

Success for the Diverse Attorney

By Miguel R. Rivera, Sr.,
and Joan Haratani

We are all travelers in the wilderness of this world, and the best that we can find in our travels is an honest friend.

Robert Louis Stevenson

Lessons from the Diversity Journey and Advice for the New Traveler

The road to diversity and inclusion in the legal profession can be long and winding and riddled with unforeseen obstacles. As we look back at the last several decades of the diversity and inclusion journey, both our individual

journeys and that of the legal profession, it becomes evident that we could not have made it this far without a guiding hand leading us along the way.

As many distinguished diverse attorneys can probably attest, finding an honest friend to guide and help you avoid the potholes and missteps can be a challenge. In many instances, when diverse attorneys cannot find a friend who can show them the path to a successful and rewarding career and help them overcome the inherent obstacles that come along their journey, this derails promising legal minds from reaching their full potential.

As two attorneys who have known each other for the better part of a decade, we have found in each other the “honest friend” that Stevenson was talking about. When we first met near the turn of the twenty-first century, there was an almost instant awareness that each of us had found that someone to help us along our journey.

The support that we have found in each other made us wonder if others could benefit from our shared experience.

Please join us as we look back at where we have been and examine where we are, as a legal profession, along the diversity journey. “Yes”—we will do our best to serve as an honest friend giving advice on navigating the path to success, both to new lawyers just starting their diversity journey and wily veterans still fighting for recognition and success.

Where We've Been

As travelers, the first step of any journey is to assess where we have been and where we are now. Then we must decide on our final destination. As lawyers, our successful performance is grounded in part on our ability to understand history, in the form of legal precedent, which we must learn to analyze and to interpret so that we can properly advise our clients about what to do now



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and in the future. History acts as a guide and allows us to predict outcomes and give sound legal advice. These important skills can be equally applied to the diversity and inclusion journey.

History tells us that women were the first “others” to make inroads into the white male-dominated legal profession. In many ways, women were the first pioneers on the profession’s diversity journey. In 1879, the U.S. Supreme Court admitted the first woman to the practice of law: Belva Ann Lockwood. Needless to say, after Ms. Lockwood’s admission to the Supreme Court bar, the floodgates to practicing law didn’t exactly burst open for women attorneys. In fact, 10 years later, in 1889, there were only 200 women attorneys. In contrast, the number of female doctors rose to 2,423 in the same time period.

To be fair, the medical profession had a 30-year head start because Elizabeth Blackwell became the first woman to earn a medical degree in the United States in 1849. However, the barriers faced by early female lawyers and doctors were similar. For example, the primary reason offered for rejecting women from these professions was that women were believed to be intellectually inferior—something that seems absurd to us today.

Obtaining a license to practice law, however, is not the same thing as being able to practice law. By 1885, only 18 states permitted women to engage in the practice of law in actuality. Ten years later, a whopping 29 states permitted women to practice, which meant that one state per year began granting women the privilege of practicing law.

By 1905, 37 states allowed women to practice. But as of 1910, there were only 559 women lawyers licensed to practice in the entire country. By 1910, less than one percent of the legal profession was composed of women lawyers. In the year 1915, women were admitted to 43 state bars and finally permitted to join the American Bar Association (ABA), a mere 35 years after its founding. In 1950, the great state of Alaska became the final state to admit women to the bar. Interestingly, even though by 1915 43 states allowed women to practice law, it was not until 1920 that women were finally granted the right to vote with the passage of the 19th Amendment. Nevertheless, women were still barred from attending

27 law schools, including the University of Columbia Law School and Harvard University Law School.

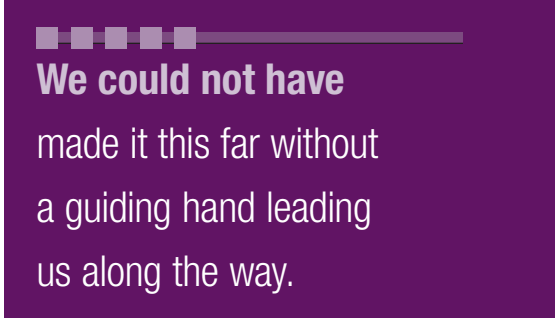
In the 1950s and 1960s, many notable women attorneys, world leaders, and historical figures, now featured in contemporary history books, graduated from law school. This distinguished list includes the Honorable Sandra Day O’Connor, Stanford Law, class of 1952; the Honorable Ruth Bader Ginsburg, Columbia Law, class of 1959; U.S. Representative Geraldine Ferraro, Fordham Law, class of 1960; Attorney General Janet Reno, Harvard, class of 1963; U.S. Representative Patricia Schroeder, Harvard, class of 1964; and U.S. Senator Elizabeth Dole, Harvard, class of 1964. What is important to remember is that each and every one of these extraordinary women was rejected by the major law firms where they applied to work!

The decade of the 1970s showed an opening of the gates to the legal profession. In the 1970s, women poured into law schools and then into law firms. *The number of women lawyers jumped from 13,000 (4 percent) in 1970 to 62,000 (12 percent) in 1980.* The good news of the 1970s kept coming. The percentage of women in large law firms increased from 14 percent in 1975 to 40 percent by 2002. This explosion of women joining the legal profession was marked by an historical event in 1981: the first female, the Honorable Sandra Day O’Connor, was appointed to the U.S. Supreme Court. By 1994, women comprised just over 23 percent of attorneys in the United States. According to ABA data, female attorneys comprised 33 percent of the lawyer population and 22 percent of Fortune 500 general counsel positions by 2012. At the judicial level, 24 percent of federal judges and 27 percent of all state court judges were women. Women really have come a long way, and the path toward diversity and inclusion is well worn by the foot falls of the women before us.

What Was Going on with Attorneys of Color?

In the 1950s and early 1960s, aspiring minority attorneys outside the South were not subject to Jim Crow segregation. Nonetheless, the barriers of racial and ethnic exclusion in legal education were formidable. While national law school enrollment

figures by race and ethnicity for the 1950s are unavailable due to poor data collection, we think that it is probably fair to say that enrollment by racially and ethnically diverse students in American law schools was approximately 1 percent during this period. For example, there were an estimated 1,450 African-American attorneys in 1950 of a total of 221,605 lawyers. This



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means that African Americans constituted only 0.65 percent of the legal profession.

By 1960, there were 2,180 African-American attorneys among a total of 285,933 lawyers, constituting 0.76 percent of the profession. Comprehensive data on African-American law school enrollment is difficult to come by for much of the 1960s. In fact, the ABA and other national organizations did not collect data on Latino, American Indian, or Asian Pacific American students until 1969.

In 1965, the Association of American Law Schools (AALS) Committee on Minority Groups, in the most comprehensive effort of its time, surveyed ABA-accredited law schools about their minority student enrollment figures. The AALS committee found that most law schools could not provide information on either Latin American or Puerto Rican students for two reasons: (1) there was confusion among deans over what these terms meant; and (2) most schools simply had no idea of the past or the present enrollment levels of these groups.

Even after reluctantly restricting the focus of their study to African Americans, the AALS committee had to rely on help from faculty members and students and personal visits to law schools because some uncooperative deans would not provide the requisite data. The committee eventually estimated that there were a total of 701 African-American law students enrolled

in law schools during the 1964–1965 academic year, combining first, second, and third year students. Of this number, 267 students attended one of the six historically Black law schools, including 165 at Howard University Law School. African Americans made up about 1 percent of national law school enrollments and less than 1 percent of enrollments among law

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schools other than these six historically Black law schools. Before 1968, there were only about 200 African Americans graduating from law school annually. According to the U.S. Bureau of Labor Statistics, the 1.01 million attorneys in 2008 included 34 percent women attorneys, 5 percent Black attorneys, in the nomenclature of the time, 3 percent Asian American attorneys, and 4 percent Hispanic or Latino attorneys.

Welcome to Your Rest Stop— Where We Are Now

The National Association for Law Placement's (NALP) newest findings on law firm demographics show that the percentage of women law firm associates had increased from 39 percent in 1993 to 46 percent in 2009, before falling back each year to the most recent level of 45 percent in 2013.

Over the same period of time, the percentage of associates of color has increased from 8 percent to 21 percent. While there

is much greater representation, there is still room for improvement. Recent data from NALP and the ABA indicate that equity partners in multi-tier law firms continue to be disproportionately white and male. An analysis of recent data from NALP shows that only 16 percent of equity partners were women in 2013. Of the 84 percent male equity partners, only 5 percent were minorities in 2013.

The representation of women and minorities in the summer associate ranks compares much more favorably to the population of recent law school graduates. According to ABA data, the percentage of minority law school graduates since 2000 has ranged from 20 percent to 24 percent, while women have accounted for 46 percent to 49 percent of graduates. In 2013 there was an unfortunate dip in these percentages: women comprised 45 percent of summer associates, minorities accounted for 30 percent, and a mere 16 percent of summer associates were minority women. In 2012, women comprised 46 percent of summer associates, minorities made up 30 percent, and minority women again accounted for 16 percent of summer associates. It seems intuitive to us that this dip may be due in part to the need for “an honest friend” to help with the journey.

The NALP executive director, James Leipold, feels that there is a reason for concern: there has been a significant drop in the number of female associates. “Since the recession, we have seen the figures for women associates drop in each of four successive years. While minority associate numbers also dipped immediately after the recession, they quickly rebounded, while the numbers for women have not. This is a significant historical shift, and represents a divergence in the previously parallel stories of women and minorities in large law firms,” explains Leipold.

“While the percentage of women partners, small as it is, has continued to grow each year, sustained incremental growth in the future is at risk if the percentage of women associates continues to inch downwards. This should be a red flag for everyone in legal education and the law firm world,” Leipold concluded.

Of course, downward trends are disturbing. But, as “corny” as this may sound, when life gives you lemons, it's a good

idea to make lemonade. Perhaps young attorneys should consider going where the jobs are.

Analyses of the 40 cities with the most lawyers represented in the NALP Directory of Legal Employers (NDLE) reveal considerable variations in measures of racial and ethnic diversity. Representation of women among partners ranges from about 12 percent in Salt Lake City and Northern Virginia to just over one-quarter in Ft. Lauderdale/West Palm Beach and San Francisco. Percentages of minority partners range from just 1 percent in Nashville to a high of 33 percent in Miami.

The newest NDLE data also reveals that the representation of minority women among partners varies considerably by geographic location with firms in Miami reporting the highest level of representation: 9 percent. This contrasts with eight cities where minority women make up less than 1 percent of partners.

Likewise percentages for female associates ranged from 27 percent in Salt Lake City to close to 50 percent or more in Minneapolis, San Francisco, Los Angeles, and Philadelphia. Firms in Seattle and Washington, D.C., also slightly exceed national averages.

Among smaller cities, Miami exceeds the national averages for female law firm associates, and a number of cities, including Austin, San Diego, exceed the national averages for minority law firm associates, as do Northern Virginia, the San Jose area, and Orange County. In Miami, women account for 24 percent of partners; minorities, mostly Hispanic, account for 33 percent of partners; and minority women account for 9 percent of partners. In the San Jose area almost 37 percent of associates are minorities and almost 19 percent are minority women. In Orange County, almost one-quarter of associates are minorities. In Austin, San Diego, and the Northern Virginia area the figures range from 22–24 percent for each of these groups, though the percentage of minority women is somewhat below average in each.

Bottom line: there has been progress. Can there be more? Certainly. But remember, YOU can make a difference. If you don't stay on the path and continue the journey, you can't contribute to the forward

progress and momentum built up over a century's worth of effort by legal travelers committed to increasing opportunities for young legal minds in this wonderful profession. So what can you do to stay on the path, to reach your destination, and to successfully complete your diversity journey?

Who Are We to Give Advice?

So you might ask yourself, "Why should I listen to what you have to say?" Well, to risk sounding like your father or mother, we have been there, made our mistakes, and have found success without losing ourselves. In many ways we helped pave the way for diverse attorneys at law firms and businesses during our nearly decade-long friendship.

One of us was the first Hispanic associate attorney at a large law firm in Indiana: of 80 lawyers, there was one African American and one Hispanic. Having grown up on the wrong side of the tracks—literally—and not knowing a single attorney, he had no inside knowledge about law firm culture, politics, or career building. He made a lot of mistakes, stumbled, fell, made enemies, was isolated, had sleepless nights, was confused, and even thought about leaving the profession. His father's advice about "getting an education and working hard and success will be guaranteed," seemed to ring hollow in the halls of the 99 percent white, male law firm precincts.

Despite these early mistakes, he survived and succeeded. He became a deputy attorney general for the state of Indiana where he worked for the state's first African-American female attorney general. He was noticed by the governor and was appointed vice chairman of the Indiana Parole Board. Later in his career he became the first Hispanic in Indiana history to serve as a commissioner of labor and as part of the governor's cabinet. Now, after serving as in-house counsel for the world's largest company, he is the general counsel for Payless ShoeSource in Topeka, Kansas, and a 24-year law veteran.

The other of us is a Japanese American, female partner of Morgan Lewis & Bockius LLP in San Francisco. Her journey began in Livermore on a farm outside of the city because no one in town would rent to Japanese Americans in post-World War II times. Both of her parents and their

families were sent to American internment camps during World War II and vividly remembered the sting of racism. Her father was a computer specialist and almost all of her relatives were engineers. She also had no idea how to succeed in a law firm. While at her first firm she kept her head down, observed how the successful lawyers at her firm acted, and followed suit. She made equity partner in six years, went on to become the first "of-color" president of the prestigious Bar Association of San Francisco, and received the American Bar Association Spirit of Excellence Award, as well as other equally wonderful awards for her diversity work and her legal abilities. She is currently a partner in the San Francisco office of Morgan Lewis & Bockius LLP and is happy to call the firm her "home."

So between the two of us, we have experienced the ups and downs, the successes and failures. We have made our mistakes, taken our punches, and survived and thrived to talk about it now. We know the journey, we have seen the map, and we have taken some wrong turns along the way. So let us share the notes from our travels with you.

Lessons Learned—Advice for the Diverse Attorney

Despite our parents' best intentions, it takes a lot more than getting an education and working hard to succeed. Success for the diverse attorney is not something that happens to you: it's something that you make happen despite the steepness of the hill in front of you. Believe me, we have learned that lesson. We remember telling ourselves when we were starting out, "I have a good education from a good law school. I studied hard and I got good grades. When I clerked at a law firm, I worked harder and longer hours than everyone else. I showed respect to my elders and took on any assignment. I will make partner...." But it didn't happen that way. In fact others got better assignments, worked for the powerful partners, got access to the good clients, and seemed well-liked and respected. What did we do wrong? What did we learn from these experiences?

You must have a strong sense of confidence and rise above what you see around you. You cannot let the setbacks of a single day take you down or make you feel

defeated. You must keep your vision of what you want and who you are in front of you. Expect that at the beginning you will lose more political battles than you will win and learn from the losses. Be inspired everyday by what you want to become. Keep that prize in front of you. Imagine yourself already in the role that you seek. Imagine yourself working the job, dealing

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with others, taking charge, being a leader, having success, and conquering challenges. Dress for the position that you want, not the position that you have. The power of that positive imagery will help you get over your mistakes and the mistakes that others make that affect you.

You must have an unassailable talent as a lawyer. Work very, very hard at your profession. Think of the practice of law as a martial art that takes years of practice, dedication, and discipline to perform. Make no mistake about it—you must put in 110 percent to get credit for putting in 80 percent. That's how it is. Fight against it, and you will not succeed. We are not advising that you accept the injustice and ignore it. We are saying that the injustice is what it is. It is the environment in which you perform. Use it to your advantage by being the best lawyer in your firm or business. Exceptionalism cannot be ignored—so work harder and better than anyone else.

Understand your role in achieving the objectives and goals of your law firm or company. Sit down and literally map out the relationships of power and influence in your law firm or company. Determine what your relationships are with those in the firm with the most influence, power, and effect on achieving the firm or the company's goals. Then, develop strategies for forming relationships and working on projects and cases with the most influential people in your firm or business. Stay focused on achieving the firm or company's goals. Align your goals and profes-

sional targets for success with that of your company or firm.

Be a shining example of integrity, transparency, and honesty. Do this even if being so puts you at risk from time to time. Keep your superiors informed about the good and the bad. Bad news should never be hidden and should be communicated quickly and honestly. Don't look to place blame

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or use bad news as a political tool. When delivering bad news, be factual, be objective, and focus on solutions, not on blame or personal attack. It will be noticed, and you will gain a reputation for integrity and fair dealing.

Think creatively. Be imaginative in your thinking and problem solving. Be the creative lawyer who thinks outside the box and from whom others want to get ideas and perspective. Never limit yourself to the box that someone else has put you in. We have seen talented, smart, and hard-working lawyers limit themselves or the role that they have been assigned out of a sense of propriety or fear. Never let yourself do that. Push the limits, act beyond your job description, show more leadership and creativity than the expectations of those around you. Show a talent for strategic thinking while acting in tactical ways that prove that you not only know what you are doing but also where you are going.

Do these things and you will eventually be recognized and earn a position of leadership in your firm or company. But the work doesn't stop there. After Mr. Rivera was appointed the commissioner of labor

and received a position in the governor's cabinet, walking into his office for the first time and sitting at his desk, in his office alone, he asked himself, "Now what?" Asking and answering that question of yourself is the first step on your journey as a leader. Your answer to the question "now what?" defines who you will be and what your team, law firm, organization, or company will become.

Leaders should work harder than anyone else in their organizations. That's right, getting the big chair doesn't mean slacking off and letting others do the hard work. Lead by example. Roll up your sleeves and join others in doing the hard work. The fastest way to lose the respect of those around you is to hand out the hard assignments and then go home early for the night. Hand out the hard assignments, but be a part of the team doing the hard work. Your team will respect you for it, and it will build loyalty and trust with your team.

When faced with people issues, build a reputation for being fair and just. Don't make decisions that affect others out of anger, a sense of vengeance, or politics. You will have favorites, and you probably will not like some of the people who work for you, but don't allow your personal likes and dislikes or your personal feelings about your team members to color what you do. Let the facts and circumstances drive your decision making, and let your integrity and fair dealing dictate the results.

Get to know your team members. Understand their issues. Learning the small things that motivate them and that make them happy goes a long way. Remember their birthdays and work anniversaries. Celebrate with them. Know when they have a personal issue that is causing difficulty and be there, if requested, with advice and more importantly, with empathy. But be sure to always maintain their confidences. Never share what you know about them with others.

Don't be caught in artificial hierarchies. By this we mean don't allow your team members' positions in the firm or organization to dictate how you treat them or how important you think that they are to you or to your success. The person working in the mailroom should be treated with the same respect as the CEO or managing partner. Treat people as ends in themselves and as

deserving of respect and empathy regardless of where they are in the organization. It's simple: be nice to everyone. Treat everyone with respect.

When managing your people, do the right thing—always. Politics will usually take care of itself, but doing the right thing almost never happens by itself. It takes a leader to recognize the right thing and to act with deliberate intent to make it happen. Making decisions or taking action based on the company or firm "opinion poll" makes you a weak leader whom no one will respect. Don't be blind to the effect that your decisions will have on others, and be smart about how you implement your decisions, but make "doing the right thing" your motivation and not an afterthought.

A great leader knows how to serve the client. Yes, leaders serve. It is the hallmark of a good leader that he or she serves his or her clients and meets their needs and expectations. Client relations are some of the most important relationships that you will develop and maintain during your career. This is true whether you are at a law firm or work in-house. Clients and their needs should be the focus of what you do every day.

When working with clients, be articulate. Express your opinions succinctly and in a manner designed to help a client understand. Communication is paramount. If you need to take a class to get better at it, do so. As an attorney leader, you need to be able to think on your feet and analyze issues presented to you for the first time, in a room full of powerful people, with all eyes on you. Relish it. Love it. Be energized by the challenge. Look your clients in the eye when communicating with them. Use strong, confident, and clear body language and expressions. Your body language speaks volumes, so make sure that it is confident and direct.

When your clients bring you a problem, give them confidence that you can handle the issue for them. Take your client's burdens and make them your own. When your clients come to your office upset, afraid, stressed, or hopeless, let them leave your office with a sense of peace, knowing that you are on the case and have taken their burden from them. Let them leave with confidence. This means that sometimes

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you are not just an attorney but frequently a counselor, an advisor, a trusted friend.

Trust is the coin of the realm for lawyers both in-house and at law firms. It doesn't matter how smart you are, how great a legal mind you have, how hard you work, how great your oratory is, or how intelligent your brief, if your clients don't trust you. Trust is hard to earn and quickly and easily lost. Work hard to earn a client's trust and then guard it as a most valuable treasure.

When working with clients, don't ever be afraid to say "no." If clients want to do something that is not supported by the law or is not in their company's best interest, tell them so. Respect their intelligence and explain the reasons for your advice in clear and direct ways, but be firm in your position and do not allow yourself to be pushed or cajoled into compromising a legal or moral position. At the same time, give clients viable, actionable, and practical alternatives. Leaving them with a simple "no" doesn't resolve their issues or meet their objectives. When telling a client what he or she cannot do, always explain what he or she can do.

Conclusion

When we began this article we started by looking back at where we have been and where we are. That wasn't simply by chance. There is a larger, more personal lesson to be learned by looking back. Remember where you come from. Remember the hard work that it took to get where you are now. Stay humble. Coming from a poor background, living on the wrong side of the tracks, being just another Latino face in the crowd, being the stereotypic Japanese American dragon lady or the beautiful Geisha in someone's eyes—these are experiences that you should remember, especially when you start to feel full of yourself and proud of the chair that you occupy. It's the journey that you have been on that makes the destiny enjoyable and the fruits of your labor sweet.

The philosopher Martin Buber once said, "All journeys have secret destinations of which the traveler is unaware." Where your diversity and inclusion journey will take you is impossible to predict. Not everyone arrives at the same place, and certainly where you end up may not be where you

intended to go, but relish the secret destinations and the lessons that you will learn along the way. And find someone, just as we did, to help you along the way. We hope that these mile posts and postcards from our diversity and inclusion journey will make your trip more direct, less fraught with pitfalls and dangers, and help you get to your final destination with yourself intact. **FD**