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Background Primer for Discussion on Diversity within the Legal Profession

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BACKGROUND PRIMER FOR DISCUSSION ON DIVERSITY WITHIN THE LEGAL PROFESSION

James M. Donovan

I. INTRODUCTION

Despite its easy use in ordinary conversation, the details of what is meant when a speaker raises questions relating to "diversity" can be more complicated than they at first appear. The materials included here seek to map the more predominant landmarks on that intellectual landscape. While they cannot pause to linger over every topic, we should recognize that many of the undiscussed elements can also be extremely important, and that the facts of any specific example can be highly emotionally charged and fraught with legal complications. The focus of the present discussion, though, is not on responses to such moments of breakdown, but on the earlier opportunities when members of the profession, through consistent attention and ethical commitment, can work to improve weak spots in the responses to diversity challenges.

II. WHAT IS DIVERSITY?

Before there can be any hope of solving the entrenched and fluid problems related to the diversification of the members admitted to the bar, we must first clarify what is meant by that term.

A. Diversity and Discrimination

Clarity on the relevant issues surrounding diversity questions can be improved by first distinguishing between two related ideas, both of which play an important role in discussions on the representation of minorities within the legal profession. Discrimination is an idea that relates to an active gatekeeping function and which has served to impede entry of targeted groups into desirable opportunities and careers. When one speaks of discrimination, the connotation is that some entity, either individual or organizational, has created obstacles that selectively block specific kinds of candidates.

Discrimination need not be a conscious exercise in particular instances. A discriminatory effect can be realized through the operation of uniform requirements that have differential consequences because their rigid application does not take into account the individual needs of specific groups, as when a religion has a different holiday schedule or observes its Sabbath on a different day than does the majority. For example, the LSAT has been argued to contain cultural assumptions that give a competitive advantage to applicants from a background not equally available in our society to all persons.¹ Because discrimination operates

¹ See, e.g., Kidder, William C., "Portia Denied: Unmasking Gender Bias on the LSAT and Its Relationship to Racial Diversity in Legal Education," 12 Yale J.L. & Feminism 1 (2000).

at the point of contact between the person and the organization, it presents a good possibility for effective correction by legal actions.²

If discrimination can be viewed as primarily a process consideration, diversity looks at outcomes. While most people immediately recognize that discrimination is "inherently wrong, unacceptable, and as a phenomenon...demands aggressive intervention," diversity "generates a more ambivalent response."³ Elimination of discrimination becomes an uncontroversial baseline that must be achieved of necessity; rectifying diversity, by contrast, is an ideal that can be set aside should costs become prohibitive.

Drawing the line between discrimination and diversity can be complicated. On the one hand, "if one fails to hire or promote a qualified minority attorney, that is normally deemed discrimination, but if one argues credibly that pursuant to some objective criteria no such qualified minority candidate exists, that is considered an issue of diversity."⁴ A diversity problem at the end of the lawyer-production pipeline, however, can be the result of discrimination earlier on as minority students are dissuaded either directly or indirectly from pursuing law as a career choice. It may be the case that if the discriminatory elements influencing the creation of new attorneys are eliminated, in due course many of the diversity issues now found within the profession can sort themselves out.

Lack of diversity can also arise from causes other than prior discrimination. One example concerns the culture within law firms that compels women to choose between a professional career and enjoying the experience of raising a family. Resulting dissatisfaction in the current demanding realities of law practice can help explain why, despite being almost half of all law students, the rate of women actually practicing law continues to present a representative shortfall.

Given the range of causes behind diversity problems, no single approach is likely to resolve them all. If earlier discrimination is identified as the culprit, then solutions should target those problems; when current firm practices are the problem, however, a different set of corrections should be offered.

² See also Deborah L. Rhode, "Diversity and Gender Equity in Legal Practice," 82 U. Cin. L. Rev. 871, 888 ("Although antidiscrimination law provides some protection from overt bias, it is ill-suited to address contemporary racial, ethnic, and gender obstacles.").

³ Eli Wald, "A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why," 24 Geo. J. Leg. Ethics 1079, 1109 (2011).

⁴ *Id.* at 1110.

B. Formal Diversity and Substantive Diversity

Formal diversity is achieved when groups are represented within the pool in proportion to their presence in the general population.⁵ The assumptions supporting an expectation of formal diversity include "the basic intuition that in a competitive, equal society, the diversity of the populace will and ought to be reflected in diversity in its educational system and in its various occupations and professions."⁶ This expectation appears to be warranted in the cases of women and religious groups in that, after discriminatory bars were eliminated, law school enrollments approached their levels in the general population.⁷ However, this positive outcome "does not appear to be the natural and inevitable state of affairs for racial, socioeconomic, and other minorities who [remain] significantly under-represented in law schools and in the legal profession."⁸

In contrast to formal diversity, which reduces to a numbers game, substantive diversity concerns the distribution of meaningful participation, rewards, and power within the pool.⁹ A group can achieve formal diversity goals while still falling short of substantive diversity targets. This divergence between the two kinds of diversity, as one example, has been used to understand the status of women within the legal profession. On the one hand, female participation within the legal profession approaches rates within the general population. According to the ABA's Commission on Women in the Profession, women received 52.7 percent of the law degrees awarded in 2011.¹⁰ They have also performed well on measures of federal clerkships (45.6 percent), state clerkships (54.8), and local clerkships (54.3).¹¹ Despite these gains, women's representation as partners and other top-end positions falls far short from what one might predict given their numerical presence. Within private firms, only 19.9 percent of women were partners, a mere 15 percent had become equity partners, and a miniscule 4 percent managing partners.¹²

⁵ Jason P. Nance & Paul E. Madsen, "An Empirical Analysis of Diversity in the Legal Profession" 3 (July 16, 2014), 47(2) Conn. L. Rev. (forthcoming), available at <http://ssrn.com/abstract=2467131>.

⁶ Wald, *supra* note 3, at 1093.

⁷ *Id.* at 1095.

⁸ *Id.*

⁹ Nance & Madsen, *supra* note 5, at 3.

¹⁰ Am. Bar Ass'n. Comm'n on Women in the Profession, A Current Glance at Women in the Law 2 (2012), available at http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.authcheckdam.pdf.

¹¹ *Id.* at 5. These gains should be measured against an earlier era in which, "Until the late 1960s, women constituted no more than three percent of the profession." Rhode, *supra* note 2, at 872.

¹² Current Glance at Women in the Law, *supra* note 10, at 2.

While formal diversity is a necessary precondition to find substantive diversity, the latter represents the true end goal of all diversification projects.¹³ Racial minorities fail to achieve even formal diversity, representing only about 11 percent of lawyers despite being a third of the general population.¹⁴ Wald reads the fact that "a disproportionate number [of racial minority students] fail to graduate and pass the bar exam [as evidence of] gross failure of substantive diversity" on the part of legal education.¹⁵

C. Dimensions of Diversity

Diversity as a mantra quickly receives support from most people, but a larger question concerns which of the infinitely large catalog of varying human traits are the ones that should be set apart for attention in initiatives to promote as an important value within the legal profession. Any list reflects the priorities of its time. If the original concerns addressed prior discriminations against certain religions, then race, and later sex, rose to the attention of the public, including the members of the bar, each in response to broader social debates and new ethical standards.

We can get a sense of the variables receiving most attention in today's discussions from the following list offered by the ABA Commission on Diversity: "Despite our efforts thus far, racial and ethnic groups [presumably including religious diversity], sexual and gender minorities, and lawyers with disabilities continue to be vastly underrepresented in the legal profession."¹⁶ Other dimensions for diversity attention, particularly within law schools, include economic background, geographic origin, and diversity of intellectual perspective.

In order to determine on a principled basis what attributes should, or should not, be added to the list of diversity variables we can look to the ways in which attention to diversity itself has been justified. Presumably, any trait that triggers the identified reasons should receive a rebuttable presumption of marking a dimension on which we hope to find proportionate representation.

III. DEFENDING DIVERSITY: FOUR JUSTIFICATIONS

How much should be done to pursue diversity goals, and to which groups this attention should be given, depends upon our understanding of what is at stake in the ongoing debates. If we believe that fundamental values are at stake, then we expect the goal of diversified participation with the legal profession to be pursued

¹³ Wald, *supra* note 3, at 1105 ("*Substantive diversity* denotes the idea that formal diversity, demanding equality in the opportunity to participate in the legal profession, is merely the first, necessary step in achieving the goals of diversity, but is insufficient.").

¹⁴ U.S. Census Bureau, Profile of General Population and Housing Characteristics: 2010 (2010).

¹⁵ Wald, *supra* note 3, at 1108.

¹⁶ ABA Presidential Diversity Initiative, Diversity in the Legal Profession: The Next Steps 5 (2010).

even at great cost and inconvenience; less so, if the principles involved rank lower on the hierarchy of public sentiment.

A. Instrumental Reasons to Pursue Diversity

An instrumental defense of diversity looks not at the value of diversity *per se*, but rather at the benefits it provides to other desirable goals. In other words, diversity is not an end in itself, but a means toward some other valued objective. This is the kind of argument offered by Justice O'Connor in her opinion for [Grutter v. Bollinger](#), the case evaluating the constitutionality of the University of Michigan's race-conscious law school admissions process. She found that the school had a compelling interest in "obtaining the educational benefits that flow from a diverse student body":

As part of its goal of "assembling a class that is both exceptionally academically qualified and broadly diverse," the Law School seeks to "enroll a 'critical mass' of minority students." The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." That would amount to outright racial balancing, which is patently unconstitutional. Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.¹⁷

The claim appears to be that diversity can be pursued under the Constitution because it yields additional benefits beyond those that accrue to diversity in itself.

In its Presidential Initiative Report, the ABA identifies three diversity rationales that can reasonably be categorized as instrumental for their emphases on the effects of diversity upon other ends. The Business Rationale is perhaps the best known, arguing that

The rapid movement of people, financial instruments, culture, technology, and political change across international borders places new expectations on the ability of lawyers, law firms, corporations, and legal institutions to respond and adapt to the multinational and cross-cultural dimensions of legal issues.

A diverse workforce within legal and judicial offices exhibits different perspectives, life experiences, linguistic and cultural skills, and knowledge about international markets, legal regimes, different geographies, and current events.¹⁸

¹⁷ [Grutter v. Bollinger](#), 539 U.S. 306, 329-330 (2003) (cited references omitted).

¹⁸ ABA Presidential Diversity Initiative, *supra* note 16, at 9.

The Business Rationale offers an intuitive appeal. If a practice's client base is increasingly Hispanic, for example, it makes sense for the firm to include Spanish speakers among its attorneys, and for some of these to identify as Hispanic themselves in order to better communicate with and understand the needs of the customer. This interaction perhaps explains the finding of studies that "find a correlation between diversity and profitability in law firms as well as in Fortune 500 companies."¹⁹ When viewed in this way, however, the Business Rationale can be a double-edged sword, cutting for diversity in those instances that satisfy the premise of targeting a diversified patron base, but also against in others that might not. If the justification for law firms to diversify flows from their need to relate to a more diverse client base, firms in environments that lack that degree of diversification may be unmotivated to attend to that need.

A better, more generalizable spin on the business case looks not simply at a wish to create better connections with potential clients, but also considers the value of a range of views and opinions, many of which can be grounded in the diverse life experiences of traditionally under-represented groups. Scott Page, in The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies (Princeton University Press, 2008) has shown that greater diversity within a decision-making group makes that collective more successful problem solvers. "People from different backgrounds have varying ways of looking at problems, what I call 'tools.' The sum of these tools is far more powerful in organizations with diversity than in ones where everyone has gone to the same schools, been trained in the same mold and thinks in almost identical ways."²⁰

A second instrumental defense of increased diversification within the legal profession tracks a different point from Justice O'Connor's [Grutter](#) opinion.

[U]niversities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools account for twenty five of the 100 United States Senators, seventy four United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges.

¹⁹ Rhode, *supra* note 2, at 892.

²⁰ Claudia Dreifus, "In a Professor's Model, Diversity=Productivity", [NYTimes.com](http://www.nytimes.com/2008/01/08/science/08conv.html) (Jan. 8, 2008), at <http://www.nytimes.com/2008/01/08/science/08conv.html>.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts." Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.²¹

Legal education and practice serve as a common pathway to positions of authority within wider society. In order for the distribution of power within society to retain legitimacy in the eyes of those impacted, those holding the reins should be drawn equitably from all segments of the population. The ABA terms this the Leadership Rationale, relying upon O'Connor's argument that because "society draws its leaders from the ranks of the legal profession, ... that is one reason why diversity is a constitutionally protected principle and practice."²²

In a final and undeveloped instrumental justification for diversity project, the ABA includes a Demographic Rationale. The reasoning here mirrors the baseline formal diversity position in that, because the "U.S. population is getting older and more diverse," the legal profession should track those changes.²³ On this point the Report asserts what it would otherwise need to argue because it does not identify the benefits of meeting this standard, or perhaps more importantly, the costs of failing to do so.

B. The Intrinsic Defense of Diversity

An intrinsic defense of diversity argues that the legal profession should be attentive in addressing diversity shortfalls for reasons that look only at the inherent benefits of diversity itself, rather than rely upon some instrumental gains achieved through that means. The ABA has termed this approach the *Democracy Rationale*:

The United States occupies a special place among the nations of the world because of its commitment to equality, broad political participation, social mobility, and political

²¹ [Grutter](#), 539 U.S. at 332-333.

²² ABA Presidential Diversity Initiative, *supra* note 16, at 10.

²³ *Id.*

representation of groups that lack political clout and/or ancestral power.

Diversity is the term used to describe the set of policies, practices, and programs that change the rhetoric of inclusion into empirically measureable change.... Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice.²⁴

Eli Wald argues that, despite the fact that "the legal profession's standard response to under-representation is to offer instrumental justifications to diversify," meaningful "justifications for diversity initiatives must be grounded ... in non-utilitarian justifications."²⁵ He builds such a non-instrumental argument upon four assertions.

First, "formal diversity is important because of its close relationship to equality."²⁶ Second, and perhaps most critically, "to the extent that minority under-representation is caused by inequalities, past and structural discrimination, lack of diversity undermines the very meaning of law and of what it means to be a lawyer in the United States."²⁷ While skewed representation is problematic for all fields of endeavor, the matter is especially challenging to a profession that defines itself as "the high priests of our civic religion" that has been "premised on the fundamental values of equality, fairness, and the rule of law."²⁸ An analogy may be the discovery of endemic sexual harassment within the offices of the EEOC: disheartening in any context, but disillusioning when it occurs within the ranks of those charged to prevent that particular ill. "As long as lawyers claim to be public citizens and servants of the public interest, and purport to have a special relationship with and owe fiduciary duties to pursue equality and justice, they owe a duty to combat under-representation based on equalities, cultural perceptions, and past and current discriminations" first and foremost among their own members.²⁹

Wald's third facet of an intrinsic argument supporting diversification within the legal profession is that "formal diversity is intimately related to access to lawyers and justice and to the quality of representation of the under-privileged."³⁰ Effective representation can frequently be promoted by an

²⁴ ABA Presidential Diversity Initiative, *supra* note 16, at 9.

²⁵ Wald, *supra* note 3, at 1100.

²⁶ *Id.* at 1101.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 1101-1102.

³⁰ *Id.* at 1102.

empathic rapport between attorney and client, which recognizes "the immense value of having lawyers actually communicate with clients, actively listen and understand the goals of their clients as opposed to imputing to their clients generic goals, in part because they do not understand their clients, their goals, their backgrounds, and their ways of reasoning."³¹

The fourth and final of Wald's prongs reads remarkably like the ABA's Leadership Rationale: "law not only means effective access to lawyers, and through them to equity, justice, and first-class citizenship, but also access to upward social mobility and key leadership positions because in the United States political leaders are often drawn from the ranks of the legal profession."³² The subtle difference lies with who benefits from this diversified participation. According to O'Connor's view, society at large needs the rewards of a diversified leadership pool (e.g., "In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry...."). Wald regards the same improvements as fully warranted due to the benefits that accrue to the under-represented groups.

The broad lesson is that the need for diversity initiatives are over-determined. While the intrinsic reasons alone wholly suffice to warrant any expense in their execution, there are ancillary practical reasons that independently justify the profession's attention to the demographic details of the members of the legal bar.

C. Diversity within the Legal Profession Today

Recognizing shortfalls of the legal profession on diversity issues is only the first step toward crafting effective remedial measures to correct the underlying issues. Proposals for action by the bar intending to improve the diversity profile of the profession should be crafted in knowledge of both the actual problems of underrepresentation needing remedy, and the sources of those shortfalls. In order to prescribe the proper remedy, we must first know the causes for the underrepresentation of groups, especially in the modern environment when overt discriminatory hiring and promotion practices have been relegated to a fading era. More and better data will ensure the efficient use of resources to target the underlying issues that have resulted in the unbalanced demographic profile of the profession.

On the initial question of formal diversity, Jason Nance and Paul Madsen looked at whether "diversity in the legal profession is a function of (a) general social forces that limit the number of women and minorities from being eligible to pursue a law degree, and (b) forces specific to the legal profession that encourage or discourage participation in the legal pro-

³¹ *Id.* at 1102-1103.

³² *Id.* at 1103.

profession in a distinct way."³³ They reasoned that if that line can be drawn, the ABA and its members can more effectively design programs, depending on whether they intend to address society-wide issues, or those unique to the practice of law.

To distinguish the likely sources of obstacles to formal diversity, Nance and Madsen compared law with other professions they judged to also be members of the category of "extremely prestigious" professions: Diagnosing/treating health practitioners (dentists, optometrists, physicians, psychiatrists, podiatrists, surgeons, and veterinarians), as well as college professors, engineers, clergy, and architects, among others.³⁴ They also limited their analysis to those who are thirty-five years old or younger, in order to better distinguish between "the current state of diversity within the legal profession" and the effects of former practices.³⁵

They conclude that "the diversity of young members of 'highly prestigious' professions is generally comparable to the diversity of young legal professions for all women and minorities except Asian Americans, who are relatively poorly represented in the legal profession."³⁶ Although the data indicate improvement in the last two decades in the presence of Asian Americans within the law, the most recent sample (2008-12) continues to show that they achieve only half the presence they enjoy in other high prestige professions.³⁷

Minorities, the authors conclude, "who are eligible to pursue professional or advanced degrees appear to be just as likely to become legal professionals as they are to become members of other high status professions."³⁸ Continued lack of formal diversity for these groups, then, must be addressed not through law-specific programs, in which case we are merely competing with other professions over the distribution of a small number of qualified persons without increasing the number of individuals. Instead we need to address broader pipeline factors that limit those to whom entry into these professions is a possible career choice. As described by Sarah Redfield,

[T]here are too few underrepresented minorities moving through the pipeline, too few graduating from high school, too few persisting and succeeding in college, too few presenting LSAT scores and GPAs that meet today's norms for admission to law school. To achieve significant

³³ Nance & Madsen, *supra* note 5, at 30.

³⁴ *Id.* at 33-34.

³⁵ *Id.* at 31.

³⁶ *Id.* at 39.

³⁷ *Id.* at 38, Panel C.

³⁸ *Id.* at 45.

diverse populations, the law academy would need to increase its admissions for blacks and Hispanics well beyond what the current applicant pool, in the current milieu, can bear – at rough count, 1,500 more black students and 7,500 more Hispanic students a year would be needed to approach parity with the population by 2028, the year Justice O'Connor's twenty-five year window would close for affirmative action.³⁹

Only in the case of increasing enrollment and hiring of Asian Americans does there appear to be a failure specific to the legal profession.

D. Obstacles to Diversity

The discussion thus far suggests that while women and religious groups have achieved formal diversity after active discrimination ceased, women particularly have failed to achieve substantive diversity. Racial minorities, on the other hand, have failed to achieve even formal diversity. The data from Nance and Madsen suggest that all failures of formal diversity – with the exception of Asian Americans – are the result of society-wide forces. That one exception of formal diversity, and all the failures of substantive diversity, however, are the outcomes of practices within the legal profession. Two kinds of solutions must be imagined in order to resolve the problems in achieving diversity within the legal profession, those that target underlying structural obstacles within society generally, and those that influence the counterproductive policies within law firms.

While the legal profession should be active partners in social efforts to increase the numbers of qualified candidates from underrepresented segments of the population, it has more control over what happens within its own institutions. While we know that attending to problems within the firms and schools will not solve all of law's diversity issues, the profession can signal its good faith by removing whatever in-house obstacles to diversity promotion that may continue to exist.

In his wide-ranging article on diversity within the legal profession, Wald identifies four trends that he claims are the source of many of the unique diversity problems within law firms especially as concerns the exodus of females from the practice of law. First is the adoption of the billable hour. As the litmus test for attorney productivity and value to the firm, "the billable hour fetish has combined forces with gender stereotypes regarding women lawyers' divided loyalties and commitment to spend significant hours away from the firm as wives and mothers, to make it more difficult for female attorneys to advance at large law firms."⁴⁰

³⁹ Sarah Redfield, Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession 2-3 (2009) (referring to O'Connor's [Grutter](#) statement that "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." [Grutter](#), 539 U.S. at 343).

⁴⁰ Wald, *supra* note 3, at 1124.

The second trend is the adoption of risk management procedures, by which he means "a set of standardized policies and procedures meant to lessen individual lawyer discretion and increase reliance on uniform responses to specific situations in an attempt to decrease errors and ultimately minimize exposure to liability."⁴¹ The problems here include unintended consequences of an otherwise reasonable strategy. He is particularly concerned with how this policy impacts evaluations and promotions:

[T]o avoid liability for failure to promote, risk management policies have increasingly caused law firms to provide content-less 'soft' written evaluations, filled with generic criticisms... [because] consistent real praise may constitute evidence in a discrimination lawsuit down the road (as in, 'plaintiff received positive evaluations but was not promoted for discriminatory reasons'), and repeated real criticism may serve as evidence of gender bias.⁴²

Soft evaluations penalize traditionally outside candidates because they do not receive the feedback necessary to improve their performance.

The third negative trend with law practices is an increased movement toward separate career tracks within the firm. This may seem initially like a positive step, one that allows individuals to tailor their legal practices to the other demands in their lives. In practice, though, Wald fears that "Women lawyers may find themselves, over time, over-represented off the partnership track, in permanent associate positions and non-equity partner ranks, and in particular, under-represented at the equity partnership level."⁴³

Finally, Wald points to an emerging culture of hyper-competitiveness within the law firm, "one that celebrates 24-7 availability to clients and around-the-clock commitment to the firm and its clients as the key definition of professional excellence."⁴⁴ While putting pressure on all practitioners, it is not difficult to imagine how such a standard disproportionately impacts women lawyers many of whom may rightly decide that they require reasonable time to share with their families.

IV. CONCLUSION

The preceding observations offer only the briefest overview of the contours of the major issues touching on diversity within the legal profession. Innumerable other topics would merit discussion in a more exhaustive treatment: the rise of "diversity

⁴¹ *Id.* at 1125.

⁴² *Id.* at 1128.

⁴³ *Id.* at 1131.

⁴⁴ *Id.* at 1131-1132.

fatigue" among older practitioners "as a response to the continual recycling of issues that had seemingly already been discussed and even resolved;"⁴⁵ the need to foster cultural competence among attorneys to promote better communication with clients; and the risks of undercutting the values that diversity initiatives are intended to promote by forcing individuals to sort themselves into predetermined categories rather than allowing them form their own identities. The hope is that once members of the bar become fluent in and comfortable with the fundamental issues and approaches to diversity, they will expand those discussions to include the full gamut of factors and issues as they present themselves.

⁴⁵ ABA Presidential Diversity Initiative, *supra* note 16, at 41.