

Diversity in Practice *looking back to look ahead*

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Ralph Waldo Emerson’s words, “Life is a journey, not a destination,” have been paraphrased often to describe abstractions like love and success that are difficult to evaluate through objective standards. “Diversity is a journey, not a destination,” is a statement made repeatedly by people (including myself) when we are frustrated with the progress of diversity in the legal profession. Reflecting simultaneously the efforts and challenges in moving forward, this phrase is an excellent entry into the dialogue I aspire to continue with this column.

As functional as the phrase is, I have come to realize that diversity is neither a journey nor a destination. It is merely a pit stop in the longer journey of configuring how to live, work, play, share resources, and thrive together as a society of individuals. Moreover, the frustration underlying the phrase stems from the journey’s requiring us to consider whether equality requires sameness or whether we can be different and equal at the same time.

Our history began with the legislation of inequality and exclusion on the basis of a person’s race (slavery), gender (suffrage), and ethnicity (internment camps), and was followed by our attempts to undo the exclusion and inequality by legislating equality and inclusion (equal treatment, civil rights). The pit stop of anti-discrimination legislation was our effort to stop discrimination — to halt and heal the inequities it caused.

Our social relationships and values, in the meantime, already mirrored and mimicked the inequalities — we stopped discriminating, but we did not begin including. So, even though the first black lawyer broke through discrimination barriers to become licensed to practice law in 1844, it took the ABA

100 years (1943) to allow minorities to become members and another 60 years (2003) to elect its first minority president. Legislation was necessary but insufficient.

From the legislative pit stop, we traveled to affirmative action — proactively including the historically excluded. Affirmative action programs further decreased exclusion; however, stark disparities in achievement continued to trace the same fault lines of historically legislated exclusions. The legal profession, reformed by anti-discrimination legislation and affirmative action, entered the 1970s with women as 3 percent and minorities as 1 percent of all lawyers. By 1990, law schools were almost 50 percent women and 25 percent minorities; but women were only 12.27 percent, and minorities only 2.55 percent of all national law firm partners. If legislation unlocked the doors, and affirmative action opened the doors, why, then, did law firms still look much as they had when these doors were locked?

This question advanced us from the affirmative action pit stop to diversity — initiatives designed to make educational institutions and workplaces more representative of national demographics. Yet, even with law school populations stabilizing at 50 percent women and 25 percent minorities since 1990, by 2006, national law firm partnerships had only increased their diversity to 18.34 percent women and 5.40 percent minorities. This rate of change would require women about 80 years and minorities about 100 years to achieve parity between their representation in law schools and national law firm partnerships.

Diversity efforts, along with teaching us that we can neither legislate nor hurry cultural change, raise questions about the definition and trajectory of diversity itself. Should diversity include other historically excluded groups like gay/lesbian lawyers, religious minorities, and lawyers with disabilities? Does focusing on diversity divert attention away from merit? Is there a business case for diversity and should the economic imperative be our primary motivation? Do generational differences change our dialogue on diversity? Are white men disadvantaged by diversity efforts? Will the answers to these questions move us forward, or cause us to rethink the journey itself?

Our exploration of these questions deepens our understanding of diversity and propels our movement to the pit stop of inclusion — efforts to move workplaces from hiring diverse talent to ensuring that every person in the workplace has an equal opportunity to succeed. Workplaces now struggle with the question of whether historically excluded groups have the same access to the

necessary information, skills development opportunities, relationships, and networks for success in the workplace that the historically included groups have long enjoyed.

As legal employers recognize that diversity in hiring does not translate into diversity at every level, inclusion asks us if our profession merely accommodates diversity, or if it values diversity and is willing to change for it.

As we enter 2008, the legal profession continues to struggle with the diversity-to-inclusion leg of this journey. Legislation has unlocked doors; affirmative action has opened doors; diversity is inviting people in; and inclusion promises that diverse groups can be fully integrated into the conversation that has historically been held behind locked doors. With the different perspectives that diversity will continue to bring into the room, inclusion asks us if we are willing to change the structure, substance, and style of the conversation itself.

This column will explore the questions (and answers) that landscape our journey to becoming a profession where differences and equality thrive in partnership. I welcome your questions, comments, and general musings about this journey, and I look forward to continuing the dialogue.