

Remarks of Paulette Brown
President of The American Bar Association
American Law Institute's 93rd Annual Meeting
Monday, May 16

Thank you, Roberta. It is a pleasure to see you again, after my recent visit to Albuquerque.

I am grateful to ALI for continuing the tradition of having ABA presidents speak at your Annual Meeting. ALI is a valued partner of the ABA. As with our outstanding past president, and president of ALI, Roberta, and all the other ABA presidents before me, it has been a great privilege to serve the legal profession as ABA president.

As many of you know, the ABA has four goals, goal two is to improve our profession by doing among other things, promoting pro bono and public service by the legal profession and goal three is to eliminate bias and enhance diversity. The objectives of this goal are to promote full and equal participation in the justice system and eliminate bias in the legal profession and justice system. When we think of our responsibilities as lawyers and jurists, we know if our constitution is to have real meaning for a significant portion of our population and if we the people, are to live in a civil and democratic society, everyone must be treated fairly. Thus I believe goals two and three are inextricably entwined and particular focus needed to be given to both. During the past year, I have focused on these two goals in particular to build upon the ABA's longtime commitment to diversity and inclusion in the legal profession and continue its tradition of pro bono activities

There is an urgent need for lawyers to help bridge the gap through their pro bono efforts to assist those who are in desperate need for legal services at a time when more than 80 percent of low-income people with civil legal issues do not obtain the legal representation they need. Every day, low-income Americans need help with civil legal matters that go to the heart of their safety and security. This, along with the criminalization of poverty threatens our confidence in the justice system.

One important initiative was the creation of “and justice for all: an ABA day of service” 10’s of thousands of lawyers mobilized on October 30th, during national pro bono week to provide free legal services to individuals around the country and abroad who cannot afford an attorney, heeding the words of judge learned hand who told us it is the daily; it is the small; it is the cumulative injuries of little people that we are here to protect...if we are to keep our democracy, there must be one commandment: thou shall not ration justice.”

I also thought hard about how best to mobilize the ABA’s nearly 400,000 members to impact the legal profession and the justice system in sustainable ways that would continue to resonate 10 years from now. The primary vehicle I used to do this was through the creation of the ABA diversity & inclusion 360 commission.

The commission was charged with examining the many facets of diversity and inclusion in the legal profession and to come up with practical resources to address the challenges we face.

The underlying sense of urgency for this work stems from the crisis in confidence that many Americans – particularly young Americans – feel about the fairness of our justice system. Nearly half of American young adults lack faith in the nation’s justice system.

Sadly, there has been no shortage of recent events to compel people to question the fairness of our nation’s justice system. The ABA strongly believes that everyone should have access to justice and representation in our legal system. Moreover, the ABA has embraced the fact that it is important for the survival of our profession by being more diverse and inclusive as is clearly evidenced by its most recent election when it elected all women to officer positions.

While significant progress has been made in improving our justice system and diversifying our profession, we have come to understand that implicit bias has created an enduring barrier that has prevented us from doing better. We remain the least diverse profession of all comparable professions, with 88 percent of all lawyers in America being white. Combating more explicit inequalities, implicit bias – the subtle and sometimes not-so-subtle prejudices we may unconsciously hold – is a more understated and equally harmful threat to the justice system.

Implicit bias isn't only a challenge to our justice system, but the legal profession as a whole. We see it in our offices and our practices, where women and lawyers of color have struggled to advance. Women constitute more than a third of the profession, but only about a fifth of law firm partners, general counsels of fortune 500 corporations, and law school deans. People of color make up fewer than seven percent of law firm partners and nine percent of general counsels of large corporations. In major law firms, only three percent of associates and 2.55 percent of partners are African Americans.

In government, the racial and gender imbalance is similar. Among elected prosecutors nationally, 95 percent are white and one percent are women of color. And among federal judges, there are only 82 women of color in all and only 12 women of color on the U.S. courts of appeals.

The commission's 360-degree review is organized into four working groups. An implicit bias working group focuses on creating training materials for the judiciary, prosecutors, and public defenders that explore an understanding of and solutions to combat implicit bias. A pipeline working group addresses the barriers facing diverse students at critical points along the pipeline – K-12, college/pre-law, and law school through bar passage. The economic case working group seeks to expand economic opportunities for diverse attorneys. And the diversity & inclusion implementation working group examines what the ABA can do to lead efforts around diversity and inclusion for itself and for local and state bar associations.

Each working group has been charged with developing pragmatic, collaborative, and forward-looking solutions. Pragmatism because we want to create tools that can help those in the trenches tackling diversity and inclusion day in and day out. Collaborative because we want to support and strengthen the many great minds, organizations, and conversations already advocating for diversity and inclusion. Forward-looking because we want to spur lasting change and make meaningful strides toward a fully diverse and inclusive profession and a fairer justice system.

We have already launched a highly lauded implicit bias training video for judges where we hear from experts in the area of implicit bias and also from judges who acknowledge that they have biases despite their best intentions. All of us have some bias and these judges help to give others permission to accept the fact that they have them so that their decision making will not be adversely affected. And we are working on training videos for public defenders and prosecutors,

as well as toolkits to go along with the videos. All of which will be available by August 9th. Other practical tools under development by the commission include a searchable database of pipeline programs and a comprehensive ABA Diversity Web Portal. To ensure that we have a more diverse and inclusive profession, we cannot wait to start to persuade young people to have a career in law. It is necessary to look far upstream and reach children at a very early age, recognizing if they cannot get from K-12, they will not get to college and much less law school. Diverse children, including those with disabilities and members of LGBT groups suffer suspensions and expulsions at much higher rates than their counterparts. This practice must be disrupted to demonstrate fairness and to increase diversity and inclusion in the legal profession.

Further, the commission is proposing progressive policies to move the diversity and inclusion needle forward in more meaningful ways. At our midyear meeting in San Diego, the house of delegates passed resolution 107, encouraging mandatory diversity and inclusion CLE. The commission will also offer models for juror instructions about implicit bias and policies that will shape how law firms and law departments gather diversity information.

While the commission itself concludes in a year, much of its work will live on and be sustained by ABA entities dedicated to our association's goals II and III the commission offers its body of work as a blueprint on the way forward in reaching those goals.

As Americans and as leaders, we are bound by our history, the oath we took when we became lawyers, our future and to the wisdom of the words written in that document by our forefathers. And as agents of the law and keepers of the constitution our challenge as lawyers and jurist is to make real those promises for all citizens.

These are just a few of the many ways, big and small, we are working to make a tangible and long-lasting difference toward a more diverse and inclusive legal profession.

As lawyers, we must not only be up to the challenges of improving diversity and inclusion in the legal profession and confronting implicit bias in the justice system, but we must also lead the effort. It is our obligation as citizens and our duty as the most visible representatives of the American legal system.