

# Is Anybody Listening? Does Anybody Care?

## Lack of Diversity in the Legal Profession

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**A**s the current president of the Hispanic National Bar Association (HNBA), I spend a lot of my time talking with students, lawyers, and judges about the frustrating disconnect between the frequently expressed commitment to diversity in the legal profession and the absence of real progress in achieving that diversity. You don't even have to Google the words "diversity" and "legal profession" to know how frequently the terms are used together. And a simple search for the words "diversity" and "inclusion" on corporate and law-firm websites shows what seems to be unanimous agreement with the principles and their importance for lawyers. But this commitment to diversity and inclusiveness just doesn't seem to be translating into the kind of measurable progress you might expect.



## A Quick Look at the Numbers

People of color continue to be severely underrepresented at nearly every level of the legal profession, and their absence is most significant in the upper echelons of the profession, among law-firm partners, on the judiciary, and among leading corporate general counsel. The American Bar Association (ABA) reports that more than 1,281,432 lawyers were licensed in the United States in 2014. Of that number, less than 4 percent are Latino<sup>1</sup>, and of that small percentage, only about one quarter are female—Latina lawyers make up only 1.3 percent of the attorney population in the country.<sup>2</sup> This is in stark contrast to the 17 percent of the nation's current population that is Hispanic. The story is much the same for other lawyers of color. In 2010, 4.8 percent of licensed attorneys were African-American, though African-Americans are 13.2 percent of the general population. And while Native Americans make up 1.2 percent of the population, they are just 0.2 percent of attorneys. Census data shows that these numbers were little changed from a decade earlier.<sup>3</sup>

Within the profession, lawyers of color are particularly underrepresented in the more elite positions. The most recent data from National Association for Law Placement (NALP) shows that 21.6 percent of law firm associates, but only 7.3 percent of partners, are minorities.<sup>4</sup> These numbers are much smaller at the most elite firms. According to *The American Lawyer's* 2014 Diversity Scorecard, which rates the nation's 200 largest law firms on their diversity, Hispanic attorneys made up 3.2 percent of all attorneys at these firms and only 2.3 percent of partners. While 3 percent of all attorneys at these large firms are African-American, only 1.9 percent of partners are African-American.<sup>5</sup>

The numbers are similar for corporate general counsel at the top companies in the United States. The 2014 report of the Minority Corporate Counsel Association reported very little growth in the number of minority general counsel for Fortune 500 companies. In this group of 500 general counsels, 29 are African-American, 10 are Hispanic, and 14 are Asian-American.<sup>6</sup> Looking at the numbers for the Fortune 1000, the picture does not improve. Of the Fortune 1000 general counsel positions, only 1.8 percent are Latino/a, and 0.7 percent Latina.

Lack of minority representation on the bench is particularly stark, although it has improved remarkably in recent years. Since 1789, more than 3,427 judges have served on Article III courts; however, only 359 have been judges of color.<sup>7</sup> Most of those appointments have been made in the past 50 years, and, indeed, almost a third of these judges have been appointed by President Barack Obama within the past six years.<sup>8</sup> Even with this progress, as of July 31, 2014, there were 1,366 active judges, of whom only 269 are judges of color.<sup>9</sup> As with other areas of the profession, diversity declines as the positions become more elite. We see this most clearly with the stark numbers on the Supreme Court. Of the nine justices on the Supreme Court today, one is African-American and one is Latina. Justice Sonia Sotomayor is the first Hispanic justice to sit on that Court since the Court was established in 1789.

## Why Haven't We Made More Progress?

Social psychologists, organizational behavioralists, and labor economists have offered a range of possible explanations for the lack of progress toward diversity and equality in workplaces—legal and otherwise. Many of these explanations, supported by empirical evidence, rest on the conclusion that racial bias is still playing a significant role in the allocation of job opportunities. Of course the days of outright, openly expressed racism are largely behind us. But research continues to demonstrate that implicit bias and stereotypes shape decision-making and impact the opportunities available to people of color in all walks of life.

In one particularly striking study, researchers sent out sets of resumes with identical qualifications, giving half of the “applicants” names traditionally associated with African-Americans—“Lakisha” and “Jamal”—and half names without a specific ethnic association—“Greg” and “Emily.”<sup>11</sup> These researchers found a 50 percent

**In 2012 Asians were the most prevalent minority group in law. They were also the most prevalent minority group for partners (2.67%) and associates (9.65%) nationally.**

SOURCE: <http://thermagency.com/diversity-in-law-minority-and-women-statistics/> and NALPorg, February 2014 NALP Bulletin, “Women and Minorities at Law Firms by Race and Ethnicity—An Update”

gap in callback rates between the “white” and “black” resumes. This gap—which meant that a white candidate received one callback for every 10 resumes submitted, while a black candidates had to send out 15 resumes for the single callback—existed across occupations and industries. The researchers estimated that “a white name yields as many more callbacks as an additional eight years of experience.”

Unfortunately, the bias that shows up in workplace decisions seems to operate as well at much earlier points in the lives of people of color—limiting opportunities by putting minorities at a disadvantage educationally from the start. A very disturbing 2014 report from the U.S. Department of Education Office of Civil Rights revealed that black students are suspended and expelled at a rate three times greater than white students and that this disproportionate school discipline begins as young as preschool.<sup>12</sup> Thus, although black children make up only about 18 percent of preschool enrollment, they account for almost half of the children who receive more than one out-of-school suspension during preschool. If children are being treated differently based on their race from the very youngest age, they will certainly face an increasingly uphill battle as they progress through school and into the workforce. Starting behind, they will continue to fall even further behind.

There is evidence, though, that we can work around our implicit biases. An implicit bias is a positive or negative mental attitude towards a person, thing, or group that a person holds at an unconscious level. We don't have to—and we shouldn't—throw up our hands and say that if the bias is “unconscious,” it cannot be addressed. Studies have shown that people who pay attention to the assumptions they are making and challenge them can start to

change those assumptions. Researchers who study how workplace culture can be changed to de-emphasize the impact of implicit bias have found that employers with more formalized and transparent decision-making practices and more oversight will see less bias in workplace decisions.<sup>13</sup> As well, “[c]ase study research on workplaces shows that internal policies and practices play a significant role in shaping the culture of the workplace, and that workplace cultures may in turn help to sustain or minimize bias.”<sup>13</sup> Corporate cultures provide a context within which supervisors and employees determine what is permissible and what is not. Cultural contexts may not control individual decision-makers, but they do have a considerable influence in shaping decisions.

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strates that genuine inclusion matters—not just to the employees who feel included but to the success of the whole workplace team.”

What Anzaldua says he sees as different now is that institutions no longer defend the old, tired arguments that advancing the cause of diversity is not desirable because it would place unqualified people of color in positions of responsibility or that it would somehow be unfair to the white majority. “On the contrary,” Anzaldua explains, “the leading business, educational, and governmental institutions in our society are in agreement that diversity is desirable and has a positive effect on our social institutions.” With this optimism, however, Anzaldua includes a note of caution, observing that the commitment to diversity may just be “pretty words” in light of the reality that, even as institutions succeed at recruiting much more racially, ethnically, and gender-representative professionals into their junior

ranks, they continue to claim that they do not find the talent that they need at the most senior levels.

Anzaldua and MetLife have a strategy for avoiding the “all talk” phenomenon. “For people seeking to rise within an organization, success requires having talents, skills, and competencies developed and on having networks of support and sponsorship,” Anzaldua explains. “Because of people’s natural affinity for others like themselves, that means that white men entering an organization will find natural affinities with the predominantly white male leadership of their organizations. While this reflects implicit bias, it doesn’t necessarily reflect conscious prejudice—in fact, in most institutions, it probably does not.”

What an organization needs is a way to get around the trap of implicit bias. How does it achieve that goal? In Anzaldua’s view, the answer is clear: “Institutions know how to create incentives to produce the behaviors they want to see. When companies want their executives to do something, they require the executives to include those things in their goals. If they achieve the goals, they earn their bonus. If they fail, they don’t get the bonus. Easy.” He believes that in order to break down the barriers to diversity, the first imperative is to define the goal correctly and that the exercise begins with identification of women and people of color who, on an impartial and objective standard, show the intelligence, work ethic, aptitude, and ambition to be successful. When those individuals are identified, senior leaders in the organization need to be assigned responsibility for championing their success. “This does not mean being a mentor,” says Anzaldua. “It could mean finding them mentors, but it certainly means learning about the person, identifying and addressing skill gaps, making sure they get the right kinds of experience, and making sure the institution does not squander their talent by assigning them to duties that won’t advance their careers.”

MetLife Legal Affairs has already launched this “champion” of diversity paradigm internally, and Anzaldua says the plan is to encourage its use in other corporate law departments and law firms. “Our plan at MetLife is to tell our outside counsel that the number of diverse associates and number of hours worked by diverse personnel are no longer going to be the end of the inquiry in terms of their commitment to diversity. We will expect to see these kinds of substantive

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strates that genuine inclusion matters—not just to the employees who feel included but to the success of the whole workplace team. In “Inclusive Leadership: The View From Six Countries,” researchers at Catalyst, report their findings that a culture of inclusiveness had a measurable impact on the quality of teams even across the very different national cultures of Australia, China, India, Germany, Mexico, and the United States.<sup>14</sup> Employees reported being more innovative in their jobs and engaging in more team citizenship—going beyond the bare requirements to support team members and the workplace—when their teams emphasized genuine inclusion. The Catalyst research supports a growing conviction among experts in organizational behavior that a sense of inclusion actually does contribute to a more successful organization. Given the measurable benefits of inclusiveness in the workplace, the next question seems to be “What are corporate legal departments and law firms doing to promote inclusiveness?”

### **A Case Study for Change**

MetLife, a leading global provider of insurance, offers a case study of a strategy for promoting diversity and true inclusion that just might work. I recently met with MetLife general counsel Ricardo Anzaldua, who expressed confidence that “change is taking place, and we are now at a historical inflection point where we can really start to produce results.” Producing those results requires commitment, a recognition of what hasn’t worked in the past, and a defined



commitments to the long-term success of their associates who are women and people of color. And if we conclude that our firms are not requiring their senior partners to be accountable for achieving this success, we will move our business to other firms that do so.”

MetLife is taking a leadership role on these issues, but they are by no means alone. I had a conversation recently with Tiffani G. Lee, Holland & Knight’s firm-wide diversity partner, who explained that “[t]he legal landscape is changing in ways that make it necessary for law firms to leverage diversity for their longevity and success. One of the changes is globalization. Another is the increasing emphasis on diversity by certain larger national and international corporations. Another is the changing demographics of the in-house decision-makers who purchase legal services from outside counsel firms.” Lee quite astutely recognized that “a law firm’s commitment to diversity and inclusion must start at the top,” but that is not enough. “It is equally important that the rank-and-file lawyer appreciates the business case for diversity, sees himself or herself as a stakeholder in the firm’s efforts, and does his or her part to support the firm’s institutional values of diversity and inclusion.” What Lee and other leaders recognize is that we need to take active steps toward diversity, or the number of diverse attorneys will not grow and is likely to dwindle. The harm will be to more than just the diverse lawyers themselves. Law firms and legal departments will not be exposed to different ideas, different cultures, different backgrounds, and, more than likely, old stereotypes will never change.

### A Reflection on Our System of Justice: Perspectives From the Bench

Diversity is important in all fields, but it is even more important in law than in other contexts, because the diversity of our legal profession reflects something profound about our system of justice. If the lawyers representing people and the judges making decisions about their lives and livelihoods do not reflect the diversity of our nation, we are failing to provide a system of justice for all. This reality is one we cannot ignore. Three federal judges express it well here: First, Hon. Christine M. Arguello of the U.S. District Court for the District of Colorado explains:

“I consider myself to have been blessed because I was born in the United States where, in one generation, a poor Latina can go from poverty to success if she is willing to work hard. Because so many seek the ‘American Dream,’ the population of the United States continues to become more diverse[,] and it is projected that by 2050, no one race or ethnicity will be the majority in America. As our first president said, ‘The administration of justice is the firmest pillar of Government.’ Shouldn’t the firmest pillar of Government reflect the diversity and inclusiveness of the United States?”<sup>15</sup>

Further, Hon. Marina Garcia Marmolejo of the U.S. District Court for the Southern District of Texas reasoned:

“Increased diversity of race, gender, religious beliefs, and socio-economic status in the legal system promote legitimacy in the eyes of the public and instills trust that the

system reflects the populace. People are more likely to trust a legal system that embraces numerous perspectives and life experiences—a system that promotes inclusion and equality in a world with boundless potential, where each child grows up knowing that he or she can be a federal judge regardless of his or her background.”

And, finally, Hon. Jimmie V. Reyna of the U.S. Court of Appeals for the Federal Circuit added: “The legal profession is the face and forerunner of the U.S. system of justice, the legitimacy of which depends on the people it serves, from whom it derives its authority. A diverse legal profession therefore ensures that the U.S. system of justice remains strong and viable into the future.”

### The HNBA’s Efforts To Diversify the Legal Profession

The programming provided by the HNBA continues to strengthen and grow. As part of my platform as HNBA president, I strive to provide something meaningful for everyone, whether they are a law student, partner, in-house counsel, or solo practitioner. As part of our strategic plan, the HNBA has developed many programs whose specific intent is to diversify the legal profession. Here are just a few examples of the work we are doing every day, all over the country:

- The HNBA unveiled a new program this year called Law School—Si Se Puede (LSSSP), founded by Hon. Christine M. Arguello of the U.S. District Court for the District of Colorado. This is a four-year, college-student mentor program whose purpose is to advance inclusiveness in the legal profession by equipping students for their journey through law school and beyond. LSSSP is a long-term program designed to prepare college students from diverse backgrounds to become highly qualified applicants for admission to the nation’s best law school. Judge Arguello has turned to the HNBA for implementation of this great concept nationwide.
- The HNBA, through its affiliate organization, the HNBA Legal

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Education Fund, provides programming for high-school students interested in the legal profession through the Legal Education Action Program (LEAP). This program introduces Hispanic high-school students to the U.S. legal system and its lawyers and judges. It is an all-expenses-paid, one-week summer program, rotating to various cities across the United States each year, whose programming includes competing in a mock trial with the support of legal advocacy coaches who are law-school professors and judges.

- Three years ago, the HNBA partnered with Microsoft to develop the HNBA/Microsoft Intellectual Property Law Institute held in Washington D.C. Students interested in intellectual property law now have the opportunity to go through a full week of intense training on IP law at no expense to them. The intent of this incredible program is not only to introduce students to this area of the law but to continue to mentor them and assist them with career development in this particular area of practice.
- MetLife is also an HNBA partner, providing funding that allows the HNBA to reach out to its members across the country through mentoring receptions where law students meet lawyers and MetLife representatives and develop long-term relationships that help them with their future and their careers.
- Wal-Mart is the exclusive sponsor of the HNBA Commission on the Status of Latinas in the Legal Profession's Latina Leadership Academy. The main goal of this program is to assist Latina lawyers in developing a strong managerial skill set that includes a personal leadership brand, business development skills, negotiating and managing relationships, navigating organizational power and politics, and effective succession planning. This is one powerful program that no female HNBA member should miss.
- Dedicated to providing opportunities for all of its members, the HNBA, in collaboration with the National Association of Corporate Directors and sponsored by Gavin Salmonese and Jones Day, provided a one-day intensive Director Professionalism training program to its members. This program was extremely popular and evidences the fact that HNBA members are always striving to do everything in their power to prepare themselves for future opportunities.
- Another HNBA program created this year is the Business Development Institute CLE track that provides programming for lawyers by general counsel and assistant general counsel (GC) who do the hiring of outside counsel. This program trains lawyers on what GCs look for, how to position themselves, and how to increase their chances of securing work as outside counsel. This programming is a benefit not only to private practitioners but to GCs and in-house counsel who may not be aware of the amazingly qualified Latino lawyers looking for work from corporations.
- The HNBA is very engaged in advocacy for diversity in the judiciary in several ways. Through the Coalition of Bar Associations of Color, the leadership from each organization meets together in Washington, D.C., to advocate for diversity in the federal judiciary. The HNBA, through its Judicial and Executive Endorsement Committee, handles requests for HNBA endorsement by candidates seeking positions on the federal bench. Candidates requesting endorsement by the HNBA must go through a rigorous process whereby the HNBA does its own in-depth investigation of the candidate's experience and qualifications, then interviews a diverse pool of individuals who know the candidate and can give an unbiased report of the candidate upon which the HNBA can rely to

make its determination on endorsement.

Through these and other projects, as well as informally networking and public education, the HNBA is very actively engaged in doing its part to empower its members with the education and leadership skills they needed to change the current statistics of Latinos in the legal profession. With the full commitment and partnership of corporations and law firms, together, as a nation, we will all benefit from diversity in the legal profession. ☺



*Cynthia D. Mares was appointed by Colorado Gov. John Hickenlooper on Oct. 26, 2012, to serve her first term as Arapahoe County Public Trustee. On Jan. 20, 2015, she was appointed for a second four-year term. Mares was sworn in as HNBA national president in September 2014 in Washington, D.C., and will hold that office for one year. She attended the University of*

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## Endnotes

<sup>1</sup> The author uses the terms *Latino* and *Hispanic* interchangeably.

<sup>2</sup> American Bar Association Total National Lawyer Counts

<sup>3</sup> See [www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2014.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2014.authcheckdam.pdf).

<sup>4</sup> See [www.nalp.org/0914research](http://www.nalp.org/0914research).

<sup>5</sup> See [www.americanlawyer.com/id=1202657037862](http://www.americanlawyer.com/id=1202657037862).

<sup>6</sup> See [www.diversityandthebardigital.com/datb/november\\_december\\_2014#article\\_id=529114](http://www.diversityandthebardigital.com/datb/november_december_2014#article_id=529114).

<sup>7</sup> Diversity & the Bar, Nov/Dec 2014, [www.mcaa.com](http://www.mcaa.com).

<sup>8</sup> See [www.fjc.gov/history/home.nsf/page/judges.html](http://www.fjc.gov/history/home.nsf/page/judges.html).

<sup>9</sup> See [www.diversityandthebardigital.com/datb/november\\_december\\_2014#pg46](http://www.diversityandthebardigital.com/datb/november_december_2014#pg46).

<sup>10</sup> Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004).

<sup>11</sup> See [www.ed.gov/news/press-releases/expansive-survey-american-public-schools-reveals-troubling-racial-disparities](http://www.ed.gov/news/press-releases/expansive-survey-american-public-schools-reveals-troubling-racial-disparities).

<sup>12</sup> FRANK DOBBIN, *INVENTING EQUAL OPPORTUNITY* (2009); Alexandra Kalev et al., *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589 (2006).

<sup>13</sup> See Brief for American Sociological Association and the Law and Society Association, as Amici Curiae Supporting Respondents at 8, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011).

<sup>14</sup> See [www.catalyst.org/uploads/inclusive\\_leadership\\_-\\_the\\_view\\_from\\_six\\_countries1.pdf](http://www.catalyst.org/uploads/inclusive_leadership_-_the_view_from_six_countries1.pdf).

<sup>15</sup> See [www.usmarshals.gov/history/firstmarshals/marshals1.htm](http://www.usmarshals.gov/history/firstmarshals/marshals1.htm). Last visited March 27, 2015.