the remedy phase announcing that America's schools must desegregate "with all deliberate speed." California regulations providing for separate schools for Indians were abolished in 1947, a year after such laws were declared unconstitutional in *Mendez v. Westminster School District of Orange County*,³ so I attended white schools. There wasn't much diversity in the El Cajon school district at the time—a couple of Asian kids, one African American, and a majority minority of Hispanics. The other Indian I went to school with was my brother.

When people think of California, they don't immediately think of its history of desegregation of public education. Maybe historians of the Supreme Court note that California Governor Earl Warren became chief justice of the Supreme Court and authored the opinions in both *Brown I* and *Brown II*. But just as the former governor of California led the Court to *Brown*, the opinion in *Regents of the University of California v. Bakke*⁴ led the way for the Court last term to render its opinion in the recent *Grutter v. Bollinger*.⁵

The California connection to *Brown* however is much greater than that the former governor became chief justice. California did not mandate segregation but did authorize it:

The governing body of the school district shall have power to exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases, and also to establish separate schools for Indian children and for children of Chinese, Japanese or Mongolian parentage. When such separate schools are established, Indian children or children of Chinese, Japanese, or Mongolian parentage must not be admitted into any other school.⁶

It is always "special" to be included in the same statutory provision for children with vicious habits or infectious diseases.

Background to *Brown*

Eight years before the Supreme Court heard arguments in *Brown I*, the District Court for the Southern District of California decided *Mendez*, a case many believe is the precursor to *Brown*. Four school districts in Orange County operated separate schools for Hispanic children, ostensibly because they needed special language programs. The plaintiffs, all of Mexican descent, argued that California law did not call for segregation of people with Mexican ancestry and their segregated schools were a violation of state law. The federal district court went further and found that these practices violated not just California law but "the supreme law of the land":

The equal protection of the laws pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. A paramount requisite in the American system of public educa-

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New & Noteworthy from the Commission

Goal IX Report

The 2003-2004 Goal IX Report was released at the beginning of February. The Goal IX Report is the Commission's annual record, analysis, and recommendations about the status of racial and ethnic diversity within the ABA. This year's assessments, which include the Commission's Honor Roll of ABA Sections, Divisions, and Forums, is available for downloading at www.abanet.org/minorities.

Midyear Roundup

The ABA Midyear Meeting in San Antonio (February 4-10) was a particularly busy one for the Commission on Racial and Ethnic Diversity. Recapping some highlights:

ABA Commission on Governance

On behalf of the Commission, Chair Lawrence R. Baca testified before the ABA Commission on Governance. The Commission on Governance, pursuant to the ABA Constitution, has begun its decennial review of the House of Delegates, the Board of Governors, and the Nominating Committee. Lawrence's testimony addressed the importance of

- Retaining the Minority and Women at Large seats on the Board of Governors, and
- Retaining the Minority and Women at Large seats on the Nominating Committee.

Lawrence and the Commission also recommended that the ABA

- Modify the process for selecting those who will fill the Minority and Women at Large positions on the Nominating Committee, and
- Open eligibility for those who might fill the Minority or Women at Large positions on the Nominating Committee beyond those who currently serve in the House of Delegates.

Lawrence's testimony in its entirety is available online at www.abanet.org/minorities.

Diversity Workshop

The Commission presented a workshop for the leaders of ABA sections, divisions, and forums about how best to recruit, retain, and engage minority lawyers in their programs, activities, and leadership. Feedback from the



workshop has been extremely positive, and this program likely will become one of the Commission's regular offerings at the Midyear Meeting.

Judicial Clerkship Program

The Commission, in conjunction with the ABA Judicial Division, organized the fourth annual Judicial Clerkship Program. Participating law schools included Cornell University, Indiana University, South Texas College of Law, University of Michigan, University of New Mexico, University of Tennessee, University of Texas, Villanova University, and William Mitchell College of Law; as well as the Council on Legal Education Opportunity. Fifty-one students took part in this simulated judicial

clerkship experience, which ran for two and one-half days. In addition to working on a research exercise in small teams with judges, the students learned about what makes a good clerk, the lifelong career opportunities clerkships afford, and the nuts and bolts of how to secure a clerkship. Our thanks to all the judges and former lawclerks who took the time to come and work with the students.

The ABA Commission on Racial and Ethnic Diversity in the Profession would like to thank LexisNexis for its generous support of the Minority Judicial Clerkship Program's Research Room.

Spirit of Excellence Awards

More than 500 attendees joined the Commission as it presented the 2004 Spirit of Excellence Awards to the following notables:

- Professor Norma V. Cantú
- Hon. Royal Furgeson, Jr.
- Bill Lann Lee
- Arvo Quoetone Mikkanen
- E. Christopher Johnson (Corporate Award)

The Spirit of Excellence Awards celebrate the achievements of diverse lawyers and other professionals who contribute to the legal profession and society. The awards are presented to those who excel in their professional settings; personify excellence on the national, state, or local level; and demonstrate a commitment to racial and ethnic diversity in the legal profession. The Call for Nominations for the 2005 Spirit of Excellence Awards is available online at www.abanet.org/minorities.

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Elimination of Bias Resolution

In collaboration with the ABA Standing Committee on Continuing Legal Education and numerous other co-sponsors, including the National Asian Pacific American Bar Association (NAPABA), the National Bar Association (NBA), the National Native American Bar Association (NNABA), and the Hispanic National Bar Association (HNBA), the Commission presented a resolution on the elimination of bias. The resolution called for an amendment to the Comment to Section 2 of the Model Rule of Minimum Continuing Legal Education to require lawyers, as part of their mandatory continuing legal education, either through a separate credit or through existing ethics and professionalism credits, to complete programs related to the promotion of racial and ethnic diversity in the profession, the promotion of full and equal participation in the profession of women and persons with disabilities, and the elimination of all forms of bias in the profession. The Commission is pleased to report that the ABA House of Delegates passed the resolution. The full text of the resolution as adopted is available online at www.abanet.org/minorities.

Note: MCLE requirements differ from state to state. CLE requirements in states with MCLE are governed by a Board or Commission established by the state supreme court.

Lawyers or bar associations who want to get their state to incorporate the elimination of bias requirement in their MCLE regulations, or lawyers interested in getting appointed or elected to the state body that oversees MCLE requirements, should review their individual



CLE Online: A Gift for You

Diversifying the Legal Profession: Strategies from General Counsel, a complimentary online CLE audio program, is now available at www.abanet.org/cle/clenow. This valuable free compilation includes discussions by general counsel from Fortune 500 companies about strategies for identifying and overcoming obstacles to diversity in the legal profession.

Based on presentations at the October 2003 ABA Presidential Conference, "Diversity in the Legal Profession: Opening the Pipeline," the CLE was spearheaded by the Council on Racial & Ethnic Justice. It was produced by ABA-CLE, with support from the Standing Committee on Continuing Legal Education.

state's MCLE Rules and Regulations to find out who to contact and how to proceed.

Houston Minority Bar Summit

The Commission was proud to be a co-sponsor of the Houston Minority Bar Summit, "Using Your Bar Association Membership to Help Advance Your Career," on February 11, 2004, at the Houston Museum of Natural Science. Spearheaded by co-chairs the Hon. Hannah Chow and Sherea McKenzie, summit speakers included Benny Agosto, Jr.; David Chaumette; Oscar de la Rosa; Harry Gee, Jr.; Lynne Liberato, and Christine Sampson Willie. Grace Yoo, executive director of the National Asian Pacific American Bar Association, made a special trip to be part of the program and to discuss opportunities in national minority bar associations. After the program, the attendees socialized at a reception and heard from Alex Gonzales, former chair of the ABA Tort Trial and Insurance Practice Section, and Scott Atlas, former chair of the ABA Section of Litigation, who shared their perspectives on the particular benefits of involvement and participation in the ABA's substantive law sections.

National Conference for the Minority Lawyer

The National Conference for the Minority Lawyer will be held June 17-18, 2004, in San Francisco. Highlights include sessions on a variety of topics, among them

- From *Brown to Grutter*: Desegregation, Affirmative Action, and the Future of Education in America
- 2004 Review of Developments in Business and Corporate Litigation
- The New Tech Frontier—Privacy and the First Amendment
- The Politics of Diversity: Lessons from Voter Initiatives and Other Advocacy Battles
- Starting Your Own Law Firm and Keeping It Going
- Diversity Within Diversity: Who Are the "Real" Minorities?
- Meeting the Challenges of Today's Electronic Discovery

The Conference also will feature the always popular Interactive Workshops and the Presentation Skills Luncheon, as well as a Town Hall Meeting where attendees will be able to raise and discuss issues of particular import and concern to minority lawyers.

The conference brochure and registration materials are available online at www.abanet.org/buslaw; you may also call Donna Nesbit at 312.988.5587.

ABA Annual Meeting

The ABA Annual Meeting will be held August 4-10 in Atlanta. The Commission's headquarters will be the Sheraton Colony in midtown. Please join us for our day-long Minority Lawyers Forum on Friday, August 6; the minority lawyers reception honoring incoming ABA President Robert Grey; and the Commission's many CLE programs, including sessions on "Retaining Minority Lawyers in Your Law Firm or Corporation" and "The Business Case for Diversity—Redux." Go to www.abanet.org/minorities for additional details.

Recent Commission Activities

To see more photos from these and other Commission programs and activities, please visit www.abanet.org/minorities.



Justice Frank Sullivan works with some of the student participants during the Judicial Clerkship Program.



Eric Knustrom from LexisNexis explains the clerkship application process during the Judicial Clerkship Program.



Spirit of Excellence Award Honorees with members of the Commission.



2004 Spirit of Excellence Award Honorees: (left to right) Hon. Royal Furgeson, Jr.; Arvo Quoetone Mikkanen; Bill Lann Lee; Norma V. Cantú; and E. Christopher Johnson.



Commissioner Floyd Holloway, Jr., who chaired the Spirit of Excellence Awards, addresses the audience



Attendees at the Houston Minority Bar Summit



Hon. Hannah L. Chow and Sherea McKenzie, the co-chairs of the Houston Minority Bar Summit.

tion is social equality. It must be open to all children by unified school association regardless of lineage.

The court also noted that the segregation of children of Mexican heritage “fosters antagonisms” and “suggests inferiority” among children “where none exists.” This case was a giant step forward in California, where separate schools for students of color—although not specifically mentioning Hispanics—were allowed by law.

But the road taken by the Supreme Court to get to *Brown* was walked in baby steps. Each education case that the Court accepted for review built upon the one before. The State of Missouri in the 1930s had separate colleges for white and black students and provided that where a black school did not offer a program of education offered at the white school, the state would pay tuition and fees for the black student at a school in a neighboring state. In 1938, in *Missouri ex rel. Gaines v. Canada*,⁷ the Court declared this practice violated the constitutional right to equal opportunity—equal education must be provided by the state in which students lived.

A decade later, in *Sipuel v. Board of Regents of Oklahoma University*,⁸ the *Gaines* opinion was reinforced in a two-page *per curiam* opinion striking down a similar practice in Oklahoma. The State of Oklahoma reacted by enacting statutes that provided for the admission of black students to white schools where comparable programs were not offered at the black schools, but “on a segregated basis.” G. W. McLaurin, a black student admitted to the graduate school at the University of Oklahoma, was required to sit outside the classroom during lectures in an anteroom labeled “reserved for colored” and at a designated desk in the library (similarly labeled). He was not allowed to use the regular reading room. He was allowed to eat in the same cafeteria—but not when the other students ate. While his case was pending,⁹ the school altered its practices somewhat, but the Court found that under these circumstances, McLaurin was not being granted the same educational opportunities as white students:

[The state] sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. *Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and in general, to learn his profession* (emphasis added).

The Court affirmed the “compelling state interest” in assuring diversity in the classroom, explaining that those who would come under McLaurin’s “guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates.”

In response to the Supreme Court’s decisions, the State of Texas made plans to open a separate law school for black students but instead added a law school to the already existing Texas State University for Negroes. The Court in *Sweatt v. Painter*,¹⁰ however, found that the new law school was inherently unequal. But, it continued,

What is more important, The University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.

The Court also found that the students at the black school would study law in a vacuum from which 85 percent of the state’s racial groups would be excluded—the very population from which most of the state’s lawyers, jurors, judges, and potential clients would be drawn. All of these deficiencies led the Court to find that the new law school was, therefore, unequal as compared to the University of Texas law school.

As each of these cases moved the law forward, each maintained acceptance of the separation of students based on race if the state offered an educational program substantially equal for the non-white races.

Sweatt and *McLaurin* were both decided in 1950. *Mendez*, cited by the lower court in *McLaurin*, was ahead of its time. The concepts set forth in 1946 by Judge McCormack can be found anticipating the *Brown I* Court’s finding: “To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”¹¹

The educational ideals of an open and free dialogue involving multiple cultures and races—diversity—didn’t begin with *Bakke*. The importance of diversity in the classroom had been expressed before. There really isn’t that much distance from *McLaurin* (1950) to *Grutter* (2003). The same educational ideal of diverse ideas in the classroom discourse that created inequities for McLaurin, denying him the ability to participate, came full circle and was the compelling state interest for the inclusion of racial and ethnic minorities in *Grutter*.¹²

As part of its goal of “assembling a class that is both exceptionally academically qualified and broadly diverse,” the Law School seeks to “enroll a ‘critical mass’ of minority students.” The Law School’s interest is not simply “to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin.” That would amount to outright racial balancing, which is patently unconstitutional. Rather, the Law School’s concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.

These benefits are substantial. As the District Court emphasized, the Law School’s admissions policy promotes “cross-racial understanding,” helps to break down racial stereotypes, and “enables [students] to better understand persons of different races.” These benefits are “important and laudable,” because “classroom discussion is livelier, more spirited, and simply more enlightening and interesting” when the students have “the greatest possible variety of backgrounds.”¹³

March 25-26, 2004	Spring MCP Meeting	Philadelphia, PA
April 15-16, 2004	NNABA Annual Meeting	Albuquerque, NM
May 12-16, 2004	CBAC Conference (includes meetings with White House, Justice Department, and Attorney General's staff)	Washington, DC Additional information: Shana Greenberg, greenberg.shana@epa.gov
May 15, 2004	NAPABA and NLF Quarterly Board Meetings	Washington, DC
May 16-18, 2004	ACCA Corporate Counsel University	Dallas, TX
June 16-18, 2004	National Conference for the Minority Lawyer	Hotel Nikko San Francisco, CA
June 19, 2004	Commission Business Meeting	San Francisco, CA
June 26, 2004	NAPABA Northeast Regional Conference	New Jersey Law Center New Brunswick, NJ Additional information: Vimal Shah, vks@carpben.com
July 2004	NAPABA Northern California Regional Conference	San Francisco, CA Additional information: Ruthe Ashley, rutheash@aol.com
July 31-August 7, 2004	NBA Annual Meeting	Westin Charlotte Charlotte, NC
August 5-11, 2004	ABA Annual Meeting	Atlanta, GA
August 7, 2004	NAPABA and NLF Quarterly Board Meetings	Atlanta, GA
August 7, 2004	ABA Section of Real Property, Probate & Trust Law Networking Reception and Luncheon	Omni Hotel Atlanta, GA Additional information: Antonette Smith, asmith4@staff.abanet.org
October 25-27, 2004	ACCA Annual Meeting	Chicago, IL
November 11-14, 2004	NAPABA Convention	Dallas, TX Additional information: Grace Yoo, ED@napaba.org



**ABA Commission
on Racial and
Ethnic Diversity in
the Profession**

**Master Calendar
of Meetings**

Abbreviations

ABA	American Bar Association
ACCA	American Corporate Counsel Association
CBAC	Coalition of Bars of Color
NNABA	National Native American Bar Association
NAPABA	National Asian Pacific Bar Association
NBA	National Bar Association
MCP	Minority Counsel Program
NLF	NAPABA Law Foundation
HNBA	Hispanic National Bar Association

Go West

Justice O'Connor says that we have twenty-five years to resolve the necessity to use race in higher education admissions. We will start to discuss the solutions in San Francisco.

Notes

1. 347 U.S. 483, 74 S. Ct. 686 (1954).
2. 349 U.S. 294, 301, 75 S. Ct. 753, 757, (1955).
3. 64 F. Supp. 544 (1946).
4. 438 U.S. 265, 98 S. Ct. 2733 (1978).
5. 539 U.S. 306, 156 L. Ed. 2d 304 (2003).
6. See Piper v. Big Pine, 193 Cal. 664, 226 P. 926 (1924).

7. 305 U.S. 337, 59 S. Ct. 232 (1938).
8. 332 U.S. 631, 68 S. Ct. 299 (1948).
9. McLaurin v. Okla. St. Regents for Higher Edu., 339 U.S. 637, 640, 70 S. Ct. 851, 853 (1950).
10. Sweatt v. Painter, 339 U.S. 629, 633, 70 S. Ct. 848, 850 (1950).
11. *Brown I*, 347 U.S. at 495. It is curious that although Earl Warren was governor of California at the time of the *Mendez* opinions, and they were cited in the briefs to the Court, he does not cite to *Mendez* in either *Brown* opinion, although he draws upon its essential truths in *Brown I*.
12. "Today, we hold that the Law School has a compelling interest in attaining a diverse student body." Grutter v. Michigan, 539 U.S. 306, 156 L. Ed. 2d 304, 321, 323 (2003). And, of course, *Gaines*, *Sipuel*, and *Sweatt* all involved law schools.
13. *Grutter*, 539 U.S. at 337, 335.

forces. Some believe coalitions dilute our individual claims. The coalition-building panel at NAPABA's annual conference in Honolulu advised that the best way to create successful coalitions among law students is to create bonds by identifying common issues. Yes, differences among minority groups still need to be resolved, but identifying those issues that affect us all will help us step back from the minor discrepancies in order to push the bigger picture forward. We do not have 100 percent buy in; the majority of students of color, however, support the creation of such coalitions.

The advantages of coalition building among minority groups are many. We can share ideas and build networks in law school that will continue and expand after we graduate. This will provide a natural inclination to continue the cause by participating in CBAC. The law student coalition will offer an instant response when someone is wronged. The increased flow of information develops deeper understandings—necessary at this level because bar organizations of color do not usually focus on issues that affect law students; here, student organizations have a timelier pulse on the issues we and other law students face.

In addition, when minority law student organizations unite, we create a single voice, much more powerful than one lone group can achieve. The most recent of two controversial events at Dewey Ballantine concerning racially offensive remarks illustrates the power of group voice. As many in the law community know, a partner's e-mail containing an unacceptable ethnic slur prompted several Asian American bar associations—and thirty-six Asian American law student associations—to band

together in composing a letter of protest. The impact would have been even greater if the coalition had responded as well; this would create a powerful demonstration that not only Asian Americans but also all legal professionals of color do not and will not tolerate such conduct.

Building relationships among minority law students—the future of legal America—can only benefit the strength of CBAC. The bonds we form in law school as leaders within our respective bar associations will only contribute toward the future goals and achievements of CBAC.

The future presents many opportunities for this new coalition. We currently attend one another's conferences and work together on joint projects. For example, this year we worked on a joint voter registration/education campaign. A definite long-term goal will be to plan a joint conference for all law students of color. Together, we

can tear down unjust stereotypes and build bridges to the future.

Mishonda Baldwin and Ted Tai are 3Ls at the University of Baltimore School of Law. Mishonda is a speaker and facilitator, a commissioner to the Maryland Senate, chair of NBLSA, and a decorated Desert Storm veteran. Ted is a former vice president of NAPALSA.

When minority law student organizations unite, we create a single voice.

Correction

The editors extend our sincere apologies for an error in the article "A Gift That Keeps on Giving," from the Winter 2004 issue of *Goal IX*, in which the Honorable Clifford Scott Green was misidentified as the Honorable Harold Greene. The author of the article, Raymond L. Ocampo Jr., was privileged to introduce Judge Green as a recipient of the Spirit of Excellence Award in 2002.

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