The current credit crisis and global financial turmoil are representative of the interconnectedness of our world. The legal profession is equally interconnected. One measure of this fact is the growing number of cases where clients solely speak foreign languages or are more comfortable speaking in their native tongue than in English. The following recommendations derive from cases I have handled in the last two years where our clients were primarily Spanish speaking.

Let me address two preliminary items before beginning. First, this article is applicable whether your clients speak Spanish, Russian, Japanese, or any language other than English. Second, this article is also applicable where key witnesses, and not just clients, solely speak a foreign language.

The following are five reasons why you should retain an attorney who speaks the same language as the clients or witnesses involved in your case.

1. Building Trust

Language is a core aspect of every relationship because it is our medium of communication. Using proper language engenders smooth communication and trust. Building trust through communication in an attorney-client relationship is not a matter of literal translations. Transferring words, phrases, or ideas in English to Spanish involves much more than the translation itself. For instance, cultural beliefs and religious or ideological underpinnings will play a significant role in building trust with a Spanish-speaking client.

It is folly to think that your clients trust you when you cannot speak their language. Without trust, it is more than likely that you are not getting the whole story. This was immediately apparent in a case I recently handled as co-counsel where a very competent, albeit English-only-speaking attorney was preparing a case for trial. This attorney represented two Spanish-only-speaking insureds. After several months of unsuccessfully trying to communicate with his...
Taking Inspiration from a Minority Trial Lawyer

BY JENNIFER BORUM BECHET, TIMOTHY L. BERTSCHY, AND RAYMOND B. KIM

In recent months, we have witnessed a milestone—a minority trial lawyer has reached the pinnacle of his career. Barack Hussein Obama, the 44th President of the United States of America, began his post-law school legal career as a civil rights litigator in Chicago. No matter your political leanings, the fact that one of our brethren has been elected to our nation’s highest office is reason to celebrate. Even more so because the effort that led to the historic victory crossed racial and philosophical lines, culminating in tens of thousands of people turning out in Chicago’s Grant Park to hear then President-elect Obama do what minority trial lawyers do—speak eloquently. What’s more, the fact that a minority trial lawyer has reached this pinnacle is reason for each of us to be inspired, to rededicate ourselves to our profession, and to be moved to action that improves it.

One meaningful approach each of us can take is to pledge ourselves to increased involvement in the work of the Minority Trial Lawyer Committee and its subcommittees. There are many ways for you to put your skills to work and help direct the course of the committee’s work within the Section of Litigation and beyond. Participate as a member of any of our subcommittees. In our Pipeline subcommittee, you can instruct and mentor high school, college, and law school students interested in pursuing a legal career. You can help develop programs for ABA CLEs, conferences, and teleconferences as a member of our Programming subcommittee. Let your talents to our Business Development, Membership, or Newsletter subcommittees and reap the ever-multiplying reward of serving. Also, throughout the year, let your voice be heard via the Minority Trial Lawyer Committee’s discussion board and business referral network, a venue for the exchange of information and facilitation of business development.

We also encourage you to take advantage of upcoming opportunities to connect with colleagues from all over the country. Please make every effort to attend the Corporate Counsel CLE Seminar in Orlando, Florida, February 12–15, or the ABA Midyear Meeting in Boston, Massachusetts, February 15–16. Also, plan to attend the Section of Litigation’s Annual Conference in Atlanta, Georgia, which will take place April 29–May 1. Our committee will present interesting and timely programming during the conference.

In closing, we would like to thank our editorial board and contributors for their contributions to the Minority Trial Lawyer newsletter. Because of their efforts, the committee was recently given an award by the Section of Litigation as one of the outstanding newsletters for the past year. In the meantime, enjoy yet another illuminating issue of Minority Trial Lawyer.
Affinity Groups in Large Law Firms: What to Consider

By Sandra S. Yamate

In the world of large corporations, it is uncommon not to have affinity groups to represent the needs, interests, and concerns of diverse segments of the workforce. These groups serve as an effective means of bringing together subgroups of employees from different areas within a corporation who desire an outlet within the corporate structure in which to share and address commonalities that may be grounded in culture, gender, sexual orientation, or other facets of their individuality. These groups often focus their efforts on providing mutual professional support, exercising leadership skills, supporting corporate goals (such as marketing or recruitment), and representing the group’s particular interests to corporate management.

Recent years have seen large law firms expand from creating diversity committees to establishing affinity groups following the corporate model. Law firms, however, need to be sensitive to the fact that they are not corporations and the affinity groups that might thrive in a corporate environment can easily become derailed or even sabotage a law firm’s diversity efforts if handled poorly.

What follows are questions that law firms need to consider or address before establishing affinity groups.

Do we need affinity groups?
Affinity groups may appear to be nonthreatening, but a firm needs to be careful in the way the purpose and goals of these groups is expressed. There is a difference between needing an affinity group because the members of the particular group cannot succeed at the firm without it and establishing a group to support the professional and social development needs of the group members. Be clear about the group’s purpose from the firm’s perspective. Avoid making statements that suggest that the members of an affinity group require remedial training or special support to be successful within the firm.

What affinity groups should we have?
When considering the firm’s purpose for an affinity group, consider in advance what criteria you wish to have for current and future affinity groups. You can expect to have affinity groups that address gender, race and ethnicity, and sexual orientation, but what other groups might seek to become established and how should these requests be handled? For example, how will the firm feel about affinity groups with a focus on a particular religion or political agenda?

In addition, do affinity groups need to meet a size requirement? Can a single person make up an affinity group? What happens if subgroups of an affinity group wish to form separate individual affinity groups? For example, if you have an affinity group representing Hispanics and Latinos, what will be the firm’s policy regarding the creation of a separate affinity group specifically for those of Mexican ancestry?

What is the firm’s expectation from its affinity groups?
Consider what the firm expects from its affinity groups. Should the group’s purpose be purely social? Educational? Should it have a role in recruitment of new members for the group?

The most effective affinity groups are those that have a clear sense of purpose, direction, and objective. Firm management should meet with the group early in its development to discuss its focus. Is it to provide additional business development opportunities for the members of the group or to support charitable efforts within the community the group represents? These are important questions to consider when determining the goals of the affinity group.

How will the affinity groups be funded?
Affinity groups invariably come up with many ideas for programs and activities, almost all of which require funding. Determine ahead of time what the process will be with regard to funding these ideas. Will all affinity groups receive the same amount of funding so that none is perceived as more valued than the others? Or will funding be used to reward those activities the firm finds of greatest value? Or will it be determined on a first come, first served basis? Or should it depend upon the membership size of the affinity group?

Bear in mind that an overarching goal for most firms is to have everyone within the firm function as part of a single organization. You may want to have policies and protocols in place about how funding requests will be handled that reinforce this principle. For example, you may want to give higher priority to activities that are joint endeavors of two or more affinity groups as a way of encouraging these groups to work together, which will hopefully translate into working together in the broader firm.

Who can join the affinity groups?
Can someone who does not share a group’s affinity join that affinity group? How will membership in an affinity group be determined? Can a male join an affinity group for women? Do all women automatically become members of a women’s affinity group, or can they choose not to be part of it? While a firm does not want to discriminate in membership nor force membership upon the unwilling, it needs to have a clearly stated policy about how membership is established in these groups.

Also, unlike corporations, law firms that are considering establishing affinity groups need to consider the scope of affinity group membership. Will the affinity groups be focused on only the lawyers in the firm or will they also include professional and support staff?

Do affinity groups have to represent minority groups or underrepresented groups?
The term “affinity group” tends to conjure up images of minority or underrepresented groups based upon gender or race and ethnicity. What if the majority group in the firm wishes to form an affinity group? Firm management needs to...
be prepared to address how they wish to handle this type of request. Many gender or minority affinity groups often perceive the need for their existence to be predicated on the fact that they do not feel included by the majority group. At the same time, the members of the majority group may feel excluded without belonging to an affinity group of their own. A proposed affinity group for the majority can create undesired tensions no matter the eventual outcome. Firm management should anticipate this as a potentially divisive issue and determine ahead of time what the firm policy will be.

Who should lead the affinity groups? Leadership of affinity groups within law firms can be tricky. On the one hand, leadership by a well-established partner who is a member of the group sends a message that the group is of value and is to be taken seriously. On the other hand, however, associates who would like to use the affinity group to support their professional development needs within the firm may complain that having a partner as the leader stifles the ability of the group to be responsive to the members’ needs.

As a general rule, firms should allow affinity groups to choose their own leaders. More importantly, there should be term limits or rotation among the leaders of the affinity groups so that no single person or small clique within the group has perpetual control over it. This will allow leadership within the group to evolve naturally. It allows the group to make its own choices about what it values in leadership whether it be stature, popularity, or willingness to take on the burden of work.

How do we make sure that affinity groups do not become the nexus for discontented employees? Firm management should be aware that sometimes affinity groups can become loosely veiled groups whose sole function seems to be to serve as an outlet for grumbling and grievances. While it is fine to provide a channel through which people can let off steam, laugh at the vagaries of management, or even commiserate about perceived common problems or inequities, there is also a point where if it becomes too much, the group is no longer productive or effective. The best way to minimize the possibility that this will occur is to keep the firm’s affinity groups feeling active and productive without firm management having to exercise heavy-handed involvement. A simple way to do this is to require affinity groups to provide periodic updates on their group’s activities and accomplishments to firm management and the firm’s Diversity Committee.

Affinity groups should have some sort of representation within the Diversity Committee so as to foster communication and collaboration among the groups.

How do we establish the internal structures within our affinity groups? The lawyers at your firm were hired because they are good lawyers. That does not necessarily mean that they are good small-group leaders or administrators. Therefore, to ensure a higher likelihood of success in each of a firm’s affinity groups, a basic leadership structure should be put in place for each group, including a person to lead the group, a person designated as a successor to the leader, and other members who will be responsible for whatever standard roles or functions the firm expects from the group, (e.g., communications or programming). The firm can also ask each group as a minimum requirement to have in place a mission statement and a list of goals and objectives. This helps ensure that the firm and the members of the affinity groups do not have greatly divergent views as to the role and purpose of the affinity group.

What do we do if an affinity group fails to sustain itself? Assess whether the lack of sustainability is the result of a lack of interest or need, poor leadership, or the degree of support from the firm. If the group fades away from lack of interest, then there may simply not be a need for it. If it stems from poor leadership, the firm may want to have a predetermined method for jump-starting the group, perhaps by helping the group with a special project or program until new leadership can take office. If a group fails because of lack of support from the firm or a perceived lack of support, it may behoove firm leadership to address the issue personally with leaders within the group.

How do affinity groups work in relation to the firm’s Diversity Committee? Structurally, affinity groups, to the extent that they are based on characteristics that would generally be considered under the purview of the firm’s Diversity Committee, should still fall under that committee. Otherwise, the firm runs the risk of setting up competing forces and internal turf wars between the Diversity Committee and the affinity groups. Affinity groups should have some sort of representation within the Diversity Committee so as to foster communication and collaboration among the groups and also to engage the groups in the broader work of the Diversity Committee.

Conclusion Affinity groups are one way that law firms can recognize and support the diversity of the individuals that comprise a firm. To make affinity groups work well within the structure of a law firm, however, requires careful consideration of a number of factors and, most especially, an appreciation for how a law firm environment and structure, as well as the personalities and expectations within it, can differ significantly from a corporate model.

Affinity groups can play a positive role in a firm’s diversity efforts, but they cannot and should not try to replace or compete with a central firm Diversity Committee. Proper planning and anticipation of the challenges that may accompany the establishment of affinity groups is crucial to their successful implementation within a firm’s overall diversity strategy.

Sandra S. Yamate is the former Director of the American Bar Association’s Commission on Racial and Ethnic Diversity in the Profession. Previously, she was the Executive Director of the Chicago Committee on Minorities in Large Law Firms.
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In 2006, the American Bar Association (ABA) released a report by the ABA’s Commission on Women in the Profession, which identified challenges faced by women of color in law firms. Although the study concentrated on the difficulties faced by women of color in navigating law firm politics, numerous discussions concerning the report, over the past two years, reveal that many of the issues and concerns identified in the report are likely to be familiar to women of color in a variety of industries, including in-house and, to a lesser extent, government. This reality is amplified by the statement of Pamela Roberts, the Commission’s current chair: “Regardless of how accomplished a woman may be, she cannot climb—much less reach the top of—the leadership ladder until the profession begins to reflect the diversity of society.” This statement is very clearly not limited to women of color in law firms but applies to all industries that serve diverse members of society.

The report was the culmination of a study commenced by the Commission to address the mass exodus of women of color from the legal profession. The Commission, with the help of the National Opinion Research Center, a social science research organization at the University of Chicago, together with volunteer experts, designed a comprehensive study. The study was designed to be used as a catalyst for removing entrenched and institutional impediments for women of color and to provide necessary tools to law firms that could be used to encourage women of color to use the talents for which they were hired in the first instance and to ensure that they succeed. Much of the information, although focusing on women of color in law firms, is transferable to the traditional corporate in-house setting, other professional entities, foundations, government, and the like.

The results of the study were devastating but not necessarily surprising. Women of color, during the course of this study and in the resulting report, had an opportunity to voice some of the negative effects they experienced in their professional and personal lives that could be directly linked to their perceived “invisibility” in the workplace. As a result, women of color reported, for example, that they are constantly plagued by feelings of isolation, exclusion, and unwanted critical attention.

To overcome systemic discrimination against women of color, firms must recognize that the experiences of women of color are different from those of other groups. Some of the unique issues confronting women of color result from their being twice removed from the nucleus of power. Those who are most likely to control the professional growth and development of women of color are different in both gender and race. Thus, women of color in law firms, other professional entities, and corporations often have fewer natural bonds and alliances than do men of color, white women, and, of course, white men. This can present a tremendous disadvantage for women of color because it further distances them from being perceived as peers, colleagues, future partners, or senior officers or directors.

The ripple effect of the disadvantages are manifested in the exclusion from informal mentoring, information sharing, and shared lunches and other outings. The ultimate result is that women of color miss opportunities to get better work assignments, more client contact, and more billable hours. This in turn perpetuates biased perceptions concerning women of color, and it becomes immaterial what motivated the firm, organization, or company to hire the woman of color in the first instance.

The Commission’s report resulting from the study was designed to be used by law firms as a tool to incorporate women of color affirmatively into the exclusive folds of law firm culture. The issues and recommendations identified, however, can also be of use to companies and other professional organizations. The report recommended that, to overcome systemic discrimination against women of color, firms must recognize that the experiences of women of color are different from those of other groups; implementing changes to reflect this difference is necessary for retention. Firms and corporations must initiate active mentorship programs and encourage organization-wide discussions about issues concerning women of color, and constructive feedback is required.

It is a delicate undertaking. Law firms and other organizations must ensure that any efforts taken by them do not become the concern solely of the woman of color. It must be made clear that it is the concern of the law firm or organization. A culture must be created that is inclusive, open, and welcoming. A level playing field must be created to ensure that all attorneys have the same opportunities to succeed. Attention given to the success of women of color, whether at a law firm or other organization, will ensure not only to the benefit of women of color but also to the benefit of the law firm or the organization.

The good news is that several law firms and corporations have taken to heart many of the recommendations set forth in the report. Since the report was released, the number of law firm diversity professionals has increased exponentially. Many law firms have instituted programs...
that focus on both recruitment and retention of not just women of color but lawyers of color in general, women, and lesbian, bisexual, gay, and transgender lawyers. Law firms are in some instances following the lead of their corporate clients, who recognized some time ago that they should be reflective of the people they serve. Corporations have stepped up their own efforts, and they are also requiring their law firms to do the same.

Law firms have increased their recruiting efforts by participating in and hiring summer associates interviewed at the Southeast Minority Career Fair, MCCA/Vault Career Fair, Specialty Bar Association, Lavender Law Career Fair, and at schools such as Howard University School of Law and North Carolina Central School of Law. Law firms recognize that these efforts help get women of color and other lawyers of color in the door and no more than that. Thus, other efforts have been undertaken to ensure retention. There has been a proliferation of professional development directors in law firms, and diversity directors are monitoring the progress of women of color.

Nirvana has not yet been reached. Although efforts have been made to overcome the devastating effects described in the report of the Commission on Women in the Profession and on women of color, in many instances, they have not been aggressive enough and everyone is not on board.

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Spanish-Speaking Attorney

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clients, he finally called me to help him in the two months leading up to trial.

It is no exaggeration to say that his clients were petrified. Imagine yourself living in Mexico for a short period of time—barely speaking Spanish—and being involved in a lawsuit. There were so many cultural and linguistic problems, not the least of which included the fact that Mexico operates on a civil code, while we use common law here in the United States. So, along with addressing the language barrier issue, I had to explain to these gentlemen that the entire judicial system was different in this country than in theirs. Try doing that in a different language.

I spent the final two months before trial updating this attorney’s clients on important pleadings and settlement negotiations and meeting with them to prepare for trial. It took time to develop their trust. However, they were able to take a deep breath once they had an attorney that could speak Spanish fluently and explain the case to them in their own language. They also developed trust more quickly when they found out that I was not just a Spanish speaker, but as a Latino myself, I was fluent in their cultura as well.

As you will see below, the trial ended up going well. However, this would not have been the case if we ignored the importance of building trust with our clients.

2. Ethical Obligations Surrounding Communications with Clients

Let’s begin with a very serious question: When you have a Spanish-speaking client and you speak broken Spanish or no Spanish at all, can you truly fulfill your ethical obligations to him or her? The Model Rules of Professional Conduct (the Rules) prescribe certain requirements for communication with clients. For instance, the Preamble and Scope of the Rules state:

(2) As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. . . . As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others. . . .

(4) A lawyer should maintain communication with a client concerning the representation.

It is inadvisable to assume that a translator is translating your questions as you phrased them or your witnesses’ answers as they answered them.

Likewise, Rule 1.4, entitled “Communication,” mandates “Communication,” mandates the following communication by an attorney to his or her client:

(a) A lawyer shall:
   (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules;
   (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
   (3) keep the client reasonably informed about the status of the matter;
   (4) promptly comply with reasonable requests for information; and
   (5) consult with the client about any relevant limitations on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

These rules suggest that lawyers may not be satisfying their ethical obligations when they use broken Spanish to explain the status of the case to their Spanish-speaking client? Can that Spanish-speaking client make an informed decision regarding his or her case from that type of explanation? Naturally, this would be determined in a case-by-case analysis. However, to avoid such an analysis and potential pitfalls, the attorney is better off hiring a Spanish-speaking co-counsel or referring the case entirely to such counsel.

3. Beware the Translator, Especially in Depositions or Trial Testimony

Returning to the case referenced above, the clients’ depositions were taken with a translator before the attorney was on the case. The deposition transcripts were in shambles. One of the clients said the car accident happened one way, while the other client said it happened a different way. It was clear that neither client understood exactly what was being asked during the depositions. This leads to a common problem and a rule to live by: Beware the translator. That is not a condemnation of translators. Rather, it is simply inadvisable to assume that a translator is translating your questions as you phrased them or your witnesses’ answers as they answered them.

The case with the two Spanish-speaking clients provides a perfect example of this rule. The translator at trial was the same person who translated the depositions. I knew how confusing the translations at the depositions were, so I was happy to be able to sit in on the trial testimony. It was money well spent. First, the translator spoke so fast that even the clients had a hard time understanding him. Second, he garbled translations seemingly in an attempt to veil the fact that he did not know how to translate accurately the attorneys’ questions. The clients were squirming under oath, attempting to answer questions truthfully but getting muddled in inaccurate translations. Without a Spanish-speaking attorney present, there would have been no one there to hold the stop sign up and fix the problem. The English-only-speaking attorney had no idea if the translation was accurate. Unless the judge, or perhaps the court reporter (if you even have one anymore),
speaks Spanish, no one will know if the translations are accurate. The clients in this case were too mortified to do more than ask for the question to be repeated. It was not in the translator’s interest to draw attention to his inaccurate translations. The trial testimony was breaking down just like the depositions. I counseled the attorney to stop the testimony, hire another translator, and continue the testimony the next day. The court was gracious in allowing the change, and the testimony continued the next day. With a competent translator, the true story came out, and justice was ultimately served when the jury concluded that our Spanish-speaking clients were not liable for the car accident. The importance of this rule cannot be overstated.

4. Trial Preparation
Preparing for trial is stressful enough for most lawyers. Add to the mélange a client or witness in your case who does not speak English well, if at all, and your trial can go south in a hurry. This situation can culminate at trial or it can be resolved during trial preparation. Therefore, if you and your Spanish-only-speaking client are butting up on the trial date and you have not consulted a Spanish-speaking attorney or even a translator yet, do not delay any longer. At this stage of the game, it is critical for your client to know how the trial will unfold, what to expect when being called as a witness, who the group of six to twelve people sitting to the side of the courtroom are, and what the possible outcomes of the trial may be. It is similarly crucial for you to spend time preparing your client or witness by explaining the process of direct examination and going over possible questions for direct examination. Proper trial preparation is not possible with a language barrier in place.

All too often, attorneys can overlook winning at trial while they focus on keeping costs down.

5. It’s About Economy, Stupid
Sixteen years after James Carville coined the phrase, which I have tweaked a bit, it is more relevant than ever. Having an efficient and economical relationship with your client is as important now as Carville’s message to President Clinton was during his 1992 presidential campaign. There is no greater potential barrier to this goal than language.

You can expect delays in your case if it involves non-English-speaking clients or witnesses. Mundane tasks take longer than normal even with a Spanish-speaking attorney as co-counsel. If you decide to use a translator instead, expect those delays to be even longer because translators are not versed in legal nuances. Further, many translation services employ a bevy of translators, so you are not guaranteed to get the same translator each time. That means you will not have someone familiar with the facts or status of your case. Such delays and linguistic confusion equate to higher litigation or transaction costs in the end.

Finally, all too often, attorneys can overlook winning at trial while they focus on keeping everyday costs down. In the case previously alluded to, the translator had the attorneys’ two clients furiously pickaxing their own graves. After the translator was replaced and the clients’ stories developed accurately, the end result was a defense verdict. Therefore, while my participation in the case added to the overall cost before trial, I was happy to note that I was a part of the team that significantly reduced the overall liability and cost at judgment. Moreover, I may have been able to reduce costs before trial altogether if I had been involved before the language barrier complicated the case. Do not forget that if you decide to retain Spanish-speaking co-counsel instead of referring a case, pretrial costs should be manageable because co-counsel does not have to be as deeply involved in the case as you are. For instance, co-counsel may not need to review all pleadings or draft motions and may be able to avoid attending most hearings or depositions.

Conclusion
Be smart, ethical, and economical as you represent a client who does not speak English or who is more comfortable communicating in his or her own language. This means either referring the case to an attorney that speaks your client’s native language or bringing that attorney onto your case as co-counsel. Doing so will lessen your stress and set your client’s case on track for success.

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Diversity Programs

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among people found within society at large. Therefore, we define work-place diversity as a plurality that reflects considerable cultural differences that exist in our society as a whole, including, but not limited to, race, ethnicity, gender, religion, and sexual orientation.

The value of such work-place diversity is often overlooked by legal employers. Diversity can lead to innovative means of organizational management and problem solving. It puts legal businesses in a better position to attract new clients and to understand and meet the needs of current clients. Diversity may positively impact a legal business in the following ways:

• It creates a broad base of expertise and ideas. People with considerable cultural differences may live in different geographical areas, have varying educational experiences and perspectives, associate with people with diverse backgrounds, and utilize different problem-solving techniques. The inclusion of individuals harboring such differences creates a broad base of expertise in the work place and leads to the development of new ideas.

• It stimulates growth. Diversity fosters the development of new ideas that plant the seed for the economic and intellectual growth of a legal business.

• It reduces attrition. Legal businesses that nurture diversity may reduce attrition rates among minority attorneys. An organization that does not welcome cultural differences will likely suffer from high attrition rates with attorneys who do not fit into the majority group.

• It strengthens core social values. Our society was founded upon the principle that diversity should be accepted, encouraged, and appreciated. Policies aimed at creating and maintaining diversity in the work place help to strengthen our core social values.

The legal profession is becoming increasingly cognizant of the benefits of diversity and the need for rapid progress in the development of successful strategies for implementing effective diversity programs in legal businesses. In this regard, several organizations have studied and evaluated the issue of diversity in the work place.

More than 50 percent of all minority associates leave their firms within the first three years of practice due to professional isolation and immobility.

The Minority Corporate Counsel Association (MCCA) published a research report in 2000 entitled “Creating Pathways to Diversity: A Study of Law Department Best Practices.” The report articulated the following three steps toward achieving meaningful diversity in the nation’s corporate law departments: compliance, diversity, and inclusion. The initial step, compliance, involves drawing diverse employees into law departments to abide by employment laws and attain equal opportunity goals and objectives. Once an employer has statistically complied with employment laws, goals, and objectives, the next step is improving diversity. An employer that is committed to achieving successful diversity initiatives must demonstrate an appreciation for gender and cultural variants, which lead to differing communication styles, perspectives, and approaches to daily work tasks. The final step, inclusion, requires an employer to recognize fully the skills and talents of its diverse staff.

In 2005, the MCCA conducted a further study to assess the progress of corporate law departments. The study revealed that many legal departments had reached the inclusion phase, but the majority of organizations remained in the diversity phase and had failed to wholly embrace diversity and employ its benefits to contribute to the success of the organization.

An examination of the employment status of women and minority attorneys at law firms that employ 100 or more persons was undertaken by the U.S. Equal Employment Opportunity Commission (the Commission). The study examines changes in the employment status of women and minority attorneys since 1975. Further, the study analyzes the relationship between associates and partners, using data collected by the National Association of Legal Placement. The Commission reported an increase in the number of women and minority attorneys receiving J.D. degrees. The number of women receiving degrees increased from 33% to 48.3% from 1982 to 2002. The number of African Americans receiving degrees grew from 4.2% to 7.2%, Hispanics grew from 2.3% to 5.7%, and Asian Americans grew from 1.3% to 6.5%. Over the past 20 years, the proportion of Native Americans receiving law degrees has increased but still remains less than 1%. By 2002, Native Americans represented 0.7% of law degrees conferred.

The number of women and minority attorneys also increased substantially from 1975 to 2002. The percentage of women attorneys increased from 14.4% to 40.3%, African American attorneys increased from 2.3% to 4.4%, Hispanic attorneys increased from 0.7% to 2.9%, Asian American attorneys increased from 0.5% to 5.3%, and Native American attorneys increased from 0% to 0.2%. However, the study revealed a rather troubling disparity with respect to the chances of career advancement to partnership. The average number of white male partners in the sample firms was 62.88, while the average number of women partners was 12.71, the average number of African American partners was 1.08, the average number of Hispanic partners was 0.63, and the average number of Asian American partners was 0.80. These statistics are significant because “Given the power and influence that accompanies large law firm partnership, women’s [and minorities’] attainment within law firms has large societal ramifications for access and opportunities.”
The American Bar Association’s (ABA) Commission on Racial and Ethnic Diversity in the Profession published a report entitled “Miles to Go 2000: Progress of Minorities in the Legal Profession,” which also examines the representation of women and minority attorneys on a national level. The report notes that minority and female attrition rates in law firms remain high. It was reported that more than 50 percent of all minority associates leave their firms within the first three years of practice due to professional isolation and immobility. As per the ABA report, minority associates “face social and professional isolation in law firms and have difficulty gaining access to mentors and quality work assignments.” The report cautions that “the legal profession—already one of the least integrated professions in the country—threatens to become even less representative of the citizens and society it serves.”

The ABA Commission on Racial and Ethnic Diversity in the Profession published a subsequent report, “Miles to Go 2004: Progress of Minorities in the Legal Profession.” The report notes that minorities are less likely to receive coveted jobs after law school, such as judicial clerkships or associate positions in private practice. Additionally, the report notes that minorities continue to be significantly less likely to advance to high-level jobs, such as law partner or corporate general counsel. It was reported that minorities represent only 4.4% of partners in the nation’s largest 250 law firms and only 4.3% of general counsel in Fortune 1000 firms. Additionally, it has been reported that only 17% of partners in major U.S. law firms are women attorneys.

The Association of the Bar of the City of New York’s Subcommittee on Recruitment and Retention (the Association) researched recruitment practices and minority retention rates at law schools, law firms, and corporate legal departments. The Association issued a report in 1992, which concluded that the profession had made significant strides in focusing on hiring minority associates but that the profession also needed to focus on promoting and retaining minority attorneys to sustain diversity. The results of these recent studies clearly show the need for further advancement of diversity in the legal profession; yet, many legal employers have failed to institute a mechanism for change. The MCCA conducted a Flash Survey on the Diversity Manager Position in Large Law Firms, which surveyed 196 firms (of which 72 responded), regarding diversity management programs. Half of the law firms indicated they did not have a designated diversity manager or director of diversity who would be held responsible for developing and managing diversity programs. And the majority of firms that did not have a designated diversity manager or director had no plans to designate one in the near future.

As companies have become more committed to diversity internally with their own workforce, they have begun to expect more diverse outside counsel as well.

If the legal profession is to attain true diversity among its organizations, legal employers must develop an understanding of diversity and its benefits, assess the diversity issue in their organization, and develop strategies for effectuating change where necessary.

Assessing Diversity in a Legal Business
Problems cannot be solved unless they are first identified. Therefore, legal employers should attempt to identify and assess diversity issues that may exist in their organization. An assessment of diversity issues may include both quantitative and qualitative methods, such as gathering numerical data on the percentage of women and minority attorneys in the organization, conducting interviews of associates and partners regarding their perception of diversity in the work place, and conducting a focus group to evaluate the status of diversity. Once the nature of diversity issues are known, employers are in a position to develop appropriate strategies for attacking the issues.

Success Strategies in Implementing an Effective Diversity Program
Managing partners and firm leaders are changing the way they manage diversity in their firms. New approaches are emerging, such as action-orientated methods that embrace diversity and aim to develop a firm culture that values and reflects the cultures of all of its attorneys.

Richard J. Cohen, managing partner of Goldberg Segalla LLP, believes that “Commitment to diversity and a strong initiative to implementing it on a firm-wide basis is smart business for so many reasons. The Fortune 500 companies that we represent recognize the rewards that diversity brings. The law firms that represent them should as well.”

Diversity will continue to increase at law firms for many reasons. It is obvious that we are a diverse society. Diversity is an important part of doing business in today’s day and age. In 1999, more than 400 chief legal officers of Fortune 500 companies signed what has become known as the Diversity Statement (“Diversity in the Work Place: A Statement of Principle”), promoting diversity in the work place. Over the last decade, as companies have become more committed to diversity internally with their own workforce, they have begun to expect more diverse outside counsel as well. Therefore, it is important to understand and develop successful strategies in implementing an effective diversity program for your organization. The following are some suggestions for achieving this goal.

- Reach out to local law schools and their faculty. Practice group leaders and managing partners should reach out to law school faculty to help recruit minority lawyers. Moreover, law firms could use their resources within law schools to communicate with minority law groups and encourage minority applicants.
- Recruit minority law students for your firm’s summer program. It is important to assign minority law students to influential partners of the firm who will mentor them and give them assignments.
- Participate in and sponsor job fairs
and diversity seminars that are offered by different legal associations. There are many state and local bar associations that hold annual diversity-themed seminars for minority attorneys and law firm leaders. These seminars are designed to improve networking skills and increase the firm’s success in the recruitment and retention of minority attorneys. They also provide a unique opportunity for minority lawyers and their law firms to interview with corporations committed to diversifying their national outside counsel.

- **Recruit minority candidates for both partner and associate positions.** Now more than ever, it is imperative that law firms look at their business practices and their recruitment of minority candidates. The business world has spoken and law firms must listen. For example, in 2005, Wal-Mart, the nation’s largest retailer, sent a letter to its top 100 law firms informing them that at least one person of color and one woman must be among the top five relationship attorneys that handle its business or Wal-Mart will move its business to another firm. The goal, said Wal-Mart’s associate general counsel, Samuel M. Reeves, is to “increase the number of women and minorities directly responsible for the Wal-Mart relationship at our law firms.” Other Fortune 500 companies, such as Visa International, Del Monte, Pitney Bowes, and Sara Lee, have also begun to implement strict guidelines requiring outside counsel to demonstrate that there are substantive numbers of women and minority lawyers in executive positions at their organizations.

- **Reward attorneys who work to implement an effective diversity management program in the firm.** As with any business measure or program implementation, measurable results and metrics are key ingredients in effective diversity implementation efforts. In firms committed to implementing a diversity program, results and financial rewards are being linked together so that attorneys who value diversity benefit from their proactive efforts.

- **Involve minority lawyers and high-ranking nonminority lawyers on hiring committees, in formal recruiting efforts, and in interviews of minority candidates.** Leading minority partners and nonminority senior attorneys who play instrumental roles on the firm’s key management committees, including associate evaluations, compensation, legal personnel, and partnership selection, should also play key roles in the recruiting efforts and interviews of minority candidates. The managing partner and the law firm’s executive committee should continue to review and approve a wide range of programs to enhance the firm’s effectiveness in recruiting, developing, and retaining minority attorneys.

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**Many firms have implemented mentoring programs that foster mentor relationships among influential senior partners and minority associates.**

- **Invite minority law school groups to visit law firms for an orientation or an introduction to the firm’s practice.** A law firm should take a proactive approach to contacting area law schools and presenting opportunities to have minority law school groups visit and take a tour of the firm. Practice group leaders can discuss the areas of law the firm practices, explain what is expected of first-year associates at the firm, and offer success strategies for getting hired.

- **Develop a multicultural mentoring program.** As more successful firms work to increase diverse representation at all levels, many have implemented mentoring programs that foster mentor relationships among influential senior partners and minority associates. The most successful programs are based on two key assumptions: Mentoring must be inclusive, not exclusive; and cross-cultural mentoring is a learning opportunity for both protégés and mentors.

- **Develop knowledgeable and committed leaders in your firm.** To implement a successful culture change in your firm, it is imperative that there be a groundswell of leadership support. Without this, implementation efforts will be fruitless, and substantive change cannot be effected. Leadership involvement is seen as crucial to the long-term success of firm-changing efforts. Diversity efforts can succeed only when there is visible sponsorship and support at the senior-partner level and ongoing coaching and education for leaders and others who are involved in diversity initiatives.

Understanding and valuing diversity are the fundamental first steps in achieving diversity in the work place. The time has come, however, to take the next steps toward creating and sustaining diversity in the legal profession. If the legal profession is to reap the many benefits of true diversity, its employers must turn rhetoric into action and implement proactive strategies that can help further diversity.

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**Notes**


2. Id.


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Dear Ask a Mentor:
I’m a mid-level female associate who recently returned from maternity leave to a full-time schedule. I’m trying to get back into the loop of things at work but am finding it difficult to juggle my roles as new mother and aspiring trial lawyer. Can you offer a few concrete suggestions to help me strike a balance between being a good parent and being a good trial lawyer?

L.T., Boston, Massachusetts

Dear L.T.,
Striking a balance of being a good parent and a good trial lawyer is challenging but definitely possible. Here are some suggestions to get you there.

First, abandon the superwoman image. Trial lawyers—especially women trial lawyers—tend to be perfectionists. As a new mother returning to work, however, you may not always meet your pre-baby self-imposed standards. That’s OK because you were probably working harder than most anyway. Figure out a schedule that will allow you to power through work with minimal interruptions. For me, it is before the kids wake up and after the kids go to bed at night. Lower those standards at home as well—you do not need to have the cleanest house, feed your baby freshly pureed organic baby food, or throw a lavish birthday party for your one-year-old. Your baby will not care, and your family and friends will appreciate the less-than-perfect but more relaxed you.

Second, spend time building a strong support network both at home and at work. It really does take a village to raise a child. It is crucial to hire the best help that you can afford and to rely on your stay-at-home partners. Do not let that discourage you. After all, a good lawyer runs marathons—not sprints—and soon enough you will catch up. Or you may decide that you need not run at the same pace to find satisfaction in your career.

Third, don’t forget that it also takes a village to advance your career. As you return to your practice, it is more important than ever to seek out mentors and build strong alliances at work. It is easy to abandon all social events in favor of billable hours, but when you do, you can miss out on important career opportunities. Carve out a couple of hours every week to cultivate your business relationships. Go to lunch at least once a week with your colleagues, clients, and business contacts; drop by your colleagues’ offices; and stay in the loop. You must stay visible to be considered for interesting assignments and to dispel any misperceptions about a working mom’s commitment to work, which unfortunately persist today.

Fourth, the first year of your child’s life is precious and irreplaceable, but do not feel guilty about traveling for business or not spending all day with her. As my mentor assured me, as long as babies receive love and consistent care, they will be fine. I personally found this to be true—my four-and-a-half- and one-year-old girls seem to adjust surprisingly well to my busy schedule and frequent traveling. I just make it a point to preoccupy them with fun activities when I am traveling (e.g., a visit from grandma or a love note with a special toy on their pillow) and to spend extra focused time with them when I return.

Fifth, spend any extra time taking care of yourself. Take a walk, attend a yoga class, read a novel, paint, or have dinner with friends. These activities will make you a better lawyer and mother. Men are especially talented at carving out time for themselves, and I try to learn from them.

Finally, balance is not about reaching the top in everything you do. It is about attaining deep satisfaction with your career, family, and personal life. When you return from maternity leave, you may find yourself not advancing as fast as some of your child-free colleagues or colleagues with stay-at-home partners. Do not let that discourage you. Perhaps it is too much to expect an entirely seamless transition on the return to work as a new parent, particularly if you are a litigation associate. Maintaining the level of performance you had before you started a family is an enormous challenge, especially because you are now performing two jobs instead of one.

Returning to work after an extended period, however, is most certainly an adjustment for many reasons, including having continued sleepless nights and feeling guilty about leaving your child and your inability to be available to your employer 24/7. It will likely take weeks to get back into the swing of things, and during that time, you may have doubts about your decision to return to work.

To read the complete article, visit the Woman Advocate Committee’s website at www.abanet.org/litigation/committees/womanadvocate.

Yuri Mikulka

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Katherine Y. Fergus knows all too well the difficulties in balancing work and parenthood. In her article “Making a Successful Transition to Two Full-Time Jobs” (The Woman Advocate, Winter 2009), she states:

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