

Diversity in Justice A talk with Judge Jenny Rivera

I. Diversity in the Profession

- A. Diversity statistics in the profession
 - 1. The legal profession is one of the least diverse.
 - 2. Any diversity headways made up to the late 2000s have flat lined since the recession. Female and black associates have seen a net-decrease in representation.¹
 - a. The overall percentage of female associates decreased more often than not since 2009.
 - b. The percentage of black associates declined every year since 2009, except for a small increase in 2016.
- B. Why is diversity important?
 - 1. Affects how society interacts with justice system. A diverse bar and bench create greater trust in government and the rule of law.
 - 2. Diversity fosters a better profession by creating a diverse work pool. A diverse workforce in the legal profession is more productive because diversity leads to better analyses, processes, and solutions as a whole.
 - 3. Recognizing the problem and knowing the solutions to increasing diversity does not mean that those solutions will be implemented if additional measures are not taken to ensure that the solutions are absorbed in the culture.
- C. Diversity on the bench
 - 1. Statistics
 - a. 33% of active federal trial court judges are female. 6 districts have never had a female judge.
 - b. 35% of circuit courts of appeal judges are female, with at least 2 circuits underrepresented.
 - c. NY state court systems have 19.3% judges of color. In the appellate division, 27.3%.
 - 2. Diversity encompasses identities beyond race, gender, religion, and sexual orientation. Also encompasses professional experiences and backgrounds. Judges are the product of their background and experiences. When judges come from different areas of the legal profession, they are collectively better equipped from understand the views of litigants before them and to render more informed decisions.

II. Latinas in the Legal Profession

¹ National Association for Law Placement 2015 Report on Diversity in U.S. Law Firms: <https://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf>

- A. Latinos account for about 16% of the U.S. population but only about 4-5% of lawyers.
- B. A 2009 study by the Commission on Latinas in the Profession examined the barriers and issues Latinas face in the profession and how it affects their careers.²
- C. Problems on the way to law school
 1. Many Latino lawyers are typically second-generation Americans whose parents lacked high levels of formal education.
 2. Lack of mentors
 3. Diminished expectations by educators
- D. Once in the profession
 1. Perceptions and stereotypes - unconscious bias and exclusion from informal networks of support and client development remain common.
 2. Latinas in the profession have reported negative experiences with stereotypes and discrimination. Although not all reported deliberate discrimination, many reported having to overcome a presumption of incompetence, not being treated the same as their counterparts in the court or by their colleagues, and having to overcome others' prejudices. Many reported holding the belief that people of color must be better than others to succeed or at least to be treated as equals.
- E. Implicit bias
 1. Unconscious bias can lead to inequality.
 2. Important to be conscious of our hidden biases. Goal of racial justice efforts should be the alleviation of substantive inequalities, not the eradication of unconscious bias.
 3. Stereotypes are learned in childhood, persist through adulthood
 4. Micro-inequities
 - a. Small events, which are often hard-to-prove, often unintentional and unrecognized by the perpetrator, occur wherever people are perceived to be "different."
 - b. Examples of behavior that can be perceived as evidence of bias:
 - i. Dismiss idea of one employee only to embrace it when offered by another;
 - ii. Leaving someone off group email;
 - iii. Addressing some employees by chummy nicknames;
 - iv. Continually mispronouncing one employee's name.
 5. Confirmation bias – a mental shortcut – a bias engaged by the brain that makes one actively seek information, interpretation and memory to only observe and absorb that which affirms established beliefs while missing data

² 2009 National Study on the Status of Latinas in the Legal Profession. Hispanic National Bar Association, Commission on Latinas in the Profession National Study and Report, September 2009: <http://hnba.com/wp-content/uploads/2015/06/few-far-between.pdf>

that contradicts established beliefs. Awareness of existence of disparities in treatment helps eliminate disparities in decision-making.

III. Recommendations

- A. Law schools - need for legal profession to help dramatically improve preschool through advanced degree pipeline through civil engagement, facilitate involvement of students' families, and help students improve academic performance to pursue higher education.
- B. Mentoring – create effective models for meaningful mentoring and leadership training to enhance skills of diverse attorneys.
- C.
- D. Simply knowing the solutions and recommendations to increase diversity in the workplace does not mean it will be implemented.