



How To Achieve Diverse Faculties

Gail Wright Sirmans

*A diverse CLE faculty is a social, moral, and economic imperative.
Here is how to achieve one.*

OVERVIEW

In his book, *Racial Healing: Confronting the Fear Between Blacks and Whites*, Professor Harlon L. Dalton of Yale School of Law warns that “we must all pitch in to remedy America’s racial ills. After all, our fates are inextricably linked. Unless we are willing to accept an economy that operates on fewer than all of its cylinders, we have an interest in ensuring that people of every hue develop and utilize their talents and skills.”

It is this “warning” that continuing legal education providers, bar associations, and law groups must heed if we are to reap the social and economic benefits of our society. Even as we step into the new millennium, studies continue to report that the legal profession has limited and denied equal opportunities to Black, Hispanics, Asians, women and other under-represented groups.¹ Law schools, bar associations, law firms, and corporations have launched programs

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¹ See, e.g., *Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts* (1997); ABA Commission on Women in the Profession, *Women in the Law: A Look at the Numbers* at 11 (1995); *Report of the Task Force on Racial and Ethnic Bias and Task Force on Gender Bias in the Courts* (District of Columbia, 1992); *Report of the Ninth Circuit Gender Bias Task Force* (1992). See also Epstein, Saute, Oglensky & Gever, *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 *Fordham L. Rev.* 291 (1995).

designed to address the issues.² Yet, more remains to be done!

Continuing legal education, now a requirement in many states, has become a fast growing industry. CLE organizations and providers should develop and implement policies to insure that all members of the legal community are afforded opportunities to fully participate in the programs, not just as consumers but as programmers and faculty members. Although CLE providers are not employers, the opportunities they provide frequently are considered a credential or prerequisite for professional advancement. Invitations to participate in these programs can be an important point of entry into the networks of power and prestige in the legal arena.

Ensuring diversity in CLE programming is not just a moral imperative, but a matter of good business and good sense. CLE providers who neglect to implement inclusive programs stand to lose their competitive edge in the market. A greater mix of the speakers serves to enrich the dialogue by adding varied and less familiar perspectives. We cannot afford to overlook or undervalue the contributions of women, Blacks, Hispanics, Asians and others.³ A diverse body of faculty members can bring real

differences in experience and viewpoints, and can promote growth in the perceptiveness of all of us.

STRATEGIES FOR INCLUSION AND DIVERSITY

In many instances, creating an inclusive CLE program will require a systematic process of diagnosis, design, and implementation. It will not occur automatically in relationship to the increase in the numbers of women and Blacks, Hispanics, and Asians or others who have been traditionally omitted from full participation. Gaining the diversity advantage will require effort and an unfaltering commitment to the principles of inclusion. Chief among the strategies for reaching diversity are the following:

- People who will be affected by the change should be involved in any efforts to diversify; and
- Groups or individuals with organizational influence and credibility should be solicited.

OPERATIONAL PARADIGM

What are some specific tactics for diversifying your CLE faculty?

1. Start at the top! Promote policies and practices of fairness and inclusion at the board level.

² According to the 1999 U.S. Census, Bureau of Labor Statistics, minorities now constitute 9.7 percent of the nation's lawyers, compared to 5 percent in 1980. The breakdown is 4.2 percent Black, 3 percent Hispanic, 2.2 percent Asian/Pacific Islander, and 0.3 percent Native American. The number of women in the profession rose to 29 percent in 1999, compared to 23 percent in 1994 and 3 percent in 1960! According to the ABA, *A Legal Review of Legal Education in the United States*, the number of minority women attorneys tripled between 1980 to 1990. In 1969 Blacks represented a little more than 3 percent of the student population; today roughly 25,000 law students are Black. A recent study produced by the National Association for Law Placement indicates that the number of attorneys of color and women who are partners in the nation's major law firms increased dramatically between 1997 and 1999.

³ It has been speculated that differences in viewpoint resulting from differences in gender or race are so powerful that they can result in different substantive outcomes in the courtroom. Smith, *Diversifying the Judiciary: The Influence of Gender and Race on Judging*, 28 U. Rich L. Rev. 179 (1994).

2. During the orientation, set aside a session to examine issues of diversity which may include:
 - a. The organization's commitment to diversity and equal opportunity;
 - b. Ways to structure collaborative programs;
 - c. Methods to generate lists of state, local, or national bar contacts;
 - d. Strategies to identify potential minority and female program leaders and speakers; and
 - e. Establishment of fair policies and procedures or guidelines.
3. During the annual meeting, introduce representatives of minority and women bar associations to section chairs and CLE coordinators. The purpose of this discussion should be to facilitate collaborative efforts and to obtain input regarding potential programs of mutual benefit. This may include a number of legal issues of particular significance to both organizations.⁴

**UNDERSTANDING THE ISSUES:
“WE CAN'T FIND SPEAKERS!
(CAN WE?)”**

The assertion that “we just can't find anybody” is a too-familiar phrase. This stance may or may not reflect a deliberate decision to exclude women, Blacks, Asians, Hispanics, or others. In any case, such a position fails to consider the cumulative impact of repeated individual choices which ultimately exclude

members of under-represented groups. It is a position that adversely affects all of us—both morally and economically. How can we address this situation?

1. Foster collaborative relationships with local and national bar associations that represent people of color and women. For example, the National Bar Association conducts two national meetings each year involving over 100 legal experts from across the country.⁵ Solicit these bar associations for assistance in establishing lists of potential speakers. Collaborate and jointly sponsor CLE programs.
2. Many state and local bar associations have created committees for minorities and/or women. Consider sending a letter/questionnaire to these committees requesting assistance in identifying potential speakers and programs of mutual interest. Distribute this list and share your findings with CLE coordinators.
3. Contact law firms for their suggestions and recommendations. Many law firms encourage their attorneys to lecture for CLE organizations, and should be helpful in recommending women and minority attorneys from their firms. During the past several years, bar associations have created committees comprised of law firms which have expressed a willingness to enhance hiring and promotional opportuni-

⁴ The ABA has model programs for collaborative ventures dealing with joint membership programs and mentorships. One effort is the Conference of Minority Partners in Majority Firms.

⁵ The American Bar Association's Committee on Minorities in the Profession maintains a current list of national and local minority bar associations.

⁶ For example, the Bar Association of the City of New York has a committee, consisting of law firms, which actively encourages major firms to hire and promote women, Blacks, Hispanics, and other under-represented groups,

ties for women and minority members of the profession.⁶ Firms that are members of these committees should be approached for referrals and support.

4. Corporate legal departments or associations of in-house counsel should be contacted and encouraged to provide recommendations.
5. Contact local laws schools for suggestions and referrals of women and minority faculty members or alumni who have expertise in a particular area of practice. Faculty members can identify attorneys who practice in areas in which you are seeking speakers.
6. Program chairs or speakers may also know women or minority attorneys who can speak in their own or other areas of practice. They should be actively encouraged to provide recommendations.
7. Solicit recommendations from participants or program attendees. Participant endorsements are a powerful recruitment tool!
8. Recruit and invite a woman or minority to chair a program! This may be one of the most effective and efficient approaches.
9. Clearly, one essential means to increase the pool of speakers is to expand the group of participants. This involves actively encouraging Blacks, Hispanics, women, and members of under-represented groups to attend the programs.
10. Explore creative pricing schemes and incentives. Extend the reach of

your program by offering discounts to first-time attendees from small bar associations or those with affiliate status.⁷ Implementing a specific tuition assistance policy and advertising it in your program brochure serves to increase the diversity of the participants. ALI-ABA has a very successful tuition assistance program that has promoted diversity in participants who attend its courses.

11. Finally, generate and distribute a database of potential women and minority speakers by practice area. This will remedy the last-minute lament, "we just didn't have time to find anybody...."

FAIR PRACTICES PRODUCE FAIR RESULTS

Too frequently a discussion of diversity within the legal profession is raised in tandem with the issue of qualifications. It is amazing that oftentimes the only time the issue of qualifications is raised is when there is a discussion of the need to increase the pool to include women, Blacks, Asians, Hispanics, and other under-represented classes. The underlying supposition is that these groups are unqualified. This assumption, and its cohort, the notion that Blacks, women, or others need remedial training programs must be similarly dispelled.

1. Design and implement objective requirements for all speakers. Apply these standards in a uniform manner. Make sure that all participants are aware of what is required of them.

⁷ Several years ago the New York State Bar Association provided this incentive with some degree of success. PLI and ALI-ABA offer scholarships to those who qualify.

2. Avoid using criteria or evaluation measurements that are subjective and lend themselves to bias. The evaluations must be uniformly applied or used.
3. Create a “policy and procedure” manual. CLE providers generally have created informational manuals for their faculty to assure the smooth operation of the programs.
4. Include diversity as an evaluation issue.⁸ Several bar associations have created “best practices” committees which review programs to determine the most effective and efficient means of providing CLE. Included in the review process is consideration of the efforts made to enhance opportunities for those members of the legal profession who have been historically excluded. Some associations and CLE providers maintain an antidiscrimi-
nation or affirmative action provision.⁹ Program participants should be reminded of these policies and encouraged to support them.
5. Solicit feedback from the participants themselves. Certain groups may feel alienated or offended by sexually charged jokes or racially offensive comments.
6. Identify and invite new participants well in advance of the program. A last-minute invitation to a new invitee may be construed to be afterthought.
7. Avoid relegating new participants to programs or topics that are inherently boring or lack challenge.
8. Create more opportunities for professional networking camaraderie.
9. Monitor efforts to diversify your faculty and participants.¹⁰ This will let you know how well you have or have not done.

⁸ The Board of Directors of the National Institute of Trial Advocates has a goal of 10 percent minority participation in its programs. The Practising Law Institute evaluates its program leaders on whether they recruit women and minorities to participate.

⁹ In 1996 the New York State Bar Association added an Ethical Consideration which “reaffirms its opposition to unlawful discrimination based on race, sex, national origin, religion, disability, age, sexual orientation or marital status in employment, education, housing, contracting and licensing, and encourages lawful efforts, including voluntary efforts to eliminate such discrimination.” The American Bar Association, as well as the state bar associations of West Virginia, Hawaii, Oregon, and Pennsylvania have endorsed affirmative action policies. Whether these policies have been used in the context of intra-bar association CLE programs is unclear.

¹⁰ NITA and ALI-ABA compile and disseminate information to their governing boards reflecting minority participation.

