

The ABA Goal IX Commission Reports Tracking Progress and Trends

By Deborah L. Rhode and Diane C. Yu

In 1986, the American Bar Association approved Goal IX—“To promote full and equal participation in the legal profession by minorities”—and established the Commission on Racial and Ethnic Diversity with Dennis Archer as its inaugural chair. The following year, the ABA created the Commission on Women in the Profession, with Hillary Rodham Clinton as its first chair, and expanded Goal IX to include women. Then in 1999, the Association amended Goal IX to embrace persons with disabilities as well. Each Goal IX Commission has, since its founding, strived to advance the opportunities and participation in the profession of its constituents and make inroads into the leadership paths within the ABA.

Reviewing the landscape of these three commissions through the lens of their respective Goal IX reports, we see certain progress and breakthroughs, but also continuing frustration and disappointment at the overall slow pace of improvement. In this vein, the creation of these commis-

sions brings to mind a favorite *New Yorker* cartoon featuring a boardroom of white men and one woman, where the chair of the meeting looks out and says, “That’s an excellent point, Ms. Tighue. Now let’s wait for one of the men to make it.” When white men join as allies in the struggle for diversity, their voices can be especially influential, and we have often been blessed with that leadership in the ABA.

Tracking Progress

When the ABA Commission on Women was founded in August 1987, women in ABA leadership positions were notable for their absence. And because no one was officially counting, the absences weren’t all that notable. Against that backdrop, the publication of annual Goal IX reports by the Commission on Women, beginning in 1991, was a substantial achievement. The purpose was to track the progress of women lawyers in ABA leadership positions by reviewing their participation at the highest levels of the ABA Board

of Governors, House of Delegates, sections, commissions, divisions, special and standing committees, and forum committees.

In 1998–99, the Commission on Racial and Ethnic Diversity followed suit, producing its first *Goal IX Report*, which revealed comparable information on the status of racial and ethnic diversity in the Association. Similarly, in 2003 the Commission on Mental and Physical Disability Law began to issue its *Goal IX Survey* to highlight the disability diversity efforts of ABA entities. That same year, it recommended that the application for presidential appointment positions, which already asked about gender and race/ethnicity, include a question about lawyers with disabilities.

It turned out that women, minorities, and persons with disabilities could do the math, and when they did, things began to change. ABA leaders became conscious of areas where talented women and lawyers of color or with disabilities were missing in action, and the statistics gradually began to improve.¹

Report Cards on Women

Examination of the Commission on Women’s *Goal IX Report Cards* from 1991 through 2008 shows, for instance, that the percentage of women members of the ABA rose from a little over 25 percent to the current 31.4 percent. The percentage of women involved in ABA leadership roles also increased, although the record has been inconsistent and virtually flat in terms of the rate of increase in recent years.

Of special significance have been the three women ABA presidents during this period: Roberta Cooper Ramo (1995–96), Martha W. Barnett (2000–01), and Karen J. Mathis (2006–07). A fourth, Carolyn B. Lamm, is slated to take office in 2009. In the same time frame, three women have chaired the ABA House of Delegates: Martha W. Barnett, Karen J. Mathis, and Laurel Bellows. Despite these positive developments, over a

17-year span, less than a fifth of ABA presidents and a third of House of Delegates chairs (33.3 percent) have been women.

Comparing the Commission on Women's *Goal IX Report Card* statistics from 1998 to 2008 is particularly instructive:

1997-98

- ◆ 12 women on the Board of Governors (32.43%)
- ◆ 116 women in the House of Delegates (22%)
- ◆ 15 women on the Nominating Committee (22.1%)
- ◆ 9 women State Delegates (17.3%)
- ◆ 62 Section Officers (26.61%)

2007-08

- ◆ 14 women on the Board of Governors (35%)
- ◆ 152 women in the House of Delegates (28.4%)
- ◆ 20 women on the Nominating Committee (29.9%)
- ◆ 11 women State Delegates (20.8%)
- ◆ 81 Section Officers (29.24%)

Furthermore, the 2007-08 *Goal IX Report Card* also articulated for the first time some "Best Practices to Advance Women into Leadership" as a means of sharing the strategies of ABA entities that have led to success in moving more women into leadership ranks.

Racial and Ethnic Diversity Efforts

The Commission on Racial and Ethnic Diversity also has documented the success and setbacks of diversity efforts through the years, but it has moved from an initial focus on diversity within ABA sections, divisions, and forums to a current report on trends within each entity. The new reporting format, first adopted three years ago, recognizes that cumulative statistics do not tell the entire story. Indeed, precise ABA minority membership numbers have been difficult to grasp, as an increasing percentage of members each year are declining to identify

themselves by race or ethnicity—in fact, only 33.73 percent of them presently identify themselves by race or ethnicity. The results from those who have self-reported indicate that the numbers of Native Americans, African Americans, and Hispanic members are all decreasing—a disturbing trend.

On a more positive note, however, since the first publication of its *Goal IX Report* ten years ago, two minorities have been elected president of the

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ABA: Dennis W. Archer (2003-04) and Robert J. Grey Jr. (2004-05). Two have served as chair of the House of Delegates: Robert J. Grey Jr. and Stephen N. Zack. Presidential appointments of minorities have risen dramatically during the past nine years, averaging over 25 percent, compared to the previous eight years' average of only 12.5 percent. The most recent figures are as follows:

2007-08

- ◆ 6 minorities on the Board of Governors (15.3%)
- ◆ 81 minorities in the House of Delegates (14.73%)
- ◆ 10 minority members of the Nominating Committee (14.9%)

The latest *Goal IX Report* goes into impressive detail in laying out the historical minority diversity record of each ABA entity during an eight-year period (2000-08) in terms of primary leadership, council members, committee chairs, other committee leadership, other leadership, nominat-

ing committee, programming faculty, publication authors, and House of Delegates membership. It also identifies a number of criteria leading to recognition in its annual Honor Roll: (1) a recent diversity plan, (2) ongoing efforts to increase diversity, (3) proven increases in participation of lawyers of color in recent years, and (4) minority diversity programs demonstrating special creativity.

In addition, the *Goal IX Report* states how much money is spent on racial or ethnic diversity initiatives by ABA entities and offers information about the diversity leadership track records of state and local bar associations.

Mental and Physical Disability Law Numbers

Turning to the Commission on Mental and Physical Disability Law's latest *Goal IX Survey*, we learn that approximately 28,700 ABA members identified themselves as having a disability in 2007, but only 12 of 44 ABA entities had a member with a disability on their leadership team. In 2003-04, the number of ABA leadership roles occupied by lawyers with disabilities was 24; in 2005-06, it reached 32; but in 2007-08, it had dropped to only 22. As to the number of principal leadership positions held by lawyers with a disability within the sections, divisions, and forums, the 2003-04 number was 13, the 2005-06 number was 14, but the 2007-08 number was only 3.

This sobering record of sharp declines has countered the previous trend of steady increases. The Commission has expressed concern that even after eight years of *Goal IX*'s coverage of lawyers with disabilities, many ABA entities have yet to include such lawyers in their diversity statements, plans, or goals. On the positive front, it also cited a number of Divisions, Sections, and Forums in its annual Honor Roll, all of which have (1) more than one lawyer with a disability in a leadership slot, (2) at least 5 percent of their committee

(Continued on page 22)

THE ABA GOAL IX COMMISSION REPORTS

(Continued from page 17)

population consisting of lawyers with disabilities, or (3) at least five CLE faculty with a disability.

A Model for Achieving Change

The infusion of diversity into the ABA and its leadership ranks has made a difference in the work of the Association and the priorities of its sections. As proponents of diversity have long argued, the addition of individuals from varied life backgrounds and experiences brings a range of concerns and perspectives that significantly enriches decision making. So, too, the opportunity for more women, lawyers of color, and lawyers with disabilities to exercise leadership roles has given them visibility and contacts that have had significant professional payoffs.

The Goal IX strategy also has become a model for how to achieve change in contexts in which women and minorities remained grossly overrepresented at the bottom and underrepresented at the top. Some local bar organizations have since launched related tracking efforts and enlisted law firms and corporate counsel offices to meet diversity goals and timetables. These efforts have confirmed what management experts have long noted: Organiza-

tions get what they measure, and one of the best ways to achieve a level playing field is to promote accountability among those in decision-making positions. That, in turn, requires systematic ways to measure and reward progress and to name and shame where efforts are lacking.

In the long run, however, to increase significantly the representation of women, minorities, and persons with disabilities at leadership levels in the bar will demand more fundamental strategies. Despite considerable efforts, the law remains less diverse than many other elite professions, and the problems start early. The inadequacies of elementary and secondary education restrict the pool of students who are in the pipelines for law schools, and over-reliance on standardized test scores as admission criteria has compounded the difficulty.

Unconscious bias and other obstacles unrelated to merit continue to impede the progress of many individuals of ability. Substantial evidence makes clear that qualities associated with leadership still reflect racial and gender stereotypes. Women often remain subject to a double standard and a double bind. What is assertive in a male professional is abrasive in a female, and aspiring women leaders risk seeming too feminine or not feminine enough. Lawyers of color,

WOMEN SUPREME COURT CLERKS STRIVING FOR "COMMONPLACE"

(Continued from page 19)

conscious effort to bring in women judges and to work with the women's law association," says Ilene Strauss, who directs judicial placement at Columbia University School of Law. Columbia will have one clerk, a woman, as a Supreme Court clerk next year.

Suk informally advises students at Harvard. "There are so many hoops to jump through to get oneself in a reasonable position to apply that, along

the way, many reasonable students say, 'What's the point?' Much of it is in the decision to apply and in planning your law school career," Suk explains.

Northwestern University School of Law currently has three women clerking for the Supreme Court and no men. "We try to encourage every competitive applicant to apply, and our women applicants are just as competitive," says Allison Heverin of the Career Strategy Center at Northwestern.

Some justices may be taking matters into their own hands. Justice Samuel Alito signed a woman

for their part, may lack the presumption of competence granted to white male colleagues.

If lawyers are truly committed to a diverse profession, we will need to invest more effort in recruiting and preparing talented students from underrepresented groups for a career in law. Some firms and law schools have undertaken partnerships with local high schools and colleges to do just that and to provide, on a sustained basis, tutoring, mentoring, and related programs for potential applicants. Expanded efforts along these lines, as well as increased scholarships and resources, might help us realize our aspirations to a truly representative profession—one of which we can all be proud. 

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Endnote

1. The coauthors note that the ABA recently established the Commission on Sexual Orientation and Gender Identity (SOGI). Because that new Commission has not yet published a Goal IX Report, we are unable to include a reference to statistics or progress with respect to issues that may be reported by the SOGI Commission in the future. Such a review will, we hope, occur at a later time.

clerk for 2008 who is already a professor of law, having graduated from Yale Law School in 2002.

Justice Ginsburg noted in 1998 that the "evolving enlightenment" of the Supreme Court justices continues to dawn and grow. "I strive," she said, "to make women's participation at our Court and in all manner of legal work, indeed in all manner of the world's work, not 'momentous,' but 'commonplace.'" 

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