

Increasing Diversity in the Legal Profession

By Cassandra Fortin

Vision without execution is hallucination.

—Thomas Edison

Are You Answering the Call to Action?

Increasing diversity in the legal profession will take more than words. It will take action. In 2003, the United States Supreme Court ruled in *Grutter v. Bollinger*, 539 U.S. 306 (2003), that a law school can take race into account in

making admission decisions because the state has a compelling interest in achieving “a diverse student body.” Justice Sandra Day O’Connor recognized that law schools serve as training grounds for our country’s leaders; therefore, we must make access to the profession broadly inclusive.

Despite Justice O’Connor’s observation, Caucasians constitute about 70 percent of the working population over the age of 16, and they represent 89 percent of all lawyers and 90 percent of all judges, according to 2009 data. A.B.A. Presidential Diversity Initiative Comm. on Diversity, *Diversity in the Legal Profession: The Next Steps, Report and Recommendations (2009–2010)*, http://www.americanbar.org/content/dam/aba/migrated/centers/diversity/PublicDocuments/Diversity_Summary_Report.authcheckdam.pdf. We must be willing to stand up and call on our colleagues to take action to increase diversity, otherwise we will not make progress.

A Call to Action

In 1999, nearly 500 major corporations

signed a document entitled “Diversity in the Workplace: A Statement of Principle,” which showcased their commitment to increasing diversity within the legal profession. Unwilling to let this commitment disappear and facing the glaring lack of diversity in the legal profession, Roderick “Rick” Palmore—then-executive vice president, general counsel, and secretary of Sara Lee Corporation and the current executive vice president, general counsel, and chief corporate and risk management officer of General Mills, Inc., called on corporations and law firms to share their commitment to increase diversity by demanding results in the law firms with which they worked, as well as in their own law departments. Palmore’s unrelenting mission to increase diversity inspired his new call to action. Palmore’s *A Call to Action—Diversity in the Legal Profession*, urged signatories to take this commitment beyond the “disappointing plateau” that had been sustained since 1999. *A Call to Action* appeared on the Association of Legal Counsel’s website in Oc-



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tober 2004. Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, available at http://www.lclldnet.org/perspectives_2004_call_to_action.html.

Signatories were asked to agree to (1) take action consistent with *A Call to Action*; (2) make an abiding commitment to diversity in their own departments; (3) actively look for opportunities with law firms that distinguish themselves in diversity issues; and (4) end or limit relationships with firms whose track records reflect a lack of meaningful interest in diversity. Since the inception of *A Call to Action*, over 100 general counsels have pledged their support and signed onto the upholding its principles.

The A Call to Action Summit

Recognizing that the success of *A Call to Action* depended on a collaborative effort among general counsels and law firms to work together and commit to increasing diversity in the legal profession a reality, the signatories hosted an *A Call to Action* summit in 2008. This summit provided an environment to foster and further dialogue about the state of diversity in the profession and the ways in which firms and their corporate clients could collaborate to achieve diversity in the legal profession.

A seven-member general counsel organizing committee made up of Fortune 500 companies brought the *A Call to Action* summit to fruition. This two-day event provided an opportunity for general counsels and managing partners to review diversity best practices, current benchmarks, and standards within the profession and to devise an agreed-upon plan of action for addressing diversity in corporate law departments and within major law firms. The summit also provided a forum for decision makers and individuals with influence in the profession to collaborate and understand effective and meaningful ways to increase diversity in the legal profession.

To ensure continued commitment to increasing diversity in the legal profession in recognition that change could only occur through measured, sustainable, and collaborative action, *A Call to Action* summit working groups were created, led by one Fortune 500 general counsel and a managing partner from one of the nation's top law firms. Those groups included Law Firm Call to Action; Strategies for Law Firm and

Corporate Partnerships; Goals to Measure Success; and Recruitment, Retention and Advancement. Participants also focused on (1) maintaining a working partnership between corporations and law firms and gaining a greater understanding of the challenges and opportunities faced by each group; (2) establishing benchmarks for measuring improvement in year-to-year recruitment and retention of diverse attorneys; (3) discussing ways to reshape the profession to make it more engaging to diverse populations and instituting additional actionable steps toward achieving this goal; and (4) maintaining a recurring event to discuss diversity, update the group on the status of tangible, agreed-upon initiatives, and ensure that progress is continually moving forward.

Leadership Council on Legal Diversity

"It is the task of this generation of leaders in the law to deepen the commitment to a profession that is increasingly open to talented individuals of all backgrounds." Leadership Council on Legal Diversity Website, <http://www.lclldnet.org/> (last visited Jan. 24, 2011). Continuing the collaborative efforts of general counsels and law firm managing partners dedicated to creating a truly diverse legal profession, the Leadership Council on Legal Diversity (LCLD) was formed in May 2009. The LCLD's vision is "to significantly advance diversity and inclusion in our profession." Its mission is "to continue the work of the '[A] Call to Action' initiative by having our organizations hire, retain, promote, and engage the best talent. A critical and necessary element of having the best talent is having diverse talent." The LCLD is committed "to work together to take action to drive material change in our institutions, with others in our circles of influence, and in the profession generally."

The LCLD held its inaugural conference entitled, "OPEN," in Washington, D.C., in October 2010. OPEN stands for "Obligation, Power, Engagement, and Now." More than 200 legal professionals attended the conference. Unique to this conference was its participation requirement: for a company to participate, its general counsel had to attend, and each law firm had to send its managing partner. Substitutes were not allowed. Moreover, the LCLD has limited its membership to managing partners and gen-

eral counsels. This requirement should be applauded because it recognizes that change will only occur in the legal profession if corporations and law firms send their leaders and decision makers to the table.

The LCLD Strategic Committees

The LCLD introduced four strategic committees at its inaugural meeting in October

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2010. See About Us, Leadership Council on Legal Diversity, http://www.lclldnet.org/about_us_strategic_committees.html (last visited Mar. 18., 2011). The committees include the following: Talent Development Committee, Partnership Committee, Benchmark Committee, and Pipeline Committee. Each committee has a chair, vice chair, and members who are themselves leaders in top law firms and corporate legal departments throughout the country.

The LCLD Talent Development Committee is chaired by Gregory B. Jordan, global managing partner of Reed Smith. Mr. Jordan referred to talent development as "the big issue," a challenge that every member, firm, and organization has in common. To address this challenge, the LCLD Talent Development Committee has been working on "one big idea," the LCLD Fellows Program.

The LCLD Fellows Program is the signature initiative for the LCLD Talent Development Committee. The program's mission is to help high-potential attorneys reach their full potential and become leaders within member firms and organizations. This is accomplished through a year-long, intensive training and mentoring program, which debuts in 2011. Member firms will identify one high-potential attorney and member organizations will select two high-potential attorneys to commit to the pro-

gram. While a mentorship and training program is not unique, the committee has thoughtfully crafted the program so that it will be distinctive and effective.

The program will consist of over 200 high-potential individuals from some of the country's leading law firms and organizations, which will create valuable networking opportunities. Ideally, fellows admitted

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to the program will have between eight and 15 years of post-law school experience. The fellows will meet in person three times throughout the year, and between meetings they will participate in teleconferences and webinars. The fellows will also divide into teams that will work together to address real leadership-enhancing problems confronting member firms and organizations. On completing the program, the LCLD will assign each graduating fellow to a lifetime mentor, one of the current leaders of a member firm or organization. The LCLD will also require each graduating fellow to serve as a mentor to an incoming fellow.

In addition, the LCLD Talent Development Committee has been building a collection of (1) industry best practices related to development of diverse talent, and (2) "personal journeys" that take form as recordings of leaders of member firms and organizations recounting their own life and career journeys, which fellows and members alike can access. The best practices and personal journeys collections are intended to provide a useful resource to assist member firms, organizations, and high-potential attorneys that may encounter similar experiences.

The LCLD Partnership Committee is chaired by Michelle Coleman Mayes, vice president and general counsel of the Allstate Corporation. The vision of the LCLD Partnership Committee is "to collect, analyze, share, recognize positive and instructive examples of team-focused, results-oriented partnering initiatives between law firms and corporations with an emphasis on diversity." In sum, the committee will (1) identify best practices around diversity-oriented partnerships between law firms and corporate legal departments, and (2) share those best practices with member firms and organizations so that they can replicate them.

The LCLD Benchmark Committee is chaired by Timothy J. Mayopoulos, executive vice president, general counsel, and chief administrative officer of Fannie Mae. The committee intends to harness its efforts toward (1) helping to understand the state of the profession based on certain key measures of diversity and inclusion, and (2) gathering fresh insight on what the profession can do to improve those measures. As such, the mission of LCLD Benchmark Committee is "to bring unprecedented insight, analysis, and rigor to these issues" through research-based work. The committee's goal is "to go beyond the numbers and understand the real forces at work that encourage and hinder diversity in law firms and legal departments." To do this, the committee plans to launch a new survey tool complete with in-depth interviews. The uniqueness of its efforts, compared to most surveys, is that the information the survey will gather will come straight from the top leaders, partners, and general counsels of member firms and organizations. Additionally, the data-gathering process will have oversight from skilled survey and interview consultants, remain confidential, and the survey will attribute nothing revealed by a particular participant to a particular member unless the firm or organization has expressly granted permission to the LCLD to share that particular experience or best practice broadly with all the members.

The LCLD Pipeline Committee is chaired by Brad Smith, general counsel and senior vice president of Microsoft Corporation. The committee's vision is "to build a pipeline that will bring into the legal profes-

sion individuals that are as diverse as the country itself." Simply stated, the committee's goal is to "increase the number of diverse persons moving from college into and through law school." This will be a difficult task. Despite improvements in college grade-point averages and scores on the Law School Admission Test, "[t]he number of black and Mexican-American students applying to law school has been relatively constant, or growing slightly, for two decades. But from 2003 to 2008, 61 percent of black applicants and 46 percent of Mexican-American applicants were denied acceptance at all of the law schools to which they applied, compared with 34 percent of white applicants." Tamar Lewin, *Law School Admissions Lag Among Minorities*, N.Y. Times, Jan. 6, 2010.

In crafting a strategy to realize its goal, the Pipeline Committee was grounded in several tenets, which include (1) the facts regarding the current state of diversity within the legal profession and how it is vastly disproportionate to the demographic makeup of the country; (2) the inclusion statistics of other pipeline organizations with a similar vision or mission; and (3) a commitment to do more than just to talk about pipeline issues but also to act in pursuit of measurable progress.

Accordingly, the LCLD Pipeline Committee has a three-fold strategy: (1) focus on students in college and help them move to law school; (2) partner with law schools to help diverse students succeed in law school; and (3) create an infrastructure to enable organizations with similar objectives to share information and learn from each other. While the committee is still assessing the best ways to implement the first strategy, it has already started to implement the second. The committee has been assisting diverse students to succeed in law school by securing tripartite partnerships among law school deans, managing partners of member law firms, and general counsel of member corporations. Through these partnerships leaders discuss ways to mentor diverse students throughout law school, and often present the students with rare opportunities to work in law firms or corporate legal departments during the summer after they complete their first year of law school. The LCLD Pipeline Committee has also begun imple-

menting the third strategy by creating a space online where member firms and organizations can promote programs targeted at diverse law school students and where like-minded organizations can share best practices.

State and Local Bar Associations Answer A Call to Action

Many states, including Minnesota, have taken matters into their own hands and put their words to action to increase diversity in the legal profession.

Twin Cities Diversity in Practice

Twin Cities Diversity in Practice (TCDIP) was formed in 2005 from discussions among major Twin Cities' law firms on how they must take a leadership role to increase diversity in the legal profession. See generally *Twin Cities Diversity in Practice*, <http://www.diversityinpractice.org/> (last visited Mar. 18, 2011). The mission of the TCDIP is to support the efforts of its members to attract, recruit, advance, and retain attorneys of color in the Twin Cities legal community. It is also dedicated to promoting the Twin Cities as a great place for attorneys of color to develop professionally and personally. One way that the TCDIP promotes itself is through "flying squads." A "flying squad" travels to different areas of the country to promote and introduce law students to the Twin Cities Legal market. Currently, the TCDIP has 36 members—24 law firms and 12 corporate law departments. The partnering corporations include 3M Company, Target, Cargill, Best Buy, General Mills, Cargill, Land O'Lakes, Inc., Medtronic, Travelers, United Health Group, Wells Fargo, and Xcel Energy. Membership is open to private law firms, corporate law departments, and other public and private employers of legal professionals in the Twin Cities metropolitan area. The organization is governed by a board of directors, currently representing 10 incorporated organizations and two additional corporate law departments. A unique and critically important strategy of Twin Cities Diversity in Practice is that it is led by a full-time executive director, Valerie Jensen.

A key component of the TCDIP's efforts is its summer clerkship program. The summer clerkship program offers an invaluable

experience for law students who have completed their first year of law school. Member law firms and corporate law departments join together to host a first-year law student. The law student splits his or her summer between a law firm and a corporate law department. This is a unique opportunity, even more so for first-year law students, because students can acquire experience and skills in both a firm as well as in an in-house setting. "The opportunity to pair up with a great firm and large corporation is a very unique opportunity. The program also capitalizes on the lack of availability of 1L jobs, so it draws the most talented applicants to the Minneapolis market," said Nathan Davis, rising 2L at the University of Minnesota Law School and a participant in TCDIP in 2010. During the summer of 2010, Davis split his time between the law firm of Faegre and Bensen and Target Corporation. Davis accepted an offer to return to Faegre in the summer of 2011 and will also work at Sidley Austin in Chicago. Davis, a native of Omaha, Nebraska, added that "work experience is great in Minnesota. Everyone wants you to succeed and will help you in whatever way they can to make sure that happens. People are very open to meeting and imparting advice from the top to the newest associate." Davis also participated in many of the TCDIP's activities throughout the summer, which introduced participants to the Twin Cities. "Minnesota is a great place to live. Many local restaurants and businesses, lots of available outdoor activities, great public transportation system, all major pro sports, affordable," but, he said, Minnesota is "very cold and snowy."

In addition to providing an invaluable experience for 1Ls, the TCDIP continues to offer programming for attorneys after they complete law school. These programs include mentoring circles, a professional development series, and summer social and subcommittees. Mentoring circles consist of six to eight associates and junior in-house counsel led by one senior firm attorney and one senior corporate attorney. The hope of the TCDIP is that mentoring circles will offer junior attorneys an opportunity to extend their network in addition to gaining insight from their mentor leaders. Furthermore, associates and junior in-house counsel have the oppor-

tunity to become involved in the various Twin Cities Diversity in Practice subcommittees, including marketing, professional development, retention, best practices, and pipeline.

In 2010, the Professional Development Series provided a number of professional and business development programs for Twin Cities' attorneys with one to seven years of experience. These programs covered important skills such as building relationships, networking, having difficult conversations, being an indispensable attorney, and more.

The TCDIP also runs the Minnesota Minority Recruitment Conference (MMRC). The MMRC typically attracts between 20 and 30 Minnesota legal employers who interview approximately 60 to 100 diverse candidates. The McGhee Scholarship helps cover the cost of many out-of-state students' travel expenses.

Lastly, the TCDIP cohosts an annual summer social with the area minority bar associations, which provides an opportunity for law students to meet minority attorneys in the Twin Cities and also provides an opportunity for lawyers of color to reconnect with their peers to build a stronger professional community.

Minnesota State Bar Association

In addition to the TCDIP, the Minnesota State Bar Association (MSBA) and the Ramsey and Hennepin County Bar Associations have actively made efforts to increase diversity in the legal profession in Minnesota. In 1993, the Hennepin County Bar Association published a report titled, *Walking Through Invisible Doors and Shattering Glass Ceilings*, which focused on gender issues, and came to be known through the years as the "Sage Report." Hennepin County Bar Association Glass Ceiling Task Force, (1993), <http://www.mnbar.org/committees/DiversityTaskForce/HCBAGlassCeilingReport1993.pdf>. From this report stemmed the MSBA's *2005 Self-Audit for Gender and Minority Equity: A Research Study of Minnesota Law Firms, Non-Firm Employers and Individual Lawyers*. Minn. State Bar Ass'n Task Force on Diversity in the Profession (2006), <http://www2.mnbar.org/committees/DiversityTaskForce/Diversity%20Report%20Final.pdf>. This report was based on surveys focusing on race, religion, gender,

sexual orientation, and disability. Moreover, the surveys sought to identify problems leading to bias in the legal profession. *Id.* at 7. This report of the Minnesota Bar Association Task Force on Diversity in the Profession led the task force to develop a guide to suggest ways to increase diversity, *Diversity and Gender Equity in the Legal Profession: Best Practices Guide*,

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Minn. State Bar Assn, (2007), <http://www.mnbar.org/committees/DiversityImplementation/DiversityBestPracticesGuideFinal.pdf>. The guide is organized according to underrepresented communities, identifying best practices conducive to increasing representation of each underrepresented community. Moreover, the guide has been used by other state bar associations. The MSBA is currently updating its diversity survey—which is tentatively scheduled for publication in the summer or early fall of 2011—and implementing the best practices identified by the task force in the greater Minnesota legal community. Both publications seek to identify the problems as well as solutions to increase diversity in the legal profession in Minnesota and to achieve these goals through a comparative analysis of current and past data.

An invaluable opportunity the MSBA provides to law students is its 1L Clerkship Program. The program began in 2005 and provides 1L law students with an opportunity to work in a medium to large Twin Cities' law firm. The program has had as many as 24 students participate in a summer associate experience. The program focuses on students attending one of the four Minnesota law schools who are members of a racially underrepresented community. Although the program experienced a reduction in firm participation

in 2010 due to the downturn in the economy, it expects to increase its number of employer-participants in the future. One additional challenge that the program has experienced is keeping students in the state of Minnesota. To address this issue, the MSBA has broadened support of diverse communities in the Minnesota legal market, collaborating with others to hold the Minnesota Minority Bar Summit.

In 2009 and 2010 Judge Leo Brisbois, the first Native American president of the MSBA and a current U.S. District Court magistrate judge, revitalized the Minnesota Minority Bar Summit. The summit is a group of minority bar associations, local and federal bar association diversity committees, other affiliated organizations supporting underrepresented communities, and representatives of the four Twin Cities law schools. Presently, the summit seeks to collaborate on pipeline issues to ensure ongoing depth in Minnesota's future legal community. Moreover, the summit provides an opportunity for the leaders of participating organizations to learn about diversity broadly, connect with persons with common passions, and help foster an environment in which all are truly committed to increasing diversity in the Twin Cities. The groups collaborating in the summit created Minnesota Legal Diversity to serve as a forum for prospective and current law students and legal practitioners could learn about the opportunities offered in Minnesota. *See* Minnesota Legal Diversity, <http://www.mnlegaldiversity.org/> (last visited Mar 18, 2011). In 2007, the Diversity Committee of the MSBA was approached by the summit and accepted the responsibility for ongoing administration of the website for Minnesota Legal Diversity. *Id.* These are just some of many examples of the MSBA's and various bar associations' answer to Mr. Palmore's *A Call to Action*.

The NFL and the SEC Diversity Initiatives

The legal profession is not the only profession that recognizes the need to increase diversity. The National Football League (NFL) and the U.S. Securities Exchange Commission (SEC) understand the importance of diversity and have implemented new practices to support diversity initiatives.

The NFL's Rooney Rule

"If we always use the same playbook... we'll never achieve any real change." Sandra Leung, General Counsel Bristol-Myers Squibb, LCLD Interviews, LCLD Website, http://www.lclldnet.org/perspectives_lclld_interviews.html (last visited Jan. 24, 2011). For decades, NFL head coaching positions lacked diversity. In 2002, the NFL published a study that found that 70 percent of NFL players were African American, while only 28 percent of the assistant coaches and only six percent of head coaches in the league were African American. Greg Garber, *Thanks to Rooney Rule, Doors opened*, ESPN.com (Feb. 9, 2007), <http://sports.espn.go.com/nfl/playoffs06/news/story?id=2750645>. Many justifications have been offered for the NFL's failure to achieve diversity among head coaches: few good minority candidates existed; because top college football coaches have not been reflected in underrepresented communities, the league didn't have a pipeline; and even "the head coaching position required a kind of thinking that did not lend itself to minority coaches." Luis A. Aguilar, Commissioner, U.S. Securities and Exchange Commission, Address at Agenda Luncheon Program, *Board Diversity: Why It Matters and How to Improve It* (Nov. 4, 2010), http://www.sec.gov/news/speech/2010/spch110410laa.htm#P32_5972.

Recognizing the need to increase diversity in the league, the NFL instituted the Rooney rule, which requires all NFL teams to interview at least one minority candidate when filling a head coaching position or risk a fine. The goal of the rule is to provide qualified, overlooked candidates with the opportunity to compete for coaching positions by placing them in the pool of applicants. Since the rule's adoption, 22 percent of the head coaching positions have been filled with minorities, and during the 2006 league season, seven of the league's 32 head coaches were African American. Currently, six NFL head coaches, or 18.75 percent, are minorities. Antonio Gonzales, *NFL Gets 'A' for Racial Hiring; Slow Hiring Women*, The GRIO (Sept. 29, 2010), <http://www.thegrio.com/sports/nfl-gets-a-for-racial-hiring-slow-hiring-women.php>.

SEC Rules Regarding Diversity in Policy Disclosures

Responding to calls from investors request-

ing information on corporate board diversity and company policies related to board diversity, in December 2009, for the first time, the U.S. Securities and Exchange Commission (SEC) adopted a rule to assess a company's commitment to developing and maintaining a diverse board of directors. Aguilar, *Board Diversity: Why It Matters*, *supra*. The SEC rule requires disclosure of whether, and if so, how, a nominating committee considers diversity in identifying nominees for director positions. *Id.* If a nominating committee or a board has a policy about considering diversity in identifying director nominees, the final rule requires disclosure of how the nominating committee or board implements this policy and how the nominating committee or the board assesses the effectiveness of its policy. "Diversity" is not defined in the rules, which permits each company to interpret it. *Id.*

The rule first applied to proxy solicitations on February 28, 2010. *Id.* Unfortunately, while some companies provided useful information, many simply provided abstract disclosure statements, for example, that diversity was something considered as part of an informal policy. The new rule requires more than this. *Id.*

U.S. SEC Commissioner Aguilar has recommended using disclosures that indicate whether a company has a policy of inter-

viewing one or more candidates who are minorities or women, retaining a search firm that has been specifically instructed to seek candidates that are minorities or women, or soliciting recommendations from organizations that have a reputation for identifying candidates with diverse backgrounds. Aguilar also recommended having a disclosure indicate how many candidates were interviewed that were women or minorities. *Id.*

Given the studies that indicated that diversity in boardrooms results in real value for both companies and shareholders and studies that indicate that companies without ethnic minorities and women on their boards eventually may be at a competitive disadvantage and have an underperforming share value, it is not surprising that the SEC answered the call of investors and enacted a rule regarding diversity policy disclosures. *Id.*

Encouraging Others to Answer the Call

The efforts of *A Call to Action*, the Leadership Council on Legal Diversity, and various state and individual bar associations have made and are currently making to bring about diversity in the legal profession should be applauded and replicated. These organizations have created innovative programming and methods to increase

diversity that your firms and legal departments can and should use to promote and increase diversity.

It is not enough to simply *talk the talk of diversity*. The legal profession needs to *walk the walk* to create a legal profession that represents the diversity of our nation. You can do this by joining the Leadership Council on Legal Diversity, participating in minority recruitment fairs, partnering with local bar associations, or becoming active in the DRI Diversity Committee. Increasing the number of minority associates in law firms or legal departments is not enough if these individuals do not have quality substantive work and experiences, opportunities to develop and foster their legal careers, and opportunities to become general counsels, managing partners, and judges—the leaders of our profession.

Change will take time, especially since achieving partner [or partnership track] can take as much as eight to 10 years. Moreover, we must also remember that having minorities in leadership positions or increasing numbers does not mean that the "diversity issue" has been solved. Efforts to increase diversity in the legal professions, and arguably in all professions, must be continuous. In the words attributed to Thomas Edison, "when you have exhausted all possibilities, remember this—you haven't." 