Dear Reader:
I am a son of immigrants. I am a brother. I am a husband. I am a father. I am a veteran. I am black. I am an American. I’m sure we have a lot in common while having many differences. We may find comfort in commonality, but dissimilarity makes life interesting because it forces us to learn and evolve how we think and problem solve. There is power in difference, but human frailty in the face of the unknown can evoke emotions of fear and resentment resulting in conflict, unfairness, and injustice. Our nation is a collection of differences, and our history includes many examples of the promise and possibilities of a diverse society as well as, unfortunately, the ugliness that accompanies the resistance to change and the lengths people take to preserve a system that benefits them exclusively. This struggle between the dueling perceptions of multiculturalism as a strength or as an ominous development to be feared and contained, by any means, is as old as the republic. We have seen this play out through the abolitionist movement, the Civil War, Reconstruction, Jim Crow, the civil rights movement, and now diversity and inclusion (D&I). Lawyers figured prominently on all sides of the issues in each era.

In 1787, the Constitutional Convention declared an African American as three-fifths of a white person. This became law and lawyers maintained its constitutionality. Most importantly, it created and ingrained a racial caste system. Almost 90 years later, in 1865, the 13th Amendment abolished slavery and the 14th Amendment granted citizenship to formerly enslaved people. These amendments were the law and lawyers upheld them, but resistance to the enfranchisement of black folks was strong. In 1896, the U.S. Supreme Court ushered in the Jim Crow era when it made “separate but equal” constitutional through the Plessy v. Ferguson decision. Almost 60 years later, in

1954, lawyers successfully fought to make “separate but equal” unconstitutional in Brown v. Board of Education.\(^2\) And, in 1967, exactly ten years before I was born, lawyers successfully confronted the illegality of marriages like mine when the Supreme Court ruled unconstitutional the laws banning interracial marriage in Loving v. Virginia.\(^3\) But legal decisions alone do not change mindsets, and the struggle for equity continued through the 1960s and into the present day, and the pursuit of D&I is another means by which to address it.

The legal profession, which has been at the heart of the equity movement, has a diversity problem. Despite its best efforts to have a more diverse bar, it just isn’t happening. Some of the blame falls on the profession, while some is attributable to factors beyond the profession’s control. This book is about both, and it draws on historical and current references and the latest research to tell a story that, I hope, compels action by all of us.

I take a broad approach to the issue of diversity in the legal profession by viewing the profession’s diversity pipeline as a funnel with the nation’s most diverse population—preschool-aged children—at the top, and one of the nation’s least diverse populations—lawyers—eventually pouring out of the very narrow bottom end of the funnel. This book addresses punctures and choke points in the pipeline resulting from institutional unfairness, tradition, and bias that either force out or stall diversity in early education, college, law school, the law firm recruiting process, and, ultimately, in how law firms evaluate and promote lawyers. These factors are barriers. The legal profession may lack the power to address some, but others are self-imposed. Either way, we must be honest about them, so we can confront these barriers effectively and appropriately. And we can look to examples in our nation’s history for guidance because these issues aren’t new.

The first two chapters recount stories of Harriet Tubman’s exploits during the Civil War and the path taken by Branch Rickey to integrate baseball when Jackie Robinson became the first African American to play in Major League Baseball (MLB). Chapter 1 illustrates why D&I is important. This illustration goes beyond diversity as the right thing to do, which it is, and also addresses how it benefits everyone when people who are often overlooked, because they

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\(^3\) Loving v. Virginia, 388 U.S. 1 (1967).
may not appear to look the part of a leader, receive opportunities to contribute in ways that benefit their organizations—in Tubman’s case, the Union Army.

Chapter 1 also touches upon the consequences of homophily, the attraction people have to folks like themselves. Comfort lies here, but so does discrimination—intended or unintended. This chapter explores the economic and reputational consequences when legislators, business executives, and institutions and their leaders fail to appreciate the importance and impact of D&I. It details the economic consequences of the passage of legislation by the North Carolina General Assembly discriminating against the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community; the reputational damage to the University of Missouri for failing to adequately address the concerns of students victimized by racist behavior from other students; and the reactions of business leaders to President Donald Trump’s inability to unequivocally condemn white supremacists after the events in Charlottesville, Virginia, that resulted in the death of a protester in the summer of 2017.

Chapter 2, on the integration of the MLB, explores the importance of leadership. This chapter answers the question of how leaders promote change. Jackie Robinson was an extraordinary American—a multisport athlete at the University of California, Los Angeles, an Army veteran, a great baseball player who was inducted into the Hall of Fame, and an even better person. In the 1940s, his skin color discounted his pedigree and baseball prowess, to the extent that only one baseball executive had the courage to give Robinson an opportunity to compete at baseball’s highest level: Branch Rickey. Rickey knew the rules governing his world, so he understood that he could not just plug Robinson into the MLB. He had to be a student of race, racism, and the obstacles that could potentially impede Robinson’s ability to fully showcase his talents. This chapter exemplifies the behavior of a leader wanting to have a real impact. Platitudes and empty proclamations are not enough. D&I progresses when leaders are secure enough to admit their ignorance on a topic and wise enough to become a student of the issue they want to solve. Rickey led with curiosity, empathy, humility, and a willingness to wield his power to effect change.

Chapters 3 through 6 address the barriers to creating a more diverse and inclusive legal profession. Some barriers are institutional, as Chapters 3 and 4 illustrate. Others are artificial due to an unyielding devotion to tradition,
which you will see illustrated in Chapters 5 and 6. And other barriers are attributable to environmental and cultural factors influencing our perceptions of ability and how people are positioned for success in various contexts. The first hurdles are erected long before people sit for the Law School Admissions Test (LSAT). In fact, initial obstacles occur before people are born. Because education should be the great equalizer, I devoted Chapters 3 and 4 to looking at it. Chapter 3 addresses the origins of public education, the socioeconomic and racial inequities accompanying its inception, and the use of the legal system to solidify a racial caste system motivated partly by the undereducation of people of color. Chapter 4 discusses the role lawyers played in overturning laws perpetuating unfairness in education and how generations of institutionalized inequity currently impact the readiness of youngsters to become future lawyers.

This unfairness weeds out many students of color well in advance of their submission of applications to college and law school admissions offices. But for the students who make it far enough to be considered for entry into higher education, they must contend with artificial barriers created by these institutions. Colleges and law schools, like society in general, inherited the consequences of this legacy of unfairness, but they are not required to preserve it through self-imposed barriers. Central to Chapter 5 is how the current use of the LSAT (an artificial barrier) hurts law school diversity efforts. This chapter explores academic research that proposes an alternative approach to merit potentially resulting in greater racial and socioeconomic diversity in law schools.

It is not enough for law schools to adopt practices promoting diversity in isolation. The law firm recruiting model is based on a 20th-century approach that will not position firms to improve their diversity representation. Each year, most firms pursue the top 10–15 percent of students from a small group of law schools. Depending on the class size of the school, this could be 20 to 40 people. The lack of a diverse critical mass in law schools suggests that there are few people of color among this group. Further compounding this situation is that firms compete with each other for the same small group of students at the same schools! It is unrealistic to expect a different recruiting result absent a willingness to make structural changes in the hiring process.
Chapter 6 proposes changes that law firms could make in their hiring, evaluation, and promotion practices based on research in organizational psychology. Like any profession, lawyers must validate their employers’ decision to hire them through their work product. And similar to any setting in society, unconscious bias influences the lens through which people treat one another. For example, why are fatality rates higher for black and Hispanic male pedestrians, how does race impact the way referees officiate National Basketball Association games, and how does bias impact financial markets? This chapter provides critical responses to each of these questions to demonstrate the pervasiveness of bias and its impact on critical phases in a law firm attorney’s career: work product evaluation, annual performance reviews, partnership consideration, and development of relationships with influential partners and institutional clients.

I don’t have all the answers. I don’t know all the answers. But I know the current approach is broken due in part to a lack of understanding of how we got here. Context matters. History matters. I am not a historian, but this book uses history to provide context. I ask you to join me on this journey and that we, all of us, work together to figure out how to fix the legal profession’s approach to creating a more diverse bar. Thank you.

Sincerely,
Kenneth O.C. Imo