

President's Message

by Manuel A. Capsalis



In Search of the Lost Chord: Diversity and “Transcendent Ideals”

THIS COLUMN IS WRITTEN to offer an update on the work of the Virginia State Bar's Diversity Task Force, and to describe the proposals the task force is currently considering and which it is anticipated will be presented to Bar Council for deliberation. Even though the task force has much yet to do in finalizing the proposals discussed below, I believe it is important to present them for your reflection and to invite your comments.

The task force was created with the mission of fully assessing the state of diversity, or the relative lack thereof, in our profession and our judiciary. It was also charged with gathering information on, and creating a sustainable resource for all pipeline and ladder projects in Virginia and those that should be in our commonwealth. It was further charged with identifying and securing sources of grant funding and other financing potentially available for diversity-related projects.

The goals of the diversity task force include facilitating the promotion of diversity in bar leadership, the profession and the judiciary, as well as enhancing access to justice and the quality of legal representation. They also include focusing on the profession and judiciary of tomorrow—our youth—to better educate them to the Rule of Law, and to inspire them to become societal leaders and dedicated citizens.

These goals are daunting, to say the least, and will require a long term sustained effort. To accomplish this, I believe we need to rethink the way the bar historically has dealt with the issue of diversity. We need to consider a fundamental restructuring within the Virginia State Bar.

The task force has thoroughly reviewed and considered the past twenty-five years of diversity efforts within the bar and the legal profession. It is important to give recognition to the many wonderfully talented and dedicated individuals who committed much time and effort in the cause of diversity through the years. It is equally important to recognize how much more needs to be done.

The bar had a committee for many years beginning in the mid-1980s devoted to diversity. That committee was sunsetted. A Commission on Women and Minorities in the Legal Profession was created in 1987 and led by a cross-section of several legal organizations. The commission eventually faded away in the 1990s. There have been other fits and starts, and yet today there remains an institutional vacuum. With the notable exception over the last several years of the bar's Young Lawyers Conference, despite all the talent, all the efforts, and all the best of intentions, change has been slow and insufficient.

This begs the question of how any different result may be expected in what is now under consideration by the task force. What struck me in all these past efforts is the fact that nothing was ever successfully institutionalized within the bar structure to maximize our capabilities and focus our efforts. In particular, no system was put in place to collectively utilize the best efforts of the many specialty bar associations, themselves historically organized and dedicated to the cause of diversity.

I believe this must change if the Virginia State Bar is to succeed in this cause. On October 7, 2008, at a meet-

ing of the task force in Richmond, I made three proposals, each of which both symbolically and substantively, I believe, will address what we hope to achieve:

1. That the enumerated powers of Bar Council, the governing body of the Virginia State Bar, be amended to specifically and expressly include the power, obligation and responsibility to promote diversity in our legal profession and judiciary.
2. That the bar's mission statement be amended. It currently states: “The mission of the Virginia State Bar is to regulate the legal profession of Virginia; to advance the availability and quality of legal services provided to the people of Virginia; and to assist in improving the legal profession and the judicial system.” I submit that the time is upon us to add the following: “and to promote diversity in the administration of justice and the practice of law.” This phrase is taken from the newly revised mission statement of the State Bar of Texas, which recently instituted a comprehensive diversity initiative.
3. That we proceed with deliberate speed with the creation of a Diversity Conference, which would become the fourth conference within the bar,

along with the Young Lawyers Conference, the Senior Lawyers Conference, and the Conference of Local Bar Associations (CLBA).

I am honored to tell you that each proposal was passed unanimously by the task force, and within the next few months will be put before council for deliberation, and I hope, implementation.

In particular, I need to highlight in this column what I believe is the meaning and significance of a Diversity Conference within the bar structure. The Diversity Conference would be similar in structure to the CLBA, in that it would be comprised of the specialty and local bar associations within the commonwealth. In other words, membership would flow through these specialty and local bars.

As a conference, its chair would have a seat on the Virginia State Bar Council and on the bar's Executive Committee, and I have proposed that at least three of the nine at-large seats on council (one of three allotted for each of three successive years), be earmarked for appointment through the Diversity Conference, ensuring that at least four seats on council would represent the conference.

By working through the specialty and local bars to secure the leadership of the Diversity Conference, we would attract the very best talents of these bar associations, and ensure they would always have a voice in the Virginia State Bar. Just as importantly, it would preserve the autonomy and integrity of these associations to allow them to function as they have historically desired.

The Diversity Conference, like the CLBA, would be project-oriented, and its potential would be enormous. It would work in coordination with the other conferences, and would be a part of the bar leadership. It would emphasize and project the best efforts of the member associations to the far reaches of Virginia.

Just as with the CLBA, the Diversity Conference's relevance and sustainability would be directly proportional to the

continued relevance and sustainability of its member associations. Its core mission, simply put, would be to seek and to promote diversity of participation and equality of opportunity throughout our profession and judiciary, in the present and in the future. As reflected further below, the pursuit of participation and opportunity, in turn, would be with the goal of promoting a more profound diversity of ideas and action. This would include enhancing access to justice and improving the quality of legal representation.

IT HAS BEEN SAID that we need to precisely define diversity to create such a structure. I disagree. While diversity by necessity must not neglect consideration of race, heritage, and gender, for example, I believe that the term must be allowed to evolve. What was considered in the scope of diversity some twenty-five years ago is not what we may think of it today, and we cannot know what the next generation may believe essential in its definition. That is for a Diversity Conference to have the freedom to pursue. Diversity must be allowed to grow and evolve organically, free from preconceived notions.

It also has been expressed that with the recent presidential election, this country has now entered a post-racial era, and that there is no further need to focus on diversity. This is voiced in a letter to the editor in response to the October issue of *Virginia Lawyer* magazine:

Here's an idea for a future diversity story: Does the election of a black lawyer, who is married to another black lawyer, as president of the United States mean we can finally move beyond judging "diversity" in the legal profession simply by reference to skin color or gender? ... [H]ow about focusing on diversity of ideas and opinions, a far more Jeffersonian proposition than counting one as "diverse" merely by accident of birth? ... It sure would be nice to broaden the scope of what is considered to be diverse

beyond biology to other areas, such as thought, opinion, and ideas.

I absolutely agree with the need for diversity of "thought, opinion, and ideas." But I contend that the letter's author fails to understand a fundamental need for diversity. Diversity of ideas is itself inherently limited by the lack of diversity in those who are meaningfully able to put forth those ideas, and who are in a position to achieve them.

This is where the Diversity Conference would serve its most critical need. The conference must not be focused solely on diversity "by accident of birth," to borrow the author's terminology. Rather, it must be centrally committed to diversity of participation and opportunity, as well as diversity of ideas. The conference would have the potential to expand our horizons, not only in participation and opportunity, but also in thought and in action. It would forge a more potent constituency for access to justice and to quality legal representation, and would measurably assist our profession and judiciary.

By encouraging participation across the wide spectrum, and by promoting opportunity in areas and amongst those historically neglected or avoided, the Diversity Conference would offer the best opportunity this bar has ever had not only in promoting inclusion and equality of opportunity in our profession and judiciary, but just as importantly, in fundamentally enhancing our collective ability to achieve the stated Jeffersonian goal of diversity in "thought, opinions, and ideas."

This is particularly important as we more resolutely address the critical need to reach out to our youth, and seek to instill in them an understanding and appreciation of the Rule of Law. I am convinced that without diversity, whether it be of the person or in thought or idea, the Rule of Law is an incomplete promise to many in Virginia. The limitation of diversity, broadly defined, inherently limits our ability to

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appropriately shape our profession and judiciary of the future.

I believe the time is now for this to be accomplished. Recently, Susan Brooks Thistlethwaite, a professor at the Chicago Theological Seminary, spoke of the presidential election. I find her words profound:

Nations, like individuals, have spirits; they even have souls. I do not believe that the soul is an ineffable something, what is called the ghost in the machine. I believe that both for individuals and nations, the soul is your ability to have transcendent ideals and make your actions match your expressed values.... [The question] is whether there is an American ideal that is worthy of the name.

The challenge for our bar, at this moment in time, is whether we can

summon those transcendent ideals. Do we have a committed sense of purpose to ensure that our actions match our expressed values? Do we have, simply and bluntly, what it takes to make a difference for the betterment of our honorable profession, as the guardians of the Rule of Law and as dedicated citizens of our great commonwealth?

How are we to be remembered—as those who stood idly by waiting for history to surround us, or as individuals part of a collective body committed to the fulfillment of those transcendent ideals we believe are good and necessary?

I ask for your support in this endeavor. This is too important to leave to the natural order of events. The Virginia State Bar, in concert with the many specialty and local bar associations in our commonwealth, must lead the way in this cause.

Separately we can seek to achieve, and perhaps we will. Together we will achieve, let there be no doubt.