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## **National Black Law Journal**

### **Title**

The Corporate Law Firm - Can it Achieve Diversity?

### **Permalink**

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### **Journal**

National Black Law Journal, 13(3)

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### **Publication Date**

1994

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# THE CORPORATE LAW FIRM — CAN IT ACHIEVE DIVERSITY?

Vance Knapp\*  
Bonnie Kae Grover\*\*

This Fourth of July is yours, not mine. You may rejoice, I must mourn. To drag a man in fetters to the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacrilegious irony. . . . I say it with a sad sense of the disparity between us. I am not included within the pale of this glorious anniversary. . . . The blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought light and healing to you, has brought stripes and death to me.†

Frederick Douglass uttered these words on July 4, 1852, to express his outrage over a society that professed to embrace freedom and liberty, yet at the same time practiced slavery.<sup>1</sup> Nearly a century and a half later, our system of civil rights laws provides protection for minorities in many areas of life.<sup>1</sup> Our Constitutional jurisprudence includes such breakthrough decisions as *Brown v. Board of Education*,<sup>2</sup> *Katzenbach v. McClung*,<sup>3</sup> and *Loving v. Virginia*.<sup>4</sup> The armed forces are integrated.<sup>5</sup> Minorities have risen to prominence in government,<sup>6</sup> entertainment and the arts,<sup>7</sup> and have made substantial gains in the sciences<sup>8</sup> and in business,<sup>9</sup> yet the representation of minorities in the legal profession continues to lag behind the gains made in these other areas.<sup>10</sup>

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\*\* University of Colorado School of Law, J.D., 1995.

We acknowledge the guidance and inspiration of Professors Richard Delgado and David S. Hill. An earlier version of this article appeared in *THE COLORADO LAWYER*, January 1994, at 15.

† *The Meaning of the Fourth of July to the Negro*, 2 *THE LIFE AND WRITINGS OF FREDERICK DOUGLASS* 189 (P. Foner ed., 1950).

1. *Id.*

2. Federal statutes, such as the Civil Rights Act of 1964 and the Fair Housing Act, protect minorities' rights in gaining access to equal employment, housing, and educational opportunities. *See* 42 U.S.C. § 2000e (1988) (employment), 42 U.S.C. § 2000c (1988) (public education), and 42 U.S.C. §§ 3601-3631 (1988) (fair housing).

3. 347 U.S. 483 (1954) (held that discrimination in public education violated the Fourteenth Amendment).

4. 379 U.S. 294 (1964) (held that Congress has the authority under the Commerce Clause to prohibit discrimination by businesses engaged in interstate commerce).

5. 388 U.S. 1 (1967) (invalidated Virginia's antimiscegenation statute that had prohibited white people from marrying outside their race).

6. GERALD G. JAYNES AND ROBIN M. WILLIAMS, JR., *NATIONAL RESEARCH COUNCIL, A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY* 67 (1989).

7. *Id.* at 238-40.

8. *Id.* at 99-102.

9. *Id.* at 182.

10. *Id.*

This article addresses the forces that gave rise to the under-representation minorities exhibit in the legal profession, and the present realities that enable it to continue today. Part I focuses on the historical hurdles that minorities have had to overcome in order to practice law. Part II addresses the current situation of minorities in the legal profession. Part III explains why achieving diversity is in corporate law firms' best interest. Part IV describes the unique attributes of a qualified minority lawyer and suggests a number of common sense measures firms may take to find and hire them.

## I. HISTORICAL BARRIERS TO PROFESSIONAL ENTRY

Racial discrimination in the legal profession has largely mirrored that prevailing in American society.<sup>11</sup> Only very recently have the barriers begun to recede.<sup>12</sup> Underrepresentation of minority attorneys can be traced to the eighteenth and nineteenth centuries, when apprenticeship was the accepted means of becoming an attorney.<sup>13</sup> Few established attorneys were willing to sponsor African-Americans, and in the South education of any sort for African-Americans was prohibited.<sup>14</sup>

At the end of the Civil War, a movement arose in many states to formalize legal education. Law schools began to emerge. In 1869, George Lewis Ruffin became the first African-American to graduate from Harvard Law School.<sup>15</sup> Few other law schools admitted African-Americans, however. Accordingly, Howard Law School was established, the first such school dedicated to educating minorities.<sup>16</sup> Although other black law schools were established in the next few decades, these other schools were minimally funded, poorly staffed, and barely met the minimal requirements of the "Separate but Equal" principle in order to preserve racial segregation.<sup>17</sup> Under these dismal circumstances, the number of minority lawyers in the United States remained small, hovering at around one percent as recently as 1975.<sup>18</sup> Howard, from its beginnings in 1869 to the early 1960s, trained the majority of African-American attorneys in the United States.<sup>19</sup>

In 1929, the young Thurgood Marshall applied for admission to the University of Maryland School of Law. When the school rejected his application,<sup>20</sup> he entered Howard. After graduation, Marshall joined the NAACP, which was then engaged in a long struggle to desegregate public

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11. *Id.* at 247-48.

12. See generally DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (3d ed. 1992); LEON A. HIGGINBOTTOM, *IN THE MATTER OF COLOR* (1978). See also Edward J. Littlejohn & Leon Rubinowitz, *Black Lawyers in Legal History*, 33 WAYNE L. REV. 1625 (1987) (examines past and present barriers faced by minorities in obtaining legal education, opportunities in the profession, bar organization memberships, clerkships and judicial appointments, and suggests means of facilitating the entrance of minorities into the legal profession).

13. See *infra* notes 50-54 and accompanying text.

14. Littlejohn & Rubinowitz, *supra* note 12, at 1629.

15. *Id.*

16. *Id.* at 1630.

17. *Id.*

18. *Id.* at 1630 n.26. Only four of the thirteen historically black law schools exist today: Howard, North Carolina Central, Southern and Texas Southern. These institutions, created as a response to the 'Separate but Equal' doctrine, lacked the prestige, reputation and support enjoyed by the white law schools.

19. *Id.*

20. *Id.* at 1629.

schools.<sup>21</sup> Earlier, at the request of the NAACP Legal Defense Fund, Charles Houston, Vice-Chancellor of Howard, had devised a legal strategy centering around carefully chosen test cases.<sup>22</sup> The strategy would challenge the "Separate but Equal" system in two stages. The first stage would establish the disparity between a fully funded graduate program and a Jim Crow program. The second stage would build upon those precedents, along with empirical data, to persuade the United States Supreme Court to declare desegregation illegal.<sup>23</sup>

In 1950, Thurgood Marshall argued *Sweatt v. Painter*<sup>24</sup> before the United States Supreme Court. Sweatt, an African-American, had been denied admission to the University of Texas School of Law because he was "colored".<sup>25</sup> To comply with the "Separate but Equal" doctrine of *Plessy v. Ferguson*,<sup>26</sup> Texas hastily created a "colored" law school, but the resulting institution was anything but equal.<sup>27</sup> It had but five full-time professors, twenty-three students, a library of 16,500 volumes, a moot court, and one alumnus member admitted to the Texas bar. By contrast, the University of Texas Law School had sixteen full-time and three part-time professors, a student body numbering 850, a library containing 65,000 volumes, a law review, practice court facilities, scholarship funds, an Order of the Coif chapter, many distinguished alumni and great prestige and tradition. The Court agreed with Sweatt that the "colored" law school was not equal and could not be made so because it lacked the faculty, resources, prestige and recognition enjoyed by the established school.<sup>28</sup> Consequently, it ordered Sweatt admitted to the University of Texas.<sup>29</sup>

*Sweatt* did not automatically open doors for minorities to enter the legal profession. Major hurdles remained: admission into the now-desegregated law schools; opportunities within the profession; and membership in bar organizations. Although minorities had secured the right to enter traditional law schools, few of them actually did.<sup>30</sup> Law schools, especially in the South, employed unspoken, subjective requirements such as letters

21. Gary Hengstler, *Looking Back*, A.B.A. J., June 1992, at 56, 57.

22. Ken Gormley, *A Mentor's Legacy*, A.B.A. J., June 1992, at 62, 64.

23. Charles Houston took over as vice-chancellor of Howard Law School in 1929. By imposing rigorous standards on a fledgling nighttime law school program, Houston was able to train some of the country's best civil rights lawyers. Houston believed that because of the prejudice faced by African-Americans, African-American attorneys would have to be more prepared than their white colleagues: "[Y]ou have got to be better than the white lawyer or you will lose." See Gormley, *supra* note 22, at 65. On the legal strategy that eventually produced *Brown*, see RICHARD KLUGER, *SIMPLE JUSTICE* (1976).

24. See Gormley, *supra* note 22.

25. 339 U.S. 629 (1950).

26. *Id.* at 631.

27. 163 U.S. 537 (1896). Plessy, who had seven eighths Caucasian and one eighth African blood, was arrested for refusing to give up his seat in the white railway car and sit in the "colored" railway car, violating a Louisiana statute providing for separate but equal railway passenger cars for blacks and whites. The Court upheld the state's right to separate the races.

28. 339 U.S. at 631-33. Sweatt filed an application for admission in February, 1946. After his application was rejected, he filed suit in a Texas trial court. The court held that the state's practice of sending African-Americans to out of state law schools violated the equal protection clause of the Fourteenth Amendment. Instead of compelling the state to admit Sweatt, the court continued the case for six months to allow the state to create a separate law school. *Id.* at 631-32.

29. *Id.* at 632-34.

30. *Id.* at 636.

of recommendation to keep the numbers small. In 1964, the American Association of Law Schools adopted a measure requiring that member schools create fair and equal admissions policies for minorities.<sup>31</sup> This change, too, produced relatively few gains. Law schools found that merely announcing that they would henceforth treat minorities on the same basis as whites did little to increase numbers, at least in the absence of affirmative action and aggressive recruiting. Because of long-standing academic and financial deprivation resulting from racism, the number of minority law graduates increased only from 1.3% in 1973 to 4.2% in 1983.<sup>32</sup> Even that small growth seems to be leveling off.<sup>33</sup>

African-Americans and other minorities who graduated from law school continued to find few opportunities within the profession. In the nation's capital, for example, African-American lawyers were not allowed to use the law library in the Federal Courthouse until a successful suit challenged the practice in 1951.<sup>34</sup> During the 1930's and 1940's, African-American lawyers were verbally and physically harassed for representing African-American clients.<sup>35</sup>

During the first half of the twentieth century African-American attorneys had trouble simply attracting clients. They competed with white lawyers for both white and African-American clients.<sup>36</sup> African-Americans perceived the legal system as racist. Because of the general belief that white lawyers were better trained and less likely to encounter discrimination in the courts, the African-American in need of a lawyer was more likely to hire a white to represent her interests.<sup>37</sup>

Having more minority judges would, presumably, help address this unfortunate circumstance. Yet it was not until the advent of political appointments in the early seventies that the numbers of judges of color began to increase in major urban areas.<sup>38</sup> Even today, the judiciary is less than one percent African-American.<sup>39</sup>

Most attorneys in private practice believe that a successful and prosperous career requires membership in professional organizations. State, local, and national bars play active roles in shaping the legal profession and also provide valuable contacts within their groups. The American Bar Association (ABA), founded in 1878, at first maintained no formal rules that excluded minorities from membership.<sup>40</sup> But when it discovered that three

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31. See Littlejohn & Rubinowitz, *supra* note 12, at 1630-31.

32. Edwin R. Hazen, *Draft Statement of Student Services Administrators Good Practices*, 12 N. ILL. U. L. REV. 332, 337-38 (1992).

33. Linda E. Dávila, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 STAN. L. REV. 1403, 1406 (1987).

34. *Id.* at 1406.

35. See Littlejohn & Rubinowitz, *supra* note 12, at 1635.

36. *Id.* at 1635.

37. *Id.* at 1634.

38. "Critical to the perception of Black lawyers' ineffectiveness was the fact that 'all the judges and the entire judicial structure [were] white and many jurists were less than fair with Black lawyers and their clients.'" Edward J. Littlejohn, *Black Lawyers in Legal History*, NAT'L BAR ASS'N MAG., November 1988, at 8, 10.

39. See generally National Bar Association, *Report on Minorities in the Judiciary* (1989).

40. *Id.*

of its members were African-American, the organization quickly promulgated a rule that excluded minorities.<sup>41</sup>

Even after *Sweatt*, the ABA discouraged minority attorneys from joining its ranks. Not until the 1960s did the organization soften its stance and begin encouraging African-Americans and other minorities to join. Before the 1960s, minorities suffered further discrimination by state and local bar associations. In response to such pervasive exclusion, minority bar associations were established.<sup>42</sup> These groups helped fulfill the social and professional needs of their members by addressing concerns that were not given adequate attention by the majority associations.<sup>43</sup>

## II. THE CURRENT SITUATION: UNDERREPRESENTATION OF ATTORNEYS OF COLOR IN PRIVATE LAW FIRMS

Minorities have made enormous contributions to our society in many areas, yet in the legal profession, for many of the reasons we have mentioned, their representation lags behind their numbers in society as a whole.<sup>44</sup> And in the legal profession, the corporate law firm brings up the rear, trailing corporate and governmental employers in virtually every measure of diversity. For example, the number of Latino attorneys employed by corporations is 50% greater than that of Latino associates in corporate law firms.<sup>45</sup> Latinos represent less than 1% of attorneys in the 150 largest law firms.<sup>46</sup>

A recent survey conducted by the National Law Journal found that of the nation's 251 largest law firms, 89% of partnerships were held by men, 97.6% of them white.<sup>47</sup> Of all attorneys surveyed, women made up 26.2%; African-Americans, 2%; Hispanics, 1.2%; and Asian/Native Americans, 1.7%.<sup>48</sup> Forty-four of the law firms had no minority lawyers; sixty-one firms had only one.<sup>49</sup> In ten of the largest U.S. cities, the proportion of minority partners and associates was smaller than 10%; San Francisco is the most diverse city with 9.2%, Boston the least with only 3%.<sup>50</sup> As A.J. Cooper, Jr., a partner in a Washington D.C. law firm and past president of the National Conference of Mayors, put it: "Law firms are among the most segregated institutions in America. . . . The Senate Judiciary Committee should not be asking judicial candidates if they belong to a segregated golf club, but whether they belong to a segregated law firm."<sup>51</sup>

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41. See Littlejohn, *supra* note 38, at 17.

42. *Id.*

43. *Id.* at 25.

44. *Id.*; see also Littlejohn & Rubinowitz, *supra* note 12, at 1680-81. Prior to the ABA's lifting of restrictions on minority membership, African-American lawyers banded together to create a bar association of their own. The National Bar Association is dedicated to advancing civil rights and combating discrimination faced by all minorities.

45. See Davila, *supra* note 33, at 1408.

46. *Id.* at 1404.

47. *Id.*

48. Claudia MacLachlan & Rita Henley Jensen, *Progress Glacial for Women, Minorities: But the Recession Hits White Males the Hardest*, NAT'L L.J., Jan 27, 1992, at 1.

49. *Id.*

50. *Id.*

51. Claudia MacLachlan, *Minorities Find Firm With A Place for Them*, NAT'L L.J., Jan. 27, 1992, at 31-32. What portion of the dismal statistics is the result of past admissions policies or self-selection on the part of minority communities? Probably relatively little. If anything, studies

What produces these shocking statistics? The law schools today are not the major stumbling block. During the 1991-92 academic year, the 175 ABA approved law schools graduated nearly 6,000 African-American, Latino, and other minority lawyers.<sup>52</sup> Many have excellent academic records and go on to careers of genuine distinction in government service, academia, and the judiciary. Few of them enter corporate practice, however, because of a complex of factors starting with the perception many receive during the job interview process that they are unwelcome. Some recruiters ask about minority applicants' command of English or LSAT score, matters they do not routinely inquire into with whites. Others ask why the student is interested in work with a law firm, giving the impression that the recruiter believes students of color are better suited for careers in poverty law or government rather than corporate practice.

Recruiters for some firms express concern over how a candidate will get along with white clients, fit into the firm's social structure, or tolerate racial insults.<sup>53</sup> In one notorious incident, an African-American woman who attended the University of Chicago Law School interviewed with Baker and McKenzie, the world's largest private firm. During the interview, a partner asked her how she would respond if a colleague or adversary called her various racist names.<sup>54</sup> The firm later apologized and funded a \$500,000 scholarship program for minority law school students.<sup>55</sup> The questions Baker and McKenzie asked were manifestly inappropriate, but more subtle forms of racism remain. As one attorney put it: "Aside from the apparent surprise on the part of white lawyers when they discover that their opponent is African-American and competent, there is a fleeting yet recognizable moment when white clients register a look of dissatisfaction and surprise when they encounter their African-American attorney for the first time."<sup>56</sup>

### III. WHY LAW FIRMS SHOULD RECRUIT LAW STUDENTS AND GRADUATES OF COLOR

Law firms should hire more minority attorneys, of course, for reasons of simple justice.<sup>57</sup> But compelling economic incentives exist as well. The United States Census Department estimates that by the year 2000, eighty percent of the work force will consist of minorities, women or immi-

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show that minority communities have exaggerated faith in lawyers and great respect for the power of courts. It seems unlikely that the low numbers are the result of a lack of interest on the part of people of color. See Vicky Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749 (1990).

52. See MacLachlan & Jensen, *supra* note 48, at 3. Mr. Cooper was addressing the lack of minority partners in the nation's largest law firms.

53. See generally *A Review of Legal Education in the United States*, Fall 1992, A.B.A. Sec. Legal Education and Admissions to the Bar.

54. David E. Neely, *Breaking into the Market*, COMPLEAT LAWYER, Summer 1987, at 19, 21.

55. Charles E. Anderson, *Affirmative Reaction: Baker and McKenzie Adopts New Program After Racial Remarks*, 75 A.B.A. J., June 1989, at 20 (recruiter asked applicant how she would react if called a "nigger" or a "black bitch").

56. *Id.*

57. Samuel L. Simpson, *The Problem of Racism*, COMPLEAT LAWYER, Winter 1987, at 18, 20.

grants.<sup>58</sup> Any business that hires only white males will find them in short supply.<sup>59</sup> Minorities are assuming positions of authority in government and corporations. The number of African-Americans holding elective office, for example, increased from 1,469 in 1970 to 5,606 in 1983.<sup>60</sup> In order to do business with government, diversity in a firm's ranks will be necessary.

A number of corporations require law firms representing them to be staffed in part by women and minority attorneys, so as to mirror the corporations' work forces.<sup>61</sup> At a 1992 conference of the Association of Legal Administrators, a speaker told of receiving a questionnaire from a potential corporate client surveying the number of minority associates and partners.<sup>62</sup> The corporation was prepared to take the firm's response into account in deciding whether to retain it.<sup>63</sup> Similarly, state and local governments are beginning to insist that the law firms they hire have women and minority lawyers working for them.<sup>64</sup> The San Francisco Redevelopment Agency demanded that Steefel, Levitt and Weiss, a Bay Area firm, hire minority attorneys or lose a profitable real estate contract. After the agency withheld funding, the firm scrambled to obtain minority representation.<sup>65</sup> The city of Chicago also emphasizes doing business with firms that have minorities working for them.<sup>66</sup>

Major law firms are located within urban areas and often represent or do business with local and state government agencies. Minorities in those areas often are represented at the highest levels of government. For example, the mayors of Atlanta, Denver, Detroit, New York, and Washington D.C. are African-American, as are members of their respective city councils.<sup>67</sup> Congress now has more women and minorities within its ranks than ever before.<sup>68</sup> President Clinton's cabinet includes four women and seven minorities. The United States Supreme Court now has two women justices. Together, women and minorities in Congress and the new Administration will exert considerable influence on policy and will be able to create more opportunities for minorities, encouraging diversification in all professions. Associates and partners of color can bring nongovernmental business into the firm, for example tort and civil rights cases and representation of the growing number of minority businesses. For all these reasons, corporations

58. See KLUGER, *SIMPLE JUSTICE*, *supra* note 23 (detailing struggle for desegregation, and terming it a question of "simple justice").

59. Nancy Blodgett, *Room for Minorities: Firms Advised that a Diverse Work Force is Good For Business*, A.B.A. J., Aug. 1992, at 35. On these demographic changes and their likely effect, see Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357 (1991).

60. See sources cited *supra* note 59.

61. Faye A. Silas, *Business Reasons To Hire Minority Lawyers*, A.B.A. J., April 1984, at 52.

62. Joanne Skolnick, *Doing the Right Thing Is Good for Business*, *COMPLEAT LAWYER*, Winter 1991, at 20. See Silas, *supra* note 61, at 52.

63. See Silas, *supra* note 61, at 52.

64. See Blodgett, *supra* note 59, at 35.

65. See Skolnick, *supra* note 62, at 22.

66. *Id.* at 52.

67. According to one attorney: "It's important to the municipality . . . to recruit minorities. . . . If I want to get city business, especially with minorities in key positions or in some of these corporations, I better have some minorities on board." *Id.* at 20.

68. Of course this encouragement may not take the form of a minority "quota," at least in the absence of a showing of past discrimination. *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

and law firms wishing to remain competitive must be willing to diversify themselves. If firms cannot be persuaded to include minority attorneys for principled reasons, changing demographics will cause them to alter their traditional hiring practices to remain competitive.<sup>69</sup>

#### IV. WHAT IS A "QUALIFIED ATTORNEY OF COLOR" AND HOW TO FIND AND HIRE ONE

Some firms complain that there are not enough qualified law graduates of color from which to hire.<sup>70</sup> One firm explained that a "qualified minority" went to a "top-10" law school, took part in law review, and graduated with honors.<sup>71</sup> Nevertheless, majority-race lawyers whose transcripts reveal less than stellar performance from regional or local schools<sup>72</sup> are found within these firms.<sup>73</sup> John Foster Dulles was excluded from practicing at Sullivan and Cromwell until his grandfather (a former partner) wrote to the hiring partner, Nelson Cromwell.<sup>74</sup> Mr. Dulles did not graduate from Yale or Harvard, yet became one of Sullivan and Cromwell's most distinguished lawyers, leading the firm for a decade.<sup>75</sup> When Mr. Dulles denied young William O. Douglas<sup>76</sup> an associate's position at Sullivan and Cromwell, he gave in to some of the same prejudices that had nearly excluded him earlier in his career.<sup>77</sup> The pages of Martindale-Hubble are replete with professional biographies of lawyers of leading firms who neither attended a top law school nor served on law review.<sup>78</sup> Firms have long recognized intangible factors besides prestigious law schools, class rank, and law review membership,<sup>79</sup> quite properly so.<sup>80</sup>

69. Revitalizing Congress, N.Y. Times, January 6, 1993, at A20. In 1992, voters elected California's two women senators, Diane Feinstein and Barbara Boxer, as well as Illinois Senator Carol Mosely-Braun, an African-American and the Senate's first woman of color.

70. *Id.* at A22.

71. John L. Edwards, *What is a 'Qualified Minority'?: A Fresh Perspective on Law Firm Hiring Practices*, NAT'L L.J., Aug. 8, 1983, at 13. On the "pool is so small" argument, see Randall Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1762 (1989). For criticism of this argument, see Richard Delgado, *Mindset and Metaphor*, 103 HARV. L. REV. 1872 (1990).

72. See Edwards, *supra* note 71, at 13.

73. Frederick H. Bates & Gregory C. Whitehead, *Do Something Different: Making A Commitment To Minority Lawyers*, A.B.A. J., October 1990, at 78, 80.

74. *Id.*; compare Jerome M. Culp, Jr., *Diversity, Multiculturalism, and Affirmative Action: Duke, the NAS and Apartheid*, 41 DEPAUL L. REV. 1141, 1158-61 (1992) (describing the preferences that children of alumni receive in law school admissions);

In response to an argument that even few whites enjoy the benefits of wealth or family connections:

When you grow up never having to deal with racism, always seeing positive portrayals of people like yourself in the mass media, it creates an adult who has the ability to access wealth and do client development with some confidence . . . because that person knows that the door he or she is knocking on is going to have a white person behind it. This compensates for the fact that he or she doesn't have family connections.

Suzanne Baer, diversity consultant for the Association of the Bar of the City of New York's Committee to Enhance Professional Opportunities for Minorities, *quoted in*, Steven Keeva, *Unequal Partners: It's Tough at the Top for Minority Lawyers*, 79 A.B.A. J. 50, 52 (1993).

75. See Edwards, *supra* note 71, at 13.

76. *Id.*

77. William O. Douglas served as an Associate Justice of the United States Supreme Court (1939-1975). Douglas was appointed by President Franklin D. Roosevelt.

78. See Edwards, *supra* note 71, at 13.

79. See Bates & Whitehead, *supra* note 73, at 80.

If grades are only used as one of the hiring criteria, what are some of the intangible qualities<sup>81</sup> that minorities might possess? Many students of color come from economically disadvantaged backgrounds and must overcome those obstacles to obtain an education. It is not unusual to find a minority student who has had to work many hours to complete his or her undergraduate and legal education, struggling to overcome prejudice and ignorance at the same time. Someone who has been undervalued by professors and fellow classmates, yet completes important educational goals, might well become a particularly tenacious and valuable attorney. Some students of color will speak foreign languages or have valuable ties with the minority community. Many will have leadership and public speaking abilities sharpened as advocates for their communities. Others will have a high degree of practical intelligence and "street smarts."

Successfully achieving any hiring goals means that the firm must always look beyond the candidate's transcript and resume. By expanding the usual range of intangibles sought to include the unique qualities of applicants of color, the firm will reap rewards well worth the effort.<sup>82</sup>

In attempting to diversify, there are several options that a law firm may pursue. First, the firm should review its criteria to give weight to the many intangible factors that offer greater predictability than grades and class rank. They should specifically be on the lookout for the qualities of character and perseverance we mentioned earlier. Second, they should reach beyond the usual on-campus employment interviews by contacting minority student organizations and encouraging their members to apply. They can ask career counselors and minority professors to refer talented minority students to them. They should attempt to make the acquaintance of promising minority candidates well before graduation, including making special efforts to give them intern and clerkship slots and other such "trial runs." They can set up minority job fairs, sending representatives who are empowered to make actual hiring decisions, not just make recommendations to the "real" hiring committee. Minority bar associations and committees that deal with diversity questions are additional sources that can be tapped.

Third, a law firm must evaluate its treatment of minorities and women once they are hired. If negative perceptions exist, it may consider employing a diversity consultant or pool with other law firms to arrange to have a

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80. *Id.*

81. As Justice Frankfurter put it:

This whole matter of academic grades, and academic records, the worship at the shrine of academic honors, has led me repeatedly to point to the B men, and even the C men, who have attained eminence in this country, and rightly so, at the bar, and certainly in public life. They show up the foolishness in thinking that one has to be a brilliant fellow in order to be a successful, a useful and esteemed lawyer. Just because a man is not intellectually very gifted is no reason to suppose that he is not very good.

See Edwards, *supra* note 71, at 13.

82. On these intangible qualities, compare Emily Campbell & Alan J. Tomkins, *Gender, Race, Grades, and Law Review Membership as factors in Law Firm Hiring Decisions: An Empirical Study*, 18 J. CONTEMP. L. 211 (1992) with Charles E. Anderson, *Law Reviews Reserving Spots For Minorities, Disadvantaged*, A.B.A. J., September 1989, at 50 (making the case for having law review membership based on a writing competition instead of grades).

minority bar association present a CLE program on diversity.<sup>83</sup> Fourth, the firm should establish a committee to oversee its diversity program. That program might include a mentorship component in which experienced attorneys assist associates early in their careers. Some firms have been experimenting with these approaches, an effort we wholeheartedly embrace so long as certain common sense precautions are observed. For example, mentors should believe strongly in the goal of diversity. If possible, they should volunteer rather than be assigned. Moreover, successful mentors should be rewarded through the firm's system of promotions and billable hours. Finally, retention and promotion of minority attorneys will require attention to the social structure within the firm and the effect this has upon both climate and earnings. For example, referrals between lawyers within the firm should be managed so as to assure associates of color sufficient billable hours, earnings, and experience.

#### CONCLUSION

Minorities do not ask for special privileges—they ask for the same treatment and opportunities available to the majority. As demographic changes and shifts in the business and political climate make it in their interest to do so, firms today should be more willing than ever to make such opportunities available. As we have seen, it is not difficult to articulate reasonable criteria for identifying promising attorneys and clerks of color. Nor is the legal profession lacking in strategies to evaluate and encourage them to join. With reasonable effort, corporate firms may rapidly and profitably increase minority representation in their ranks. Society at large, as well as the law itself, will be the better for it.

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83. Such expansion will reap rewards just as it often does with white applicants. *See supra* notes 79-82 and accompanying text.

