

Upholding the Constitution through Diversity

BY CALEB L. GREEN, ESQ.

The phrase “Justice is blind” has been adopted by our legal communities as our judicial system’s creed. However, the unfortunate reality for African Americans and people of color is that justice is not always realized in our legal system. Decades of disenfranchisement of African American communities have permeated our existing institutions, limiting representation in our legal professionals and judiciary, and barring their access to justice. Indeed, the continued lack of diversity throughout the legal profession cannot only lead to unjust results but also infringe on our enumerated constitutional rights and access to adequate legal representation.

It is no secret that people of color face an uphill battle in the criminal justice system. Not only are African Americans subject to a disproportionate rate of arrest and incarceration, but they make a small percentage of licensed attorneys throughout the U.S. According to the American Bar Association, despite African American’s 13 percent makeup of the U.S. population, only 5 percent of all U.S. attorneys are African American.¹

There is a common saying that “if you are not at the table, then you are on the menu.” Well, when we look at the proverbial table that is our legal profession, it is clear that African Americans are disproportionately omitted as lawyers, judges and legal professionals. There are historical explanations for this disparity. For several decades, African Americans could not avail themselves to the U.S. judicial system and were barred from filing lawsuits in U.S. courts.² Likewise, law schools and state bars denied African Americans access, creating additional barriers to a diverse legal profession.

Given the long history of racism, diversifying the legal profession requires more than increasing the number of attorneys of color on the bench and in law firms. A diverse bar requires adopting a culture of inclusion and actively educating and embracing cultural diversity while incorporating those values in the ordinary practice of law.



Benefits of a Diverse Legal Community

Foremost, there are several benefits to a diverse legal community. A diverse bar promotes democracy because lawyers and judges play a prominent role in maintaining a government system that influences all citizens. The law impacts every aspect of our lives. The American Bar Association summarized this succinctly, stating that “a diverse bar and bench create greater trust in the mechanisms of government.” In fact, diversity in the legal field

has been directly linked to an increase in civic engagement, including increased voter turnout and jury duty from minority communities.³

Additionally, in our increasingly global profession, it simply makes good business sense for the profession and for law practices to include lawyers from diverse backgrounds to respond to clients’ wide-ranging cultural and linguistic needs. Since the death of George Floyd and the recent public response to racial injustice, companies are increasingly conscious and seeking attorneys, firms and legal organizations that not only value diversity and inclusion but also have the personnel to reflect those values. However, overall, the most important aspect of a diverse legal community is its influence on our constitutional rights and access to justice.

Constitutional Implications of a Diverse Legal Profession

A close look at U.S. case law reveals how the lack of diversity throughout our legal systems unjustly eroded our constitutional rights. For example, the *State v. Demesme*⁴ case is a prime example of how failure of courts to consider the differences in ethnic linguistics and cultural diversity undercuts the Sixth Amendment rights of black defendants in the criminal justice system. The case arose in Louisiana and involved Warren Demesme, an African American male, who voluntarily agreed to speak with state police officers. During the conversation, Demesme realized that the officers suspected him of rape of a minor and made the following statement to the officers: “I know that I didn’t do it, so why don’t you just give me a lawyer dog ‘cause this is not what’s up.” The officers ignored his constitutional right to an attorney, continued to question Demesme, and later used his statements during the conversation to convict him. The trial judge denied Demesme’s motion to exclude the statements, finding that the defendant’s request for a “lawyer dog” was too ambiguous to constitute a violation of the Fifth or Sixth Amendment.

This case illustrates that a diverse judiciary requires a commitment to learning and incorporating the value of cultural differences, including cultural linguistics and languages. The trial court’s decision illuminates the cultural disconnect that still exists in our legal system. A judicial system that appreciated diverse cultures could have realized that individuals use the term “dog” or “dawg” to reference persons in the African American community, not the canine. A diverse system likely would not have construed defendant’s statements as ambiguous and could have come to a very different result. The *State v. Demesme* decision shows how failure to consider cultural differences can lead to questionable decisions and further erode our constitutional rights.

The *State v. Demesme* case is an illustrative example of how a diverse judiciary means more than racial and ethnic diversity. On appeal, the Supreme Court of Louisiana denied cert and refused to hear Demesme’s appeal. Notably, the sole African American Supreme Court justice—Justice Bernette J. Johnson—joined the majority opinion, declining to hear the appeal of the lower court’s decision. This case signals that our legal communities must not stop increasing racial diversity in the courtroom if we are to bridge the cultural divide that fleets our existing legal institutions. We must continue to make tangible efforts to understand and appreciate differences in cultures to ensure our constitutional rights are realized in the courts.

Even specialized areas of law, like immigration, require diversity to ensure adequate representation for underrepresented immigrants. It is no secret that the immigration system has recently become more complex and strict. The U.S. immigration system, previously a topic of modest or quaint discussion, has now risen to the forefront of legal issues facing the U.S.

Indeed, the conversation of undocumented immigrants or the nearly 800,000 dreamers—who have greatly benefited from Deferred Action for Childhood Arrivals (DACA)—has shifted the focus on Latinx immigrants’ experiences and issues.

While discussions regarding the undocumented Latinx community’s experiences and issues are essential, necessary and warranted, the plight of Black immigrants has been overlooked and, quite frankly, omitted from the mainstream and representation of immigrants in the U.S. The experience and attitudes of Black immigrants are a crucial segment of the immigration community. A closer look at the numbers illustrates the degree of importance of the Black immigrant experience. It may surprise you that Black immigrants are one of the fastest-growing populations in the U.S.⁵ Since 1970, the Black immigrant population has increased from 800,000 to more than 4 million—a fivefold increase.⁶ Further, more than one-fifth of undocumented individuals facing deportation or other adverse immigration proceedings are Black.⁷

Black immigrants are dealing with more than just immigration issues. They face a unique challenge from both the immigration system and the criminal justice system. In the U.S., Black persons face a heightened threat from overcriminalization. Not only are they 2.5 times more likely to be arrested than their non-Black counterparts, but they are also more likely to be arrested, imprisoned and convicted than any other population.⁸ It is clear that the story of Black immigrants must be merged with that of other communities of color. Bridging this gap starts with further diversifying our immigration legal industries with quality attorneys who recognize the unique plight of immigrants of African and Black diaspora.

Despite its longevity and the emphasis on diversity and inclusion, the legal profession remains one of the least-diverse industries. The lack of representation, derived from years of disenfranchisement of African Americans that plague our legal institutions, can be resolved through a legal community that actively strives to understand and embrace diversity. Without it, our society will continue to suffer the consequence, including the slow evaporation of our constitutional rights.

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Prior to joining the firm, Dallas has assisted numerous clients at Legal Aid Center of Southern Nevada and has also acted as an advisor to Chairwoman Ann Pongracz in the role of administrative attorney with the Public Utilities Commission of Nevada. Dallas has a law degree from The George Washington University Law School, a master's degree from Claremont Graduate University, and a Bachelor of Arts from the University of Nevada Las Vegas. Dallas was also appointed to the 11th district of the Nevada Senate on December 4, 2018, and then was elected to that position in November 2020.

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