

The VSB and Diversity — Getting Our Paragraphs Right

by the Hon. Manuel A. Capsalis and Joseph A. Condo, Esq.



Law student mentees, sponsored by the Diversity Conference, pose with their mentors during the 2017 VSB Annual Meeting.

President Barack Obama once said, “At the end of the day, we’re part of a long-running story. We just try to get our paragraph right.”

The endeavor of achieving greater diversity in the legal profession and the judiciary in Virginia is a long-running story. A significant moment in the story occurred in 2000. That year, as Joe Condo was preparing to begin his term as president of the Virginia State Bar, two items came to his attention that convinced him what it would take for him to “get his paragraph right” in the story. First, in a nation in which minorities were approaching becoming a majority of the population, the legal profession was ninety-two percent white. Second, there was a significant disparity in the passage rate of Virginia’s bar exam between white and minority applicants.

To write the first words of the paragraph, but not knowing how it might end, Joe convened a day-long conference of minority judges and bar leaders to frame the challenge and talk about ways to address it.

One tangible result of the conference was the creation of a non-profit corporation called Millennium Diversity Initiative (“MDI”), with

volunteers doing the necessary drafting, and a Richmond lawyer named Nina Olsen (now the United States Taxpayer Advocate) shepherding the corporation through the process of obtaining a 501(c)(3) designation from the I.R.S. MDI would come to be a vehicle for receiving grants and contributions and applying those funds to diversity projects.

Another result of the conference was the next paragraph of the diversity story, this one written by the always-energetic and innovative Young Lawyers Conference (YLC) of the Virginia State Bar. In 2001, under the leadership of now-State Senator Jennifer McClellan, the YLC conceived and organized the Oliver Hill/Samuel Tucker Pre-Law Institute. Held at the University of Richmond every summer, the institute is a week-long program that gives minority high-school students who are considering a legal career a grounding in law and trial procedure. In addition to receiving an education in legal fundamentals from the faculty of volunteer lawyers and judges, the students go on day trips to the Virginia Supreme Court and the Fourth Circuit Court of Appeals where they are often welcomed by Justice Cleo Powell and Judge Roger Gregory, respectively, and end their week with a mock trial. The Oliver Hill/Samuel Tucker Pre-Law

Institute has had a singular role in promoting diversity in Virginia's legal profession: some 500 young people have participated in the Institute in its 17-year existence, with some returning to serve as mentors to the next generation of participants!¹

Diversity and inclusion gained renewed focus in 2008 as Manny Capsalis prepared for his term as Virginia State Bar president. This focus was premised on two major issues needing to be confronted. The first was the rapidly changing demographics of the commonwealth. The second was the persistent underrepresentation of minorities and women in the profession and the judiciary, which threatened the legal system's ability to be fully responsive to the legal needs of our changing society.

At the commencement of his term, Manny created a diversity task force to address these issues. The task force was comprised of attorneys, judges and lay members, and was given wide mandate to debate, consider, and propose whether and how to promote diversity within the profession and the judiciary, and how best to address the legal needs of our fellow citizens. Nothing was pre-ordained as the task force began its work. Joe Condo was asked to serve as chair of the task force. Given the enormity of what was at stake, he proved to be a fitting choice as he guided the deliberations of the task force to a set of recommendations eventually adopted by Bar Council and approved by the Supreme Court of Virginia.

Two fundamental questions dominated the task force's deliberations. The first was whether the Virginia State Bar was, as the statewide mandatory bar, the appropriate professional association for any recommended diversity-focused initiative. The second was whether to define the term "diversity" and, if so, how?

It was the unanimous conclusion of the task force that an organizational entity dedicated to diversity needed to be created within the mandatory bar. This was the only way to ensure a permanent institutional recognition of the importance of diversity. This entity would not merely be a section or committee of the Virginia State Bar, but rather the bar's fourth conference. It would have representation on Bar Council and the bar's Executive Committee, and would stand equal to the Young Lawyers Conference, the Seniors Lawyers Conference, and the Conference of

Local and Specialty Bar Associations.

The task force then debated at length whether the term "diversity" should be defined. Some argued that defining the term was necessary: the American Bar Association defined the term; other organizations defined it. If the task force was to propose the creation of a fourth conference of the Virginia State Bar, as the argument went, the very thing necessitating the conference needed to be defined. Others (including the co-authors of this article) argued that the term "diversity" was an organic term that had greatly evolved over time and would continue to evolve. What was considered diversity twenty, ten or even five years ago was now outdated; what may be considered diversity in the next five, ten or twenty years was unknown. Attempting to define the term, these members maintained, would result in excluding whatever did not come within the language of the definition. This would be directly contradictory to the very concept of diversity.

The task force's decision was to leave the term without a stated definition, a majority concluding that the purpose of the conference would best be understood by its mission and goals, and the concept of diversity as promoted by the conference would evolve as society dictated. With the advantage of ten years of hindsight, this decision has been shown to be the right one, the absence of a restrictive definition having enabled the conference to be appropriately responsive to our changing society.

The Oliver Hill/Samuel Tucker Pre-Law Institute has had a singular role in promoting diversity in Virginia's legal profession: some 500 young people have participated in the Institute in its 17-year existence

In June 2009, after a spirited debate, Bar Council voted to create the Diversity Conference. The Supreme Court of Virginia not only approved creation of the conference but also, on the recommendation of the task force and adoption by Bar Council, amended the enumerated powers of Bar Council to specifically include the obligation to promote

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and enhance diversity within the profession and the judiciary. The importance of this cannot be overstated, as it fixed the course for the future of the profession with a diversity-focused mandate.

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The Diversity Conference is now an essential and thriving part of the Virginia State Bar, and there is no denying that the conference has had a measurable impact on the legal profession in the commonwealth.

- As the makeup of the bar and judiciary has changed over the last ten years, so has the face of the bar. In 2017, Doris Henderson Causey became the first African American to serve as bar president. She also became the first legal aid attorney and only the fifth woman to serve as president. In 2019, Marni E. Byrum will become the sixth woman and first openly LGBTQ president of the bar.
- Bar service participation on the state and local level has become more diverse, as has attendance at the bar’s annual meeting.
- Outreach to the law schools has become a priority as well. Through the Diversity Conference’s Mentor/Mentee Initiative, selected students from Virginia’s law schools now attend the bar’s annual meeting at Virginia Beach, giving them the unique opportunity to meet with judges and attorneys, and witness firsthand the professional and public service opportunities that await them.
- The conference also has played a critical role in the expansion of pipeline projects in middle schools and high schools. This has included Rule of Law projects and the Oliver Hill/Samuel Tucker Pre-Law Institute. Just as we did with the generation of leaders preceding us, these are the bar and civic leaders of tomorrow who will stand on our shoulders.

The goal of inclusion is a goal of exclusion of none, but without quotas or preordained results. It merely seeks an equality of opportunity to all to develop their particular abilities and talents. It accepts that the whole of our noble profession can be greater than the sum of the parts. It means that

only acting together can we best meet the legal needs of society. It accepts the belief that a diverse profession and judiciary is better equipped to ensure that the bedrock guarantees of our country’s system of justice and the Rule of Law are not just a shallow promise to some segments of our society. It seeks to fulfill the motto of our great country: *e pluribus unum* — “out of many, one.”

The initiative that became the Diversity Conference was itself undertaken by a dedicated and diverse group of attorneys, judges and dedicated citizens. It continues to be a shining example of what the collaborative efforts of so many can achieve.

It has been the humble privilege of the co-authors of this article to have “written their paragraphs” of the story of diversity and inclusion in Virginia’s legal system. But the story is far from finished; indeed, most of the page remains blank, to be filled with paragraphs by authors as yet unknown. There remains much hard work that only we lawyers can do. And do it we must.

Endnotes:

- 1 For photos and interviews of 2018 Hill/Tucker Institute participants, see page 49.



Hon. Manuel A. Capsalis served as the 70th president of the Virginia State Bar from 2008–09. He is a judge in the Fairfax County General District Court.



Joseph A. Condo, Esq. served as the 62nd president of the Virginia State Bar from 2000–01. He is a principal at the law firm of Offit Kurman. During his term as VSB president, Joe made a priority of expansion of minority access to the legal profession, with the establishment of the Millennium Diversity Initiative, that ultimately led to the establishment of the VSB’S Diversity Conference. Joe is proud to have played a role in broadening minority access to the legal profession, in heightening awareness of minority and LGBTQ issues in the legal system, and in helping to increase the numbers of women, minorities, and LGBTQ lawyers in the Virginia judiciary.