Diversity: Denied, Deferred or Preferred

Carl G. Cooper
Kirkpatrick & Lockhart Nicholson Graham LLP

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Civil Rights and Discrimination Commons, Labor and Employment Law Commons, and the Legal Profession Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol107/iss3/9

This Symposium Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
DIVERSITY: DENIED, DEFERRED OR PREFERRED

Carl G. Cooper*

I. INTRODUCTION .............................................................. 685
II. WHY DIVERSITY? .......................................................... 686
   A. Diversity As a Value Added Business Tool ..................... 688
   B. Diversity Used to Remediate Past Wrongs ..................... 688
III. HYPOCRISY’S ASSAULT ON DIVERSITY ......................... 690
IV. K&LNG’S NOVEL DIVERSITY INITIATIVES ....................... 692
V. BENCHMARKS FOR THE CHIEF DIVERSITY OFFICER ............. 693
VI. PARTNER MENTORING AND THE IMPORTANCE OF ASSOCIATE
    FEEDBACK ........................................................................ 694
VII. INDUSTRY RELATIONSHIP BUILDING ............................. 695
VIII. DIVERSITY INITIATIVES UNDER ATTACK ...................... 697
IX. CALL TO ACTION .......................................................... 698

I. INTRODUCTION

I want to thank, first of all, the West Virginia Law Review Staff¹ for inviting me speak on diversity in the legal profession² at the West Virginia University College of Law. When first invited to speak at this symposium on Brown

---

* Carl G. Cooper is the Chief Diversity Officer of Kirkpatrick & Lockhart Nicholson Graham LLP. At the time of his appointment, February 18, 2003, he was the first Management Legal Executive to hold such a position in a major law firm in the country. On January 1, 2005, Kirkpatrick & Lockhart LLP merged with the London firm of Nicholson Graham & Jones to form Kirkpatrick & Lockhart Nicholson Graham LLP. All references to Kirkpatrick and Lockhart LLP before the merger shall use the current name of the firm or its monogram, K&LNG.

¹ Special thanks to Seema Loynab and Marcie McClinic of the West Virginia Law Review. The Author gratefully acknowledges the assistance of Rahmond Staggers and Lynnie Jenkins, associates with K&LNG, with editing this manuscript. Benjamin Kail and Kathleen Obringer are acknowledged for their inestimable assistance as my staff and my rod.

² This manuscript is based on a speech given by Carl G. Cooper on February 22, 2005, at the West Virginia University College of Law as part of the West Virginia Law Review symposium, “A Look at Brown v. Board of Education in West Virginia: Remembering the Past, Examining the Present, and Preparing for the Future.”
v. Board of Education, I was rather hesitant, but inevitably agreed. I asked, “What is the genesis of the program?” and was told a little bit about it, and then, of course, they hit me at a very weak spot when they informed me that my dear friend, Professor Charles Ogletree, had agreed to be the keynote speaker for an earlier portion of the program. They knew that Charles and I go back to 1975 at Harvard Law School, and in point of fact, I have a Harvard story of my own, though not as interesting as Charles’s.

When I first came to Harvard, I stopped a gentleman on my way to the Law School because I had been told that the Law School was only a few blocks away from Harvard Square. So I asked the young man, “Can you direct me to Harvard Square?” He looked at me, almost perplexed, and said, “My God, man, it’s at the center of the universe!” Well, having arrived at the “Center,” I really felt that this was going to be an extraordinary experience. I won’t go into how extraordinary it was except to say that Professor Ogletree, who at the time introduced himself to me as “Tree,” was one of my students. As a new Teaching Fellow at Harvard, I really found that I was at a place where I had an opportunity to meet and interact with an extraordinary group of very young and talented folks in the law school community.

In fact, in the two years that I was there, Harvard Law School had the largest mix of African-American faculty, as well as teaching fellows, in the law school’s history. It has never been as large since then in terms of the teaching fellow program, although the faculty has expanded.

What follows is a blending of both my prepared remarks at the Brown v. Board of Education Symposium, held on February 22, 2005, and a forthcoming article which I have been preparing to write on the subject of Brown and diversity. The opportunity to put the two academic interests together into one publication was irresistible to me, and what follows is my attempt to weave diversity practice and a bit of historical race relations into one fabric to give context and meaning to our present multicultural dilemma.

II. WHY DIVERSITY?

When I think about the subject of my topic, diversity, the first thing that comes to mind is to try to help people understand “Why diversity?” If you’ve read this morning’s USA Today, you would see on the front of the Business section - the Money section - a report that businesses all across the country are realizing that being multicultural, being bilingual in terms of your staff, has absolute profitable benefits to it. The report notes that dealerships, which have multicultural staffs are doing business and those that are not are being left behind.

3 Chris Woodyard, Multilingual staff can drive up auto sales; Ethnic communities show buying power, USA TODAY, February 22, 2005, at B1.

4 Id.
There is an extraordinary amount of discussion about the fact that there is a business case for diversity. We recall in the Grutter v. Bollinger case, Justice Sandra Day O’Connor concluded that diversity was, of all things, a compelling state interest. Why was it compelling? Because major American businesses say that diversity in terms of our global competitiveness is extraordinarily important. She heard them loud and clear. When American businesses speak, the courts listen. The Court was not unmindful of the fact that their decision was going to have a “ripple effect” in terms of our economic ability as a nation to be competitive.

The emphasis, however, for the business case for diversity initially came about because of a study that was done in the 1980’s; a study called “Workforce 2000” and what that study indicated really blew the minds of most Americans - the fact that by the year 2050 the country was going to be made up of a majority of minorities. Indeed, if you look around today you will see that Texas is a state with a majority of minorities; that New Mexico is a state with a majority of minorities, as are Hawaii and California. I think the American business community woke up to the fact that they were going to find a workforce out there going into the 21st century that did not look like them. They immediately started taking stock of what they needed to do in order to go into the 21st century competitively. Thus, as the corporate world became more diverse and wanted its vendors to reflect this, more and more law firms started thinking about diversity for real this time, as opposed to what was going on in the 1960’s, 1970’s, and early 1980’s, where there was token diversity, but not real, sustained diversity.

One of the other reasons of “Why diversity,” is that a diverse workforce cuts down on litigation. It is very difficult when you have all groups, all racial groups and all kinds of individuals, sexual orientation, disability, age, all employed by the same employer to mount a successful discrimination lawsuit. So, if for no other reason, just as a defense mechanism for law firms, which are prestigious groups - diversity was a great defensive move for them to take.

Also, it does help firms gain a competitive advantage. It also provides for a broader opportunity in terms of the workforce. Staff turnover is reduced, you have greater access to a rich pool of workforce, and you improve in terms of your image.

---

6 Id. at 330.
7 See id.
8 David B. Wilkins, From “Separate is Inherently Unequal” to “Diversity is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar, 117 Harv. L. Rev. 1548 (2004).
9 Janet Wiscombe, Corporate America’s Scariest Opponent, WORKFORCE, April 2003, at 34. Wiscombe’s article chronicles some of attorney Cyrus Mehri’s biggest workforce discrimination cases, including suits against the Coca-Cola Company and Texaco. Cyrus offers advice on how
While speaking all across the country to bar associations, local law firms and national law firms about what we, Kirkpatrick & Lockhart Nicholson Graham LLP ("K&LNG") have done, I am asked what others can do to get into the diversity movement. The number one answer I give to "Why Diversity" is paramount is as follows: In terms of images, it seems to me, diversity is one of those kinds of phenomena, which increase the motivation of your staff. If the staff looks around and sees a lot of different people, they are imbued with a sense that "my firm is a firm that really represents the public at large and that makes me feel good." At the end of the day, the bottom line is that diversity is economically in most organizations' best interest.

A. Diversity As a Value Added Business Tool

But, there are other arguments that I call the value additive arguments for diversity. For example, there is the "social" argument for diversity. It is when you have a diverse workforce, you get perspectives that you ordinarily would not get. Those perspectives help you come to a decision which is far better a decision than if you only had one racial group making that decision.  

Diversity acknowledges that different people have different strengths which they bring to the decision-making process. As a result of that, your decisions are much more reflective of a well-rounded and robust exchange of ideas, rather than a product of a monolithic view of what the world ought to be. Also, diversity takes into consideration the fact that all people have a right to contribute something to the health of their organization, and so having a diverse workforce really does help you to make sure that you are on the cutting edge in the workplace.

B. Diversity Used to RemEDIATE Past Wrongs

There is the one other argument that we all hear but we do not like to discuss very often, and that's the moral case for diversity. Professor Ogletree talked about that a little bit yesterday as part of this symposium. He talked about the insidious era of slavery from the institutionalized "separate but equal" segregation of Plessy, to Brown - "separate is inherently unequal," up to today, where you still have racially and economically separate educational facilities, corporations can clean up their images by taking diversity seriously.

---

10 See David B. Wilkins, From "Separate is Inherently Unequal" to "Diversity is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar, 117 HARV. L. REV. 1548, 1556 (2004).

desperately in need of educational and financial parity. Historically, "We the people," in the U.S. Constitution,\textsuperscript{12} was never intended to include my ancestors.\textsuperscript{13} Indeed, the only people who were the original beneficiaries of these majestic words were white males, who were free men. Not white females,\textsuperscript{14} certainly not Africans (blacks),\textsuperscript{15} nor American Indians. Although the original inhabitants of this great land welcomed their European brothers, they soon found themselves being treated as strangers in their own land and ultimately and consequently, forced onto reservations, with only those rights as their conquerors felt inclined to bestow on them.\textsuperscript{16}

\textsuperscript{12} U.S. CONST. pmbl.
\textsuperscript{13} U.S. CONST. art. IV, § 2 provides that escaped slaves (persons held to service or labor) shall be returned to person(s) making claim that service is due.
\textsuperscript{14} U.S. CONST. amend. XIX.
\textsuperscript{15} See Dred Scott v. Sanford, 60 U.S. 393 (1856); U.S. CONST. amend. XIII, XIV. But see Abraham Lincoln, The Emancipation Proclamation (Jan. 1, 1863); U.S. CONST. amend. XV; Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (noting that "all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin").
\textsuperscript{16} See Johnson v. McIntosh, 21 U.S. 543, 572-589 (1823). Chief Justice Marshall wrote:

On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim ascendency. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity . . . . In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it. While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives . . . .

The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles . . . . No one of the powers of Europe gave its full assent to this principle, more unequivocally than England . . . . So early as the year 1496, her monarch granted a commission to the Cabots, to discover countries then unknown to Christian people, and to take possession of them in the name of the king of England . . . . Thus asserting a right to take possession, notwithstanding the occupancy of the natives, who were heathens, and, at the same time, admitting the prior title of any
To understand our present circumstances, we must focus on America's history and how it has affected people of color, to explain the "badges and incidents" of slavery that still affect African Americans and all other Americans as we are entering the dawn of the twenty-first century. Over time, white males in power over the nation conceded rights to women,\textsuperscript{17} to some extent Indians,\textsuperscript{18} and, in the last two centuries, to blacks,\textsuperscript{19} the descendents' of slaves, and other people of color.\textsuperscript{20} As we enter the twenty-first century, our nation is still in denial over its race-based past and seems incapable, or unwilling, to rid itself of the badges of racism, the remnants of past slavery,\textsuperscript{21} segregation,\textsuperscript{22} and separation,\textsuperscript{23} to become one nation, color-blind and diverse.\textsuperscript{24} W. E. B. Dubois noted in the early 1900's — "The problem of the Twentieth Century is the problem of the color-line."

III. HYPOCRISY'S ASSAULT ON DIVERSITY

Today's advocates for a color-blind society are the heirs of yesterday's beneficiaries of a race conscious, separate and unequal society.\textsuperscript{25} They claim that efforts today that level the playing field are acts of reverse discrimination. These devotees of suburban flight have recently launched a concerted, comprehensive and constant "Assault on Diversity,"\textsuperscript{26} the contemporary remedial program(s) for inclusion of races and groups who historically were denied access to America’s bounty. Diversity, insofar as this manuscript is concerned, is the proactive practice and policy of promoting equal opportunity in the workforce – private and governmental, and in institutions of higher education.\textsuperscript{27} Diversity

\textsuperscript{17} U.S. CONST. amend. XIX.
\textsuperscript{19} Abraham Lincoln, The Emancipation Proclamation (Jan. 1, 1863).
\textsuperscript{21} Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).
\textsuperscript{23} Plessy v. Ferguson, 163 U.S. 537 (1896).
\textsuperscript{24} LEE COKORINOS, THE ASSAULT ON DIVERSITY 3-6, 15 (2003).
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
initiatives, programs, and policies, as distinguished from Affirmative Action remedies, are defined as voluntary business-based decisions which are aimed at making American businesses globally competitive in an environment where multiculturalism is valued for its competitive edge.28 Even though slavery "officially" ended with the conclusion of the Civil War and the Emancipation Proclamation, the nation was still racially divided, economically, socially, politically, and spiritually. Rather than color-blind, the nation was steeped in historic cultural divisions, which could not be healed by the eloquence of the Gettysburg Address nor the Thirteenth or Fourteenth Amendments to the Constitution, which promised equality, but gave the newly-freed slaves a "bad check"29 with insufficient funds in the bank of America's freedoms.

Professor Derrick Bell chronicles the rise of the Jim Crow era lynchings and "official" intimidation by the state and local officials, including law enforcement agencies all over the country, which all conspired to make equality between the races a mockery and disgrace.30 The Court added insult to injury with its infamous decision in Plessy v. Ferguson,31 which held that "separate" public facilities as long as they were "equal" were constitutional. Eight white men in black robes sitting on the highest court in the land delivered, what history has determined to be one of the most insidious, socially, and politically racist decisions since Dred Scott32 was decided almost forty years earlier. DuBois was right. The color-line was a defining issue in the twentieth century, as it had been in every century since the habitation of this continent by Europeans.33 The American Dilemma,34 which continues even today, is not the "Problem of the Negro in America." It is the lack of commitment to full equality for all.

The promise of Brown still has not been met. One cause is a crisis in education: the separation in terms of the poor community, the minority community, and you have to do a great deal more to bring more people into the struggle

28 David B. Wilkins, "Separate is Inherently Unequal" To "Diversity is Good For Business": The Rise of Market Based Diversity Arguments And the Fate of The Black Corporate Bar, 117 HARV. L. REV. 1548, 1553, 1557 (2004).
31 163 U.S. at 550.
32 60 U.S. at 393.
33 Statement made by NAACP founder Dr. W.E.B. DuBois in 1906: "The Negro problem in America is but a local phase of a world problem. The problem of the twentieth century is the problem of the color line."
34 GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944).
to achieve educational parity. Indeed, education is just too fundamental of a right to be left to the states.

There is no doubt that the states have a priority, in terms of making sure that all their citizenry are educated, but they failed and they failed miserably. He argues that we ought to treat it like we do other preferred rights, a federal right and a constitutional right. I think he is on the cutting edge with this, and I think that you will hear more about that as the Nation goes forward.

IV. K&LNG’S NOVEL DIVERSITY INITIATIVES

As Chief Diversity Officer, what we are saying at Kirkpatrick & Lockhart Nicholson Graham is that diversity is part of our DNA. It is intrinsic; it is inextricably interwoven into the fabric of the law firm, and it is very important. If diversity is simply an add-on to the law firm, it will never get the kind of support or movement that is necessary for the law firm to move from being a diversity spectator to a diversity player.

At K&LNG, we have diversity as a mind-set from the top down. One of the things I try to get law firms and legal institutions to understand is that there are really about six principles to employ in a diversity program at a law firm. This is not rocket science. This is not something that is difficult to comprehend or understand; more and more law firms are getting involved in it because they see what the advantages are, and they see that it is something that they can do. They can get it started in a short period of time, and if they have a continuing interest in it, it will last over a longer period of time.

First and foremost is, at the top, you have to develop an initial statement. You cannot just say, “We want our law firm to be diverse.” You have to come out with a statement of commitment to diversity, which management supports. Our statement of commitment to diversity is two pronged. The first prong is the creation of the Chief Diversity Officer (“CDO”) position, a change agent in terms of the culture within the law firm. The second prong is that the CDO be authorized to be a change agent in the legal profession. So, I spend a lot of time on the road talking to law firms, their managing partners and bar associations, helping them get themselves more diverse. You need to have that commitment in order for diversity to work.

The other thing you should understand is that, in terms of our goals, they are very simple. “I will acquire, I want to promote, and I want to maintain diversity firm wide and firm deep” – it is as simple as that - to acquire, to promote and to maintain diversity firm-wide and firm-deep.

When our firm made a commitment to diversity, it had to make an assessment. You cannot know where you are going until you know where you have been. So, what we did was have outside consultants come in and do an assessment and a training session and, as a result of evaluation, we formed a diversity committee. The diversity committee had a chair. The chair of the diversity committee was a partner, in fact, the administrative partner for our Los Angeles office. As a result of the committee and the administrative partner try-
ing to move the diversity ball, they realized that managing an entire office, practicing law and championing the diversity cause was a daunting task. So, they came back to management and said, “If you really want to do this, hire a full-time Diversity Officer.”

At the time I was interviewed by K&LNG (then Kirkpatrick & Lockhart, “K&L”), I did not know it was an interview. They called and asked me if they could take me to lunch and so I said, “Well, of course.” At that time, I was the Allegheny County Bar Association’s Chair of the Opportunities for Minorities in the Legal Profession Committee and, in that capacity, I would go to lunch with managing partners at large law firms and try to help them become diverse.

During the course of our discussions, it became clear to me that they needed an individual to be the head of their diversity initiative. The focus then turned to identifying eligible, qualified individuals for the position. At some point in our discussions, it became clear to me that I was that individual. So, I tried, and I really did try, to decline the position, but, ultimately, I accepted.

What I was given was indispensable tools to get my job done. Number one - I report to one person, the Chair of the Management Committee. Number two - I have real authority in terms of recruiting; both laterally for partners and laterally for some of our senior associates, including getting young law students in as summer associates, and the ability to initiate programs at the management level aimed at recruiting a broader pool of diverse candidates. Perhaps the most important thing is the fact that I have no, I repeat, no billable hours. In fact, as soon as I realized I was not going to be asked to practice law and be the Chief Diversity Officer, I came on board.

V. BENCHMARKS FOR THE CHIEF DIVERSITY OFFICER

The three goals that I set out for myself were recruiting, retention and relationship building. The first thing that I did was set benchmarks. We had to have some deliverables. We had to have some goals. I want to spend time on that just for a moment, because I believe affirmative action is part of diversity and it is quantitative, not qualitative. I think the difference between affirmative action and diversity is that diversity is qualitative in addition to quantitative. So numbers do count in accomplishing diversity.

So, I will tell you about our numbers. I came to K&LNG on February 18, 2003. At that time we had 208 women with the law firm; today we have 260. When I came to K&LNG, we had thirty-four women partners; today we have fifty-seven. Importantly, when I first came on board we had sixty-seven minorities and six were partners; today we have ninety-two minorities and sixteen are partners.

So the numbers are improving, but in order that they continue to improve, one of the things that I have done is to spend an interim amount of time recruiting law students. We have recruited at seven targeted schools, identified for their educational excellence as well as their large populations of minorities and women.
One of the advantages that I have as CDO is that I can pick and choose at which schools I want to recruit, and I can pick and choose at those schools who I want to interview. So, I have a kind of carte blanche to make sure that our law firm, in each of its offices, looks like the community in which that particular law office is located. For example, our law offices are going to look different in Dallas from our Los Angeles office, which is going to be a lot different than our Pittsburgh office.

Unfortunately, I have yet to go to our London office, and I am putting that off as long as I can because I know that it is going to be a very difficult job to overcome and understand. We have eleven offices in some very nice cities: Boston, Dallas, Harrisburg, London, Los Angeles, Miami, New York, Newark, Pittsburgh, San Francisco and Washington, D.C. Obviously, at different offices you have different emphases on the particular needs of that office.

VI. PARTNER MENTORING AND THE IMPORTANCE OF ASSOCIATE FEEDBACK

Recruiting is only a small part of the work that I do. One of the most important parts, the lynchpin to our success, is the K&LNG Mentoring Program. If we do not have a strong mentoring program, we cannot accomplish our goal. Now every summer associate has an “Associate Buddy” and a “Partner Buddy.” The summer associates all have an opportunity to talk with and work for a partner during their summer experience. When they come back as a first year associate, every associate has an “Associate Buddy” and a “Partner Mentor.” The Partner Mentors are all volunteers, meaning we do not require partners to serve as mentors. We invite them to volunteer. We really believe in the term inter-generational excellence, and we make sure we give our young people the kind of legacy training that would be necessary to carry forward the K&LNG values.

To ensure the success of our mentoring program, we have hired two people to act as Professional Development and Mentor Program Administrators—one for our Pittsburgh office and one who travels around like I do on a type of circuit. They both deal with any K&LNG associate that has been self-identified as having a skill set problem or any associate that has any difficulty getting traction. The mentor program administrators give advice, monitor and provide assistance for first year associates primarily as counseling is needed.

In the CDO budget, there are sufficient funds for any associate who needs additional help. We provide them with the kind of outside help that they would need. Whether it is an outside professional or one of our own lawyers that has the expertise and time to commit to the associate’s development, we bring them into work with that individual over a period of time. We are committed to it.

In each office, we also have a mentor coordinator. At the end of each cycle (the cycles are every six months), we do a review of every associate, and we let the associate know where they are in their skill development. At the end of the year, we do what is known as an associate review process (“ARP”). In
conjunction with the ARP, every associate has to draft a development plan. The associate’s development plan is more or less the associate’s and partner’s assessment of where that associate’s skill level and professional aspirations lie over the course of the next year. It is a business plan. The partner signs off on it, as does the associate, and then we make sure the associate gets the assignments necessary to build the skill set so that they can move to the next level.

At the commencement of our revamped mentoring program, we did an associate/partner mentor training session, and the responses to the training sessions were very favorable. All offices, over 700 lawyers (at that time), were trained on the best practices, including cultural as well as gender-based sensitivity, so that our partners would be well-versed in terms of approaching and giving feedback to the younger associates.

It is critical that partners give positive, as well as negative, yet instrumental feedback. It is almost like law teachers who hate to give low grades because they know that the student is going to come in and say, “You must have me confused with someone else, I know I did better than whatever the grade purports.” Some partners are the same way. They do not want associates coming back into their offices saying, “You certainly have me confused with someone else.” And, of course, the partner does not have the associate confused and, in fact, is very clear about the identity of the neophyte. We need to develop, in all partners, the ability to give critical feedback because feedback is essential to the development of a young associate.

Again, the most important thing you should take away from this is, as a typical law student, if you go to a law firm that does not have a strong mentoring program and you are not totally self-sufficient, you may be in trouble within two years. Oftentimes, you are in trouble within two years, and you do not even know it. Mentoring is the ability to give both developmental guidance and critical feedback for growth.

The most detrimental effect of the lack of feedback is that most law firms will give you two years to prove yourself and never alert you to your deleterious status. Your work and your utilization may fall off. The work allocation will begin to dwindle, and you will wonder why other people seem to be scurrying around and you are not. The reason is because the firm is probably preparing the way for you to transition out. So, a program is needed that nurtures and guides new associates through the maze and the political process.

VII. INDUSTRY RELATIONSHIP BUILDING

The third element to my responsibilities is relationship building. I travel around the country and talk with general counsels, among other groups, and Bar Associations. It is important to connect with the National Minorities Bar Associations, attend their annual meetings and network with their membership. One of the most recent appointments I accepted was being on the ABA’s Presidential Advisory Council on Diversity in the Legal Profession, and I am Chair of the Pipeline Program that is sponsoring a program in Houston this fall. The next
president of the ABA, interestingly enough, is one of K&LNG’s partners, Mike Greco from our Boston office. So we will be continuing with developing diversity programs into the future.

Another example of relationship building occurred early into my first year at the law firm when I was asked to moderate a program on diversity and the panel assembled was quite impressive. A paneled discussion on diversity with six of the countries top African American and Asian general counsels, Jim Diggs from PPG., Ken Frazier from Merck, who was also a student when I was a Teaching Fellow at Harvard, Michele Mays from Pitney Bowes, Stacy Mobley who was a year behind me at Howard Law School and is VP and General Counsel for DuPont, Rick Palmore from Sara Lee, and Don Liu of IKON. Associates do not have a lot of contact with clients, and they are always concerned on how you get a client and how you develop client relationships.

Interestingly enough, Rick Palmore recently began an initiative known as *A Call to Action*. He asked corporations, primarily Fortune 500 corporations, sign onto a diversity statement which said that if they use a vendor and that vendor does not have a diverse workforce they will cut that vendor from their list of preferred law firms in the next year.

More and more corporations are signing this kind of diversity manifesto and going forward with them. So, what I have done in addition to that is, as I go to meet with these different corporate general counsels, I take minority and women lawyers with me, so that they see the workforce for whom we work. I simply go in because I know these folks and introduce them and they tell them what area they practice. In our law firm, we have sixty-one practice areas and they speak in terms of what it is that they do and how proficient they are in doing that particular activity.

Another building block is that we have relationships with law schools. One of the relationships that we have is at Howard University. We started the James M. Nabrit Lecture Series, commemorating the *Brown v. Board of Education* decision and the role that James M. Nabrit played in the case, as well as his role as Dean of the Howard University Law School and President of the University. The first in the speaker series featured Justice Stephen Breyer and the keynote speaker was Professor Charles Ogletree. It was a huge success and we are going to continue for the next four years. This year on March 23rd, the Secretary for Housing and Urban Development (HUD), Alphonso Jackson, will be the keynote speaker.

In addition to the Howard Law School program, I brought Professor Ogletree into Pittsburgh and asked him to do a program just for the University of Pittsburgh Law School on diversity, called “Law and Social Justice.” He came in and talked about *Brown v. Board of Education* to the Pittsburgh community, both students as well as to the community leaders and residents.

Our London office has signed a diversity statement in the U.K., among a group of law firms referred to as *The Magic Circle*, and many of them signed onto it. It says that the signatories are committed to a diverse workplace and that
diversity includes race, ethnicity, gender, sexual orientation, gender identity and expression of religion, nationality, disability and marital and parental status.

VIII. DIVERSITY INITIATIVES UNDER ATTACK

With all this having been said, there is an assault on diversity. Most of you have read or heard of Professor Richard Sander, from Stanford Law School, who has just written a critical assessment of affirmative action programs.35

There is also an assault from the right, and the book "Assault on Diversity" by Lee Cokorinos, chronicles the systematic attempt by the right to keep the playing field titled against minorities.36 As Ted Shaw of the NAACP Legal Defense and Education Fund put it, "I have always been puzzled by individuals who were missing in action during the struggles against discrimination directed at racial minorities and who later became zealous opponents of affirmative action," arguing passionately that white people - who continue to occupy the overwhelming majority of positions of privilege in the United States - are not victims of the most insidious forms of racial discrimination.

Sander's article uses research of his own, as well as that of the Law Schools Admissions Council's (LSAC) research taken from their National Longitudinal Bar Passage Study. The data was obtained through the National Association of Law Placement (NALP) Foundation's "After the JD" study. LSAC has provided a response to, analysis of and disagreement with Professor Sander's article and the article will not attempt to join the chorus condemning his presentation. But suffice it to say, Professor Sander's article set off a firestorm in academia. It provided needed fodder for the forces who have historically opposed any inclusionary practices which may have gained leverage after the Grutter case was decided, validating diversity as a legitimate tool to make up for the past racial wrongs and to try to continue to fight to level the playing field for opportunities for racial minorities.

First denied through slavery, Jim Crow segregation, separate and unequal treatment, and then deferred as a result of Brown, these remedies, reparations for historic wrongs, are now being attacked as "preferences" for the victims of historic racial deprivations. How ironic that Professor Sander considers himself to be a liberal! And there are those who have been critical of diversity in terms of the business case as demonstrated in an article in Workforce Inc. by Fay Hansen who quotes M.I.T. scholar Thomas Kochan, indicating that there is no empirical evidence that diversity improves the bottom line. He went on to say that there is no empirical evidence that it does not either.


IX. CALL TO ACTION

Last year, McGeorge Law School Dean Elizabeth Parker sent out an invitation to all 188 accredited law schools asking them to come and join her on a new initiative. "Renovating the P-20 Pyramid in Education – With the Leadership of Schools of Law." The short title to this meeting was "A Report on the Wingspread Conference." The initiative, in part, is what you are doing here in West Virginia through this symposium. It involved various educators from, what we call the "P-20 Continuing" that is K-12, middle school, high school on to colleges and graduate school. It was a collaboration between the law school and law firms, with the law schools taking the lead, some of your other university and college administrations working with outside groups all collaborating, talking together, and developing together a network to promote diversity in the legal profession.

What we found, and there is an ABA report that substantiates this, is that the entrance has abated in terms of African Americans, particularly males, in professional schools. As Professor Ogletree mentioned during this symposium, we have more African American men in prison than in college. So if you look forward, in terms of where the pool is going to be to go to law school, they are not going to be there. If they are no minority roles in law school, then there are not going to be there for law firms.

K&LNG is taking the initiative to join with others, the universities, the bar associations, etc., to try to move this forward, and we would like to invite West Virginia College of Law and other law schools to involve themselves in an upcoming program, "Embracing the Opportunities for Increasing Diversity Into The Legal Profession: Collaborating to Expand the Pipeline" at Rice University in Houston, Texas, on November 3-5, 2005, sponsored by the American Bar Association, along with the Law Schools Admission Council (LSAC). I am chairing a group with ABA's Presidential Advisory Council on Diversity in the Legal Profession who is organizing the conference. I think words are very important, so that every word of the title is meant to send a signal. I want this conference to be proactive and so the title of the program "Embracing the Opportunities" was selected. This three-day conference will bring together four regional modules from the northeast, southeast, northwest and southwest to collaborate.

Thus, it is a host of diversity initiatives like the conference in Houston and this symposium that will guide us in achieving diversity in the workplace, particularly in the legal profession. Participating in these types of initiatives, as well as developing an effective diversity plan from the top down, can ultimately help accomplish the mission "to acquire, to promote and to maintain diversity firm-wide and firm-deep."