



ILLINOIS STATE  
BAR ASSOCIATION

# DIVERSITY MATTERS

The newsletter of the ISBA's Task Force on Diversity

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## Diversity Task Force—Report from the Chair

By Alice M. Noble-Allgire

As I write this column, Lynn Grayson and I are putting the finishing touches on a comprehensive report to the Board of Governors detailing the activities of the Task Force on Diversity during the past two years and offering a plan of action to chart the course for the ISBA's diversity efforts into the future.

The Task Force was appointed by Past ISBA President Joe Bisceglia in 2007 to develop a Diversity Pipeline initiative and to pursue other activities to promote greater diversity in the Illinois legal community statewide and within the ISBA. When it became apparent that the Task Force could not complete its ambitious agenda in one year, the Task Force was reappointed in 2008 by President Jack Carey.

Under Lynn Grayson's leadership last year, the Task Force amassed an impressive list of accomplishments, which included: Completion of the first-ever statewide diversity survey; completion of the first-ever diversity survey within the ISBA, including the Board of Governors, Assembly, committees and section councils and professional staff; publication of the *Diversity Matters* newsletter; and creation of a diversity page within the ISBA's Web site. An interim report detailing these activities can be found on the diversity Web page at <http://www.isba.org/diversity/index.html>.

The Task Force also made substantial progress on a Diversity Pipeline initiative during its first year. As detailed in the interim report, the Pipeline Subcommittee created a blueprint for a comprehensive, integrated, and institutionalized program to help students of diverse backgrounds traverse the educational pipeline into the legal profession. The proposal has several key elements:



Alice Noble-Allgire

(1) exposing elementary, junior high, and high school students to the law through the ISBA's law-related education program; (2) creating a summer law camp to expose students to a variety of lawyering activities and to educate them about how to prepare for college and law school; (3) outreach and support to students in college and law school through the ISBA's diversity-related committees and Young Lawyers Committee; and (4) developing a mentoring program for lawyers to help guide aspiring students through each step in the educational system.

During the past year, the Pipeline Subcommittee developed a plan to implement the Future Leaders program with existing ISBA resources and through partnerships with other organizations involved in pipeline activities. The Subcommittee ultimately crafted a multi-year implementation schedule, beginning with a Lawyers in the Classroom component in 2009-2010 and preparations for a law camp in the summer of 2011.

Three other major projects were on the Task Force's agenda this year:

- Development of a Diversity Matters Award to recognize significant contributions by individuals or organizations in advancing diversity. This proposal won the support of the Scope and Correlation Committee and was before the Board of Governors as this article went to press.
- Development of a plan to reorganize the ISBA's diversity-related committees, with the collective leadership of these committees forming a Diversity Leadership Council to coordinate committee work and outreach efforts. This proposal was also supported by Scope and Correlation and is before the Board of Governors.
- Development of a proposal for a Diversity Leadership Program to increase diversity within the ISBA by annually selecting five to ten lawyers from diverse backgrounds to serve as Leadership Fellows. Fellows would be appointed to the ISBA section council or committee of their choice and paired with an established committee member who would serve as the Fellow's mentor. The Task Force recommended that details of the program be refined in 2009-2010 by the Diversity Leadership Council, assuming that the Council is established as set forth in the restructuring proposal.

To find out more about these proposals and other recommendations in the Task Force's Diversity Action Plan, look for the Task Force's full report on the ISBA's diversity Web page later this summer.

It has been my privilege to serve as the Task Force's chair this year. As Lynn Grayson noted in her column last year, the Task Force has pulled together an

amazing group of attorneys with a shared vision of more diverse legal profession. The accomplishments set forth above are a direct result of the hard work, creativity, collegiality, and persistence of this extraordinary collective, whose names appear inside this newsletter. I thank them for sharing their talents and dedication to this project.

I would also like to thank the ISBA's leadership for its support and ISBA's professional staff for its guidance and assistance. It is hard to believe that three years have passed since Past President Irene Bahr first discussed with me her vision of pursuing a pipeline initiative during her term. Each ISBA President since then—Joseph Bisceglia, Jack Carey, and this year's President-Elect John O'Brien—has enthusiastically embraced and supported the Task Force's work, as have ISBA Executive Director Robert Craghead and Staff Liaison Janet Sosin.

I have great optimism that the foundation we have laid during the past several years will ultimately lead to greater diversity both within the ISBA and in the legal profession as a whole.

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## California Proposition 8 update

By Sepi Ghafouri<sup>1</sup>

Last summer, the Supreme Court of California became the second state high court in the United States to end years of marriage inequality. The Court declared that gay and lesbian couples will no longer be treated as second class citizens in the state of California. The Court also classified gays and lesbians as a protected class under the state constitution alongside race

and gender. Celebration and joy spread throughout California and more than 18,000 gay and lesbian couples were married between June and November.

In the backdrop of this great advance in civil rights, conservatives were putting together a ballot initiative called Proposition 8 which read, "Only marriage between a man and a woman is valid or recognized in California."

These words would later take away the Constitutional rights of thousands of Californians. This is the first time a proposition threatened to change the Constitution to take away fundamental rights rather than extending them.

As Co-president of the Lesbian and Gay Lawyers Association of Los Angeles, I, along with my male Co-president and Board of Governors, felt that it was of

utmost importance to put everything on hold and direct our efforts to battle this Proposition. LGLA, along with other Bar Associations, including the Los Angeles County Bar Association and many others, fought hard to raise money, awareness and media coverage in order to stop the passage of this hateful initiative.

To our dismay, on November 4, 2008, Proposition 8 passed by a narrow margin of 52.24% to 47.76%.

People flooded the streets of California in protests across the state for weeks.

Lawsuits were subsequently filed in the California Supreme Court challenging the validity of Proposition 8 and the Court agreed to hear oral arguments on March 5, 2009.

On March 5, 2009 oral arguments were presented by both sides. The challenger's side argued that proposition 8 was a major overhaul of the underpinning of the state constitution and hence a revision rather than an amendment. If found to be a revision, a simple majority vote is not enough for Proposition 8 to be valid. The other compelling argument is that Proposition 8 impedes the judiciary's authority to protect minority groups from discrimination. This second argument is the way the fundamental rights issues came into play during oral arguments. The proponents argued that Proposition 8 is an amendment and that it should be applied retroactively to invalidate the 18,000 marriages which took place between June and November.

During oral arguments, the Justices seemed to be leaning toward keeping Proposition 8 valid but not invalidating the 18,000 marriages which took place.

Any prediction of the result, however, is complete speculation.

Since Oral Arguments, Iowa and Vermont have become the newest States that have extended Marriage Equality to all couples.

The Supreme Court's decision will send a strong signal to all. It is ironic that the same Court that extended Marriage Equality for all is now faced with either having the courage to stand by their word or falter to conservative political pressure and the fear of a possible recall.

The Supreme Court should be courageous, do the right thing and invalidate Proposition 8. Not only is this a monumental civil rights issue but the message that will come across if the Court stands by its word is that fundamental rights are of such importance that they cannot be taken away by a simple majority vote. This case will also set the much-needed precedent that will give guidance about the legislative process of revisions versus amendments by making it about the effect rather than linguistic wording.

California has always been a leader on the forefront of civil equality. More than 18,000 married couples, thousands more that want their love fully recognized and hundreds of thousands of supporters of equal marriage rights await the Supreme Court's ruling which is set to be released this summer.

Regardless of the decision, the progress toward full civil right and marriage equality for all continues.

1. Sepi Ghafouri is the Owner of Law Office of Sepi Ghafouri and 2008 Co-President of the Lesbian and Gay Lawyers of Los Angeles. <www.sepilaw.com> .

## Diversity Matters

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# Remarks as prepared for delivery by Attorney General Eric Holder at the Department of Justice African American History Month Program

Wednesday, February 18, 2009

Every year, in February, we attempt to recognize and to appreciate black history. It is a worthwhile endeavor for the contributions of African Americans to this great nation are numerous and significant. Even as we fight a war against terrorism, deal with the reality of electing an African American as our President for the first time and deal with the other significant issues of the day, the need to confront our racial past, and our racial present, and to understand the history of African people in this country, endures. One cannot truly understand America without understanding the historical experience of black people in this nation. Simply put, to get to the heart of this country one must examine its racial soul.

Though this nation has proudly thought of itself as an ethnic melting pot, in things racial we have always been and continue to be, in too many ways, essentially a nation of cowards. Though race related issues continue to occupy a significant portion of our political discussion, and though there remain many unresolved racial issues in this nation, we, average Americans, simply do not talk enough with each other about race. It is an issue we have never been at ease with and given our nation's history this is in some ways understandable. And yet, if we are to make progress in this area we must feel comfortable enough with one another, and tolerant enough of each other, to have frank conversations about the racial matters that continue to divide us. But we must do more—and we in this room bear a special responsibility. Through its work and through its example this Department of Justice, as long as I am here, must—and will—lead the nation to the “new birth of freedom” so long ago promised by our greatest President. This is our duty and our solemn obligation.

We commemorated five years ago, the 50th anniversary of the landmark *Brown v. Board of Education* decision. And though the world in which we now live is fundamentally different than that which existed then, this nation has still

not come to grips with its racial past nor has it been willing to contemplate, in a truly meaningful way, the diverse future it is fated to have. To our detriment, this is typical of the way in which this nation deals with issues of race. And so I would suggest that we use February of every year to not only commemorate black history but also to foster a period of dialogue among the races. This is admittedly an artificial device to generate discussion that should come more naturally, but our history is such that we must find ways to force ourselves to confront that which we have become expert at avoiding.

As a nation we have done a pretty good job in melding the races in the workplace. We work with one another, lunch together and, when the event is at the workplace during work hours or shortly thereafter, we socialize with one another fairly well, irrespective of race. And yet even this interaction operates within certain limitations. We know, by “American instinct” and by learned behavior, that certain subjects are off limits and that to explore them risks, at best embarrassment, and, at worst, the questioning of one's character. And outside the workplace the situation is even more bleak in that there is almost no significant interaction between us. On Saturdays and Sundays America in the year 2009 does not, in some ways, differ significantly from the country that existed some fifty years ago. This is truly sad. Given all that we as a nation went through during the civil rights struggle it is hard for me to accept that the result of those efforts was to create an America that is more prosperous, more positively race conscious and yet is voluntarily socially segregated.

As a nation we should use Black History month as a means to deal with this continuing problem. By creating what will admittedly be, at first, artificial opportunities to engage one another we can hasten the day when the dream of individual, character based, acceptance can actually be realized. To respect one another we must have a basic understanding of one another. And so we should use events such as this to not only

learn more about the facts of black history but also to learn more about each other. This will be, at first, a process that is both awkward and painful but the rewards are potentially great. The alternative is to allow to continue the polite, restrained mixing that now passes as meaningful interaction but that accomplishes little. Imagine if you will situations where people—regardless of their skin color—could confront racial issues freely and without fear. The potential of this country, that is becoming increasingly diverse, would be greatly enhanced. I fear however, that we are taking steps that, rather than advancing us as a nation are actually dividing us even further. We still speak too much of “them” and not “us.” There can, for instance, be very legitimate debate about the question of affirmative action. This debate can, and should, be nuanced, principled and spirited. But the conversation that we now engage in as a nation on this and other racial subjects is too often simplistic and left to those on the extremes who are not hesitant to use these issues to advance nothing more than their own, narrow self interest. Our history has demonstrated that the vast majority of Americans are uncomfortable with, and would like to not have to deal with, racial matters and that is why those, black or white, elected or self-appointed, who promise relief in easy, quick solutions, no matter how divisive, are embraced. We are then free to retreat to our race protected cocoons where much is comfortable and where progress is not really made. If we allow this attitude to persist in the face of the most significant demographic changes that this nation has ever confronted—and remember, there will be no majority race in America in about 50 years—the coming diversity that could be such a powerful, positive force will, instead, become a reason for stagnation and polarization. We cannot allow this to happen and one way to prevent such an unwelcome outcome is to engage one another more routinely—and to do so now.

As I indicated before, the artificial device that is Black History month is a perfect vehicle for the beginnings of

such a dialogue. And so I urge all of you to use the opportunity of this month to talk with your friends and co-workers on the other side of the divide about racial matters. In this way we can hasten the day when we truly become one America.

It is also clear that if we are to better understand one another the study of black history is essential because the history of black America and the history of this nation are inextricably tied to each other. It is for this reason that the study of black history is important to everyone—black or white. For example, the history of the United States in the nineteenth century revolves around a resolution of the question of how America was going to deal with its black inhabitants. The great debates of that era and the war that was ultimately fought are all centered around the issue of, initially, slavery and then the reconstruction of the vanquished region. A dominant domestic issue throughout the twentieth century was, again, America's treatment of its black citizens. The civil rights movement of the 1950's and 1960's changed America in truly fundamental ways. Americans of all colors were forced to examine basic beliefs and long held views. Even so, most people, who are not conversant with history, still do not really comprehend the way in which that movement transformed America. In racial terms the country that existed before the civil rights struggle is almost unrecognizable to us today. Separate public facilities, separate entrances, poll taxes, legal discrimination, forced labor, in essence an American apartheid, all were part of an America that the movement destroyed. To attend her state's taxpayer supported college in 1963 my late sister in law had to be escorted to class by United States Marshals and past the state's governor, George Wallace. That frightening reality seems almost unthinkable to us now. The civil rights movement made America, if not perfect, better.

In addition, the other major social movements of the latter half of the twentieth century—feminism, the nation's treatment of other minority groups, even the anti-war effort—were all tied in some way to the spirit that was set free by the quest for African American equality. Those other movements may have occurred in the absence of the civil rights struggle but the fight for black equality came first and helped to shape the way in which other groups of people came to think of themselves and to raise their desire for equal treatment. Further, many

of the tactics that were used by these other groups were developed in the civil rights movement.

And today the link between the black experience and this country is still evident. While the problems that continue to afflict the black community may be more severe, they are an indication of where the rest of the nation may be if corrective measures are not taken. Our inner cities are still too conversant with crime but the level of fear generated by that crime, now found in once quiet, and now electronically padlocked suburbs is alarming and further demonstrates that our past, present and future are linked. It is not safe for this nation to assume that the unaddressed social problems in the poorest parts of our country can be isolated and will not ultimately affect the larger society.

Black history is extremely important because it is American history. Given this, it is in some ways sad that there is a need for a black history month. Though we are all enlarged by our study and knowledge of the roles played by blacks in American history, and though there is a crying need for all of us to know and acknowledge the contributions of black America, a black history month is a testament to the problem that has afflicted blacks throughout our stay in this country. Black history is given a separate, and clearly not equal, treatment by our society in general and by our educational institutions in particular. As a former American history major I am struck by the fact that such a major part of our national story has been divorced from the whole. In law, culture, science, athletics, industry and other fields, knowledge of the roles played by blacks is critical to an understanding of the American experiment. For too long we have been too willing to segregate the study of black history. There is clearly a need at present for a device that focuses the attention of the country on the study of the history of its black citizens. But we must endeavor to integrate black history into our culture and into our curriculums in ways in which it has never occurred before so that the study of black history, and a recognition of the contributions of black Americans, become commonplace. Until that time, Black History Month must remain an important, vital concept. But we have to recognize that until black history is included in the standard curriculum in our schools and becomes a regular part of all our lives, it will be viewed as a novelty, relatively unimportant and not as weighty as so called "real"

American history.

I, like many in my generation, have been fortunate in my life and have had a great number of wonderful opportunities. Some may consider me to be a part of black history. But we do a great disservice to the concept of black history recognition if we fail to understand that any success that I have had, cannot be viewed in isolation. I stood, and stand, on the shoulders of many other black Americans. Admittedly, the identities of some of these people, through the passage of time, have become lost to us—the men, and women, who labored long in fields, who were later legally and systemically discriminated against, who were lynched by the hundreds in the century just past and those others who have been too long denied the fruits of our great American culture. The names of too many of these people, these heroes and heroines, are lost to us. But the names of others of these people should strike a resonant chord in the historical ear of all in our nation: Frederick Douglass, W.E.B. DuBois, Walter White, Langston Hughes, Marcus Garvey, Martin Luther King, Malcolm X, Joe Louis, Jackie Robinson, Charles Drew, Paul Robeson, Ralph Ellison, James Baldwin, Toni Morrison, Vivian Malone, Rosa Parks, Marion Anderson, Emmet Till. These are just some of the people who should be generally recognized and are just some of the people to whom all of us, black and white, owe such a debt of gratitude. It is on their broad shoulders that I stand as I hope that others will some day stand on my more narrow ones.

Black history is a subject worthy of study by all our nation's people. Blacks have played a unique, productive role in the development of America. Perhaps the greatest strength of the United States is the diversity of its people and to truly understand this country one must have knowledge of its constituent parts. But an unstudied, not discussed and ultimately misunderstood diversity can become a divisive force. An appreciation of the unique black past, acquired through the study of black history, will help lead to understanding and true compassion in the present, where it is still so sorely needed, and to a future where all of our people are truly valued.

Thank you.

This material was reprinted from and is available at the United States Department of Justice Web site: <<http://www.usdoj.gov/ag/speeches/2009/ag-speech-090218.html>>.

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## A response to Attorney General Eric Holder's remarks

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By Andrea Flynn

As lawyers, we are trained to tackle intellectual problems daily; however, a lack of diversity and troubled race relations cannot be easily analyzed and solved like a legal issue. Race relations have improved considerably due to law prohibiting discriminatory behavior, generational change and growing diversity in the nation; however, intentional and unintentional racial disparities continue to exist.

Eric Holder addressed race relations during his speech to the Justice Department in February 2009. The most quoted phrase from his speech describing the United States "as a nation of cowards" caused a major debate. Many people were upset and confused by his comments because race relations have improved. We have elected the nation's first African American president, appointed the first African American Attorney General, and have numerous women and men holding leadership positions in fields of law, government, corporate and education. Unfortunately, much racial

interaction is superficial. Holder acknowledged race relations have improved, as experienced by many in the friendly interaction during work time, but noted the lack of interaction outside of work and voluntary segregation on weekends. Race relations cannot be analyzed and summarized; nor can the troubles surrounding the issue be resolved by employing a few minorities or women and claiming diversity. We don't discuss race relations, many times we omit race in our discussions and don't regularly interact with individuals outside of our comfort zone. Members of the Bar are still part of an elite club and unfortunately the club is not always diverse. Like the nation, the Bar continues to break barriers and open doors to women and minorities. However, like this nation, we still have room for improvement. Even though numbers have improved, many minorities and women are invisible in the practice of law. Adverse race relations could prevent our growth as a nation and could also prevent the continued growth

and diversity of the Bar. In his position as Attorney General, Holder will tackle the civil rights issues that plague this nation. However, Holder cannot tackle race relations alone. A large portion of the nation is still uncomfortable about discussing race relations and this discomfort is preventing us from the real racial reconciliation that we desire. Unfortunately, discussions of race issues requires a high tolerance for intellectual and emotional conflict due to the uncomfortable topics associated with race such as school inequality, wealth and affirmative action. The discussions must be based on a mutual respect among individuals willing to discuss the issues.

We are trained to argue both sides, and there are good arguments on both sides of the race relation debate. We also need to hear both sides of those arguments. Race relations can and must continue to improve. If we can move past Holder's words, perhaps we can continue to improve race relations.

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## The Legal Balance: Resources for women attorneys and a safe haven to discuss diverse personal and professional concerns and perspectives

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By Erica Zalokar

This spring, a new resource, The Legal Balance, will be made available to women attorneys here in Chicago. The Legal Balance is more than an online social networking community for women attorneys. The Legal Balance contains resources for women attorneys to help them find a better work-life balance. The Legal Balance's mission is to help with the promotion, retention and advancement of women attorneys in the legal profession and beyond by creating a safe, nurturing and supportive community replete with

resources all in one spot.

The community draws on the collective knowledge of its members to create a powerhouse "brain." No matter where one is at in their career, The Legal Balance will connect its members to a diverse group of women attorneys to discuss their issues and to answer each others' questions and concerns.

The Legal Balance will also provide tips on rainmaking, mentoring, career advancement, and job opportunities. The Legal Balance is designed to be a repository of any resource women attor-

ney need to manage their personal and professional obligations.

### How Does The Legal Balance Help Women?

The Legal Balance will provide anonymous forums to facilitate community discussions by allowing its members to ask each other those tough and sometimes delicate questions. There are many online communities for women and professionals, but no community just for women attorneys who many times

have special personal and professional issues because of the unique nature of the practice of law. The Legal Balance will facilitate this special sharing of information such as sharing recommendations for a fertility specialist, discussing how to negotiate a four-day work week, or how to find an advocate when close to partnership. The Legal Balance will promote solutions and sharing in a safe, positive and diverse community.

The Legal Balance also will have many contributors, including a group of successful and powerful women attorneys, such as its "Dear Jane" contributor where members can ask their questions anonymously to a well-respected Chicago community leader without feeling embarrassed. Many women want to know if it is okay to date a co-worker, or should they be concerned if no one has asked them to take an expert deposition. The Legal Balance's "Dear Jane" will work with its members to create a success strategy career game plan and to share the information to its members.

The Legal Balance will provide an

events calendar to its members where the bar associations' events will be showcased and listed for quick review and to connect its members to the various bar association committees and resources focusing on career issues, women's issues, mentoring opportunities and other programs geared towards women attorneys.

The Legal Balance will provide access to the Top 100 Legal Balance Leaders in its section entitled, "This is how she does it!" where The Legal Balance will showcase successful women attorney leaders in Chicago, and later the nation.

Lastly, The Legal Balance has numerous experts on hand to answer questions on real estate, finance, career, skin care from an Oprah show dermatologist, and even a wine expert.

The Legal Balance is designed for all women attorneys from all diverse backgrounds. Whether one is a new lawyer freshly sworn into the bar, a veteran lawyer who's been practicing for years, an associate, in-house council, government attorney, not-for-profit lawyer, judge,

staff attorney, partner, law student, stay-at-home mom, or an attorney looking to return to the practice, The Legal Balance values the diverse community of women attorneys and will bring the community together into one safe place.

**About the Founder:** After practicing law for seven years, Erica Zalokar was alarmed at the attrition rate of women attorneys leaving the practice of law, and Erica realized a new passion: helping women attorneys from all backgrounds gain access to resources and to connect them in one powerful community to allow them to use their great brains, talents and resources to help others.

Prior to The Legal Balance, Erica practiced corporate litigation at numerous prestigious law firms including Eimer Stahl Klevorn & Solberg, a litigation boutique spun-off from Sidley & Austin, Ungaretti & Harris, and Williams, Montgomery & John. Erica is a 1998 graduate from Indiana University Maurer School of Law.

The Legal Balance goes live this spring with a \$40 annual membership fee to join. If you would like an invitation to join, Erica can be reached at [Erica@thelegalbalance.com](mailto:Erica@thelegalbalance.com).

## Checks and balances at work: The ADA Amendments Act of 2008

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In my introduction to the paralegal class that I teach, we go over the system of checks and balances in this country. The way the system is supposed to work is that if the U.S. Supreme Court interprets the statute and gets it wrong, then Congress has the option to write legislation that, if signed by the president (assuming no veto), overrules those decisions. It doesn't happen very often and so when it does it is notable. The Americans with Disabilities Act Amendments Act of 2008 is such an instance. These amendments overrule several United States Supreme Court decisions that had narrowed considerably the scope of the Americans with Disabilities Act of 1990. The amendments also clarify the regulatory authority for implementing the Americans with Disabilities Act of 1998 as well as give

the regulators some guidance on what the subsequent regulations might look like. In particular, the following is worth noting:

1. The EEOC had defined whether a person was substantially limited in a major life activity as occurring when that person is significantly restricted in a major life activity when compared to the average person.<sup>1</sup> With the amendments, Congress has made it clear that this standard goes too far and that the regulatory bodies will have to adopt a far more inclusive standard.<sup>2</sup>
2. *Sutton*, *Albertson's*<sup>3</sup> and *Toyota Motor*<sup>4</sup> have been overruled. More specifically, mitigating measures—whether they be prosthetic devices, medicine the person takes, or something that the body does—are not to be

factored into whether a person has a disability, with the exception of eyeglasses.<sup>5</sup> Further, *Toyota Motor's* determination of what is a substantial limitation on a major life activity is overruled.<sup>6</sup> What is unknown at this time is whether *Toyota Motor's* definition of a major life activity, an activity being of central importance to most people daily lives,<sup>7</sup> is still in effect. The amendments list a variety of major life activities, but that list is not exclusive.<sup>8</sup> Thus, should a major life activity not on the list be alleged, it is not known which standard the court would use in deciding whether that new life activity would qualify.

3. The amendments add major bodily functions as being included in the definition of major life activities, which is nothing more than Congress

codifying something very similar to prior regulations.<sup>9</sup>

4. The requirements set forth by the Supreme Court in *Sutton* that in order to be regarded as having a disability, the employer must perceive both a physical or mental impairment as well as a substantial limitation on a major life activity<sup>10</sup>, has been overruled. These amendments make clear that the only issue is whether the employer perceives a physical or mental impairment.<sup>11</sup> This is a significant change and will significantly expand the ability of plaintiffs to make, "regarded as" cases. Before, such a case was very difficult to make because in essence it required the plaintiff to convince the court that the subjective state of the employer's mind was that they perceived a substantial limitation on a major life activity in addition to their perceiving a physical or mental impairment.
5. Under the original Americans with Disabilities Act of 1990, temporary impairments were not covered, but it was never clear how long the person had to be disabled for the impairment to be temporary. The amendments make clear that an impairment must be expected to last for at least six months or more.<sup>12</sup>
6. The amendments suggest that disability discrimination will definitely now turn on whether there was a motivating factor, rather than on whether disability discrimination was the sole cause since "because," has been stricken in favor of, "on the basis of disability."<sup>13</sup>
7. Even though eyeglasses, as mentioned above, are factored in to whether a person has a disability, the amendments make clear that requiring a test assessing uncorrected vision can only be done if it is job related to the position and consistent with business necessity.<sup>14</sup>
8. There are some people that have disabilities that flare up from time to time and when they do, it can be quite debilitating. These people who have disabilities that are episodic or in remission, prior to these amendments, would not have been covered as a person with a disability under the Americans with Disabilities Act. The amendments make clear that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity

when active.<sup>15</sup>

9. Finally, the amendments give clear authority to both the Department of Justice and to the Equal Employment Opportunity Commission to formulate regulations going to the definitions contained within the Americans with Disabilities Act.<sup>16</sup> One of the ways, the Supreme Court had narrowed the scope of the ADA in the way that it did was to say that Congress never gave the regulatory bodies any authority over the definition section of the law, and so the Supreme Court felt free to come up with their own definitions.<sup>17</sup> Thus, by giving regulatory bodies this authority, the ability of the court to discount regulations as they have previously done is restricted.

In short, these amendments do a great job of restoring the original intent behind the Americans with Disabilities Act of 1990. It will mean more focus on reasonable accommodations and less focus on whether the person has a disability, which was what the ADA was meant to do originally. It also eliminates some of the absurdities inherent in the common law interpretation of the Americans with Disabilities Act. For example, when you combine *Sutton* with *Toyota Motor*, you could get a situation whereby a person with a disability might be disabled depending upon the time of day since you had to consider mitigating measures and simultaneously assess whether they were severely restricted or prevented from performing a major life activity. Such a standard ignores that mitigating measures with the exception of eyeglasses in many cases, never cure their disability, rather they only compensate for it. It is also absurd to think that a person has a disability depending upon the time of day. For example, a person with a severe to profound hearing loss who wears hearing aids and functions in the hearing world, under the old system may or may not have a disability during the daytime, but at nighttime, when those hearing aids come out, such a person would have a disability. Such an odd conclusion is no longer possible with these amendments.

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on the Americans with Disabilities Act, both published by the American Bar Association. When he is not teaching, he consults on the Americans with Disabilities Act and on the Rehabilitation Act of 1973. Mr. Goren received his Bachelor's from Vassar college, his J.D. from the University of San Diego, and his LL.M. in health law from DePaul University.

1. 29 C.F.R. § 12102 (2).
2. § 2(A)(8) of the ADA Amendments Act.
3. *Sutton v. United Airlines*, 527 U.S. 471 (1999); *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999).
4. *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).
5. §§ 4 (A)(4)(E)(i),(ii) of the ADA Amendments Act.
6. See § 2(b)(4) of the ADA Amendments Act.
7. *Toyota Motor*, 534 U.S. at p. 198.
8. § 4(a)(2) of the ADA Amendments Act.
9. See 29 C.F.R. § 1630.2 (h).
10. *Sutton*, 527 U.S. at 489.
11. §§ 2(b)(3),4(a)(3)(A) of the ADA Amendments Act.
12. § 4(a)(3)(B) of the ADA Amendments Act.
13. § 5(a)(1) of the ADA Amendments Act.
14. § 5(c) of the ADA Amendments Act.
15. § 4(a)(4)(D) of the ADA Amendments Act.
16. § 6(a)(2) of the ADA Amendments Act.
17. See *Toyota Motor* 534 U.S. at 194-98 (2002).



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# The 2008 ISBA Diversity Survey

By Albert J. Klumpp<sup>1</sup>

## Introduction

Last spring more than 2,500 ISBA members participated in a survey conducted by the ISBA's Task Force on Diversity. The Task Force undertook the survey to gauge members' levels of satisfaction with various aspects of both their own legal careers and the environment in which they practice.

The survey was conducted on an open basis over the Internet, and so was not "scientific" in the sense of having a strictly controlled sample. Nevertheless, because of the large number of responses, the results do provide useful insight into the current opinions of the Illinois legal community regarding the issues covered therein.

Following the survey's completion I performed an initial review of the results and provided a summary report to the Task Force. Since then I have examined the results in more depth, particularly in terms of demographic subgroups. The following is a summary of the survey results and the main findings from my analysis.

## Survey and Response Overview

The core of the survey asked respondents to rate their satisfaction levels with the following aspects of their careers and practice environment:

- Quality of legal work
- Amount of client contact
- Collegiality of workplace culture
- Practice of law
- Diversity of office
- Sensitivity in Workplace
- Diversity of legal profession in county
- Diversity of legal profession in state

Ratings were given on a five-point scale, with a score of 5 for "extremely satisfied" and 1 for "not satisfied." (Two additional questions were included, but their response patterns were nearly identical to those of questions in the above group. So they are excluded here).

After receiving the data set I removed responses that were incomplete or unanalyzable. I also removed 105 responses from law students, so that the analysis would be performed on practicing attorneys only. The remaining data

TABLE 1: Summary of responses to core questions

	Not Satisfied	Somewhat Satisfied	Satisfied	Very Satisfied	Extremely Satisfied	Mean Score
Satisfied with	1	2	3	4	5	
Quality of Legal Work	4%	14%	34%	34%	14%	3.42
Amount of Client contact	4%	9%	33%	33%	22%	3.60
Collegiality of workplace culture	5%	11%	22%	34%	28%	3.69
Practice of law	7%	19%	30%	28%	15%	3.24
Diversity of office	11%	15%	36%	22%	17%	3.18
Sensitivity in workplace	7%	12%	32%	29%	20%	3.44
Diversity of legal profession in county	17%	23%	36%	15%	8%	2.75
Diversity of legal profession in state	13%	22%	42%	15%	8%	2.83

set contains a total of 2,596 completed responses.

Table 1 reports the response percentages and mean scores for the eight core questions. For the most part the figures are self-explanatory. Average scores on six of the eight questions exceeded the 3.00 "satisfied" level and in some cases were considerably higher, with only small percentages of respondents indicating partial or complete dissatisfaction. These scores are not surprising considering that the respondents not only are practicing attorneys, but possess the level of commitment to their profession to have joined a major bar association.

Not all of the scores were high, though. The county-diversity and state-diversity scores averaged below the 3.00 level, with more than one-third of respondents expressing partial or complete dissatisfaction. Interestingly, respondents gave significantly higher scores to the diversity levels in their own offices than to those of their counties or the state. This pattern held true for respondents in all parts of Illinois. It suggests at least the possibility of a degree of misperception—specifically, either that diversity levels in the larger community are slightly better than respondents perceive them to be, or else that respondents evaluated their own workplaces too leniently.

## Demographic Categories and Subgroups

In addition to the core questions, the survey also included a group of demographic questions. Based on the responses to these questions I was able to define seven useful demographic categories and to subdivide the survey responses into suitable subgroups within each category. Table 2 reports the numbers and percentages of respondents in these categories and subgroups.

Are the percentages representative of the Illinois legal community? Given the open-participation format of the survey, this is an important question because of the potential for a disproportionate response from some subgroups. Based on available information, the survey's respondents were comparatively younger and included a somewhat larger proportion of females. However, these differences were not large enough to cause any significant distortions in the overall summary scores.

## Differences in Scoring Among Demographic Subgroups

For each subgroup I calculated a set of average scores on the eight core questions. In examining these score sets, meaningful information emerged from all seven categories.

**Table 2: Demographic breakdown of respondents**

Female	39%
Male	61%
1-10 years in practice	30%
11-20 years in practice	23%
21-30 years in practice	22%
31+ years in practice	25%
LGBT	6%
Straight	94%
African-American	5%
Asian/Pacific Islander	4%
Hispanic	3%
Other minority	1%
Multiracial	4%
All minority	17%
Caucasian	83%
Solo practitioner	25%
Firm size 2-5 attys	24%
Firm size 6-20 attys	19%
Firm size 21-100 attys	14%
Firm size 101+ attys	18%
Chicago	39%
Suburban counties*	22%
Medium-sized counties*	21%
Small counties*	9%
Other/multiple states	9%
Income \$0-\$50k	19%
Income \$51k —\$100k	32%
Income \$101k —\$250k	36%
Income \$250k —plus	13%
*—"Suburban counties" includes DuPage, Kane, Lake, McHenry, Will, and non-Chicago Cook. "Medium-sized counties" includes Champaign, Jackson, Macon, Madison, McLean, Peoria, Rock Island, St. Clair, Sangamon, and Winnebago. "Small counties" includes all other Illinois counties.	

— Males and females gave similar answers to the first four questions, those dealing with general characteristics of practice. On the four diversity/sensitivity questions, though, females gave significantly lower scores, aver-

aging a half-point below those of males.

- A similar pattern was present based on location; lawyers throughout the state gave similar responses to the four general-practice questions, but on the diversity/sensitivity questions there were consistent differences. Chicago lawyers were the least satisfied, followed in increasing order by lawyers in the "medium" counties and lawyers in the Chicago suburbs, with the "small" county group the most satisfied.
- The income category showed the opposite pattern. Diversity/sensitivity ratings were consistent throughout income subgroups, but on the general-practice questions there were substantial differences. Higher incomes were strongly connected with higher levels of satisfaction, particularly in the areas of quality of legal work and client contact (the scores of the highest group were nearly one full point above those of the lowest).
- Older lawyers gave consistently higher scores on all eight questions than did younger lawyers. This pattern was not as substantial on the general-practice questions, but scores on the diversity/sensitivity questions averaged roughly a half-point higher for lawyers in practice for more than 30 years than for those in practice for 10 years or less.
- The largest differences in any category were based on ethnicity. Minority and non-minority scores on the general-practice questions were not substantively different, but minority scores on the diversity/sensitivity questions were well below non-minority scores. Among minority groups, the African-American group gave the lowest scores on all four questions, averaging as low as 1.71 and 1.85 for the diversity-of-county and diversity-of-state questions, respectively.
- The smallest differences were in the sexual orientation category. Average scores in the lesbian/gay/bisexual/transgender subgroup were nearly all within one or two tenths of those of the straight subgroup.
- Finally, an interesting pattern emerged in terms of size of practice. On the general-practice questions there were small but definite increases in scores as firm size increased. But

on the diversity/sensitivity questions, larger firms were associated with lower scores.

Some of these results, of course, are intertwined. For instance, two-thirds of the minority responses came from Chicago. While minority scores on the diversity/sensitivity questions were low throughout the state, the concentration of minority respondents in Chicago was the factor responsible for the low overall diversity/sensitivity scores in the Chicago subgroup.

### Conclusion

These findings not only provide a revealing snapshot of ISBA member opinion but also will be of value in the future. This is because the Task Force intends for this survey's results to be used as a baseline against which future survey results will be compared. I have suggested refinements in the survey questions and procedures that will build on this initial survey and enhance its clarity and usefulness. Hopefully the survey will prove to be a productive and worthwhile tool in furthering the ISBA's diversity goals, both today and over the long term.

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## Chicago Urban League, et al. v. State of Illinois, et al.: Summary of Cook County Circuit Court’s April 15, 2009 opinion

By Lisa T. Scruggs, Sandi J. Toll and Shyni Varghese<sup>1</sup>

In a decision issued by Cook County Circuit Court Judge Martin S. Agran, the Court announced that Plaintiffs in the *Chicago Urban League et al. v. State of Illinois and Illinois State Board of Education* case have stated a valid claim of discriminatory disparate impact under the Illinois Civil Rights Act of 2003. The Court recognized that the Plaintiffs’ case “presents vitally important issues to the people and State of Illinois” and that “Plaintiffs documented gaps in achievement between one school and another, and disparities in funding between one school district and another.”

The Court specifically held that Plaintiffs met their burden to allege facts demonstrating that minority students have suffered injury from the discriminatory, albeit unintentional, effect of the implementation of the Illinois school funding system. The Court stated: “The Plaintiffs pled facts showing that the school funding system adopted and implemented by the Defendants has the effect of subjecting African American and Hispanic students to discrimination because they attend schools in ‘Majority-Minority Districts.’” Because the school funding system so heavily relies on local property taxes, Defendants provide substantially lower dollar amounts per student than the amount that is recommended by the Educational Funding Advisory Board which was established by the State for the primary goal of informing legislators how much funding would be needed to provide students with a “high quality” education. The Court expressly rejected Defendants’ arguments that existing precedent precluded Plaintiffs from seeking relief under the Illinois Civil Rights Act. “In this case, the complaint provides a straightforward challenge of the alleged disparate impact produced by the Defendants’ adoption, implementation, enactment and enforcement of the school funding system.”

The Court’s opinion highlights some of the more striking facts from the Complaint concerning the State’s inequitable school funding system:

- Students who attend schools located in property-poor communities do not receive an equal educational oppor-



Scruggs—shown in the picture are Jenner & Block partner, Lisa Scruggs announcing the Chicago Urban League lawsuit accompanied by Chicago Urban League President and CEO, Cheryle Jackson, with now U.S. Secretary Arne Duncan looking on.

tunity. “Illinois ranks 49th in the nation in the size of per-pupil funding disparity between its lowest and highest poverty districts.”

- The EAV per pupil in the top five wealthiest districts ranged from \$1.2 to \$1.8 million, while the EAV per pupil ranged from \$7,000 to just over \$24,000 in the five districts with the lowest property wealth.
- The “disparity exists despite the fact that low-property-wealth areas generally pay much higher property tax rates than areas with higher property wealth, and yet they still generate less local funding for their schools.” The tax rate in the districts with the lowest property wealth is more than six times higher than the tax rate in the highest poverty districts.
- As just one example, Illinois School District Unit 188, in Brooklyn, Illinois, ranked 386th out of a total of 395 consolidated school districts in EAV per pupil in 2007, that 97% of Brooklyn’s students came from low-income households in 2007 and that almost 100% of Brooklyn’s students are African-American or Hispanic.

The Court also held that the Illinois

Civil Rights Act claim must be maintained solely against the Illinois State Board of Education because the Illinois Civil Rights Act does not provide an explicit waiver of the State’s sovereign immunity. Still, by rejecting the Defendants’ efforts to dismiss the Illinois Civil Rights Act claim, Plaintiffs believe the Court has paved the way for them to obtain the relief that was sought when the suit was originally filed: (1) a declaration that the Defendants’ enactment, adoption and implementation of the existing state funding scheme amounts to a violation of state law; (2) an injunction precluding the Defendants from continuing to implement the existing school funding scheme until such time as a system that does not have a disparate discriminatory effect on students in Majority-Minority school districts; (3) an order that Defendants ascertain the actual cost of providing all students throughout the State regardless of race or ethnicity with an opportunity to receive a “high quality” education and reform the system of school funding to ensure that every school in the State has the critical basic resources needed to provide all students the opportunity to receive a “high quality” education.

Although the Court dismissed the

other four claims in the Complaint, Plaintiffs continue to believe that they have asserted valid claims for relief under the Illinois Constitution. For Count II, while the Court noted that Plaintiffs' Uniformity of Taxation Clause claim was "well-reasoned," and acknowledged that the Complaint sufficiently alleged a disparity in the rate of property taxation among school districts, the Court held that the State's Property Tax Code provides a definition of "taxing district" that precludes Plaintiffs from maintaining a Uniformity of Taxation claim.

As to Count III, the Court found that the doctrine of *stare decisis* requires it follow the Illinois Supreme Court's reasoning in *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1 (1996). In that case, the

Court held that the question of whether Defendants provided sufficient funding to establish a system of "high quality educational institutions and services" was not one the courts can decide, but must be left to the state legislature. Although the Court found that Plaintiffs "persuasively argue[d]" that the educational goals of Article X Section I have not been met, consistent with the *Edgar* decision, he held that it is the job of the legislature to determine whether a high quality education is being provided.

The Court also dismissed Plaintiffs' claims based on the Equal Protection Clause in the Illinois Constitution (Counts IV and V). For the Equal Protection claim based on racial discrimination, the Court found that Plaintiffs failed to allege facts

showing that the laws that make up the school funding system have a racially discriminatory purpose. For the claim based upon property wealth, the Court relied on Illinois Supreme Court and United States Supreme Court precedent and held that the school funding system appears to be rationally related to a legitimate state goal.

The Court set a status hearing for May 5, 2009 where the parties will appear and discuss the next steps in the litigation.

Dated: April 16, 2009.

1. Lisa T. Scruggs is a Partner and Sandi J. Toll and Shyni Varghese are Associates at Jenner & Block. They may be reached at lscruggs@jenner.com, stoll@jenner.com and svarghese@jenner.com.

## The Coalition of Women's Initiatives in Law Firms: From dream to reality

By Pamela M. Belyn<sup>1</sup>

Chicago has always been a city of firsts, from the Ferris wheel and steel-frame skyscrapers to McDonald's and Twinkies. That passion for innovation also holds true in the local legal industry, where Chicago once again is leading the pack. In the summer of 2008, a group of more than 30 women's initiatives in Chicago law firms came together to form the Coalition of Women's Initiatives in Law Firms—the first organization of its kind in the United States. The Coalition's mission is to benefit member firms by providing positive avenues of communication, collaboration and guidance that help member groups to enhance the recruitment, retention and promotion of women lawyers and support the building, implementation and continued relevancy of women's initiatives in law firms.

With these goals in mind, the Coalition works collectively to provide a forum for sharing the positive efforts and successes of women's initiatives in law firms; to serve as a resource for leaders and members of women's initiatives within each member firm; and to share knowledge by coordinating resources from inside and outside the legal com-

munity to provide training and perspectives on how to be successful in today's business environment.

### The dream

The Coalition was the brainchild of Nicole Nehama Auerbach, an alum of Katten Muchin, Rosenman LLP who is now a principal of Valorem Law Group LLC and the Coalition's first President. In March 2007, Auerbach and the other founder of Katten's women's initiative, partner Tara Kamradt, hosted a breakfast meeting of representatives of women's initiatives to discuss the common issues affecting women at law firms around the city. From this initial gathering, a steering committee was formed and charged with developing the Coalition's mission and initial steps to formalization. Fast forward to July 2008, when the Coalition held elections for its 18 board members. The board subsequently created six committees (Policy, Community Outreach, Finance, Programming, Public Relations and Membership) to carry out the mission statement of the Coalition. "We were both thrilled and amazed at how quickly things came together for the Coalition," said Auerbach. "The passion and com-

mitment that these women had in the beginning remains a driving force for us today. The momentum we've already created is testament to the incredible potential of women attorneys in Chicago and beyond."

### The reality

Currently, the Coalition's various committees are taking the lead in spreading the word about the organization and its mission. The Programming Committee, with a goal of hosting at least one event per month, has a full slate of programs scheduled for 2009 ranging from networking best practices to the annual National Speaker Forum focused on issues for women in business. During February's event, titled "Approaches and Alternatives for Implementing a Business Development Initiative," Deborah Knupp of Akina Corporation and Paula Giovacchini of Gio Group, Inc. discussed strategies that Coalition delegates and alternate delegates can apply in their own firms to expand women's business development initiatives while taking into account today's economic climate. More recently, the Community Outreach Committee sponsored a panel discussion

and networking reception for first- and second-year law students. Titled "Success Strategies for Women in Law Firms," the April 8th event drew an enthusiastic crowd of approximately 75 students and 30 Coalition delegates.

But the most visible contribution of the committees to date has come from the Public Relations Committee, which recently debuted the Coalition's Web site ([www.thewomenscoalition.com](http://www.thewomenscoalition.com)). Launched in March, the site offers a glimpse of the Coalition's mission, programming and sponsorship

opportunities, as well as information on how to become a member firm. "Our new Web site gives us a much-needed public forum that shows the Chicago legal and business community how a group of dedicated women attorneys can take a dream and turn it into reality," said Sharon Hwang, a Shareholder at McAndrews, Held & Malloy, Ltd. and Chair of the Public Relations Committee. "Our hope is that women in other law firms will learn about the Coalition, take inspiration from our initial success and ultimately become a part of our future

growth."

With an overall goal of promoting a dialogue and a support network among the members of various law firm women's initiatives, the Coalition is well on its way to helping fuel the continued growth of these important organizations and the professional development of women in the practice of law.

1. Pamela M. Belyn is with Much Shelist in Chicago and is the firm's Coalition Delegate. She may be reached at [pbelyn@muchshelist.com](mailto:pbelyn@muchshelist.com).

## Reflections on World AIDS Day

By Yolain Dauphin

According to *The Skeptic's Guide to the Global AIDS Crisis*, a book authored by Dale Hanson Bourke, approximately 8,500 people die of AIDS every day. The author explains: "AIDS is the biggest public health problem the world has ever faced. It has already surpassed the bubonic plague, which wiped out twenty-five million people—one quarter of Europe's population at the time. An estimated three million people die each year from AIDS, a death toll that has been compared to 20 fully loaded 747s crashing every single day for a year." When even one airplane crashes, our television, newspapers, the internet and other media outlets quickly disseminate the information. Where then are daily or weekly stories on AIDS and the toll this pandemic is taking around the world? Why do so few articles alert us to the relationship between AIDS, poverty, sexual trafficking, and the unavailability of drug cocktails in many countries around the world? Is it of interest that women, at one of the few facilities in India for those suffering and dying of AIDS, must take turns sleeping on the beds and sitting on the ground? Perhaps the AIDS epidemic kills too many, leaving us too frightened, and too hopeless to act.

### Awakening to a Crisis

For years I was aware of AIDS at a certain level. Here and there I would read

an article on AIDS, comment negatively on the failure of certain players, such as drug manufacturers, to take proactive steps to help those in need, and move on to the projects, meetings, relationships in my life. AIDS was an issue, but it was not my issue, perhaps because of the lack of contacts I had with persons suffering of AIDS and the lack of exposure I had to the issues contributing to the toll of AIDS around the world. That changed in 2004 when the senior pastor of my church and his wife traveled to South Africa. The video broadcast of their interviews with individuals impacted by or living with HIV/AIDS moved me deeply. In particular, I remember being told that a child seen in one of the interviews had died shortly after the interview. Suddenly, AIDS had faces, and I wondered how I could have been inactive for so long to the issues, the suffering and the toll in human lives.

### A Challenge

The work of my pastor and his wife challenged me to teach myself about HIV/AIDS in a consistent and meaningful way. I read *The Skeptic's Guide to the Global AIDS Crisis*, and attended a series of seminars on issues related to AIDS, not allowing the everyday things of my life to dull the impact of the interviews and the glimpse that I had of the suffering brought by AIDS. I watched an interview with rock star Bono in which he detailed his involvement with issues

related to poverty and AIDS, and challenged individuals and the church to get involved and make a difference. I also watched an interview with filmmaker Richard Curtis, the director of *The Girl in the Café*, and the mastermind behind the show *American Idol: Idol Gives Back*. In the interview, an unforgettable moment came from a short film clip by Curtis. It is after 11:00p.m., in a city in India, and a girl, no more than six or seven years old, wearing a yellow dress, arranges a blanket and a pillow on a sidewalk. Her bed made to her satisfaction, she settles in for the night, as a man veers around, to avoid stepping on her, and continues on his way. Tears came to my eyes as I wondered what had happened to the girl's mother; why a girl so young was on the streets at night.

### Making a Difference

The faces and the interviews challenged me and changed me. I could not forget, and I could not be content to have "others" find solutions. I renewed a relationship with World Vision International, an organization caring for vulnerable children around the world. Through World Vision's Hope Child Program, I sponsored Mpundu and Theresa from Zambia, Etenesh from Ethiopia, and Caroline from Kenya. These children, my children, live in communities under the shadow of AIDS, in communities where individuals struggle to survive on a dol-

lar a day, in communities in which life expectancy has plummeted to less than 40 years. The funds I contribute help the children by giving them access to education, clean water, and food, while also improving the communities in which the children live by helping adults learn better farming techniques and women start businesses through micro-enterprise loans.

### A Walk on World AIDS Day

One number has particularly made the pandemic real to me. Every day more than **6,000 children** are orphaned by AIDS. It is a frightening toll, and when multiplied by the number of days in a month, mirrors the devastation brought about by the tsunami. Sometimes aging grandparents try to care for the children. Far too often, the children must care for themselves in child-headed households.

For several years, World Vision has sponsored a walk in the Chicago Loop on World AIDS Day to raise awareness about the toll of AIDS on children, and, in particular, children living in Africa and Asia. The walkers take **6,000 steps**, approximately two and one half miles, in solidarity with

the children orphaned that very day by AIDS. In 2006, after watching the movie, *A Closer Walk*, friends on the North Shore were moved to respond in some way to the AIDS crisis. We joined World Vision's efforts by planning a walk in Glenview on December 1, 2006. In 2007, my church Willow Creek North Shore, and Rise International, an organization that has raised funds and built more than **110 schools** in post civil war Angola, joined the effort to raise awareness about the toll of AIDS. The walk took place once again in Glenview, but organizers added a concert with **WATOTO**, a children's choir from Uganda. The free walk and concert attracted approximately 300 participants from North Shore communities.

### A Challenge to Readers

In 2008, I chaired the planning committee for the World AIDS Day Walk & Concert. The walk on December 6, 2008, again **6,000 steps, a step for each child orphaned that day**, took place in Evanston and was intended to continue awareness building on the North Shore about the plight of AIDS orphans. The concert with the **African Children's**

**Choir**, a group that performs around the world and that has been featured on *American Idol: Idol Gives Back*, was inspirational, reminding us all that we can make a difference. **Princess Kazune Zulu**, a young mother impacted by AIDS, provided opening remarks for the day's events and led a charge of approximately 500 walkers.

Each participant in this year's World AIDS Day Walk & Concert received an educational packet with information about next steps. The challenge to participants was to become more educated about the issues, and to determine to take a next step, an action step. My challenge to readers of this article is the same: education and action. AIDS is the biggest humanitarian crisis of our times, with an ever-increasing toll in human lives and suffering. We can each make a difference, however, whether by raising awareness about the issues, advocating on behalf of those impacted by HIV/AIDS, or more directly helping those suffering or impacted by AIDS. In 2009, learn more about the issues, take a step and make a difference in the fight against AIDS.

## A new path to equality: The Challenge to Section 3 of DOMA in *Gill, et al. v. OPM, et al.*

By Paul M. Smith, Daniel I. Weiner & Lindsey C. Harrison, Jenner & Block LLP

On March 3, 2009, the Gay and Lesbian Advocates and Defenders (GLAD) commenced a challenge to Section 3 of the federal Defense of Marriage Act (DOMA), 1 U.S.C. § 7, in the United States District Court for the District of Massachusetts. See *Gill, et al. v. OPM, et al.*, No. 2009cv10309. Along with several Boston law firms, Jenner & Block is privileged to act as cooperating counsel in this litigation.

After recent historic developments in Vermont and Iowa, the number of states choosing to provide marriage equality to all of their citizens has risen to four, with more likely to follow in the coming years and a number of other states choosing to provide full-faith-and-credit to same-sex marriages performed else-

where. Yet each new victory at the state level, while cause for celebration, is also a reminder that although the states are the traditional arbiters of marital and familial status, state governments today have no authority with respect to many important federal rights and responsibilities that are linked to marital status. These federal rights and responsibilities have an enormous impact of the daily lives of families and individuals that is at least equal to that of the rights and responsibilities conferred under state law. They include well-known entitlements like the right to file a joint federal income tax return, to deduct employer-paid spousal health benefits, to collect social security death benefits, to receive health and pension benefits if one's spouse is a federal employee, to take unpaid leave

from one's job to care for a sick spouse, to sponsor one's non-citizen spouse for a visa and citizenship, to refuse to testify against one's spouse in federal court, and over one thousand others, according to the Federal Government's own statistics. Moreover, unlike some (though not all) state rights and obligations connected to marriage like communal property and inheritance, most federal marriage-related rights and obligations are not replicable through contract.

All marriage-related federal rights and obligations are currently denied to same-sex couples regardless of whether their marriages are recognized as lawful in their states of residence pursuant to Section 3 of DOMA. For 200 years, the Federal Government largely deferred to the states on the proper definition of

marriage for the purpose of implementing federal programs, even on morally-charged issues related to the definition of marriage where the states disagreed, such as age restrictions, consanguinity and common law marriage. In 1996, however, this centuries-long practice of deference to the states ended, with the enactment of Section 3. Section 3, enacted like Section 2 in response to the possibility that the state of Hawaii would legalize same-sex marriage, prohibits the Federal Government from defining the words "marriage" or "spouse" to connote anything other than "the union of one man and one woman" for any purpose, regardless of any state's definition of marriage. Unlike the more well-known Section 2, Section 3 does not speak to the obligations of the states themselves with respect to same-sex marriages lawfully entered into in other states. Rather, Section 3 singles out a specific subset of lawfully married couples for sweeping disability under federal law, based solely on the fact that they are of the same gender.

The plaintiffs in the lawsuit filed by GLAD all are or were legally married in Massachusetts. Many have raised or are raising children. They include a former congressman's widower who was denied his husband's congressional pension and a retired employee of the Social Security Administration who is worried about this same thing for his husband; a postal worker who cannot add her wife

to her family health insurance plan; three other widowers who were denied social security death and survivor benefits; a business owner married to an Air Force veteran who was denied the right to change his name to that of his husband and step-daughter on his passport; and several couples, old and young, middle and working class, who have paid thousands more in taxes to the Federal Government than they otherwise would have had their marriages been federally recognized.

The *Gill* plaintiffs' challenge to Section 3 is, fundamentally, quite simple: by taking lawfully married couples and dividing them into two groups—those who are respected and those who are effectively "unmarried" by operation of DOMA-Section 3, as applied to the plaintiffs, clearly violates the Federal Government's promise of equal protection in the Fifth Amendment to the Constitution. It is also an unprecedented negation of state power to license marriage and state authority in family-related legal matters generally, one that is not rationally related to any of the purposes that have traditionally motivated federal interference in areas of primary state concern. Moreover, the Federal Government has never articulated any other legitimate policy justification for such sweeping, wholesale interference with the state-created right to marriage at issue in this case; nor can this enormous burden placed on certain families be rationally

justified based on implementation-related concerns that are specific to particular federal programs. Rather, the burden that Section 3 places on certain families can only reasonably be explained as the result of animus against LGBT people, animus which the legislative history of DOMA, replete as it is with denunciations of homosexuality and gay and lesbian relationships, amply confirms. Such animus continues to trump not only the legitimate needs of the plaintiffs and their families but also the basic structure of our system of federalism.

We believe strongly that the commencement of the *Gill* case represents a promising new development in the push for marriage equality, one rooted firmly in traditional notions of equal protection and the division of authority between federal and state governments. Ultimately, the case is a complement to, rather than a substitute for, the continuing push to win hearts and minds at the state level. The *Gill* plaintiffs do not seek recognition of any new federal right to same-sex marriage. Rather, as Attorney-General Coakley of Massachusetts put it on the day the case was filed, "[t]hey are simply seeking the legal protections given to all other married couples." We are very hopeful that this goal will be achieved.

For more information about this litigation or the other important work being done by GLAD, please visit <[www.glad.org](http://www.glad.org)>.

## The Call to Action: Advancing Women Attorneys in Leadership in Chicago

By Jane DiRenzo Pigott and E. Lynn Grayson<sup>1</sup>

The Chicago Bar Association ("CBA") issued a Call to Action ("CTA") in 2004 with 10 law firms acting as leadership signatories:

Baker & McKenzie LLP  
DLA Piper US LLP  
Jenner & Block LLP  
Katten Muchin Rosenman LLP  
Kirkland & Ellis LLP  
McDermott Will & Emery  
McGuireWoods LLP

Schiff Hardin LLP  
Sidley Austin LLP  
Sonnenschein Nath & Rosenthal LLP

The CTA has 50 signatories<sup>2</sup> at present: 44 law firms and six legal departments. Each signatory to the CTA agreed to pursue five goals over the time from January 1, 2004 to December 31, 2007:

- Increase % of women partners by three percentage points
- Women on every firm committee in

same proportion as in partnership

- Increase number of women practice group leaders
- Ensure flexible hours policies are equitable and viable options
- Improve any disparities in rates in which women and men are retained, promoted and laterally recruited

The intent of the CTA was to promote greater focus on and increased awareness of advancing women into leader-

ship roles in Chicago law firms. Each of the five goals was measured annually and reports were issued to the signatories. These interim measurements were intended to provide tools to law firm signatories to ascertain their progress on the goals of the CTA.

In 2005, the CBA's Alliance for Women ("AFW") won the National Conference of Women's Bar Association's Public Service Award for the CTA. Since 2004, the templates for the CTA and the annual measures have been shared with bar associations across the country, many of which have created calls to action in their communities.

The AFW was thrilled by the results achieved by the CTA in Chicago. Every one of the five CTA goals were met or exceeded by a number of signatory firms. Material progress on the issue of women in leadership roles in the Chicago legal community has been made since the inception of the CTA in 2004.

### Goal 1: Three Percent Increase in Women Partners

This goal was measured on both an absolute and a relative basis. On an absolute basis, twelve law firm signatories increased their percent of women partners by at least three percent (firms are listed in the order of percentage increase):

Bryan Cave LLP  
Seyfarth Shaw LLP  
Schiller DuCanto and Fleck LLP  
Ungaretti & Harris LLP  
Skadden, Arps, Slate, Meagher & Flom LLP  
Chapman and Cutler LLP  
Perkins Coie LLP  
Hinshaw & Culbertson LLP  
Foley & Lardner LLP  
McDermott Will & Emery LLP  
Meckler Bulger Tilson Marick & Pearson LLP  
Katten Muchin Rosenman LLP

Bryan Cave experienced the biggest increase in women partners from 2004 to 2007: 19.0%.

In connection with the CTA, the AFW also looked at relative performance of law firms with regard to their percent of women partners. In 2004, the average for the percent of women partners at Chicago law firm offices<sup>3</sup> was 18.12%. In 2007, that average<sup>3</sup> had increased to 19.31% and twenty-two Chicago law firm offices exceeded that average. The signatory law firms with the highest percent of

women partners at the end of the CTA in 2007 are (the firms are listed in order of percentage of women partners):

Schiller DuCanto and Fleck LLP  
Cassiday Schade LLP  
Sonnenschein Nath & Rosenthal LLP  
Tressler Soderstrom Maloney & Priess LLP  
McDermott Will & Emery LLP  
Ungaretti & Harris LLP  
Barack Ferrazzano Kirschbaum & Nagelberg LLP  
Katten Muchin Rosenman LLP  
Neal, Gerber & Eisenberg LLP  
Burke, Warren, MacKay & Serritella, P.C.

Four firms appear on both of these lists—they increased the percent of women partners by at least three percent from 2004 to 2007 and they are among the top 10 highest percentages of women partners among Chicago law firms.

### Goal 2: Proportionate Representation on Power Committees

Between the baseline year (2004) and the end of the CTA (2007), there was a 100% increase in the number of signatory firms that had women proportionately represented on the majority of the firm's power committees. One-third of the signatory firms increased the number of power committees at their firms with proportionate representation by women (firms are listed in alphabetical order):

Brinks Hofer Gilson & Lione  
Bryan Cave LLP  
Chapman and Cutler LLP  
DLA Piper US LLP  
Foley & Lardner LLP  
Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd.  
Katten Muchin Rosenman LLP  
Locke Lord Bissell & Liddell LLP  
Meckler Bulger Tilson Marick & Pearson LLP  
Schiff Hardin LLP  
Schiller DuCanto and Fleck LLP

By the end of 2007, Brinks had women proportionately represented on all of its power committees.

### Goal 3: Increase Women Practice Group Leaders

More than half of the CTA law firm signatories met the goal of increasing their number of women practice group leaders (firms are listed in alphabetical order):

Brinks Hofer Gilson & Lione

Bryan Cave LLP  
Chapman and Cutler LLP  
DLA Piper US LLP  
Foley & Lardner LLP  
Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd.  
Hinshaw & Culbertson LLP  
Laner, Muchin, Dombrow, Becker, Levin and Tominberg, Ltd.  
Locke Lord Bissell & Liddell LLP  
Mayer Brown LLP  
McDermott Will & Emery LLP  
McGuireWoods LLP  
Meckler Bulger Tilson Marick & Pearson LLP  
Neal, Gerber & Eisenberg LLP  
Seyfarth Shaw LLP  
Skadden, Arps, Slate, Meagher & Flom LLP  
Winston & Strawn LLP

Material increases from 2004 to 2007 in the number of women practice group leaders were reported by three of the signatory firms. Foley & Lardner LLP added thirteen women practice group leaders, and Locke Lord Bissell & Liddell LLP and DLA Piper US LLP added nine and seven, respectively.

### Goal 4: Equitable and Viable Flexible Hours Policies

Over half of the signatory law firms reported that an attorney utilizing a reduced schedule had been promoted to partnership (firms are in alphabetical order):

Burke, Warren, MacKay & Serritella, P.C.  
Chapman and Cutler LLP  
DLA Piper US LLP  
Dykema Gossett PLLC  
Foley & Lardner LLP  
Hinshaw & Culbertson LLP  
Jenner & Block LLP  
Katten Muchin Rosenman LLP  
Kirkland & Ellis LLP  
Locke Lord Bissell & Liddell LLP  
Mayer Brown LLP  
McDermott Will & Emery LLP  
McGuireWoods LLP  
Meckler Bulger Tilson Marick & Pearson LLP  
Neal, Gerber & Eisenberg LLP  
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP  
Schiff Hardin LLP  
Seyfarth Shaw LLP  
Wildman, Harrold, Allen & Dixon LLP  
Winston & Strawn LLP

During the course of the CTA, almost half of the signatory firms reported an increase in the number of attorneys

working a reduced schedule (firms are in alphabetical order):

Baker & McKenzie LLP  
Brinks Hofer Gilson & Lione  
Bryan Cave LLP  
Chapman and Cutler LLP  
Foley & Lardner LLP  
Jenner & Block LLP  
Katten Muchin Rosenman LLP  
Kirkland & Ellis LLP  
Laner, Muchin, Dombrow, Becker, Levin and Tominberg, Ltd.  
Locke Lord Bissell & Liddell LLP  
Perkins Coie LLP  
Quarles & Brady LLP  
Schiller Schiller DuCanto and Fleck LLP  
Seyfarth Shaw LLP

By the end of the CTA, all signatory firms reported having a written flexible hours policy.

### **Goal 5: Improve Retention, Promotion and Lateral Recruitment Disparities**

This goal focused on preventing dilution of the existing women partner statistics by hiring and promotion practices.

The CTA results on this goal demonstrate that a number of firms have actively improved the percent of partners who are women through their hiring and promotion decisions.

These signatory firms had at least one class of new equity partners that was forty percent or more women attorneys (firms are listed in alphabetical order):

Baker & McKenzie LLP  
Chapman and Cutler LLP  
Foley & Lardner LLP  
Jenner & Block LLP  
Katten Muchin Rosenman LLP  
Laner, Muchin, Dombrow, Becker, Levin and Tominberg, Ltd.  
Meckler Bulger Tilson Marick & Pearson LLP  
McGuireWoods LLP  
Perkins Coie LLP  
Quarles & Brady LLP  
Schiff Hardin LLP  
Seyfarth Shaw LLP  
Vedder Price P.C.  
Wildman, Harrold, Allen & Dixon LLP

During the course of the CTA, four of these firms had two classes of new equity partners that were at least 50 percent

women (firms are listed in alphabetical order): Chapman and Cutler LLP, Foley & Lardner LLP, McGuireWoods LLP and Wildman, Harrold, Allen & Dixon LLP.

### **Conclusion**

Chicago law firm signatories to the CTA demonstrated success on each of its five goals. Many firms demonstrated real success on the front of advancing women into leadership. Overall, the Chicago legal community made material progress and established some best practices that fed the success of its efforts. Continued progress will be necessary, but the CTA facilitated focus and progress on this important issue.

1. Ms. Pigott is Managing Director of R3 Group LLC and Ms. Grayson is a partner at Jenner & Block LLP. The two were Co-Chairs of the Alliance for Women ("AFW") in 2004 at the inception of the Call to Action and have co-chaired the Call to Action Committee of the AFW since then.

2. A list of signatories can be found at [www.chicagobar.org](http://www.chicagobar.org).

3. Statistic provided by National Association for Law Placement.

## Photos



Women and the Law Standing Committee members and past chairs attending the March 6th special program "Having It All and Giving Back: Special Challenges Faced by Women Attorneys" in recognition of International Women's Day and National Women's History Month.



March 6th Special Program speakers, Susan Riegler, Clinical Director and Janet Piper Voss, Executive Director, Lawyers' Assistance Program, Program Chair Sharon Eiseman and Past ISBA President, Irene Bahr.

The following photos all relate to the University of Illinois outreach effort undertaken by the Women and the Law Committee to connect with the women law students there on April 23-24, 2009.



U of I Women's Law Society members participating in the ISBA program.



U of I women law student leaders Krista Nelson, Miranda Soucie and Kate Imp.



U of I women law students and Women and the Law Committee members.



Women and the Law Committee meeting attendees.



U of I Chair, Miranda Soucie with ISBA Women and the Law Committee Event Chair, Stephanie Nathanson.

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## Upcoming CLE programs

To register, go to [www.isba.org/cle](http://www.isba.org/cle) or call the ISBA registrar at 800-252-8908 or 217-525-1760.

### June 2009

**Thursday—Saturday, 6/18/09—6/20/09, Chicago, ISBA Regional Office**—CLE Fest Classic. Presented by the Illinois State Bar Association.

**Thursday, 6/25/09—webcast**—Ethical Considerations in Estate Planning and Trust Administration. Presented by the Illinois State Bar Association. 12-1:30

**Friday, 6/26/09 —Lake Geneva, WI**—LESSONS IN PROFESSIONAL RESPONSIBILITY. Learned from the Illinois Law Practice of Abraham Lincoln. A Master Series Video Production Presented by the Illinois State Bar Association.

### July 2009

**Wednesday, 7/01/09—Webinar**—Conducting Legal Research on Fastcase. Presented by the Illinois State Bar Association. *\*An exclusive member benefit provided by ISBA and ISBA Mutual. Register at: <https://www1.gotomeeting.com/register/960228025>.*

### August 2009

**Monday, 8/03/09—Webinar**—Conducting Legal Research on Fastcase. Presented by the Illinois State Bar Association. *\*An exclusive member benefit provided by ISBA and ISBA Mutual. Register at: <https://www1.gotomeeting.com/register/648690400>.*

**Monday, 8/24/09—Chicago, ISBA Regional Office**—Distributions from Qualified Retirement Plans. Presented by the ISBA Employee Benefits Section.

### September 2009

**Tuesday, 9/01/09—Tinley Park, Odyssey Country Club**—Day-to-Day Ethical Dilemmas, What Every Attorney Should Know About Ethics and ARDC Complaints. Presented by the ISBA Young Lawyers Division Section.

**Thursday, 9/03/09—Chicago, ISBA Regional Office**—Mentor Training. Presented by the ISBA Standing Committee on Mentoring.

**Thursday, 9/10/09—Chicago, ISBA Regional Office**—Franchising Issues under New State and Federal Requirements. Disclosure, Laws, Rules and Forms. Presented by the ISBA Corporation, Securities, and Business Law Section.

**Friday, 9/11/09—Chicago, Kirkland & Ellis LLP**—Rambus is Final: Where do we go From Here? Presented by the ISBA Antitrust & Unfair Competition Law Section, Co-Sponsored by the ISBA Intellectual Property Section. 11-1:15.

**Friday, 9/11/09—Chicago, ISBA Regional Office**—Tackling Family Law Conundrums. Presented by the ISBA Family Law Section.

**Tuesday, 9/29/09—Chicago, ISBA Regional Office**—Recent Developments in State and Local Tax 2009. Presented by the ISBA State & Local Tax Section. 9-12.

### October 2009

**Friday, 10/02/09—Champaign, I Hotel and Conference Center**—Divorce Basics for Pro Bono Attorneys —2009. Presented by the ISBA Standing Committee Delivery of Legal Services. 12-5.

**Friday, 10/16/09—Fairview Heights, Four Points Sheraton**—Tackling Family Law Conundrums. Presented by the ISBA Family Law Section.

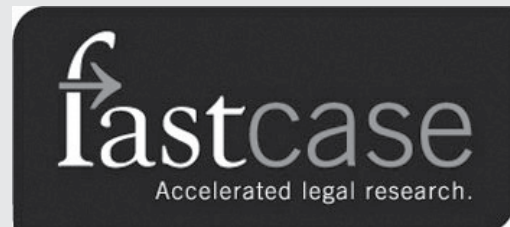
Thursday —Saturday, 10/22/09 —10/24/09—Springfield, President Abraham Lincoln Hotel—5<sup>th</sup> Annual Solo & Small Firm Conference. Presented by the Illinois State Bar Association.

**Monday —Friday, 10/26/09—10/30/09—Chicago, ISBA Regional Office**—40 hour Mediation/ Arbitration Training. Master Series Presented by the Illinois State Bar Association and the ISBA Alternative Dispute Resolution Section. 8:30—5:45 daily.

### November 2009

**Monday —Friday, 11/09/09 —11/13/09—Grafton, Pere Marquette Lodge and Conference Center**—40 hour Mediation/Arbitration Training. Master Series Presented by the Illinois State Bar Association and the ISBA Alternative Dispute Resolution Section. 8:30-5:30 each day.

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