Announcements »
Diverse Leaders Academy Accepting Applications; Save the Date for Upcoming Diversity Programs
The committee is pleased to make a few important announcements about upcoming programs and the Diverse Leaders Academy.

School to Prison Pipeline 2015 Townhalls
Learn more about this year’s schedule of programs hosted by the ABA’s Coalition on Racial & Ethnic Justice, Pipeline Council, and Criminal Justice Section.

Articles »
Lack of Jury Diversity: A National Problem With Individual Consequences
By Ashish S. Joshi and Christina T. Kline
Learn about the how, why, and repercussions of this endemic American problem.

Recruiting Is Only the Start: 7 Tips for Retaining and Mentoring Diverse Attorneys
By Danny Van Horn
What are some best practices to improve retention and diversity at all levels?

Diversity and Inclusion: The Financial Services Sector and Dodd-Frank
By Honorable Karen T. Roby
The impact of the bill’s Section 342 remains to be seen.
ANNOUNCEMENTS

Applications for Diverse Leaders Academy 2015–2017 Now Open

Applications are now being accepted for the 2015–2017 Diverse Leaders Academy class.

The program provides opportunities for lawyers in under-represented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual and transgender persons, to participate in leadership roles within the Section of Litigation. The primary objectives of the program are to attract, retain and develop talented diverse lawyers, foster a culture of diversity and inclusion, to further demonstrate the Section’s commitment to ensuring equal opportunity in the profession and to create a pipeline of future Section leaders.

Download the Diverse Leaders Academy brochure or submit the application for the Diverse Leaders Academy by June 9!
Background information for 2015 Town Halls

The issue: For too many of our young people, particularly those who are Black, Hispanic, American Indian, disabled, LGBT, and/or low-income, the education pipeline stands broken, and the doors to meaningful education remain closed. The problem is particularly acute in regard to students being pushed or dropping out of school, often into the juvenile or prison system—the so-called school to prison pipeline. Disproportionality—where certain racial or other groups are represented out of proportion to their student numbers—remains virtually unchecked both in regard to discipline, suspension, and expulsion and in regard to certain special education categorizations and placements. The disproportionate minority contact in juvenile justice and delinquency matters is equally troubling. While the availability and visibility of data on pipeline issues is increasing, the problems have been known for decades and have been resistant to change.

The issues posed by the school to prison pipeline are a civil rights challenge for our society. The economics alone are enough reason to address it: Students who drop out or are pushed out of school are disengaged as citizens; they lose earning capacity; they become more dependent on welfare or join the expensive prison population. The U.S. spends an average of $12,136 per year per student while states’ average per inmate cost is over twice that, $28,323;¹ and juvenile detention even higher, an estimated $87,981 per year.²

The goals: The Town Halls use the convening power of the ABA to host a series of national gatherings of key individuals and organizations 1) to call particular attention to the role of the legal community in addressing pipeline issues; 2) to direct focus to the role implicit bias may play in these issues; 3) to recognize ongoing research and programmatic intervention and allow opportunity for networking to support replication of successful efforts; and 4) to develop an

¹ Christian Henrichson & Ruth Delaney, The Vera Institute, The Price of Prisons: What Incarceration Costs Taxpayers (Jan. 2012 updated 7/20/12), Figure 4, The Taxpayer Costs of State Prison per Inmate, Fiscal Year 2010 $ funded by state and federal revenue for states reporting to Vera survey (This is the average of the 40 states reporting in the Vera Survey.)

http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_ji_ps.pdf. See also The Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative,
http://www.aecf.org/~/media/Pubs/Other/D/DetentionReformACostSavingApproach/JDAI_facts_1.pdf (estimating costs between $32000 and $65000)
action plan to address the components of the school-to-prison pipeline dilemma.

**The typical format:** The Town Halls follow a proven format for engagement for change. The first hour features an expert panel drawn largely from the local area and led by two experienced ABA moderators. The panelists speak to the designated topic area and to their experience with pipeline programs and interventions. The second hour opens the program to the audience for questions, comments, and discussion. The formal program is followed by an informal networking opportunity, and, where possible, a reception hosted by local participants.

**So far:** The inaugural Town Hall was convened at the ABA midyear meeting in Chicago to discuss issues posed by the school to prison pipeline. Entitled, “The School-to-Prison Pipeline: What Are the Problems? What Are the Solutions?” the Town Hall offered expert information on the nature of the problem, together with presentations of local Chicago leaders who have programs on the ground to help find solutions. Consistent with the stated goals, the moderators drew particular attention to two major themes: 1) the role that implicit bias plays in disproportionately filling the school to prison pipeline, and 2) the role that lawyers and law students can play in helping dismantle that pipeline.

The first Town Hall aptly illustrated the convening power of the ABA and brought together an expert panel and an extraordinary audience (a standing room only crowd, almost all of whom stayed for the entire program). Those commenting and writing about the session uniformly lauded the ABA’s ability to connect people from different perspectives who came armed with varying solutions; they also praised the Town Hall emphasis on facilitating taking action and implementing real solutions at all levels. One example illustrates the potential here: Three law students traveled from New Orleans (sponsored by their deans at Tulane and Loyola) to talk about Stand Up For Each Other, SUFEO, where New Orleans law students represent K12 students in suspension hearings; Chicago area law students attended as well, took these young people out for lunch, and started a conversation about replicating SUFEO.

The second Town Hall was held at the annual ABA meeting in Boston. Again, it was an extraordinary panel of experts and an extraordinary audience. The focus in Boston was on the excellent on the ground programs in Massachusetts (including legislation and class action litigation on point) and on the issues particular to special education. After the Town Hall, speakers continued to engage in extended networking conversations on next steps.

**Upcoming venues and needs:** Plans for future Town Halls on the School to Prison Pipeline Problems and Solutions are listed below. We are in need of further sponsorship (financial, reception host, in-kind), suggestions for area experts/attendees, and help getting the word out about each/all event(s).
If you can help or need more information, contact Rachel Patrick, Rachel.Patrick@americanbar.org or Professor Sarah Redfield at sarah.redfield@gmail.com.

March 27, 2015—School to Prison Pipeline Town Hall Meeting & Symposium
Sandra Day O’Connor College of Law, Arizona State University, Tempe, AZ, in conjunction with
Arizona State University Law Journal Symposium on Education and Civil Rights in Indian Country

Cosponsored by the Indian Legal Program, Sandra Day O’Connor College of Law; Center for Indian Education, School of Social Transformation; National Congress of American Indians; ABA Coalition on Racial and Ethnic Justice, ABA Criminal Justice Section, and ABA Council for Racial & Ethnic Diversity in the Educational Pipeline.

With a focus on pipeline and education civil rights issues in Indian country.

- Morning of the 27th: Symposium with academic papers
- Afternoon of the 27th:
  - School to Prison Pipeline Town Hall: What are the problems? What are the solutions?
  - Reflections on Civil Rights in Indian Country: Where are we now? What is next?

April 14, 2015—School-To-Prison Pipeline Town Hall, LS 405, Loyola University New Orleans College of Law, 7214 St. Charles Ave., New Orleans, LA, starting at 2:30 pm
in conjunction with
ABA Section of Litigation Section Annual Conference 2015 (April 15-16)

Cosponsored by ABA Coalition on Racial and Ethnic Justice, Criminal Justice Section, and Council for Racial & Ethnic Diversity in the Educational Pipeline; ABA Section of Litigation, Loyola University New Orleans College of Law

With a focus on New Orleans programs on the ground and particular issues raised by charter schools.

- 2:30-4:45 pm School to Prison Pipeline Town Hall: What are the problems? What are the solutions?
- 5-7 pm Cocktails for a Cause to benefit SUFEO (Stand Up for Each Other)
Tentative: April 18, 2015—Facing Future: School-To-Prison Pipeline Town Hall, Moana Surfrider, Honolulu, HI, starting at 8:30 a.m.
in conjunction with
ABA GP Solo and NAPABA National Asian Pacific American Bar Association, (April 16-18)

Cosponsored by ABA Coalition on Racial and Ethnic Justice, Criminal Justice Section, Council for Racial & Ethnic Diversity in the Educational Pipeline and GP Solo; National Asian Pacific American Bar Association

With a focus on Native Hawaiian programs and issues unique to a statewide education provider.

May 2015, Miami, FL, Recommendations Moving Forward: School-To-Prison Pipeline Town Hall. Date and location to be announced.

Cosponsored by ABA Coalition on Racial and Ethnic Justice, Criminal Justice Section, and Council for Racial & Ethnic Diversity in the Educational Pipeline; the Hispanic National Bar Association

With a focus on Florida programs on the ground and Hispanic pipeline issues.

Seattle, WA, Recommendations Moving Forward: School-To-Prison Pipeline Town Hall. Date and location to be announced.
ARTICLES

Lack of Jury Diversity: A National Problem with Individual Consequences
By Ashish S. Joshi and Christina T. Kline

Chicago’s federal district court, the Eastern Division of the Northern District of Illinois, encompasses racially diverse and multicultural Cook County in addition to other primarily white counties. In 2013, at the start of a high-profile criminal tax-evasion trial, the 50-member prospective jury pool called for jury selection failed to include a single African-American man. See Annie Sweeney & Cynthia Dizikes, The balancing act of jury selection, Chicago Tribune (Mar. 27, 2013). Although U.S. District Judge James Zagel suggested that this incident was a rarity, the same courthouse had summoned an entirely Caucasian jury pool no more than two months earlier for another black defendant’s criminal trial. Id.

Turns out, this “rare” incident is not so rare after all. Tresa Baldas, No-shows for jury duty hurt diversity of Michigan pools, Detroit Free Press (Apr. 13, 2012). On the contrary, it is indicative of a challenge that courts are confronting across the country. These jurisdictions are struggling to provide criminal defendants with jury candidates that could be reasonably described as the defendant’s “peers.” In other words, courts are striving to effectively and randomly select jury pools with a composition that reflects the racially diverse populations they serve. Id. Criminal defense attorneys are often presented with a jury that features a majority of white, upper-middle class individuals who are then responsible for judging the guilt or innocence of a defendant who does not share their same characteristics or background. Hong Tran, Jury Diversity: Policy, legislative and legal arguments to address the lack of diversity in juries, Defense, May 2013, at 6. As one federal judge put it: “Unless you are totally blind, a judge cannot help but realize that when 100 people come into court for jury selection that there are one or two, or none, who are visible minorities.” Baldas, supra (quoting U.S. District Judge Victoria Roberts).

Several causes have been identified as a source of this problem. A key factor associated with the underrepresentation of minorities is that jury questionnaires in many predominantly minority areas come back to the court as undeliverable or do not come back at all. Id. According to the Detroit U.S. District Court’s Jury Department, “one-third of undeliverable jury questionnaires or ones never returned are in Detroit,” a city with a significant minority population. Individuals with lower socioeconomic statuses tend to move more frequently, making them difficult to locate to deliver a juror summons. See Task Force on Race and the Criminal Justice System, Preliminary Report of Race and Washington’s Criminal Justice System, at 29 (2012) (“African Americans, Native Americans and Latinos are more likely to be economically disadvantaged, have unstable employment, experience more family disruptions, and have more residential mobility.”). Furthermore, the costs associated with answering a summons or being called for jury duty are prohibitive for those who cannot afford to miss a day of work. Alexander E. Preller, Jury Duty is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service, 46 Colum. J.L. 1, 1–2 (Fall 2012) (“For many, [the] inadequate compensation [afforded to jurors] is simply inconvenient, but for those who are self-employed, hold multiple
part-time jobs, or are dependent on tips as part of their compensation, potential loss of income is critical and they do whatever they can to avoid [jury duty].”).

Notwithstanding the difficulties in empaneling a multiracial jury, criminal defendants are still given the right to be tried by an impartial jury of their peers. But given the difficulty in composing a diverse jury pool, it bears asking: Why does it matter? Why do we strive for jury diversity?

As an initial point, there is an issue of “optics”: a heterogeneous jury not only confirms that the system is fair and impartial for the defendant, Tran, supra, at 6 (citing Paula Hannaford-Agor, Systematic Negligence in Jury Operations: Why the Definitions of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded, 59 Drake L. Rev. 761 (Spring 2011)), but also assures the public at large. Leslie Ellis & Shari Seidman Diamond, Race, Diversity and Jury Composition: Battering and Bolstering Legitimacy, 78 (3) Chi.-Kent L. Rev. 1033, 1033 (2003). As former federal judge for the Northern District of Illinois David Coar opined, “You want, especially at the outset, [for] this thing to not only be fair but look fair. This court system depends on people believing that you get a fair shake.” Sweeney & Dizikes, supra note 1. Conversely, a racially homogenous jury pool can have a harmful impact on the public’s perception of the justice system. Sonia Chopra, Preserving Jury Diversity by Preventing Illegal Peremptory Challenges: How to Make a Batson/Wheeler Motion at Trial (and Why You Should), The Trial Lawyer, Summer 2014, at 20 (citing Samuel Sommers, On Racial Diversity and Group Decision-Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations, 90 (4) J. Personality & Soc. Pschol. 597 (2006)) (noting that “jury verdicts are perceived as more fair by outsiders when they are rendered by diverse versus homogenous juries”). Indeed, a jury pool’s makeup can raise serious questions concerning this nation’s overall dedication to racial equality. Are all-white juries a cause or a symptom of systemic racism, oppression, and discrimination? Either way, a system in which non-diverse juries are almost uniformly deciding the fate of minority criminal defendants is inherently contrary to our society’s professed dedication to achieving and maintaining equality.

In addition, minority presence on a jury allows the group to understand and appreciate the different life experiences that different racial identities have with the criminal justice system. Tran, supra, at 6 (citing Edward S. Adams, Constructing a Jury That is Both Impartial and Representative: Utilizing Cumulative Voting in Jury Selection, 73 N.Y.U.L.Rev. 703, 709 (June 1998)). This leads the jury as a whole to perform their fact-finding tasks more effectively by helping eliminate or lessen individual biases or prejudices. Id. In turn, trials are more likely to be considered fair and impartial. Id. (citing Paula Hannaford-Agor, Systemic Negligence in Jury Operations: Why The Definitions of Systemic Exclusion In Fair Cross Section Claims Must Be Expanded, 59 Drake L. Rev. 761 (Spring 2011)). Studies have shown that “diverse juries had longer deliberations, discussed more case facts, made fewer inaccurate statements, and were more likely to correct inaccurate statements.” Chopra, supra. People of different races—akin to people with varied economic statuses, social hierarchies, sexual orientations, or national origins—consider and evaluate the same information in different ways and often arrive at
different conclusions. Tran, supra, at 6. Of course, “[d]iverse viewpoints are more important to a jury’s performance than diverse skin color, but promoting diversity of race and ethnicity provides a more workable means of ensuring diverse viewpoints than attempting to probe viewpoints directly through questionnaires, voir dire examinations, and the like.” Albert W. Alschuler, Racial Quotas and the Jury, 44 Duke L.J. 704, 722 (1995).

Indeed, the lack of jury diversity has tangible implications beyond the larger societal problems that are indicated by a non-diverse jury pool. For example, consider the case of a black defendant who may wish to have at least one black juror in order to ensure that he is judged by a group that understands the nuances and implications associated with his background. Imagine that this defendant is presented with a jury pool comprised entirely of white, upper-middle class individuals along with a single black prospective juror. Now consider that the one black juror, while sharing the defendant’s racial background, lacks other traits that may be beneficial for the defense (e.g., a family member in the police force, an association with someone who was a victim of the crime charged against the defendant, etc.). On the one hand, the defense may choose to retain the minority juror despite these other issues. On the other, the defense could dismiss the juror and proceed with an all-white jury that lacks the necessary insight into the defendant’s identity, which risks allowing the remaining juror’s biases to go unchecked.

In this hypothetical, the defendant and defense counsel are forced to weigh the values of a shared racial identity against other characteristics that are desirable in a juror. Do you keep a juror who may sympathize and identify with the defendant because of a shared identity trait? Or do you risk empaneling a jury that lacks the ability to fully understand that defendant’s background and unique circumstances but may have different valuable characteristics? This balance is only being struck because there are no other prospective jurors who share the defendant’s racial background. The value of a juror’s race—an inherently troubling topic that calls into question other issues of discrimination and bias—is placed directly in the spotlight solely because of that juror’s otherness in comparison to his or her fellow jurors. By failing to provide other minority jurors, the court forces defendants and jurors to focus on what separates them from the group despite the justice system’s continued guarantees of equality and impartiality. Notwithstanding, this is a dilemma that stacks the deck even further against the defendant and jeopardizes his right to a jury of peers who can sympathize or identify with him as a nuanced individual.

Given the significant benefits to empaneling a multiracial jury pool, denial of such diversity may give rise to other issues. An all-white jury may ultimately deny a minority defendant the right to be tried by a panel of his or her peers and, as a result, run afoul constitutional guarantees. Legal challenges are chiefly based on the Sixth Amendment’s guarantee of an “impartial jury” that has been drawn from a fair cross-section of the community. Taylor v. Louisiana, 419 U.S. 522, 535–37 (1975). When a defendant challenges the composition of his or her jury panel under this paradigm, the alleged violation is analyzed using the Duren test. Duren v. Missouri, 439 U.S. 357 (1979). This test was reaffirmed in Berghuis v. Smith, 559 U.S. 314 (2010). The prima facie factors that establish a violation are
the group alleged to be excluded is a “distinctive” group in the community;
the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and
the underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Id. at 364.

A group is typically considered “distinctive” if it is based on race, gender, or ethnicity. Otherwise, courts have considered the following: “(1) that the group be defined and limited by some clearly identifiable factor . . ., (2) that a common thread or basic similarity in attitude, ideas, or experience run through the group, and (3) that there be a community of interest among the members of the group, such that the group's interests cannot be adequately represented if the group is excluded from the jury selection process.” Barber v. Ponte, 772 F.2d 982, 997 (1st Cir. 1985).

If the excluded group qualifies as “distinctive,” a court must then determine the pool of available and qualified prospective jurors. Duren, 439 U.S. at 364–66. To do this, the court will look to the state’s laws on the subject. States may generally be permitted to establish the requisite qualifications for prospective jurors, Berghuis, 559 U.S. at 333. (i.e., U.S. citizens, eighteen years old or older, resident of the county in which summoned, proficient in English, etc.). See e.g., RCW 2.36.070. From there, statistical evidence must be presented establishing that the distinctive group is underrepresented in the overall potential juror group. Duren, 439 U.S. at 364–66. The Supreme Court, in Berghuis v. Smith, noted that at least three different methods have been used for this element—absolute disparity, comparative disparity, and standard deviation—but further clarified that no statistical test is ideal. Berghuis, 559 U.S. at 329.

The final requirement under Duren requires that the underrepresentation be a product of the system used to select prospective jurors for service. Duren, 439 U.S. at 367 (1979). Duren, for example, found that that the court’s practice of granting automatic exemptions to otherwise qualified female jurors constituted systematic exclusion that violated the Sixth Amendment. Id. If a defendant is able to present sufficient evidence to show that his or her right to an impartial jury was violated, then the State must demonstrate a compelling justification for the alleged exclusion. Id. at 368. Unfortunately, the legal challenges concerning the lack of jury diversity have mostly been unsuccessful. For example, in Detroit, several defendants have challenged the jury selection process—none successfully. Baldas, supra. And Detroit is not alone: The lack of jury diversity is a national concern. Id. (quoting Greg Hurley, a member of the Virginia-based Center for Jury Studies and an analyst with the National Center for State Courts). Accordingly, federal courts around the country are taking steps to address the problem. Courts and lawmakers alike have implemented various solutions, which range from highly individualized responses to broad-reaching campaigns.
Some courts and judges have chosen to address the problem on a case-by-case or person-by-person basis. For instance, Eastern District of Michigan Judge David Lawson ordered several individuals to appear in his court and explain their failure to appear for jury duty. \textit{Id.} Judge Lawson, however, did not stop there; he indicated that their continued absence would result in arrest, jail time, or a monetary fine. \textit{Id.} Similarly, Judge Denise Page Hood, also of the Eastern District of Michigan, has taken an educational approach and required jury-dodgers to appear in her courtroom and observe the jury selection process in its entirety. \textit{Id.} It seems that many courts agree that the sanction, or even the threat of sanction, effectively increases juror turnout. Tran, \textit{supra}, at 8. Moreover, judges have been able to take corrective action even when the initial jury gathering process fails to provide a sufficiently diverse group. For example, when presented with a predominantly Caucasian group of prospective jurors, Northern District of Illinois Judge Milton Shadur simply adjourned the trial for a couple of days until an adequately multiracial jury could be summoned. Sweeney & Dizikes, \textit{supra}. In these instances, judges were able to take the steps they felt were appropriate to provide a defendant with an acceptable jury pool. At the same time, these ad hoc measures can only go so far and may be entirely unavailable if no minorities ever appear for jury duty. Moreover, these actions were taken at the discretion of the individual judge and may be unavailable, overlooked, or disregarded in other courtrooms.

To ensure consistent minority attendance, a broader, policy-based approach may be necessary. Some courts and lawmakers have extended the scope of their efforts by altering laws and jury-selection methods. Permitting non-English speakers to sit on juries may increase the presence of minorities. Tran, \textit{supra}, at 8–9. While eliminating the language requirement may not necessarily impact racial diversity, such a policy shift will certainly increase the presence of varied identities, nationalities, ethnicities, and other valuable characteristics. Also, some courts have changed their random-selection process to reach a broader groups of individuals with jury summonses. Sweeney & Dizikes, \textit{supra} (referencing statement from Paula Hannaford-Agor, an expert on jury system management with the National Center for State Courts). Typically, courts send juror questionnaires to individuals who were pulled from voter registration lists. \textit{Id.} Census data, however, suggests that “registered voters tend to be older, white and more affluent than the general population.” \textit{Id.} To bring greater racial and ethnic balance to the list of potential jurors, some jurisdictions have begun drawing from other lists with a greater proportion of minorities, such as driver license and state ID databases. \textit{Id. See also} Tran, \textit{supra}, at 8. Still, there remain countless other possible remedies, such as redesigning the jury questionnaire, requiring that questionnaires be completed and returned, and using stratified sampling techniques, John P. Bueker, \textit{Jury Source Lists: Does Supplementation Really Work?}, 82 Cornell L. Rev. 390, 423–30 (Jan. 1997). However, each court must determine what solution is most effective for their jurisdiction.

Despite the efficacy of methods that are specifically intended to increase juror diversity, it may be necessary to first overcome the general population’s opposition to serving on a jury. It comes as no surprise that Americans typically hold negative attitudes when it comes to jury duty. Alexander E. Preller, \textit{Jury Duty is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service}, 46 Colum. J.L. 1, 1–2 (Fall 2012) (“People hate getting jury
duty.”). If potential jurors, regardless of identity, resist jury service, then there is yet another barrier to achieving multiracial, heterogeneous jury panels. As a result, ensuring jury diversity may require a holistic approach that makes jury duty more desirable to everyone and then focuses additional efforts that target minority populations. Some courts have already suggested or undertaken this type of multifaceted approach. Increasing juror pay or providing additional incentives, for example, can serve a dual role by increasing general juror turnout and encouraging individuals from lower socioeconomic backgrounds to appear by decreasing the opportunity costs associated with jury service. Tran, supra, at 8 (noting that the Washington State Jury Commission, created by the Board of Judicial Administration in 1999, gave the “highest priority to increasing juror fees” which will “address the current inequity in juror compensation” and “enable[e] a broader segment of the population to serve”) (citing Washington Jury Commission, Report to the Board of Judicial Administration, Executive Summary (July 2000) http://www.courts.wa.gov/committee/pdf/Jury_Commission_Report.pdf.). Likewise, community outreach, including publicity campaigns, communications with businesses and employers, and educational efforts geared toward new citizens and minorities may promote jury service for the general population as well as for diverse communities. Id.

While there appear to be significant barriers to remedying the lack of multiracial and diverse jury pools, the alternative (i.e., allowing the issue to go unaddressed) is unacceptable. As previously noted, diversity is not simply an idealistic goal but has true utility in ensuring the justice system’s integrity and reliability. Presently, our nation’s courts seem to depend on an approach where each individual court system conceives a plan to increase diversity and subsequently evaluates the outcome. If one method is unsuccessful, they return to the drawing board. Essentially, these courts must rely on trial and error. To further complicate the issue, while one arrangement may work for one location, that same system may not be as effective in another part of the country. Therefore, it is imperative for courts to continue trying different methods to increase juror turnout and, in turn, juror diversity. The costs and potential benefits are too great to allow the continued absence of minority jurors to go unchecked.

Ashish S. Joshi is a trial lawyer and Christina T. Kline is an associate with Lorandos Joshi in Ann Arbor, Michigan. Mr. Joshi is a recipient of the Diverse Leaders Academy award for the years 2014–2016.
Recruiting Is Only the Start: 7 Tips for Retaining and Mentoring Diverse Attorneys

By Danny Van Horn

Many law firms and legal employers talk openly about the importance of diversity and some do a pretty good job at recruiting diverse attorneys at entry level positions. Few can show real progress at more senior levels. While a necessary first step, it is simply not sufficient to talk about diversity and to recruit diverse attorneys at entry-level positions without there also being progress at more senior levels. We all have to get much better at retaining them and helping them develop into productive more senior attorneys.

Of course, that is easier said than done. What are some best practices that legal employers can follow to improve retention and ultimately diversity at all levels within their organization? Here are seven suggestions:

1. **It starts with honest recruiting.** You have to be honest about the skill set really required to succeed in your organization. Don’t just list certain grades or clerkships or law review opportunities because that is what you have always done. You need to really think through the skill set entry-level applicants and employees need succeed. You then need to be honest with the people you are recruiting about what those skills are and how you see the candidate in terms of having or lacking certain skills. If for diversity purposes you are providing an opportunity to someone who otherwise does not fit your hiring criteria, you need to be honest about that and explain how you are going to help that candidate get up to speed with everyone else in short order. There needs to be a shared understanding as to where that candidate stands and what he or she needs to do to succeed. Yes, this honesty may result in the candidate declining the job offer. The point of honesty at the outset is to set expectations and demonstrate transparency. In the end, what people want is an honest opportunity to shine. If things don’t work out, there is a greater chance for understanding if the criteria were explained fairly and thought out well. More importantly, there is a greater chance that the candidate will rise to the occasion.

2. **Find the right mentors.** In every organization that I know of, those who make it and succeed did so in no small part because those who came before them opened doors, picked them up when they were down, and helped guide them along the way. Before the new hire comes in, identify someone who agrees to be that new hire’s champion. It is critical that the mentor not be stereotyped: don’t automatically pair a new female associate with a more senior female. Of course, it is helpful to have senior attorneys to talk with who have shared your experiences and have a common background. But it is a mistake to start and stop at that premise. There’s no reason a new hire can’t and should have more than one mentor. The first principle in selecting a mentor is finding someone really ready to look after and champion the new hire.
The mentor relationship needs to be reevaluated periodically. The mentor may not be doing their job. There may not be a good personality fit between the two. Don’t let a bad pairing remain in place just because that was the decision the first day. Perhaps most importantly, ask the younger hire how they feel about the mentor relationship after they have been in it for a time. Ask them who they would like as a mentor if they could choose anyone. Then work to make that happen.

3. **Develop a career checklist.** As soon as possible, create a career checklist for the new hire. For example, it might include, “By the end of your first year here, you should have argued a motion in court or taken a deposition.” Then put milestones on each skill set or accomplishment. The new hire, their mentor, and any management in the organization should periodically review that checklist to see how the hire is progressing. The checklist can then also be used to look for good experience and opportunities for that hire. One of the worst things a legal organization can do is hire a diverse attorney “for the numbers” and include them in various marketing pitches and marketing collateral but fail to give them substantive work and an opportunity to shine. At the very least, if you included a diverse attorney in a marketing pitch and got the work, they should be heavily involved in the work.

4. **Give honest feedback.** It’s not easy to hear when our work has not met expectations. If we are honest with ourselves, honest feedback is a great opportunity to grow and learn—even if it’s painful. If you avoid telling a diverse attorney that the work they did was less than expected for fear that your honest feedback will be perceived as showing improper bias, then you do that attorney, your organization, and yourself no good. Problems are created when people are consistently told that they are doing well when they are not or when they are simply not given any feedback at all. To give honest feedback, there needs to be a relationship such that the person receiving the feedback understands that you are trying to help them grow and that you believe in them. Communicate that you have high expectations for the diverse attorney and want to help them succeed and achieve those expectations. Like anyone else, they may not like hearing the negative feedback at first. They may have gone a very long time without anyone telling them that they did anything that was less than stellar. Understand that too. Commit to enough of a relationship that you can ride out any initial reaction you get. Keep caring, and in the long run they will appreciate you for it. The flip side of this: Don’t give glowing praise when it’s not warranted. That’s just as bad. In order for this to work, you need regular, honest feedback.

5. **Career planning.** Every now and then, talk with these hires about career planning and about the extracurricular things they can and should be doing to further their career and advancement opportunities. Take them to meetings and conferences. Introduce them to your contacts. Groom them as you would anyone else you wanted to see succeed. Help them develop a vision and a career path. Part of that is, of course, listening to them and
asking them what they see as their long-term goal. Challenge them to write a fake ideal resume that would be theirs in five or ten years, and then work backward from what that picture looks like to today. Then build a plan with them to work toward that ideal resume.

6. **Social opportunities.** Retention in any organization is about more than just professional opportunities. It helps to know and like your coworkers. So, get to know them. What are their hobbies or interests? What about their personal lives? Invite them to dinner and to meet your family. Show them that there are important things about getting to know the people at work. Invite them to play golf or to have dinner with other friends. Work to get to know their network and help them get to know your network. It is much easier to care about someone that you know. Get to know them and help them get to know you.

7. **Look out for them.** There is, will be, or has been a point in all our careers where we quite frankly messed things up. From that vantage point, the view can be bleak. If the person you are mentoring or another diverse attorney in your organization makes a big mistake, take that opportunity to reach out to them, lift a helping hand, and encourage them. That is also a great inflection point to provide honest feedback and career-planning covered by other points. Always remember to communicate with an attitude of care and friendship. It will go farther. If the screw up is so bad that it is unrecoverable, sometimes the best thing you can do is to help buy that person more time and help them find another job. If you can’t retain them in your organization, retain them as a friend and contact. It is a small world. We do reap what we sow.

Retention is as important as recruitment. The keys to retention are honest communications, a shared vision for development and success, and genuine concern for the person. These goals are much easier said than done, but the path to success in retention is not a mystery. Is your organization measuring its retention? Is your organization focused on efforts to retain folks that it has already hired? You should be.

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Diversity and Inclusion: The Financial Services Sector and Dodd-Frank
By Honorable Karen Wells Roby

The financial services sector is not very diverse. This fact is well documented in an April 2013 report issued by the U.S. Government Accountability Office which noted that from 2007 to 2011 there have been no substantial changes in the number of minorities and women in management in the financial services industry. (The report also notes that there is an increase in both minorities and women in first- and mid-level management positions, which may create a pipeline for increased representation in senior management positions in the future.) According to the report, women represented close to 30 percent of senior management at financial firms and approximately 36 percent of senior management at financial regulators. However, the representation of minorities in senior management level positions is only 11 percent at financial firms and 17 percent at their regulators. Doreen Lilienfeld and Amy Gitilitz Bennett, Will Dodd-Frank’s Diversity Mandates Go Far Enough? Law 360. [Log-in required.]

Maxine Waters, U.S. Representative of California and the author of Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), has noted that the lack of inclusion and participations of women and minorities spreads across many diverse industries, but that the financial services has sector has been the worst offender. Waters further explained that Section 342 will assist agencies in their outreach efforts and help broaden their appeal to different communities. Id.

One of the Dodd-Frank Act’s goals was to increase racial and gender balances at financial institutions and regulatory agencies, and one step toward this goal is to require federal agencies to create an Office of Minority and Women Inclusion (OMWI). OMWI is responsible for overseeing all agency matters relating to diversity in management, employment, and business activities. Each agency must appoint a director for its OMWI, which is a senior executive service position charged with developing standards for (1) agency diversity in regard to race and gender, (2) increased participation of minority- and women-owned businesses, and (3) assessing the policies and practices of the agency-regulated entities. Daniel J. Moore and Stephanie Wilson, Dodd-Frank Wall Street Reform Act Requires Federal Financial Agencies to Address Diversity and Fair Inclusion of Minorities and Women, Employment Law Watch (October 20, 2010).

The Dodd-Frank Act focuses on transparency and awareness of diversity policies within agencies. However, it does not necessarily call for quotas or actions, and it does not levy penalties. The OMWI has neither the authority nor the responsibility of enforcing civil rights laws. The agencies covered by the act include the Department of Treasury, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Federal Reserve Banks, Board of Governors of the Federal Reserve System, National Credit Union Administration, Office of the Comptroller of the Currency, Securities and Exchange Commission, and Bureau of Consumer Financial Protection. Each agency was required to establish its OMWI by January 2011, though
the Bureau of Consumer Financial Protection was given until July 2012 to establish its OMWI. The provisions of the Dodd-Frank Act apply to all types of service contracts with the agency, such as financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities underwriters, accountants, investment consultants, and law firms. Id.

Furthermore, each OMWI is responsible for developing standards for assessing the diversity policy and practices of its agency. In October 2013, the “Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices” was created by six agencies. The proposed standards recognize that some regulated entities are required to file Employer Information Reports (known as EEO-1 reports) with the Equal Employment Opportunity Commission (EEOC) and some of the entities are federal contractors covered by affirmative action laws enforced by the Office of Federal Contract Compliance Programs (OFCCP). Brian D. Pedrow and Ashley L. Wilson, Raising the Bar on Diversity and Inclusion: Dodd-Frank’s Proposed Diversity Standards, Mortgage Compliance Magazine, Aug. 2014, at 35, 36. The requirements hinge on two conditions: (1) employer size and (2) whether the employer has a federal contract above the financial thresholds. “The diversity standards are broader and not limited in their application to only entities covered by these legal requirements.” Id.

Dodd-Frank’s Section 342 is not written to be an enforcement measure, nor does it prescribe penalties or mandates, but merely as an encouragement for agencies to do so independently:

The agencies may view this gap as an invitation to develop their own enforcement mechanisms. Moreover, while Section 342 specifically provides that the OMWI’s duties do not include enforcement of civil rights laws relating to discrimination, each OMWI director is empowered to coordinate with the agency administrator regarding the design and implementation of any remedies resulting from violations of such laws. Such remedies could include, for example, referral of suspected violations to other agencies with authority to investigate, remediate and/or litigate such claims, including the EEOC and the OFCCP. For example, Section 342 specifically mentions referrals to the OFCCP when a contractor or subcontractor of the agency has failed to make a good faith effort to include minorities and women in their workforce.

In addition, Section 342 specifies that the diversity assessment required under the standards should not be construed to mandate any requirement on, or otherwise affect the lending policies and practices of, any regulated entity, or to require any specific action based on the findings of the assessment. It nonetheless remains to be seen whether the assessments will play a part in the extent to which a regulated entity’s lending practices become the subject of a fair lending examination or the scope and rigor of such an examination.

Id.

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While the U.S. government recognizes the importance of diversity in the financial services industry, the industry’s leaders must seize the opportunity and truly prioritize diversity and inclusion for meaningful change to occur. It can demonstrate the true importance of diversity by not only complying with the Dodd-Frank Act in form, but also by the implementation of policies and practices that advance the overall goal by hiring and including more minorities and women. Nonetheless, the verdict is still out on the impact of Section 342 on diversity and inclusion in the financial services sector.

U.S. Magistrate Judge Karen Wells Roby is chair of the Section of Litigation's Diversity & Inclusion Committee and serves on the U.S. District Court, Eastern District of Louisiana.
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