Fly in the Bowl of Milk: The Illusion of Inclusion

Penny Willrich, Arizona Summit Law School

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By The Honorable Penny L. Willrich (Retired)
Associate Professor, Phoenix School of Law

When I came to Arizona in 1987 there were approximately 25 African-American attorneys admitted to the State Bar. Today there are an estimated 161 African-American attorneys admitted out of 19,420. African-American attorneys practicing law in Arizona make up less than one per cent of the entire Bar Association membership. However, one has to look at the membership numbers in perspective to the Black population of Arizona and the African-Americans graduating from college.

In the last United States Census Bureau report, the African-American population was slightly over 180,000 for the entire state. At least 130,000 African-Americans reside in Maricopa County. Despite the low numbers, the same type of social, educational, political, health and economic inequality that exists in the rest of America also exists in Arizona. Black student college graduation is at 43% of those entering college compared to 63% of White students entering college.

Had I been concerned with just how “white” Arizona was in 1987, I may have had second thoughts about moving and raising my daughter here. However, Arizona chose me to be a pioneer just as much as I chose it to set sail in the practice of law with a goal of making a difference in the lives of others. In the early years of establishing my home in Arizona, I can recall telling my mother on many occasions that the only time that I really saw any number of Black people was when I attended church. Having grown up in Texas and after attending law school in Washington, D.C., I was accustomed to more diverse and multi-cultural environments. It was somewhat of a culture shock to go weeks on end and not see another African-American attorney litigating a case in the Superior Court. Twenty years ago there were no African-American attorneys in 13 of the 15 counties in Arizona. I
recall with much humor a crowded courtroom in Yuma and upon inquiry learned that the crowd had come to see me the "Black attorney from Phoeni-cx." I quickly learned that I was just a fly in a bowl of milk.

Shortly after I arrived in Arizona, the struggle for approval of a statewide holiday that honored an American icon, Dr. Martin Luther King, Jr. began. I watched and participated as people of all races and walks of life joined together to tackle the attitudinal disparity that had caused the holiday to be revoked by the Governor’s executive order. Then and today, contemporary discussions on the historical legacy of race relations in this state are generally unwelcome in most setting, non-Black. It almost seems as if White Arizonans wants to turn a blind eye because “it’s not like that anymore.” Yet, the reality is that in the political, economic, social, educational, health, and justice systems of Arizona equality is not reflected nor equal opportunity provided. In Arizona, most Black professionals are a part of mainstream systems. Though some are in positions of leadership and power, they are often prevented from using the leadership and power to make these systems face the causes and consequences of the economic, social and legal disparity that exists for Black Arizonans. Others simple choose not to rock the boat. To adopt a mainstream agenda is in essence turning a blind eye to a Black agenda and to ignore the vast gulf that exist between Blacks and Whites in Arizona.

We live in a country and in a state where Black people are under-represented in political, business, and professional positions yet over-represented among juvenile delinquents, high-school dropouts, teen pregnancies, foster-care, and the criminal justice system. The most recent statistic is that 6 out of every 10 African-American males in this state will have been involved in the juvenile or criminal justice systems either through arrests or conviction of a crime once in their life.⁵ We also know that 4 out of 10 children who grow up in and age out of foster care are African-American.⁶ In 1993, Governor Fife Symington asked me whether children in our foster care system were safe.⁷ Having just lost two Black foster children, who died at the hands of their state sanctioned foster parents, I could offer no assurances to him. In a statewide study to determine the safety of children in foster care, it was discovered that a great disparity existed of services provided to White families and families of color. Though the goal is always family reunification, more often than not, Black children were not reunited with their parents nor placed with their extended families. The family Diaspora caused by the system of slavery is no different from the family Diaspora caused by Arizona’s foster care system. The Director of the Department of Economic Security said, after reading the Child Safety Report, “this says that Arizona foster care system discriminates.”⁸ But it is not the system that discriminates; it is the people that operate within the system. It is the people that are making decisions. It is the judges, lawyers, social workers, and others who often are White middle class values to fashion a resolution to an issue that needs cultural competence. In the late 80’s I represented an elderly black man who had been denied a residence in a federally subsidized housing complex because (as the manager wrote on his application) he was “very very black.” Though ultimately the victor, my client was emotionally distraught to know that his skin color could have potentially kept him from having decent and affordable housing.

In 1953, Superior Court Judge Frederick Struckmeyer declared that “[t]here are no second class citizens in Arizona” when desegregating Arizona’s public schools.⁹ If those words were really true we would not have over 800,000 people living at or below the national poverty level in Arizona.¹⁰ If those words were true, we would have a more representative government. If those words were true, we would have a greater appreciation for a diverse and multi-cultural society. Recognition that all citizens are equal is not just dependent on changes in the law or desegregation of public schools; it is dependent on the attitudes and hearts of the people who must make the system work. Though the laws may change to make equality a legal reality, it does not really occur until there is a self-conscious and individual commitment to understand the need to shift the power of the relationship of race in our society. In the late 1980s a young white attorney came to me in tears when a judge equated domestic violence against an African-American woman and her children as “something that black people are accustomed to,” meaning that it is a natural phenomenon for black people to be whipped.¹¹ Perhaps the phenomenon of the physical whip is gone but the mental and psychological whip of racism is still alive.
I often feel that Black people are invisible in Arizona and that those of us in professional positions are often marginalized. This invisibility gives rise to an illusion of inclusion. It is an illusion that Black people are a part of the power structure, but in reality, it is mere tokenism. Having a seat at the table of power has to mean more than just identifying with the mainstream but taking a stand against an educational system that turns out fewer African-American graduates than prior to the infamous words of Judge Struckmeyer. In the early 1990s the African-American Lawyers Association took a strong position for the removal of a White Superior Court judge who frequently referred to Black defendants as “niggers” in open court. Having a seat at the table of power must mean having the courage to stand up for what is right. African-American attorneys directly and indirectly represent the interests that give young people a choice to end the cycle that racism and poverty often places them in.

There is a huge political vacuum in the African-American community of Arizona. For the last twenty years there have only been two or three African-American legislative officials each session. There have been few executive branch departmental directors who were African-Americans. There are so many positions of leadership in Arizona that have never been filled by an African-American—Governor, Supreme Court Justice, Attorney General, Corporation Commissioner, Secretary of State, County Court Clerks, Chief Probation Officers, County Attorneys, Public Defenders, University Presidents, United States Attorneys, Federal District Judges, and the list goes on. To fill this vacuum in leadership, the illusion of inclusion must be replaced with a value for the contributions that African-American leaders and citizens make to this great State.

Recently in teaching family law, I was explaining the concept of miscegenation and the ability of the government to exercise control over who could marry whom. Many of the law students expressed dismay that our county and our state leaders could believe that such a law made any logical sense. This discussion led to the discussion of how most laws had to be enacted to provide the rights to Blacks that most Whites took for granted. Many Arizonans, of all races, do not understand the impact of the atrocities that have resulted from the legacy of slavery and Jim Crow racism. Many do not understand why Senator Biden’s compliment that Senator Barak Obama was “articulate” is not a compliment for a Harvard Law graduate. Many do not understand why Don Imus’ comments that the Rutgers women’s basketball team were a “bunch of nappy headed ho’s” is not only not acceptable, totally ignorant, but even more so a demonstration of the rampant attitudes formed against Black people. The symbolism of racism has created a schism of fear. During jury selection in a trial where I was presiding, a potential juror said, “if I see a group of Black or Hispanic kids walking toward me in the mall, I will try to avoid them.” What makes a White juror afraid of Black or Hispanic children? The symbols of racism and the lack of understanding of its consequences permeate to the core. My daughter accompanied me to court on one occasion because she wanted to see me in trial, in getting on the elevator with a Phoenix City Prosecutor; the attorney looked at my daughter and said, “Wow, the defendants are getting younger and younger.” The audacity to even utter those words to my child and in my presence is indicative of the marginalization or the need to malign that is so often a part of the white philosophy of inferiority. Black people are constantly having to fight the negative views that are overtly spouted and that conjure images of inherent criminality that date back to the 17th century. One of my favorite authors, Joe Feagin states, “[t]he systemic character of contemporary racism constantly reveals itself in ...everyday accounts of life...”

In Arizona, Black history is not considered a major component of public school education and as a result of the lack understanding of the vast contributions that Blacks have made in this country. Instead, the term Black has come to symbolize a threat to the safety of middle class whites. In a restaurant recently, a white waitress who had just moved to Phoenix from California asked whether it would be safe for her to go to LoLo’s Chicken and Waffles, a restaurant in South Phoenix. When I asked her why she asked, she said that she had been told that going to South Phoenix would be like going to Compton, California. I assured her that there was no place in Phoenix or Arizona that could be compared to the blight and neglect of neighborhoods of color or the level of crime in Compton and that it would be perfectly safe for her to eat at LoLo’s.

In 2000 I co-wrote a thesis on the issues of diversity in Gilbert, Arizona after the town’s encounter with the Devil Dog White Supremacist gang. In the research
we found that confronting the racism meant confronting feelings of guilt, embarrassment, anger, and despair.\textsuperscript{15} However, the mayor (Cynthia Dunham) and the task-force she appointed took the issue on head on. The end result was the discovery of the affect that racism and racist sentiment can have on a community; the demonstration that a community could pull together to say that it was not acceptable within its borders; and the creation of a human relations commission to assist the town council in meeting the needs of a diverse community.

In order to dismantle the illusion of inclusion one has to be aware of the moral and ethical duty to let go of attitudes that cause one to malign and marginalize others who may not be mainstream. We have to prefer right over wrong and right is not always white. This essay is a call for our leaders of all races to step up to establish concrete goals for inclusion and representation. When I became a lawyer, I took a personal and professional commitment to be a part of the solution and not the problem. Being part of the solution is sometimes a lonely place, where you may find that you are a fly in the bowl of milk, and it also may mean generating enough interest to attract more flies. \textsuperscript{8}

\textsuperscript{1} The statistical records maintained by the African-American Bar Association have tracked bar admittance of African-American attorneys.
\textsuperscript{2} United States Census, 2000.
\textsuperscript{3} United States Census, 2000 (Arizona).
\textsuperscript{4} Journal of Blacks in Higher Education. (2007). Black student college graduation rates inch higher but a large racial gap persists.
\textsuperscript{6} 1993 – 94 Statewide Case Review of Children in Out of Home Placements in Arizona—Department of Economic Security— “Are Children Safe In Our Care?”
\textsuperscript{7} Personal conversation with Governor Fife Symington in 1993 after the death of China Marie Davis Tawanna Davison, who were both African-American children and wards of the Juvenile Court and Department of Economic Security.
\textsuperscript{8} Personal conversation with Arizona Department of Economic Security Director Linda Blessing (1994).
\textsuperscript{9} Phillips v. Phoenix Union School District, Maricopa County Superior Court (1952).
\textsuperscript{10} Presentation by Lillian O. Johnson, Executive Director of Community Legal Services (Phoenix, Arizona), 2007.
\textsuperscript{11} Personal conversation with Attorney Ruth Swenson of Community Legal Services, 1991.
\textsuperscript{12} Personal Archives, Arizona African-American Bar Association.
\textsuperscript{14} As a parent of a student in the Gilbert Public Schools, I often supplied my daughter’s teachers with information regarding Black achievements in the United States, because what was portrayed in the classroom always seemed to be negative or from a White perspective.