

## President's Message

FERN C. BOMCHILL

### The Goal of Attaining Diversity

**I**T WASN'T UNTIL the late 1960s that I first recall hearing and reading of diversity as a stated goal in the educational, civil service, and business world. It began with affirmative action and litigation over required quotas. Over the next 40 years, affirmative action took

various forms. The U.S. Supreme Court rejected a strict quota system but recognized race as a plus factor that could be constitutionally considered in university admissions. *See Regents of University of California v. Bakke*, (1978); *Grutter v. Bollinger*, (2003). In *Grutter*, Justice Sandra Day O'Connor wrote the majority opinion and explained the decision as a temporary measure: "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." Some commentators believe that we have made progress. Racial pluses, however, continue to be a subject of debate, and litigation involving university admissions and civil service testing continues to wind through the lower and appellate courts. Next October, the U.S. Supreme Court will hear *Fisher v. University of Texas*, a case involving a woman who claims that she was denied admission to the university because the school had expanded its numerical goals for minority students. In deciding *Fisher*, the Supreme Court will once again need to consider, among other issues, whether the use of specific factors, such as race, is a violation of the Equal Protection Clause of the U.S. Constitution.

Pundits debate whether minority status should continue to be viewed as a positive factor or whether solving problems of discrimination with a different form of discrimination just exacerbates the problem. In the 1970s and 1980s, there was much heralding of special opportunities for women and minorities to demonstrate their abilities as lawyers. Then, corporations began requesting commitments by law firms to hire more minorities and women. Later, the corporations adopted initiatives that were aimed to create greater diversity and inclusion and promised more business for firms that complied with these initiatives and a loss of business for those firms that failed to reach their clients' expectations. After a five-month study, the Institute for Inclusion in the Legal Profession (IILP) found that the "business case for diversity" works to some extent, but the institute was disappointed in the numbers. In its report, the IILP observed the following:

The business case for diversity is important.

In many instances it has been the driving force behind the decisions by some individuals and organizations to more actively support and engage in diversity and inclusion efforts. ... [I]t is equally important to remind ourselves that the importance and value of a more diverse and inclusive legal profession goes well beyond dollars and cents. A diverse and inclusive legal profession is fundamental to social justice.

*See "The Business Case for Diversity, Reality or Wishful Thinking" (2011).*

Perhaps as the IILP has recognized, it is time to better define the goal. Organizations now appear to recognize that diversity includes differences in age, religion, ethnicity, sexual preference, physical abilities, and geographical locale as well as race and gender, but it is not clear that these organizations recognize that a commitment to diversity is not demonstrated by appointing someone to a position just because he or she falls within a diverse classification. Similarly, "diversity committees" populated only by diverse members of the organization do not inform the nondiverse members of those business and non-business organizations.

Many organizations proudly claim that they are diverse and rattle off the number of minority group members they have. I too am proud to say the Federal Bar Association has members of various origins, genders, ages, abilities, and preferences, but I am also comfortable to say that I cannot tell you what all those differences are and I do not keep count of any specific minority groups or subgroups within our association. We are a voluntary organization and my individual goals are to ensure that we are available, welcoming, and valuable to each member and prospective member and that we actively work toward the advancement of diversity and inclusion in the legal profession.



**MESSAGE** continued on page 7

**MESSAGE** *continued from page 3*

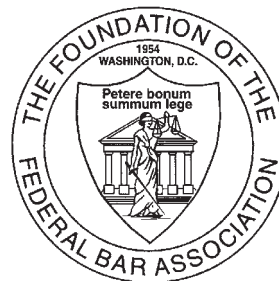
I attended a high school that had a student body and teachers of different races and religions. Most classes and activities included girls and boys, blacks and whites, Asians and Latinos, and Protestants, Catholics, Jews, and even some Muslims. We were diverse and inclusive, even though there was little talk of these concepts. Needless to say, my experience was unique, especially for the time. We can only hope that Justice O'Connor's prediction will come true—maybe even before 2028—so that quotas, initiatives, pluses, and business incentives will no longer be necessary and that numbers are no longer the goal.

Society, including the legal profession, must accept and appreciate the differences among people. It is not only the right thing to do, but in today's world, the workforce that reflects the demographics of the global economy will be stronger and work product that results from that workforce will be improved. **TFL**

*Feu C. Bomchill*

### Chief Justice Roberts Meets with Federal Magistrate Judge Association Leaders

On Feb. 27, 2012, the leadership of the Federal Magistrate Judges Association, an organization of over 500 magistrate judges, met with Chief Justice Roberts of the U.S. Supreme Court. Present at the meeting were U.S. Magistrate Judges Karen Wells Roby, Eastern District of Louisiana, FMJA president-elect; Malachy Mannion, Middle District of Pennsylvania, FJMA president; and Sidney Schenkier, Northern District of Illinois, FMJA vice president. The judges met to discuss issues concerning the federal judiciary.



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