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Justice for All...Who Can Afford It
By Paulette Brown

What is the price of justice?

America is supposed to adhere to the principle of "equal justice under law," a concept dating back to ancient Greece and embedded in our society through the 14th Amendment. The phrase is so important to our legal system it is engraved on the U.S. Supreme Court building.

But today, in far too many instances, an individual's access to equal justice is based less on principle and more on ability to pay. Financial penalties—fees, fines and bail—have rendered justice unjust.

Fees and fines that ignore a defendant's ability to pay place an unfair burden on people of lesser means. Minor infractions can result in fees that spiral into thousands of dollars, and contribute to the United States incarcerating more individuals than any developed country. Bail set without consideration of financial circumstances results in the detention of the poorest, rather than most dangerous or highest flight risks as intended.

In December, I attended a White House meeting titled "A Cycle of Incarceration: Prison, Debt and Bail Practices." A bipartisan, eclectic group of academics and stakeholders were gathered to discuss the issue and develop an agenda for change. U.S. Attorney General Loretta Lynch spoke at the meeting about "the criminalization of poverty" where a person's financial standing, not actions or deeds, determines justice. She explained how this situation breeds mistrust and erodes faith in our government and law enforcement.

Former Attorney General Robert F. Kennedy said in 1962, "If justice is priced in the marketplace, individual liberty will be curtailed and respect for law diminished." We are seeing this respect diminished throughout our country. One such place, Ferguson, Missouri, was the subject of a U.S. Department of Justice investigation.

In March 2015 the Justice Department's Civil Rights Division released its report on the Ferguson Police Department and found that the city focused its municipal court operations on revenue generation, not public safety. It routinely imposed excessive fines, arrested low-income residents for failure to appear or make payments, and used unlawful bail practices, resulting in unnecessary incarceration.

The report referenced the case of a 67-year-old woman who received two traffic tickets in 2007 totaling $152. After more than eight years of fines and penalties—including two arrests and six days in jail—she had paid the city $550 and owed $541 more.

Ferguson is not an anomaly. Across the country, nearly two thirds of all inmates in county jails
are awaiting trial at a taxpayer cost of $9 billion. After release on bail or probation, many must pay private companies to monitor them. In South Carolina, a defendant has to pay almost $300 a month for an ankle-monitoring bracelet or return to jail.

The office of the public defender was formed to assist individuals unable to afford a private lawyer. Yet in too many instances, indigent defendants are required to pay a fee to utilize a public defender, placing the promises of *Gideon v. Wainwright* in a precarious position.

But there are alternatives. In Newark, New Jersey, Judge Victoria F. Pratt presides over Municipal Court Part Two and uses procedural justice rather than incarceration. She routinely orders individuals to write essays to examine why they committed an infraction and how they can change their lives.

Judge Alex Calabrese at the Red Hook Community Justice Center in Brooklyn, New York, concentrates on the underlying problem of a defendant’s behavior and crafts solutions such as service to repay the community. These courts focus on fairness. Defendants respond when treated with dignity. These courts save money, reduce pretrial incarcerations—which can average $19,000 per case—and improve recidivism rates.

John Jay, the first Chief Justice of the United States, said, "Justice is indiscriminately due to all, without regard to numbers, wealth or rank." To live up to these words, courts need to save money through innovation rather than extracting it from poor defendants. Only then can justice truly be equal for all.

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Diversity in Law: Who Cares?
By Candice A. Garcia-Rodrigo

“I’m just wondering what the benefits of diversity are in [the classroom],” United States Supreme Court Chief Justice John Roberts pondered during oral arguments in Fischer v. University of Texas at Austin pending before the U.S. Supreme Court. Too often people pose a similar question about the benefits of diversity in the legal profession.

Historically, the legal profession has been one of the least diverse professions in the nation. It continues to be so, according to a recent survey produced by the American Bar Association (ABA). Some may think why it even matters for the profession to be diverse. What is diversity? What are the benefits of diversity in law?

The ABA defines diversity as “the term used to describe the set of policies, practices, and programs that change the rhetoric of inclusion into empirically measurable change.” Diversity includes more than just racial or ethnic diversity. The concept of diversity encompasses all persons of every background, gender, race, sexual orientation, age, and/or disability. Diversity has a different meaning to everyone, posits Chasity H. O’Steen, chair of the Florida Bar Diversity and Inclusion Committee Diversity. “People’s experiences and exposure to different situations inform their perspectives, perceptions, and beliefs. Fundamentally, people want to belong, be heard, and be understood,” says O’Steen.

According to the ABA, “racial and ethnic diversity in the legal profession is necessary to demonstrate that our laws are being made and administered for the benefit of all persons. Because the public’s perception of the legal profession often informs impressions of the legal system, a diverse bar and bench create greater trust in the rule of law.” And negative perceptions of the legal profession impacts the “public confidence in our system,” says Thomas W. Ross, Professor of Public Law and Government at University of North Carolina at Chapel Hill. As such, enhancing diversity and inclusion is one of the ABA’s primary goals.

Again, the nagging question: Why does diversity matter? Beyond the public perception and confidence in our system, diversity affects “the quality of legal services and judicial decisions,” argues the ABA. “A diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes.”

Further, the need for fair representation of citizens in the legal system is crucial and begins with a diverse population of attorneys and judges, says 2015–2016 ABA President Paulette Brown. “A demonstrated commitment to diversity and inclusion can be a key aspect of a law firm’s competitive advantage when it comes to recruiting and retaining talent and pitching certain clients. Clients receive the highest quality service when their legal teams are drawn from
professionals mirroring the diversity of the marketplace,” says Tiffani Lee, partner at Holland & Knight, LLP.

The other rationale for promoting diversity in the profession is that the nation’s leaders typically come from the population of lawyers and judges, points out Justice O’Connor (Ret.). “In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity,” continues O’Connor.

Beyond the perception of the justice system and representation of the public in the system, is the benefit of being able to “come up with more creative solutions,” argues Robin Wofford of Wilson Turner Kosmo LLP, who also serves as chair of the National Association of Minority & Women Owned Law Firms. “Their unique backgrounds help to ensure that a 360-degree approach is used to analyze each issue,” continues Wofford. “Having a diverse legal team helps to eliminate the possibility of bias affecting your final decision.”

Moreover, “a group of diverse people working together to identify, analyze, and resolve issues ensures that those collective perspectives, perceptions, and beliefs are voiced, considered, and represented as part of any proposed solution,” states O’Steen. “This collaborative effort, though at times challenging or even contentious, builds confidence within the legal community that diverse opinions, thoughts, and proposals are respected, appreciated, and desired, which in turn encourages others to become involved and perpetuates an inclusive and cooperative environment within which members of the legal community can work and feel valued instead of feeling that their perspectives, beliefs, and perceptions, and those of the individuals and entities that they represent and serve, are not worthy of consideration and are not wanted.”

Knowing the value and benefits of diversity in the legal profession is important, but how can we achieve diversity in the profession? The ABA suggests that law schools must implement diversity plans, in which school leaders participate in the plan. “Diversity and inclusion education and training needs to start while future attorneys are in law school and continue during the practice of law. Legal organizations and associations need to continue to make diversity and inclusion a priority and promote efforts to encourage diversity and inclusion within their organizations, in legal practice, and in the judiciary,” argues O’Steen.

Despite the implication of questions similar to Chief Justice Roberts’s question about the benefits of diversity, there are countless benefits to having diversity in the legal profession.

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How In-House Counsel Can Promote LGBT Diversity in the Legal Profession

By Samuel L. Felker

Over the past several years, law firms in the United States have made great strides in promoting LGBT diversity. Most large law firms in the United States now express a commitment to LGBT diversity in the diversity section of their webpages. More importantly, many have adopted nondiscrimination policies, equalized employee benefits, and dedicated resources to the recruitment of LGBT law students and laterals. Many firms now include LGBT content in their diversity training to attack stereotypes and build cultural competency regarding LGBT issues. It is also very common now for law firms to have an affinity group (i.e., employee resource group or ERG) for LGBT attorneys. My firm, Baker Donelson, has such an affinity group for LGBT attorneys and staff, and we operate alongside the long-standing affinity groups and diversity initiatives for women and lawyers of color. It is fair to say that in recent years, LGBT diversity has become entrenched in the culture of major U.S. law firms, at least on the surface.

To measure this cultural shift in law firms, one need only look to the Human Rights Campaign’s (HRC’s) annual Corporate Equality Index, which is widely regarded as the leading national benchmarking tool on policies and practices pertaining to LGBT employees. The HRC Index is a voluntary survey examining the extent to which employers demonstrate fully inclusive equal opportunity policies, equal employment benefits, organizational LGBT competency, a public commitment to LGBT equality, and responsible corporate citizenship. This year, 149 law firms, including a majority of the Am Law 200 firms, participated in the survey, and a record 89 received a perfect score of 100 and earned the distinction of “Best Places to Work for LGBT Equality.” An additional 36 law firms scored 90 percent. By comparison, in 2006, when law firms were first requested to participate, only 12 law firms scored 100. That number jumped to 64 in 2009, with law firms for the first time eclipsing the number of businesses who received the top score in the banking and financial service sectors. The 2009 HRC Corporate Equality Index contained the following statement indicating that was a watershed year: “Law firms are highly competitive in their recruitment efforts for law school graduates, and are also held to increasing standards of diversity by their corporate clients. LGBT equality is an integral part of these efforts to recruit and retain top talent and cultivate clients.”

I am not aware of any data to support the proposition that even today law firms regard LGBT equality as an integral part of their efforts to cultivate clients. However, there is good evidence that law firms have dramatically increased their recruitment of LGBT law students and laterals. The annual Lavender Law Career Fair, sponsored by the National LGBT Bar Association, demonstrates that virtually all of the major law firms in the United States are actively recruiting LGBT law students. Last year in New York at the Lavender Law Career Fair, 500 law students participated in the recruiting job fair, which offered the opportunity to interview with 142 law firms. Liz Youngblood, “Strength in Numbers,” LGBT Bar Talk (Dec. 10, 2014). The list of sponsoring law firms is impressive and includes the top 10 firms in the United States by revenue: Baker & McKenzie, Skadden Arps, Latham & Watkins, Hogan Lovells, Jones Day, Kirkland &
Ellis, Sidley Austin, White & Case, Weil Gotshal, and Greenberg Traurig. It is also instructive to examine the advertisements by law firms in the 2014 Lavender Law Conference brochure. The advertisement by my firm contains the following statement about our commitment to LGBT diversity: “The best client service comes from a diverse legal team that works in harmony. That’s why we have devoted ourselves to striking up the band for diversity and inclusion—because despite our differences, when we work together, the music sounds that much sweeter.” Here are some other advertising statements by sponsoring law firms:

- “Morrison & Foerster is proud to support the Lavender Law Conference and its mission to promote LGBT diversity within the legal profession.”
- “At [Sullivan & Cromwell], we believe that attracting, developing and retaining the finest lawyers of all backgrounds is vital to providing the highest level of service to our clients.”
- “At Covington, we recognize the differences among us as an asset and a source of strength. Promotion of diversity is never complete and we strive to lead by example.”
- “Sidley is proud to support the Lavender Law Conference and Career Fair and to be a progressive proponent of law firm diversity and inclusion.”

Although not the focus of this article, it is important to also recognize that corporate America is far ahead of the legal profession in promoting LGBT diversity. In the 2015 HRC Corporate Equality Index, it is reported that 89 percent of the Fortune 500 companies include sexual orientation in their nondiscrimination policies. The report also contains this overview: “In this year’s national benchmarking report, an all-time record of 366 major businesses—spanning nearly every industry and geography—earned a top score of 100 percent and the coveted distinction of ‘Best Places to Work for LGBT Equality.’” By comparison, a decade ago when the HRC Index was first issued, only 13 businesses achieved a top score of 100 percent, and in 2012 just 189 businesses earned top marks. This data graphically demonstrates a watershed cultural shift in corporate America in recent years.

Despite this remarkable progress in the legal profession and corporate America, significant work remains to be done to fully integrate out LGBT attorneys into law firms. Diversity trainers will tell you that LGBT content in diversity training programs in law firms will routinely draw the strongest reactions from participants. Additionally, recent scholarly work in the field of implicit bias emphasizes the need to address head-on LGBT stereotypes and biases that exist in the workplace, including law firms.

In-house counsel are in an excellent position to push for continued progress in LGBT diversity in the legal profession. After all, law firms realize there is a business case for diversity and, if they are to be successful, they must listen to and adapt to their client’s needs. In-house counsel can send the message that they expect their company’s commitment to LGBT diversity to carry over to the law firm’s handling of their legal matters, and that the law firm should mirror the diversity the client embraces in its corporate culture.
Here are some suggestions for how in-house counsel can send that message:

1. **Let your outside law firms know that LGBT diversity is important to your business.** It is now routine for many corporate clients to include in requests for proposal (RFPs) a question about the law firm’s diversity practices. This is an excellent opportunity for in-house counsel to send a message that LGBT diversity is a factor that will be considered when selecting outside counsel. Beyond the RFP process, in-house counsel should inquire about the law firm’s diversity practices, for example how it scored on the HRC Index and whether it recruited at Lavender Law. This sends a strong message that LGBT diversity is important to the corporate client, and that the client wants its law firm to share its commitment to diversity.

2. **Engage your important outside counsel partners to join in your company’s LGBT diversity efforts.** This can be done in a variety of ways, depending on the diversity activities of the client. For example, if the company’s ERG participates in a local Pride event or similar activity, in-house counsel should ask the law firm to participate. Or, the law firm’s LGBT lawyers can be invited to participate in one of the many in-house events sponsored by the ERG. The main point is that by reaching out to the law firm, in-house counsel sends a message that LGBT diversity is important. After many years of private practice in two large firms, I can assure you that the law firms listen.

3. **Take an interest in and make a point to work with LGBT attorneys at the firm you employ.** In-house counsel should think of ways to reach out to the LGBT attorneys who work in the law firms they regularly employ. An example would be sponsoring a “meet and greet” for LGBT attorneys to network with the legal department. Many corporations have LGBT ERGs, and a joint networking event for LGBT employees and attorneys at both companies would provide an excellent opportunity for the LGBT attorneys in the law firm to get to know the client. Also, if the company offers diversity internships or employment opportunities, in-house counsel should inquire of law firms whether there are LGBT associates who may be interested in applying. Again, this reinforces to the law firm that the client is committed to LGBT diversity.

4. **Monitor and enforce the extent to which your partner firms assign LGBT attorneys to work on your matters.** It is apparent that the majority of U.S. law firms espouse commitment to LGBT diversity, but in-house counsel can make sure they “walk the walk” by assigning LGBT attorneys to handle significant matters. Once matters are assigned to a law firm, in-house counsel should monitor that firm’s diversity commitment by periodically asking the extent to which diverse attorneys (including LGBT) have been assigned to and billed on matters. It is crucial to move beyond the RFP stage (when LGBT diversity efforts are reported and espoused by the law firm) and to the day-to-day handling of matters.
Substantial progress in LGBT inclusion has been made in the legal profession, but much more is possible. By following these simple steps, in-house counsel can send a strong message to law firms that the client expects the firm’s commitment to LGBT diversity to have legs. By demonstrating commitment to LGBT diversity in the profession, in-house counsel can send a strong message that there is, in fact, a strong business case for LGBT diversity.

**Keywords:** litigation, LGBT, diversity, nondiscrimination policy, employee resource group, in-house counsel

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Q&A with In-House Counsel Robert Harrison of ADT
By Robert K. Dixon

Robert Harrison is senior corporate counsel at ADT, which is one of the largest security companies in the United States that specializes in providing electronic security, fire protection, and other alarm monitoring services to residences and businesses. At ADT, Harrison is the primary transactional attorney assigned to ADT’s commercial business unit and health business unit. Previously, Harrison was an assistant general counsel at UTC Aerospace Systems, where he was involved in transactional and litigation matters.

Recently, Harrison shared his perspective on the following questions:

What accomplishment as an attorney are you most proud of?
One thing that comes to mind is the work that I did with the George W. Crawford Black Bar Association in Connecticut, which is the oldest and the largest black attorneys bar association in Connecticut. When I first started practicing in Connecticut, the organization had been dormant and somewhat inactive for a few years. I, along with a few people I handpicked, worked to reengage and restart the organization. The organization is very strong today. It is crucial that the organization is active because part of the organization’s mission is to advocate for social justice and other things in terms of insuring that black attorneys are active and at the table not only in the private sector but also in the public sector.

What about being an in-house counsel do you like the most?
I like the fact that I’m not only a legal advocate or legal advisor but I’m also a business advisor. Fifty percent of what I do is provide legal guidance, but the other half is general business advice about how the business should proceed. So it stretches my intellect in that we are all at the table and were all trying to figure out how our business can be most profitable, but also keeping in mind that we need to be ethical and compliant with the laws and regulations that are applicable to the business.

What about being an in-house counsel do you like the least?
I think sometimes it’s a challenge because there are all sorts of business meetings within the organization. Sometimes it is a challenge to have time to actually do the work that is required or the deliverables that are identified within those meetings because you are always in meetings.

What is the most important factor you consider when choosing outside counsel?
Having an outside counsel that has supreme expertise in that area is the most important thing. The second most important thing is that their billing platform/pricing is compatible with what we’re trying to get. But I think the most important thing is that we are getting top-notch service, which is linked to ensuring that we have someone who has supreme expertise in that area.

Is there any kind of alternative fee arrangement or method that you typically prefer?
The flat rate arrangement with a caveat that if certain variables are changed or are not met that
we would either revisit or that there would be some provision for the outside counsel to renegotiate or get more out of it. We want it to be a win-win situation. We don’t want to take advantage of the law firm and we understand everybody needs to make money, so my preference is to have some sort of fixed arrangement with the option of transitioning to something different if things changed or don’t go according to plan. We make certain assumptions at the flat rate and if those assumptions are way off then from my perspective then we both should sit at the table and renegotiate.

**What are some of the things that outside counsel do or do not do that you find annoying?**

One thing I find generally annoying is outside lawyers that are nonresponsive. From a billings perspective, being charged for work that is not related to my matter. In addition, sometimes outside counsel can be condescending at times because they are the expert. Sometimes they have to remember that they are talking to an attorney as well. Also, sometimes outside counsel forget to keep us in the loop, which can be problematic because the more they share the more the in-house counsel can be helpful … I think the outside lawyers that do not understand the importance of partnering with the in-house lawyer are at a disadvantage.

**What are some of the biggest challenges associated with the change from outside counsel to in-house counsel?**

The challenge is that you are now directly working for some form of business and you have a huge learning curve. You have to learn the business, the people, the acronyms, as well as the culture of the business. There are also substantive differences in terms of how you practice law, because now you are not only providing legal input, but you are also sort of a business advisor.

**What advice would you give to an attorney who recently moved in-house?**

My advice would be to learn the business very well. Always do exceptional work and in order to accomplish this you have to partner with your business colleagues. You need to set up meetings and conference calls so that you can talk with the folks that you are supporting to find out what they do and how you can be most efficient and helpful to advancing their platforms and how you can best provide legal services to the team. Be engaged so that the business sees you as a valuable contributor to the organization. You want to build your reputation so that other people within your organization think of you before or when they are making moves strategically. But having people actively seek your advice and counsel is only going to happen if you build those relationships internally, put the time in to learn your trade and the business, and if you provide sound business and legal input to your colleagues.

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