Diversity: How Is AALL Doing?*

James M. Donovan**

This article describes the approaches to workplace diversity available to professional organizations, including the American Association of Law Libraries. The data demonstrate that if reflective diversity is the goal, AALL is farther behind in 2014 than it was in 2000. The article also inquires as to what extent AALL’s poor performance arises out of features of law librarianship, or is symptomatic of a society-wide lack of a pool of suitable candidates.

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Introduction

¶1 Our society’s failure to fully include its minority citizens does not go unnoticed. Major universities face student protests demanding that their schools show

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** Library Director and James and Mary Lassiter Associate Professor of Law, University of Kentucky College of Law.
more sensitivity to minority students. As part of this trend, Yale University committed $50 million toward faculty diversification after a furor began with an e-mail suggesting that students avoid racially insensitive Halloween costumes.¹ Princeton University agreed to consider removing references to President Woodrow Wilson due to his racist beliefs,² while the president of the University of Missouri was compelled to resign in response to student demands, including a strike by the football team, arising from his perceived insensitivity to racism on campus.³ The University of Kentucky draped over a renowned mural from the 1930s because it depicted blacks in subservient roles.⁴

² The customarily sedate confines of the academic law library have not been untouched. A former librarian with the South Texas College of Law sued on the grounds of racial and gender discrimination.⁵ The public facts are unclear on the racial and gender motivations of the alleged harassment, but the African American plaintiff’s attorney claimed that other black employees “also experienced discrimination before retiring from the school.”⁶

³ These outbursts are ample proof that despite gains on many fronts, social progress toward full inclusion of minorities has far to go. These public frustrations create a timely opening for the American Association of Law Libraries (AALL) to assess its own record on this vitally important matter.

⁴ Inclusion and promotion of racial and ethnic minorities⁷ within law librarianship has been an ongoing concern as evidenced not only in a healthy list of

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⁶ Id.
⁷ The present discussion limits its focus to racial and ethnic minorities. Two points should be clarified. First, although some may combine race and ethnicity into a single demographic variable, these terms refer to conceptually distinct ideas and present different challenges. Race denotes supposed biological differences; ethnicity connotes a cultural background. Your race is usually determined by who your parents are, your ethnicity by how they raised you. Considerable overlap exists between the two, but beyond a certain point, eliding them into a single construct obstructs the goal of increasing actual diversity as opposed to the mere appearance of diversity.

The second point is that race and ethnicity do not exhaust the full range of championed categories. Those taking a broader perspective will argue for diversity of economic status, geographical origin, political philosophy, sex, religion, sexual orientation, as well as other demographic variables. Which are the dimensions to be prioritized by diversification projects, and for what reasons? Any list reflects the priorities of its time. If the original concerns addressed the prior discriminations against certain religions, then race, and later sex rose to the attention of the public in response to broader social debates and new ethical standards, we should expect the list of diversity-eligible criteria to expand. As Lorna Peterson warns, however, a growing list of categories to pay attention to can detract from the larger purpose of creating equity:
articles but also by the decision of the editor of Law Library Journal to devote regular column space to this topic. Despite many pages rehearsing the concerns, it is not clear that either the problems or strategies to solve them are any better understood. Even when surveying the same data, writers reach contrary conclusions. Alyssa Thurston finds that there has been “little change to show for decades of efforts and initiatives” by AALL, while Ron Wheeler in response more optimistically suggests that those same efforts “show positive results.” Although observers may agree on the statistical changes in group representations, the meaning of those changes—whether the numbers reflect little or much progress—depends how one frames the underlying goals and benchmarks for improvement.

§5 The most direct method to resolve this conflict would be to look at AALL totals and the best numbers for minority membership. That task, however, is surprisingly difficult. For many years AALL, like most professional associations, collected and published demographic data on its membership. This information appeared biennially in the Salary Survey. For unclear reasons AALL ceased to collect this information after the 2005 survey, creating “a gap between what is acknowledged as an issue of concern, and what is being done about it.” The fallout of that

If policy language makes no distinction among differences, the legacy of segregation, discrimination, and oppression can be denied. If “quirkiness” (a term heard in workshops), knitting skills, and being African American are all measures of diversity, social injustice becomes an individual, not an institutional, matter. Institutions can more easily maintain the status quo, because the well-intended multiculturalists have diluted racism into a happy-faced discussion of difference.

Lorna Peterson, Multiculturalism: Affirmative or Negative Action?, Libr. J., July 1995, at 30, 31. In her summary, the diversity project should be limited “to women, gays, the disabled, Asian Americans, Hispanics, Native Americans, and African Americans.” Id. at 30.


10. Alyssa Thurston, Addressing the “Emerging Majority”: Racial and Ethnic Diversity in Law Librarianship in the Twenty-First Century, 104 Law Libr. J. 359, 381, 2012 Law Libr. J. 27, ¶ 61; see also Gabriel, supra note 9, at 151–52, ¶ 17:

Why is that that after years of awareness, and perhaps even limited acceptance of diversity as a goal in many aspects of society, we find ourselves stuck in a time warp when trying to move forward? What is it about diversity that feels as if we are continually repeating the same talking points with no significant movement?

The lack of progress from diversity efforts seems to be characteristic of the library profession more broadly. “In spite of intense recruitment initiatives the library and information profession continues to be one for which the modal entrant is a White female in her mid-thirties who majored in English, education or history.” Kathleen M. Heim & William E. Moen, Diversification of the Library and Information Science Entry Pool: Issues from the LISSADA Survey Report, 16 J. Libr. Admin. 95, 102 (1992).


12. As a spot check, I looked to see whether one of the other professional associations of which I am a member made its demographic statistics available. While the American Anthropological Association (AAA) does not presently include them on its website, they were immediately provided by the AAA’s executive director.

13. Gabriel, supra note 9, at 151, ¶ 15.
decision is that we must now rely on information that is more current but less complete and certainly less reliable.

§ 6 At present the only descriptive information on law librarians comes from analyzing the listings contained in the self-reported Minority Law Librarian Directory. This method unquestionably undercounts the presence of minorities within AALL. As recorded in table 1, the numbers of minorities from the Salary Survey average about fourteen percent, all higher than those derived through the Directory. If the Salary Survey trend continues until today, the better estimate of actual diversity within AALL might be to add another ten percent to the rate found by comparing Directory listings to total AALL membership. But that correction has no firm foundation, and thus we are left with the numbers we actually have while regretting the lack of those we should have.

§ 7 With that limitation in mind, table 1 contains the rate of minority inclusion spanning the years 2000 to 2014. Looking at the available numbers from the Directory, we find a consistent increase in the twenty-first century, during which AALL has more than doubled its claimed racial diversity. Any deep analysis, however, will find difficulties with this conclusion beyond the data’s reliance on self-identification. In later years, a slice of the improvement appears to be due less to an increase in minority librarians than to a falling general membership. Further complicating the picture is that a not insignificant portion of the gains comes from increased foreign memberships to AALL rather than a rise in the minority participation here at home that most

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14. The most consistent run of the best available data depends on self-identification and appeared in the annual directories through the 2014–2015 edition. Thereafter the print version of the AALL Directory ceased. While the electronic version allows a user to see current self-identified minority members, the site does not archive this information for regular snapshots. Retrospective work using even these weak numbers, therefore, will no longer be possible.

15. AALL membership numbers in the first column of table 1 were obtained by special request from Kate Hagan, Executive Director of AALL. E-mail from Kate Hagan, AALL Exec. Dir., to author (July 22, 2015) (on file with author). These numbers differ from those contained in the annual print directories because the criteria governing what to “count” have changed. The published data include Active, Retired, Student, Honorary, and Life members, while the 2015 tallies include only Active, Retired, and Student members. E-mail from Kate Hagan, AALL Exec. Dir., to author (Sept. 1, 2015) (on file with author). The Association stopped creating new Honorary and Life memberships, so those categories are no longer included. E-mail from Kate Hagan, AALL Exec. Dir., to author (Mar. 7, 2016) (on file with author).

The differences between the two counts can be significant. For example, the published membership number for 2003 is 5170, AALL Membership Directory 2005–2006, at 522 (2005), but under the later calculation it is 5094 due to the omission of seventy-six Life and Honorary members on the roll for that year. Under the revised figures, membership numbers are uniformly lower and thus increase retroactively the proportion of minority members claimed for AALL membership. Granting the good reason to omit those diminishing categories, the cost is that the historical published data describing AALL membership totals no longer connect to new figures, which complicates longitudinal analyses important to diversity questions. In instances where the published record is more detailed, with the membership categories broken out, a user can calculate the new number by omitting the two categories now eliminated. But not only is that process unnecessarily tedious, it cannot always be done due to AALL’s inconsistent history of publishing data. AALL should consider republishing AALL membership numbers for past years using the new method, one that is updated each year, to make available a consistent run of totals.

would expect to be the primary focus of the discussion. Finally, any apparent progress may be an artifact of the time span chosen. Mersky, for example, reported that in 1993 there were “more than 4,600 members of AALL, 205 of whom are members of an ethnic minority,” for a membership percentage of 4.46%. This rate would not be equaled in the present data until 2003.

¶8 Wheeler’s optimism that AALL has seen improvement on this problem may be justified, with caveats, but so too is Thurston’s skepticism. To gain firmer control over the situation in order to formulate more effective strategies and policies, we need a better understanding of the fundamentals. Identifying a sustainable goal that can be evaluated through shared criteria requires clarifying the underlying issues, concepts, and options.

¶9 The articles by Wheeler and Thurston are both vague concerning the basic questions: what do we mean when we talk about “diversity,” and what are the benefits we expect to achieve by maximizing this good? What, precisely, is being valued, and which are the best ways to realize those goals? Different answers to those questions will generate varying expectations about the directions in which any organization should move, as well as identify the different means to measure progress on the chosen path toward a diversified workplace.

17. Id. at 859–60. Mersky does not identify the source for this statistic, although presumably it came from the Salary Survey.
¶10 Wheeler offers without defense his preferred standard when he describes the larger project as aiming “to look demographically more and more like the larger population of the United States.”18 This statement asserts a goal of reflective representation, that groups should be present in any subset (like AALL) in the same proportion as they occur in the general population. He is not atypical in assuming the appropriateness of that goal, but its popularity should not shield it from critical scrutiny. While mirroring the demographic proportions of society may satisfy as a short-term objective, the strategy contains limitations to any diversity undertaking that takes the long view. Alternative forms of diversity do exist, and these must be considered so that we are at least aware of what we are not pursuing when we prioritize reflective diversity.

¶11 This article lays out the available options and the choices our profession must make. Paragraphs 14 through 23 review the basic terms: discrimination, bias, and diversity. Reasons for pursuing diversity in the workplace are discussed in paragraphs 24 through 51. Two instrumental justifications and one intrinsic rationale reveal the range of motivations behind these projects. Each rationale supports its characteristic form of diversity: reflective, substantive, and cognitive. Because the kind of diversity determines the anticipated outcome, disagreement over progress may be the result of expecting different kinds of diversity. Clarity on goals and means will lead to better communication about results and progress.

¶12 The data in paragraphs 52 through 87 demonstrate, however, that if reflective diversity is the appropriate standard, AALL not only falls short of the goal but is farther behind in 2014 than it was in 2000. Although evaluating AALL in absolute terms shows that it is becoming less diverse with time, that conclusion does not tell us what we should do about it. Paragraphs 88 through 129 compare AALL’s diversity record with those of similar professions of law, general librarianship, and postsecondary teaching. The purpose is to identify to what extent AALL’s poor performance suggests an unusual obstacle to entering law librarianship, and to what extent it is merely symptomatic of the society-wide lack of a sizeable pool of suitable candidates for professions of this type.

¶13 The thesis is that to judge AALL’s diversity efforts, we must place law librarianship into broader social contexts so that patterns can be meaningfully interpreted. To devise effective remedies, we need to know how much of any demonstrated lack of diversity arises out of the intrinsic features of law librarianship. These should be separated from the difficulties situated elsewhere, such as in libraries and library education generally, or in the legal profession with which we are allied. Recognizing these wider patterns will allow us to target limited resources toward factors under our immediate control before moving on to address general societal shortcomings.

**Discrimination, Bias, and Diversity**

¶14 The first step toward evaluating AALL’s progress in diversifying its membership is to distinguish three related ideas, each of which plays an important role in understanding the representation of minorities within the workplace. The first,
**discrimination**, relates to an active gatekeeping function that has as its purpose to impede targeted groups from entry into desirable opportunities and career options.

¶15 This exercise in obstruction need not always be the result of willful prejudice. When the effort has become internalized and unreflective, the hurdle may become one of bias rather than purposeful discrimination. Persons can harbor discriminatory beliefs unbeknownst even to themselves.19

Implicit biases are unconscious mental processes based on implicit attitudes or implicit stereotypes that are formed by one’s life experiences and that lurk beneath the surface of the conscious. They are automatic; “the characteristic in question (skin color, age, sexual orientation) operates so quickly, in the relevant tests, that people have no time to deliberate.”20

The reality of implicit biases means that a discriminatory effect can exist within an organization beyond any individual’s intentions, despite beliefs that it applies reasonable and objective selection criteria and procedures.

¶16 A common example points to the operation of uniform requirements that have differential consequences because their rigid application does not take into account the typical backgrounds of disparate groups.21 The LSAT, for instance, has been argued to contain cultural assumptions that give a competitive advantage to applicants from middle-class backgrounds denied persons not similarly blessed.22 To the extent this is true, a test advertised to measure a student’s intellectual ability to succeed in law school in part scores his or her socioeconomic upbringing. Although such problems are serious, they are generally unintentional and thus open to remedy if revealed.23

¶17 Whatever the mechanism—whether deliberate discrimination or unconscious bias—the outcome is the same, so for present purposes it is not necessary to further distinguish between them. What discrimination and bias share is the use of an immaterial characteristic like race when assigning roles and opportunities. To speak of either entails the charge that some entity, either individual or organizational,

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21. A cartoon makes this point very effectively in the context of educational testing. Under the guise of administering a fair test, all students—which include a bird, monkey, penguin, elephant, fish, seal, and dog—are asked to take the same exam: to climb a tree. The picture is sometimes accompanied by a quote (questionably attributed to Albert Einstein) that “everyone is a genius. But if you judge a fish by its ability to climb a tree, it will live its whole life believing that it is stupid.” See *Everybody Is a Genius. But If You Judge a Fish by Its Ability to Climb a Tree, It Will Live Its Whole Life Believing that It Is Stupid*, QUOTE INVESTIGATOR (Apr. 6, 2013), http://quoteinvestigator.com/2013/04/06/fish-climb/ [https://perma.cc/CM7B-3E4N] (“There is no substantive evidence connecting Einstein to the quotation.”). To view both image and quote in context, see James May, *Should Everyone Take the Same Test?*, CIRCLES OF INNOVATION (Jan. 17, 2013), http://circlesofinnovation.valenciacollege.edu/2013/01/17/should-everyone-take-the-same-test/ [https://perma.cc/NXU6-9YUQ].
23. See Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. Cin. L. Rev. 871, 888 (2014) (“Although antidiscrimination law provides some protection from overt bias, it is ill-suited to address contemporary racial, ethnic, and gender obstacles.”).
has raised obstacles that selectively block specific kinds of candidates due to irrelevant criteria.\textsuperscript{24}

¶18 If discrimination is understood in the broadest sense as the raising of barriers to obstruct the flow of persons deemed “undesirable,” this processual view can be contrasted with diversity’s focus on outcomes. Diversity problems may commonly be the consequence of discriminatory acts earlier in the career pipeline.

¶19 Consider that “if one fails to hire or promote a qualified minority attorney, that is normally deemed discrimination, but if one argues credibly that pursuant to some objective criteria no such qualified minority candidate exists, that is considered an issue of diversity.”\textsuperscript{25} Although the end result may look the same—the corner offices tend not to be assigned to minorities—the underlying causes differ. A diversity problem at the end of the pipeline can be the result of earlier discrimination as minority students are dissuaded either directly or indirectly, without suggesting bias on the part of the current employer.

¶20 We must also allow that today’s lack of diversity can arise from causes other than prior discrimination. Even when sufficient raw numbers of qualified candidates exist, they may distribute themselves in patterns that for one reason or another prefer some occupations rather than others. In that situation, we are challenged to look at elements of our operations that might be found unappealing. One related example concerns the culture within law firms that compels women to choose between a professional career and enjoying the experience of raising a family. Dissatisfaction with the current demanding realities of law practice can help explain why, despite being almost half of all law students, the rates of women actually practicing law continue to reflect a representative shortfall.\textsuperscript{26} The inability to retain women is particularly acute in the case of minorities: “Eighty-five percent of minority female attorneys in the U.S. will quit large firms within seven years of starting their practice.”\textsuperscript{27}

¶21 While it is not immediately clear what features of law librarianship may deter potential candidates, one possibility can be imagined. The perception is that librarianship is predominantly a female profession. Membership in the American Library Association (ALA) is 81% female and 19% male.\textsuperscript{28} AALL has not published comparable membership data by sex since its 2005 Salary Survey, when it claimed a membership of 71.4% females and 27.9% males.\textsuperscript{29} A more current window onto

\begin{itemize}
\item \textsuperscript{24} An early effort to describe the effects of discrimination in law libraries is Vernon A. Rayford, \textit{A Black Librarian Takes a Look at Discrimination: By a Law School Library Survey}, 65 \textit{Law Libr. J.} 183 (1972).
\item \textsuperscript{25} Eli Wald, \textit{A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why}, 24 Geo. J. Legal Ethics 1079, 1110 (2011). Thurston reviews the variables that contribute to a similar pipeline problem obstructing the flow of new minority librarians. See Thurston, \textit{supra} note 10, at 366–77, ¶¶ 19–49.
\item \textsuperscript{26} Marlisse Silver Sweeney, \textit{The Female Lawyer Exodus}, \textit{Daily Beast} (July 31, 2013, 4:45 AM), http://www.thedailybeast.com/witw/articles/2013/07/31/the-exodus-of-female-lawyers.html [https://perma.cc/444F-AC5Q] (“Even though they earned half of all law degrees in 2012, women are still leaving the legal profession in droves later on in life.”).
\item \textsuperscript{27} Liane Jackson, \textit{Invisible, Then Gone}, A.B.A. J., Mar. 2016, at 36, 37.
\item \textsuperscript{28} AALL Office for Research & Statistics, \textit{ALA Demographic Studies} (Sept. 2014), http://www.alanet.org/mm/Publications/salary-survey/pub-salary05.html (available to AALL members only).
\item \textsuperscript{29} \textit{AALL Salary Survey 2005, AM. ASS’N OF LAW LIBRARIES}, http://www.aallnet.org/mm/Publications/salary-survey/pub-salary05.html (available to AALL members only).
\end{itemize}
the terrain can be had through data collected by the Association of Research Libraries (ARL). That source shows that in 2014–2015, members with law libraries reported a gender split among librarians of 34.3% male and 65.7% female. This skew may dissuade some males from considering the field, as well as some women who find unappealing the prospect of a lifetime of labor in a “female” profession with all the negative connotations that association carries in our culture.

Perhaps the most important long-term difference between discrimination and diversity relates to the perceived need for remedy. While most people immediately recognize that discrimination is “inherently wrong, unacceptable, and as a phenomenon . . . demands aggressive intervention,” a diversity gap “generates a more ambivalent response.” Discrimination is easily grasped, and its elimination offers an uncontroversial baseline that must be achieved of necessity. In contrast, many see rectifying diversity issues as an ideal that can be postponed should costs become prohibitive and, especially, as efforts produce little real change. In this light, we can understand why the list of forbidden discriminations in ABA accreditation Standard 205 is longer than that targeting diversity efforts under Standard 206.

Even among the most optimistic of proponents, the range of causes underlying diversity problems suggests that no single approach is likely to resolve them all. When earlier discrimination can be identified as the culprit, solutions should target those problems; when current practices are found to be the problem, however, a different set of corrections should be offered. We must be prepared, then, to consider approaches and solutions to diversity difficulties that are rooted in the specifics of particular organizations and professions, rather than assuming generic standards and approaches will solve the problem.

Defending Diversity: Three Justifications

Recognizing a lack of diversity is only the first step. What should be done to change the situation? A thoughtful answer will depend on our understanding of what costs are at stake should we allow the deficit to continue.

31. For a thoughtful discussion on the issues arising from males within female-dominated professions, including librarianship, see Christine L. Williams, The Glass Escalator: Hidden Advantages for Men in the “Female” Professions, 39 SOC. PROBS. 253 (1992).
32. “[B]oth women and men tend to assign more worth and prestige to work performed by men.” Philip N. Cohen & Matt L. Huffman, Individuals, Jobs, and Labor Markets: The Devaluation of Women’s Work, 68 AMER. SOC. REV. 443, 443 (2003). Given that sociological background, minority women with superior qualities may tend to aspire to male-dominated professions and bypass those dominated by females, further reducing the pipeline. See Audrey J. Murrell et al., Aspiring to Careers in Male- and Female-Dominated Professions: A Study of Black and White College Women, 15 PSYCHOL. WOMEN Q. 103 (1991).
33. Wald, supra note 25, at 1109.
34. Standard 205 includes “race, color, religion, national origin, gender, gender identity, sexual orientation, age, or disability,” while Standard 206 declined to extend the groups of underrepresented groups from “gender, race, and ethnicity” to also include “gender identity, sexual orientation, age, and disability.” Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, ABA Standards for Approval of Law Schools Matters for Notice and Comment (Dec. 11, 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20151211_notice_and_comment.authcheckdam.pdf [https://perma.cc/ZHM5-BPCN].
This discussion assumes a world of finite resources in which more fundamental values are secured first, with remaining resources proportionately allocated to priorities farther removed from core principles. In that environment, if we believe that workplace diversity has immediate links to fundamental values, we would expect the goal to be pursued even at great cost and inconvenience. If, however, the defense of diversity depends on principles lower on the hierarchy of public priorities, our allotted costs will be proportionately less. While most readers would assume that diversity is a good, we need to know why it is good in order to assign its proper position within the list of all the goods that demand our commitment.

At least three reasons have been offered to defend the good of workplace diversity. While these need not be mutually exclusive—indeed, almost certainly they are not—the varying ills envisioned by each conceivably call forth different solutions that may not sit well together. Pursuit of diversity under one banner may complicate efforts under another, leading to overall ineffectiveness. We should therefore be clear why diversity is a worthwhile pursuit.

Two Instrumental Reasons to Pursue Diversity

The first question to consider asks whether diversity is an intrinsic good, worth pursuing in itself, or whether workplace diversity is desirable as a means to attain some other end. The latter is the more commonly offered justification. Even when the argument for diversity appears to be offered in a wrapper of intrinsic values, inside often lurks a motivating core of utilitarian benefit.

Instrumental defenses of diversity look not at the merit of diversity per se but at the advantages it provides toward achieving other goals. If diversification were costless, advocates might agree that workplaces should strive to increase group representation simply because our principles say we should. Under the consequentialist view, though, it is the benefit that diversity contributes toward another valued goal that makes the associated costs a prudent investment.

Justice O’Connor offers this kind of instrumental argument in her opinion in Grutter v. Bollinger, the case upholding the constitutionality of the University of Michigan’s race-conscious law school admissions process. She found that the school had a compelling interest in “obtaining the educational benefits that flow from a diverse student body”:

As part of its goal of “assembling a class that is both exceptionally academically qualified and broadly diverse,” the Law School seeks to “enroll a ‘critical mass’ of minority students.” The Law School’s interest is not simply “to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin.” That would amount to outright racial balancing, which is patently unconstitutional. Rather, the Law School’s concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.35

O’Connor rejects the reflective standard suggested by Wheeler and, in its stead, puts forward the claim that diversity considerations are valuable (and constitutionally permitted) because they generate “educational benefits.” Without such benefits, diversity efforts would not pass muster in this context.

Other returns arise in different settings. In its Presidential Diversity Initiative Report, the ABA identifies two diversity rationales that can reasonably be

categorized as instrumental for their emphases on the impacts of diversity on other ends. The business rationale is the best known, arguing that

[the] rapid movement of people, financial instruments, culture, technology, and political change across international borders places new expectations on the ability of lawyers, law firms, corporations, and legal institutions to respond and adapt to the multinational and cross-cultural dimensions of legal issues.

A diverse workforce within legal and judicial offices exhibits different perspectives, life experiences, linguistic and cultural skills, and knowledge about international markets, legal regimes, different geographies, and current events.36

§32 Including demographically and culturally varied persons on its roster provides a business improved access to foreign markets and domestic sectors dominated by nonmajoritarian ethnic identities. This outcome may be because clients in those markets prefer to trade with others who resemble them or because in-house expertise allows the domestic enterprise to better tailor its products for an international market.

§33 Whatever the reason, the business rationale offers an intuitive appeal. If a practice’s client base is increasingly Hispanic, for example, it makes sense for the firm to include Spanish speakers among its attorneys, and for some of these to identify as Hispanic themselves to better communicate with and understand the needs and values of the client. These abilities not uncommonly become marketing points for law firms competing for new business.

§34 The business rationale perhaps explains why studies “find a correlation between diversity and profitability in law firms as well as in Fortune 500 companies.”37 When viewed in this way, however, the business rationale can be a double-edged sword, cutting for diversity in those instances that satisfy the premise of targeting diversified customers, but also against it in other settings that might not. If the justification for law firms to diversify flows from its need to market to a cosmopolitan client base, firms in environments that lack that need to expand into foreign markets, or whose offices are outside environments with significant ethnic populations, may be unmotivated to increase their in-house diversity. More to the point, it would be difficult to fault them for failing to make this added recruitment effort given the premises of the business rationale.

§35 A more generalizable spin on the business case looks not simply at a wish to create better connections with potential clients, but also considers the value of a range of views and opinions available to the organization to solve its problems. Scott Page has shown that greater diversity within a decision-making group makes that collective more successful problem solvers:38

People from different backgrounds have varying ways of looking at problems, what I call “tools.” The sum of these tools is far more powerful in organizations with diversity than in ones where everyone has gone to the same schools, been trained in the same mold and thinks in almost identical ways.39
Although the introduction of new ideas and perspectives into monolithic institutional structures offers a powerfully self-interested reason for business organizations to seek out diverse hires, we can note that the result may not always take the form typically expected by diversity advocates. From the perspective of increasing the range of viewpoints available for innovative problem solving, a white conservative from a rural background and lower socioeconomic status might introduce more diversity than an African American from an upper-middle-class family who attended the same private schools as the traditional members of that organization.

Organizations, firms, and universities that solve problems should seek out people with diverse experiences, training, and identities that translate into diverse perspectives and heuristics. Specifically, hiring students who had high grade point averages from the top-ranked school may be a less effective strategy than hiring good students from a diverse set of schools and a diverse set of backgrounds, majors, and electives. Under the business rationale, what variables count as “diverse” become a fact-specific inquiry looking at the details of individual organizations, rather than social patterns of demographic participation.

The ABA Report’s second instrumental defense of increased diversification within the legal profession, the leadership rationale, echoes a different point within Justice O’Connor’s Grutter opinion.

Universities, and in particular, law schools, represent the training ground for a large number of our Nation’s leaders. Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools “cannot be effective in isolation from the individuals and institutions with which the law interacts.” Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.

According to Justice O’Connor’s analysis, legal education and practice serve as common pathways to positions of authority within wider society, and because “society draws its leaders from the ranks of the legal profession, . . . that is one reason why diversity is a constitutionally protected principle and practice.” For the distribution of power within society to retain legitimacy in the eyes of the governed, those holding the reins should be drawn equitably from all segments of the population.

Two considerations appear to be at work here. The first points to the need for all segments of the population in some sense to see themselves sharing in the

40. Page, supra note 38, at 173.
42. ABA Presidential Diversity Initiative, supra note 36, at 10.
material rewards available in society. The second idea within the leadership rationale is that if the power wielders of society are not sufficiently diverse, this perception undermines the assumed legitimacy of the political and economic order that often does not treat all groups equitably. Both work to encourage the belief that the distribution of valued status and rewards is fundamentally fair, even if in any specific case it is not.

¶40 Diversity advocates may again be taken by surprise by the consequences of the leadership rationale. While it might be assumed that increasing diversity within the upper ranks will redound to the socioeconomic fortunes of impacted groups, the possibility occurs that on the whole it may strengthen the status quo by diffusing any impulse for radical changes to the organization. When the percentage of minorities in leadership positions significantly outpaces their representation in the ordinary membership, that imbalance may be a sign of unhealthy organizational priorities as the success of a few elites is read to mean that no deeper, more painful changes are required.

¶41 Librarianship has asserted both the business and leadership rationales in support of diversity within its own ranks. Gestures toward the communities served become reasons for a similar profile to provide adequate services. We also find within the literature suggestions that individuals will not consider librarianship a serious or personally relevant profession unless they first encounter persons like themselves already successful in that role who then encourage them in that direction.

¶42 Although most defenses of diversity slide quickly into instrumental versions, intrinsic arguments can be offered. These claim that the workplace should be attentive to diversity because diversity is always ethically defensible even when it is pragmatically expensive. Even if no instrumental gains are realized by increasing

43. An interesting parallel phenomenon occurs in what is called possession-trance within some traditional societies. The afflicted are usually females who become possessed by male spirits. Episodes allow them the opportunity to speak their minds and demand special favors, all of which would normally be forbidden behaviors. But because the demands are viewed as coming from an honored male, they are tolerated and obeyed. These outlets allow the underprivileged sufficient relief from their ordinary condition that it prevents them from effectively organizing to structurally improve their situation. See I.M. Lewis, ECSTATIC RELIGION: A STUDY OF SHAMANISM AND SPIRIT POSSESSION 64–77 (2d ed. 1989).

44. E.g., Emily K. Chan et al., Discovering Librarianship: Personalizing the Recruitment Process for Underrepresented Students, in WHERE ARE ALL THE LIBRARIANS OF COLOR? 11, 13 (Rebecca Hankins & Miguel Juárez eds., 2015) (“When contrasting these statistics to census numbers, it is evident that more needs to be done in order to attain greater parity between the profession and the communities that libraries serve.”); Juleah Swanson et al., Why Diversity Matters: A Roundtable Discussion on Racial and Ethnic Diversity in Librarianship, IN THE LIBRARY WITH THE LEAD PIPE (July 29, 2015), http://www.intothelibrarywiththeleadpipe.org/2015/why-diversity-matters-a-roundtable-discussion-on-racial-and-ethnic-diversity-in-librarianship/ [https://perma.cc/7DMS-2HLN] (“[D]iversity matters because the libraries must accommodate diverse user groups as well as librarian population.”).

45. E.g., Chan et al., supra note 44, at 16.
diversity among employees, any costs or inconveniences would still be justified because it is a good in itself. Understandably, this justification is rare. Arguing the case to taxpayers, stockholders, or others with financial interests in organizational accounts that they should spend extra resources on outreach and recruitment when these investments are not intended to improve operational efficiency or bottom-line yields can be a difficult challenge.

¶43 In spite of these hurdles, the ABA Report outlines its version of the intrinsic defense, the democracy rationale:

The United States occupies a special place among the nations of the world because of its commitment to equality, broad political participation, social mobility, and political representation of groups that lack political clout and/or ancestral power.

Diversity is the term used to describe the set of policies, practices, and programs that change the rhetoric of inclusion into empirically measurable change. . . . Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice. 46

¶44 Like the leadership rationale, the democracy rationale begins with the observation that important social institutions should represent the peoples they serve. But whereas the purpose in the leadership rationale is to preserve the legitimacy of the institutions and thus maintain the people's compliance, the motivation behind the democracy rationale is different. While skewed representation is problematic for all fields of endeavor, the gap is especially challenging to a profession that defines itself as “the high priests of our civic religion” that has been “premised on the fundamental values of equality, fairness, and the rule of law.” 47 As the ABA points out, law cannot hold itself out as defending equality and safeguarding broad political participation when its face literally contradicts those same values, and still be “law” rather than the mere exercise of power.

¶45 If the makeup of public entities does not embody the political ideals it is their purpose to promote and police without regard to irrelevancies like race or religion, then the entire system suffers an irreparable blow. If the system is not seen to be fair in its everyday operations, it is less likely to be fair in the more extraordinary circumstances such as criminal justice, and the distrust toward institutions will inevitably create a tear in the social fabric. In this light, diversity does not create a benefit, since our national mythology claims we should already be diverse, but its lack inflicts a significant cost by revealing those myths to be a lie.

¶46 Along these lines, Eli Wald argues that, despite the fact that “the legal profession’s standard response to under-representation is to offer instrumental justifications to diversify,” meaningful “justifications for diversity initiatives must be grounded . . . in non-utilitarian justifications. . . . [L]ack of diversity undermines the very meaning of law and of what it means to be a lawyer in the United States.” 48

¶47 An analogy may be the discovery of endemic sexual harassment within the offices of the EEOC: disheartening in any context, but disillusioning when it occurs within the ranks of those charged to prevent that particular ill. “As long as lawyers claim to be public citizens and servants of the public interest, and purport to have a special relationship with and owe fiduciary duties to pursue equality and justice,

46. ABA PRESIDENTIAL DIVERSITY INITIATIVE, supra note 36, at 9.
47. Wald, supra note 25, at 1079, 1101.
48. Id. at 1100–01.
they owe a duty to combat under-representation based on inequalities, cultural perceptions, and past and current discriminations” first and foremost among their own members.49

¶48 While the democracy rationale is designed to apply to the legal profession, it also extends to librarianship. As proclaimed in the ALA’s Democracy Statement, American libraries have a long tradition of supporting the political system by creating an informed citizenry capable of an active role in the democratic process:

Democracies need libraries. An informed public constitutes the very foundation of a democracy; after all, democracies are about discourse—discourse among the people. If a free society is to survive, it must ensure the preservation of its records and provide free and open access to this information to all its citizens. It must ensure that citizens have the resources to develop the information literacy skills necessary to participate in the democratic process. It must allow unfettered dialogue and guarantee freedom of expression. . . . Indeed, libraries ensure the freedom to read, to view, to speak and to participate. They are the cornerstone of democracy.50

¶49 The ability of libraries to perform this role can be questioned when its personnel do not include everyone. In fact, librarianship has not always lived up to its responsibilities in this regard. As summarized by Rosemary Ruhig Du Mont, libraries were slow to embrace equity for minorities in terms of both services—“In 1940 . . . out of 774 public library units in the thirteen states of the South, only 99 provided any service for blacks”51—and professionals. Historically ALA’s “effort to prevent discrimination against its own black members” was “hesitant,”52 as evidenced at the 1936 annual meeting at which blacks “would be able to attend most sessions, sitting in a segregated portion of all meeting halls, but would not be allowed to attend any meetings where meals were served, nor would they be able to obtain rooms in the hotels housing the white delegates.”53 Like lawyers, librarians have grown into their responsibilities and realized that diversity is not something one can optionally add to being a lawyer or a librarian; to be those things at all requires that the full range of citizens be embraced at every level.

¶50 Using the ABA Report as a guide, we have been able to identify two distinct instrumental justifications for diversity within the workplace, the business and the leadership rationales, as well as one intrinsic defense, the democracy rationale. These distinct bases for diversity show that the need for diversity initiatives is overdetermined. But if many reasons can support a specific endeavor, we should recognize that some are more persuasive than others.

¶51 The intrinsic reason provides the strongest defense of diversity because it is valid in all situations. No facet of American life should undermine the nation’s overarching commitment to the freedom of every citizen. Diversity is valuable because that is who we, as a people, have decided to be. If another rationale is needed, next should come the link between present diversity and future leadership. Although an instrumental justification, the benefit accrues to society as a whole and

49. Id. at 1101–02.
52. Id. at 504.
53. Id. at 488.
thus offers a more general good than does the third and last reason to support
diversity, the business rationale. Whatever appeal such an argument has, the busi-
ness case treats diversity as a commodity to be exploited for returns limited to a few
individuals or to a specific organization. As noted, the business rationale can easily
become a contested process when one form of valued diversity, such as increasing
underrepresented groups, is forced to compete with other kinds that advantage the
business interests. For such reasons the business case for diversity is the weakest
foundation on which to build that inclusive future.

The Kinds of Diversities

¶52 The three justifications for diversity generate in turn their own forms of
diversity. Confusion arises with a mismatch between the reasons to pursue diver-
sity and the kinds of diversity that are in fact pursued.

Reflective Diversity

¶53 The intrinsic rationale of democracy supports pursuit of at least some ver-
sion of reflective diversity. Reflective diversity (also known as formal diversity) is
achieved when groups are represented within each subset in proportion to their
presence in the general population.54 The assumptions supporting the goal of
reflective diversity include “the basic intuition that in a competitive, equal society,
the diversity of the populace will and ought to be reflected in diversity in its edu-
cational system and in its various occupations and professions.”55 Operating under
the assumption that no relevant differences attach to being of one ethnic back-
ground rather than another, persons should sort themselves into professional
groups in a manner that tracks distributions in the general population. Any persis-
tent skewing would indicate that hidden variables are at work influencing out-
comes, and the rebuttable presumption is that those forces are of a nefarious
quality.

¶54 As noted earlier, Wheeler asserts that reflective diversity should be the tar-
get for AALL, but he does not state what that would look like or how far we are
from that goal. Table 1 shows that AALL has slowly climbed to a combined minor-
ity representation of 6.9%. Table 2 indicates that the percentage of all minorities in
the U.S. currently stands at 37.9%. Even if we add in the theoretical corrective of
an additional 10% to AALL’s Directory figure, it still would not be even halfway to
meeting the goal of reflective diversity.

¶55 In what may be the central finding of this analysis, while AALL since 2000
has doubled its rate of minority membership—a source of optimism for Wheeler—
when we look at table 2 we see that AALL’s total increase of less than four percent-
age points did not keep pace with the growth of minorities in the general popula-
tion, which rose more than seven points from 30.5% to almost 38% over that same
time. If reflective diversity is the appropriate goal for AALL, then Thurston is cor-
rect: we have done a poor job, and despite its relative progress AALL is worse off in
2014 than it was in 2000.

54. Wald, supra note 25, at 1093.
55. Id.
Two responses might be offered. The first suggests that, granting that the overall picture is bleak, the census statistic groups all minorities together (i.e., everyone who is not a non-Hispanic white). If we looked at the different minority groups separately, we may perhaps find that AALL does well among at least some groups. But because AALL no longer reports data in that format, we cannot perform that analysis (although the 2005 slice is considered in table 7).

The second response asks the same question about differential impacts, but, instead of considering underrepresented groups, looks instead at clusters within AALL itself. AALL is not a homogenous organization, but instead contains distinct units, and it is possible that some do better than others at incorporating minorities. Table 3 compares one such unit, the Academic Law Libraries Special Interest Section (ALL-SIS) with all others, such as firm, court, and corporate libraries.

While still falling significantly below the national figures, over the fourteen years examined ALL-SIS has consistently counted between 9 and 11% of its members as minorities. In contrast, the best the remainder of AALL can claim is 5.22%, up from 1.82% in 2000.

If we allow that academic law libraries benefit from their alliance with universities that work under a pressing mandate from federal and other laws, Howland suggests a similar but reverse process may have caused minority candidates to become disinterested in law librarianship within firms and courts. Drawing on reports from the 1970s she finds that, in addition to their own problems, law libraries suffered from

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**Table 2**

<table>
<thead>
<tr>
<th>Year</th>
<th>U.S. Total Population</th>
<th>White, not Hispanic</th>
<th>Nonwhite Total</th>
<th>Nonwhite Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>281,424,600</td>
<td>195,576,996</td>
<td>85,847,604</td>
<td>30.50</td>
</tr>
<tr>
<td>2001</td>
<td>284,968,955</td>
<td>195,974,813</td>
<td>88,994,142</td>
<td>31.23</td>
</tr>
<tr>
<td>2002</td>
<td>287,625,193</td>
<td>196,140,540</td>
<td>91,484,653</td>
<td>31.81</td>
</tr>
<tr>
<td>2003</td>
<td>290,107,933</td>
<td>196,232,760</td>
<td>93,875,173</td>
<td>32.36</td>
</tr>
<tr>
<td>2004</td>
<td>292,805,298</td>
<td>196,461,761</td>
<td>96,343,537</td>
<td>32.90</td>
</tr>
<tr>
<td>2005</td>
<td>295,516,599</td>
<td>196,620,983</td>
<td>98,895,616</td>
<td>33.47</td>
</tr>
<tr>
<td>2006</td>
<td>298,379,912</td>
<td>196,832,697</td>
<td>101,547,215</td>
<td>34.03</td>
</tr>
<tr>
<td>2007</td>
<td>301,231,207</td>
<td>197,011,394</td>
<td>104,219,813</td>
<td>34.60</td>
</tr>
<tr>
<td>2008</td>
<td>304,093,966</td>
<td>197,183,535</td>
<td>106,910,431</td>
<td>35.16</td>
</tr>
<tr>
<td>2009</td>
<td>306,771,529</td>
<td>197,274,549</td>
<td>109,496,980</td>
<td>35.69</td>
</tr>
<tr>
<td>2010</td>
<td>308,74,5538</td>
<td>197,318,956</td>
<td>111,426,582</td>
<td>36.09</td>
</tr>
<tr>
<td>2011</td>
<td>311,591,917</td>
<td>197,510,927</td>
<td>114,080,990</td>
<td>36.61</td>
</tr>
<tr>
<td>2012</td>
<td>313,914,040</td>
<td>197,705,655</td>
<td>116,208,385</td>
<td>37.02</td>
</tr>
<tr>
<td>2013</td>
<td>316,128,839</td>
<td>197,836,231</td>
<td>118,292,608</td>
<td>37.42</td>
</tr>
<tr>
<td>2014</td>
<td>318,857,056</td>
<td>197,870,516</td>
<td>120,986,540</td>
<td>37.94</td>
</tr>
</tbody>
</table>

their close association with a legal profession that was slow to welcome racial minorities. Even today problems linger in both recruitment and retention of nontraditional attorneys. The suggestion appears to be that law librarianship in those environments has been forced to trail behind the practices of legal firms, and could aggressively advance an agenda of nondiscrimination only after that policy became accepted within the legal field itself. This ripple effect may explain why the rate of minorities outside academic libraries continues to lag.

Table 3
Percentage of Minority Librarians in ALL-SIS and Non-ALL-SIS Units of AALL

<table>
<thead>
<tr>
<th>Year</th>
<th>ALL-SIS Members</th>
<th>ALL-SIS Minority Members</th>
<th>Percentage of Minority Librarians Within ALL-SIS</th>
<th>Non-ALL-SIS AALL Members</th>
<th>Non-ALL-SIS Minority Members</th>
<th>Percentage of Non-ALL-SIS Minority Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>849</td>
<td>79</td>
<td>9.31</td>
<td>4008</td>
<td>73</td>
<td>1.82</td>
</tr>
<tr>
<td>2001</td>
<td>884</td>
<td>92</td>
<td>10.41</td>
<td>4126</td>
<td>101</td>
<td>2.45</td>
</tr>
<tr>
<td>2002</td>
<td>895</td>
<td>95</td>
<td>10.61</td>
<td>4298</td>
<td>115</td>
<td>2.68</td>
</tr>
<tr>
<td>2003</td>
<td>967</td>
<td>102</td>
<td>10.55</td>
<td>4127</td>
<td>125</td>
<td>3.03</td>
</tr>
<tr>
<td>2004</td>
<td>1031</td>
<td>111</td>
<td>10.77</td>
<td>3945</td>
<td>112</td>
<td>2.84</td>
</tr>
<tr>
<td>2005</td>
<td>1117</td>
<td>111</td>
<td>9.94</td>
<td>3909</td>
<td>119</td>
<td>3.04</td>
</tr>
<tr>
<td>2006</td>
<td>1131</td>
<td>109</td>
<td>9.64</td>
<td>3843</td>
<td>120</td>
<td>3.12</td>
</tr>
<tr>
<td>2007</td>
<td>1220</td>
<td>119</td>
<td>9.75</td>
<td>3806</td>
<td>132</td>
<td>3.47</td>
</tr>
<tr>
<td>2008</td>
<td>1247</td>
<td>127</td>
<td>10.18</td>
<td>3859</td>
<td>138</td>
<td>3.58</td>
</tr>
<tr>
<td>2009</td>
<td>1312</td>
<td>128</td>
<td>9.76</td>
<td>3693</td>
<td>138</td>
<td>3.74</td>
</tr>
<tr>
<td>2010</td>
<td>1357</td>
<td>132</td>
<td>9.73</td>
<td>3536</td>
<td>146</td>
<td>4.13</td>
</tr>
<tr>
<td>2011</td>
<td>1429</td>
<td>135</td>
<td>9.45</td>
<td>3476</td>
<td>145</td>
<td>4.17</td>
</tr>
<tr>
<td>2012</td>
<td>1449</td>
<td>145</td>
<td>10.01</td>
<td>3346</td>
<td>159</td>
<td>4.75</td>
</tr>
<tr>
<td>2013</td>
<td>1467</td>
<td>155</td>
<td>10.57</td>
<td>3288</td>
<td>164</td>
<td>4.99</td>
</tr>
<tr>
<td>2014</td>
<td>1463</td>
<td>155</td>
<td>10.60</td>
<td>3235</td>
<td>169</td>
<td>5.22</td>
</tr>
</tbody>
</table>

- a. Membership numbers were obtained by special request from Kate Hagan, Executive Director of AALL. E-mail from Kate Hagan, Exec. Dir., Am. Ass’n of Law Libraries to author (July 22, 2015) (on file with author).
- b. ALL-SIS minority member numbers are based on the Minority Law Librarians Directory published in the AALL Directory. All those with .edu e-mails were automatically included; entries without that domain were evaluated for appropriateness.
- c. Table 1 membership totals minus ALL-SIS members.
- d. Table 1 minority librarians minus ALL-SIS minority members.

56. In 1970, O’Rourke identified as her second sign post the fact that law librarians serve the legal profession, with its “long and distinguished history of racial discrimination,” and the racism within the legal profession made it highly unlikely that law librarians would take a firm stand against biased hiring practices. Unfortunately, although the legal profession, like law librarianship, has generally adhered to the letter of the law in regard to fair hiring practices, the profession is still predominantly white. Joan S. Howland, Diversity Deferred, 90 LAW LIBR. J. 561, 571 (1998).
Whatever the reason, the data are clear. Over the studied span, diversity within academic law libraries is greater, but plateaued; that within firm and court libraries is much lower, but growing. Whatever improvement in diversity is found within AALL generally, it is likely due to changes within nonacademic libraries. On the other side of the scales, the flat rates within academic libraries are what saves AALL from a truly dismal performance. Still, if AALL could bring the rest of its units up to the steady rate of the academic libraries, it would improve its overall inclusion of minorities by almost fifty percent.

Substantive Diversity

A group can achieve formal diversity representation while still falling short of the higher rewards of professional success. In contrast to reflective diversity, which reduces to a numbers game, substantive diversity concerns the distribution of meaningful participation, rewards, and power within the pool. As such it builds on the values of the leadership rationale, which is less concerned with the representation of minorities in the rank and file if they are not also appearing among the profession’s elite.

This divergence between the two kinds of diversity, as one example, has been used to understand the status of women within the legal profession. On the one hand, female participation within the legal profession approaches rates within the general population, which should be a cause of celebration. According to the ABA’s Commission on Women in the Profession, women received 47.3% of the law degrees awarded in 2011. They have also performed well on measures of federal clerkships (45.6%), state clerkships (54.8%), and local clerkships (54.3%). Despite these gains, women’s inclusion among partners and other top-end positions falls far short from what one might predict given their numerical presence. Within private firms, only 19.9% of partners, a mere 15% of equity partners, and a miniscule 4% of managing partners within the 200 largest law firms are women. According to the Diversity and Flexibility Alliance, women comprise only slightly above a third of each new class of firm partners.

Women experience impediments to the upper echelons of even a stereotypically female profession like librarianship. Although males comprise only 19% of ALA membership, in 1999 they held 39% of library directorships, with an average salary of $68,586 compared to $61,614 for female directors. In ARL law libraries, at least, the outcome is somewhat more in keeping with the requirements of
both reflective and substantive diversity: of 72 reporting institutions, 38 law libraries (53%) are headed by women, and 34 by men.\(^63\) Male directors’ salaries, however, are averaging $175,864 as compared to the women’s $167,788.\(^64\)

\(^64\) The lesson from both cases is that while reflective diversity is arguably a necessary precondition to achieving substantive diversity,\(^65\) the latter represents the more meaningful goal of all diversification projects.\(^66\) Ratcheting up the absolute numbers of underrepresented groups may offer some satisfactions, but an overall negative message would still be signaled if they are rarely seen to attain the highest ranks and rewards of professional engagement.

Cognitive Diversity

\(^65\) The business rationale generates a third form of diversity, cognitive diversity, which is markedly different from those described thus far. Conceptually orthogonal to the first two, cognitive diversity looks not at demographic variables or even persons per se, but to ideas.

\(^66\) Reflective and substantive diversities flow easily from our concepts of fairness. Persons should be judged on relevant criteria when considered for jobs and promotions, free from stereotypes or unconscious prejudices. Although distinguishable, reflective and substantive diversities bear a mutually supportive relationship to one another and may even, in a distant time horizon, become a single standard. Cognitive diversity, however, does not spring from the same equitable concerns. The value of this kind of diversity is found in the improved performance of organizations. While the benefits of reflective and substantive diversities accrue to society in general and to underrepresented groups more broadly, those of cognitive diversity are enjoyed by the specific business or organization wise enough to make it part of its member profile.

\(^67\) According to Page, when diversity refers not to identity but to ways of thinking,

diverse groups of problem solvers—groups of people with diverse tools—consistently outperformed groups of the best and the brightest. If I formed two groups, one random (and therefore diverse) and one consisting of the best individual performers, the first group almost always did better. In my model, diversity trumped ability.\(^67\)

63. Kyrillidou & Morris, supra note 30, at 18 fig.5. A similar outcome is reported by a recent survey that includes non-ALR academic law libraries, finding in 2012 that forty-nine percent of directors were male and fifty-one percent female. Michael J. Slinger & Sarah C. Slinger, The Career Path, Education, and Activities of Academic Law Library Directors Revisited Twenty-Five Years Later, 107 Law Libr. J. 175, 203, 2015 Law Libr. J. 8, ¶148, tbl.1. The respective figures in 1986 were sixty-one percent male and thirty-nine percent female. Id.

64. Kyrillidou & Morris, supra note 30, at 18 fig.5.

65. Many groups have yet to overcome the first hurdle of reflective representation. For example, racial minorities represent only about eleven percent of lawyers despite being a third of the general population. See U.S. DEP’T OF LABOR, U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2010, at 18 tbl.6 (Employed People by Detailed Occupation, Race, and Hispanic or Latino Ethnicity, 2010 Annual Averages) (2011).

66. Wald, supra note 25, at 1105 (“Substantive diversity denotes the idea that formal diversity, demanding equality in the opportunity to participate in the legal profession, is merely the first, necessary step in achieving the goals of diversity, but is insufficient.”).

There are conditions required for this effect to arise: “the problem has to be hard, the people have to be smart, and the group size has to be bigger than a handful and chosen from a large population.” Within these constraints, however, “This theorem is no mere metaphor or cute empirical anecdote that may or may not be true ten years from now. It’s a logical truth.”

While cognitive diversity highlights much of the asserted benefit of increasing identity diversity within the workplace, one must ask to what degree the two are related. To the extent that different racial and ethnic groups have disparate experiences that are sufficiently consistent so that one may speak meaningfully, say, of an African American way of seeing the world that is different from the Hispanic and from the Caucasian, then we can expect that pursuing identity diversity would yield many of the benefits of cognitive diversity.

This expectation will be stronger to the extent that the focal identity diversities incorporate linguistic diversity. Languages embed a characteristic way of looking at and linking concepts and objects. Linguist George Lakoff explored this idea in his book, *Women, Fire, and Dangerous Things*. The title comes from Dyirbal, an Australian aboriginal language in which the word *balan* groups these three things together through extended associations. What is common sense in one language can be startlingly novel or even incomprehensible in another. Another mechanism by which a variety of conceptual categories might generate new ideas involves the finding that when we read a word *every* attached meaning activates simultaneously. Unexpected interpretations, the raw material of creative problem solving, become more likely out of this buzz of associations.

These linguistic variations come together to help form perceptual viewpoints that differ from one another, and these in turn contribute to the construction of varying conscious structures and “institutional facts.”

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68. *Id.* at 162.

69. *Id.*


71. *Id.* at 5.

72. The popular belief that all languages encode the same reality, and thus can be translated from one into the other without loss of information, is exaggerated.


74. JOHN R. SEARLE, *THE CONSTRUCTION OF SOCIAL REALITY* 64 (1995) ("[T]hat institutional facts are language dependent[.]" boils down to the thesis that the thoughts that are constitutive of institutional facts are language dependent.").
ethnic minorities can offer perspectives that diverge from the majority’s assumptions, generating a significant convergence between identity diversity and cognitive diversity.

¶72 For various reasons this chain of relationships may not play out perfectly. Not all ethnic groups speak different languages, and even if once they did, second and later generations may have lost the skill. We should thus not be surprised that Page’s review of the relevant literature addressing this topic found that in terms of cognitive diversity the “evidence for identity diverse groups, though, is far from unequivocal. Some identity diverse groups perform well. Others do not . . . , [not least because] the linkages between identity diversity and cognitive diversity may not be strong in all cases.”75 He concludes that “[i]dentity diverse groups perform better when the task is primarily problem solving, when their identities translate into relevant tools, when they have little or no preference diversity [i.e., they agree on the end, differing only on the means], and when their members get along with one another.”76

Critical Reflective Diversity

¶73 Each kind of diversity offers something of value. Reflective diversity responds to the strong sense that, all things being equal, the goods of society should be shared proportionately among all its groups. Substantive diversity refines this conviction by explicitly requiring that those goods not be limited to gross numbers but also include the more elite benefits. Finally, cognitive diversity reminds us that difference can offer its own returns, and that pursuit of racial and ethnic diversity in the workplace does not require that we ignore the special strengths of each group. Minorities do not have to bury their differences to make a contribution; indeed, their input may be more valuable if they are not too similar. Beneficial on their own terms, each diversity type also harbors weaknesses that should dissuade us from putting all of our confidence in one to the exclusion of others.

¶74 This caution is especially necessary concerning the most popular diversity standard, reflective diversity. Despite its common invocation, an agenda of reflective diversity can prove difficult to achieve. On the one hand, the experiences of women and of religious denominations do suggest that it can be realized. After discriminatory bars were eliminated, law school enrollments for these groups did approach their levels in the general population.77 This outcome, however, may prove to be the exception, as similar results do “not appear to be the natural and inevitable state of affairs for racial, socioeconomic, and other minorities who [remain] significantly under-represented in law schools and in the legal profession.”78 According to Redfield, between 2009 and 2030 the legal profession would need to add over the current rates, each year, an additional 33% more blacks and 173% more Hispanics to reach formal diversity.79

75. Page, supra note 38, at 314.
76. Id. at 328.
77. Wald, supra note 25, at 1095.
78. Id.
Beyond such pragmatic challenges, reflective diversity raises concerns on two fundamental levels. The first is that it is a rigid and unforgiving standard, and not merely because it has proven so challenging to satisfy. Recall that on its own terms, each group should see itself reflected in the profession in the same measure as it occurs in the general population. In practice, this standard has been applied in an ad hoc manner that undermines its overall credibility.

For example, as indicated earlier librarianship is a heavily female-dominated profession. Advocates of pursuing the goal of reflective diversity have no basis, without additional justifications external to the rationale, to deny that we should be pursuing the increase of male membership within AALL. In reality such efforts appear unlikely, but we should ask why this divergence from proportionate reflecting is tolerable, while others, such the gaps in race and ethnic numbers, are not. Reflective diversity itself allows no such distinctions.

If we poke at the data a bit we can construct a plausible post facto explanation. Because women are disadvantaged in so many other aspects of the American workforce, it perhaps makes a certain sense not to raise obstacles in one area where they have achieved success, especially as men are not disadvantaged by being underrepresented within female-dominated professions like law librarianship. This practical approach, however, undermines the sense of immediate obviousness that appeal to reflective diversity is meant to inspire. We either have to apply this rule across the board, for all groups, or recognize that reflective diversity does not offer a consistent or complete basis for outreach to minority groups. In practice, we need additional information beyond census counts to understand its appropriateness in one context but not another.

The second troubling concern directs our attention to even more basic contradictions in the claim that groups must be present in all occupational groups in matching proportions to their presence in the population. That rule mandates how many of each race or ethnic group a profession can include. If the goal of diversity efforts is to encourage freedom of choice by eliminating irrelevant obstacles, there seems something oddly counterintuitive to also declare, as the logic of reflective diversity would require, that African Americans do not have the freedom to choose if those collective choices do not yield 12.6% of law librarians, which is their presence within the general population. Above that threshold they are eating into some other group’s equitable portion of AALL membership; below it, there is something wrong that is preventing otherwise interested individuals from pursuing law librarianship. Reflective diversity, in a word, mandates a quota to be met but not surpassed.

Table 6 shows, for instance, that Asian Americans occupy postsecondary teaching positions in excess of their presence in the population: about ten to twelve percent versus four to five percent respectively. Given the limited number of such posts, the success of this group at achieving and even exceeding reflective diversity

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must come at the expense of other groups. Reflective diversity, because it is concerned only with deviations from a population norm and not with the direction of that disparity, would deem overrepresentation as poor an outcome as being underrepresented. There seems something unprogressive in declaring that any group who has secured success—whether women in librarianship or Asian Americans in college teaching—has received “enough” and should back away from the table to allow others an opportunity. Yet this seems to be what the demands of reflective diversity would require.

¶80 These problems arise from the common characterizations of reflective diversity. Under any view these demands seem counterproductive. Although the description of reflective diversity includes the specified assumption of “all things being equal,” we should doubt that the real world very often satisfies this strict requirement. Among librarians, for example, an earlier study found that “[t]ype of work setting desired varied by ethnicity,” with the top choice for American Indians being large academic libraries (40%), for blacks, medium-to-large public libraries (29.2%), and for Hispanics, noncorporate special libraries (34.6%). Other research suggests that women with conservative Protestant religious affiliations may have disproportionately lower levels of workforce participation due to their higher priorities for childcare in the home. Such differential behavioral patterns can be important for the present discussion because “people who are black or Hispanic, in comparison to white, were more likely to say that religious factors influenced their choice of career or job.” Similarly, it may be significant for understanding the distribution and upward progression of minority law librarians that 48% in 1992 said they would not be willing to relocate to pursue career advancement, a number that had increased to 51% by 2007. Such a trend would limit both an ability to find positions within the profession (impacting reflective diversity) and the likelihood of rising to higher positions in different libraries (suppressing substantive diversity).

¶81 The broad lesson is that, whatever the reasons, the effort to maximize diversity should not discourage individuals from making personal choices even when collectively they cut against public policy objectives. Diversity efforts are intended to create more opportunities for everyone, especially those historically disadvantaged, not less. We must recognize that the choice of career path is subtly influenced by many variables. If any of these are differentially shaped by ethnic and cultural background—and it would seem odd if that were not the case—then we must be open to the possibility that all things are not equal, and that different

82. Heim & Moen, supra note 10, at 98.
86. Ballard-Thrower et al., supra note 85, at 286, ¶ 63. The lack of willingness to relocate may be characteristic of library students generally. One earlier study found that only about one-quarter of full-time students were mobile. Heim & Moen, supra note 10, at 98. Moreover, these are the students “more likely to seek employment in academic or special libraries,” presumably including law libraries. Id.
groups need not sort themselves identically into occupational categories. Someone raised in an environment in which material gain is the highest good will be more interested in becoming a hedge fund manager, for example, than if she had been taught to define herself through intellectual achievements. To insist otherwise is to deny respect to the varying identities that workplace diversity initiatives are supposed to be promoting and that cognitive diversity teaches have real and intrinsic value.

¶ If this argument is reasonable, then we are left with the conclusion that there is something amiss with the earlier application of reflective diversity. The misstep occurred with the definitional leap that the condition to be reflected or mirrored was population distribution. As a philosophical matter, we should have been skeptical about the way in which reflective diversity constructs a parallel between the natural occurrence of raw racial and ethnic population statistics with a second distribution resulting from presumably free personal choices.

¶ These conceptual difficulties with reflective diversity should not lead us to forget its strengths. As the previous section concluded, the democratic rationale embedded within this form of diversity offers the strongest defense of this workforce ideal. The goal should be to find something more coherently defensible for it to "reflect." If we deconstruct the motive behind this reliance on a population statistic, we may be in a better position to identify a suitable alternative.

¶ The goal to match population distributions can be approached less as a literal target than as a convenient proxy for what truly matters. Again we can look to Justice O’Conner for the clue written into the Grutter opinion. The goal is not, she says, an “outright racial balancing,” which is patently unconstitutional, but to achieve a “critical mass” that would create the desired educational benefits. Minority groups should be represented in the professions not only because of the fairness issues centering on the individual applicants, but also because of the ripple effects from these persons being seen by others. The goal should not be a strict quota but for each group to be included in sufficient numbers that their presence becomes ordinary and unremarkable for everyone, and the minority members find their participation rewarding rather than a source of anxiety and stress. When looking at Latinos, for example, students performed better both when the campus included a greater percentage of enrolled Latino students (supporting reflective diversity) and when they had contact with more Latino faculty (supporting substantive diversity). When that minimal threshold has been crossed, aspirants will no longer doubt whether a career option is open to people like themselves; the only question in their minds should be if they find it personally interesting and attractive.

88. See, e.g., Linda Serra Hagedorn et al., An Investigation of Critical Mass: The Role of Latino Representation in the Success of Urban Community College Students, 48 Res. Higher Educ. 73, 74 (2007) (“[W]ithin the field of education the term [critical mass] has been adapted to indicate a level of representation that brings comfort or familiarity within the education environment.”).
89. Id. at 82, 88; see also Suzanne E. Eckes, Diversity in Higher Education: The Consideration of Race in Hiring University Faculty, BYU Educ. & L.J., no. 1, 2005, at 33, 49 (“[T]he presence of minority faculty tends to make students of color feel that they are welcome in the institution. A ‘critical mass’ of people of color can be quite beneficial.”).
This alternative read on the meaning of “reflective diversity” provides a solution to the question raised earlier concerning sex ratios within librarianship. If the important goal is the point at which a group’s participation becomes unremarkable rather than when it matches a census allocation, we can understand why AALL has no programs to bring more males into law librarianship despite a sizeable shortfall from their number within the general population. In this profession, at least, the presence of males has become uninteresting. Deviation from census proportions is therefore unproblematic. In contrast, this lack of concern does not appear to be true among nurses, where men made up only about nine percent of the profession in 2011, and where the continuing lack of males generates an ongoing literature discussing ways to increase recruitment.

Because background cultural assumptions attached to occupational categories differ, we can expect that what levels will provide the needed critical mass varies across professions and may vary depending on the underrepresented group being examined. The squishiness of efforts to quantify the “sufficient number” for each group to achieve the needed critical mass is what encourages resort to a proxy-like population proportion. Rather than attempting to ascertain what the target might be for each group and each occupation, reliance on an easily accessible statistic is both expedient and reasonable. The harm comes when the proxy, which when read literally verges on nonsense, assumes a life of its own and becomes an independent goal obscuring the purpose in whose place it is standing.

Even if we currently have no empirical basis on which to assign the true level of minority membership at which their participation elicits neither criticism nor applause, we can hypothesize that while the census statistic sets a ceiling, the level for perceptual ordinariness determines a floor. So long as the actual numbers float somewhere in between we can be less despairing when judging whether we are effectively addressing the issue. While this is the case for gender, AALL has not achieved that goal for race and ethnicity. Those numbers are clearly below the floor, and even in the sub-basement.

Even by the more forgiving standard described in the previous section, AALL performs poorly. Here we consider how much of its inability to attract minorities is due to failings within the organization and how much is due to broader social patterns over which AALL has little control. The recommendation is that AALL should focus its efforts on the former rather than the latter.

At a time when many people are experiencing “diversity fatigue”—an emotional response “to the continual recycling of issues that had seemingly already been discussed and even resolved”—the appearance of new outlooks on the topic

91. See, e.g., Robert J. Meadus, Men in Nursing: Barriers to Recruitment, NURSING F., July–Sept. 2000, at 5; Dale Rajacich et al., If They Do Call You a Nurse, It Is Always a “Male Nurse”: Experiences of Men in the Nursing Profession, NURSING F., Jan.–Mar. 2013, at 71; Susan Trossman, Caring Knows No Gender: Break the Stereotype and Boost the Number of Men in Nursing, AM. J. NURSING, May 2003, at 65.
92. ABA PRESIDENTIAL DIVERSITY INITIATIVE, supra note 36, at 41.
can be a source of unexpected excitement. Scott Page’s work developing the significance of cognitive diversity is one such fresh perspective. A second is offered by Jason Nance and Paul Madsen.

¶90 Nance and Madsen argue that while the legal profession fails by the rigid standard of reflective diversity, it does no worse than other similarly situated “extremely prestigious” professions such as health practitioners and college professors.93 “[W]hen the results for minorities are disaggregated, women, African Americans, Hispanic Americans, Native Americans, and Other Minorities appear to be, for the most part, as well represented in the legal profession as they are in other high status professions.”94 Minority candidates “who are eligible to pursue professional or advanced degrees appear to be just as likely to become legal professionals as they are to become members of other high status professions.”95

¶91 The persistent lack of formal diversity within the legal profession, then, should not be addressed through law-specific programs. Trying to gain recruits at college job fairs, for example, merely competes with other professions for a small number of qualified persons without increasing the pool of such individuals. In addition to those short-term approaches, the legal profession needs to address broader pipeline factors that limit those to whom entry into law school is a realistic option. As described by Sarah Redfield,

there are too few underrepresented minorities moving through the pipeline, too few graduating from high school, too few persisting and succeeding in college, too few presenting LSAT scores and GPAs that meet today’s norms for admission to law school. To achieve significant diverse populations, the law academy would need to increase its admissions for blacks and Hispanics well beyond what the current applicant pool, in the current milieu, can bear—at rough count, 1,500 more black students and 7,500 more Hispanic students a year would be needed to approach parity with the population by 2028, the year Justice O’Connor’s twenty-five year window would close for affirmative action.96

¶92 Granting the need for action on all fronts, the innovative analysis by Nance and Madsen allows them to isolate where the specific challenge exists for law, where it fails even when compared to similar occupational categories like medicine. The single exception to their conclusion that minorities are as well represented in law as they are in similar occupations with high academic and testing requirements is Asian Americans, who are “drastically underrepresented in the legal profession when compared to other high status professions.”97 This segment of the minority population seems to encounter unique obstacles to entering law occupations, and it is here, according to Nance and Madsen, that organizations such as the ABA and law schools have a special burden.

¶93 The next step involves identifying the nature of that unique obstacle. Personality stereotypes may be one likely problem:

94. Id. at 314.
95. Id. at 316–17.
96. Redfield, supra note 79, at 2–3 (2009) (referring to O’Connor’s statement in Grutter that “[w]e expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today,” Grutter v. Bollinger, 539 U.S. 306, 343 (2003)).
97. Nance & Madsen, supra note 93, at 314.
Several studies have found that people inside and outside the legal profession share common stereotypes of lawyers as assertive, dominant, ambitious, competitive, and argumentative. Professor [Jerry] Kang and his co-authors explain that these stereotypes of lawyers are both gendered and racialized because the traits and behaviors of ideal litigators typically are used to describe white male professionals. The authors suggest that the impact of these stereotypes leads to discrimination against those who do not fit this mold, such as Asian Americans.98

¶94 Ideally we would like to perform a similar analysis for law librarianship. The optimism that AALL has made meaningful strides toward increasing its diversity cannot be properly evaluated if we restrict our attention to the aggregated numbers for AALL while ignoring the wider professional world in which AALL operates. The tallies for AALL have meaning only in the context of those broader comparisons, and as we have already seen, in that light it has actually lost ground.99

¶95 Granting that the inclusion of minority groups falls well below the goal of reflective diversity, are AALL's shortcomings any worse than similarly situated occupations? If not, the problem is not recruitment at the output of the education pipeline. Focusing our attention at that point merely shuffles members of a too-small pool of qualified candidates between equally appealing career options. Inclusion rates for underrepresented minorities will be significantly improved only when that pool expands through better educational and training opportunities beginning as early as possible in a student's life.100 Such broad social projects are arguably beyond the mission of AALL, although its individual members could contribute through other entities more directly tasked to address these problems.

¶96 If, however, we find that qualified recruits from some groups disproportionately choose options beside law librarianship, or once choosing fail to stay, then we should look within ourselves to discover what we are doing incorrectly. This problem would be wholly within our power to rectify and thus should receive the majority of AALL's diversification attention and resources.

¶97 This section compares the table 1 data for law librarianship with three allied professions in an effort to ascertain how it performs relative to other options against which we compete for the same candidates. Because law librarianship is a conjunct between law and librarianship, those two are obvious choices. Most drawn to a career in law librarianship would regard as feasible alternatives working in a different kind of library or becoming a practicing attorney. Similarly, many who find law librarianship attractive do so because it affords an opportunity for instructional interaction with intellectually mature patrons. Those enjoying that facet of law librarianship could have opted to become a teacher at the postsecondary (college or university) level, and thus that occupational category is also included for comparison.

¶98 We cannot fully replicate the method used by Nance and Madsen because AALL no longer provides statistics on individual racial groups, and the aggregated minority statistics we have culled from the Minority Law Librarians Directory are too thin to warrant any attempt to sort into smaller identity groups. For those reasons, the final comparison uses only the snapshot drawn from the 2005 Salary

98. Negowetti, supra note 19, at 943.
99. See supra ¶¶ 53–60.
100. See Redfield, supra note 79, at 69 (“By the time students reach the point of considering a law career, for many, the damage is done.”).
Survey and relates it to tallies from the three allied professions for the same year. Following that review, the usefulness of relying as a remedy on pipelines from either law or library schools is considered.

Diversity Within Law, Librarianship, and Postsecondary Teaching

¶99 As determined by the strict standard of reflective diversity, the equitable current participation rates for minority groups should be 12.6% for African Americans, 5.6% for Asian Americans, and 17% for Hispanics. As shown above in table 2, the aggregate rate for all minorities is 37.9%. Tables 4 through 6 reveal that each of the three chosen allied professions consistently fails to satisfy this goal. All fare better than the rates for law librarianship in table 1.

¶100 Beginning with the legal field, we see in table 4 that it falls significantly below the targets of reflective diversity, although less so for Asian Americans. This result might seem surprising given the discussion of the Nance and Madsen paper. The negative conclusions there concerning law’s inclusion of Asian Americans were in comparison with other “prestigious professions,” and not, as here, with the general population.

Table 4

Employed Lawyers by Race

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th>Percentage Black or African American</th>
<th>Percentage Asian/Asian American</th>
<th>Percentage Hispanic or Latino Ethnicity</th>
<th>Percentage Blacks + Asians + Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Not published</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Not published</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>929,000</td>
<td>4.6</td>
<td>N/A</td>
<td>3.1</td>
<td>7.7</td>
</tr>
<tr>
<td>2003</td>
<td>952,000</td>
<td>3.6</td>
<td>2.8</td>
<td>4.0</td>
<td>10.4</td>
</tr>
<tr>
<td>2004</td>
<td>954,000</td>
<td>4.7</td>
<td>2.9</td>
<td>3.4</td>
<td>11.0</td>
</tr>
<tr>
<td>2005</td>
<td>961,000</td>
<td>4.7</td>
<td>2.0</td>
<td>3.5</td>
<td>10.2</td>
</tr>
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<td>5.0</td>
<td>2.9</td>
<td>3.0</td>
<td>10.9</td>
</tr>
<tr>
<td>2007</td>
<td>1,001,000</td>
<td>4.9</td>
<td>2.6</td>
<td>4.3</td>
<td>11.8</td>
</tr>
<tr>
<td>2008</td>
<td>1,014,000</td>
<td>4.6</td>
<td>2.9</td>
<td>3.8</td>
<td>11.3</td>
</tr>
<tr>
<td>2009</td>
<td>1,043,000</td>
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<td>4.1</td>
<td>2.8</td>
<td>11.6</td>
</tr>
<tr>
<td>2010</td>
<td>1,040,000</td>
<td>4.3</td>
<td>3.4</td>
<td>3.4</td>
<td>11.1</td>
</tr>
<tr>
<td>2011</td>
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<td>4.2</td>
<td>3.2</td>
<td>12.7</td>
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<td>4.3</td>
<td>4.0</td>
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</tr>
<tr>
<td>2013</td>
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<td>5.1</td>
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<td>14.4</td>
</tr>
<tr>
<td>2014</td>
<td>1,132,000</td>
<td>5.7</td>
<td>4.4</td>
<td>5.6</td>
<td>15.7</td>
</tr>
</tbody>
</table>

a. Data from annual reports of the U.S. Bureau of Labor Statistics, Labor Force Characteristics by Race and Ethnicity (various tables, Employed People by Detailed Occupation, Race, and Hispanic or Latino Ethnicity).
According to table 5, in most categories general librarianship fares even worse than law, although its ending statistic for Hispanics is slightly better. Most alarming is that the rate of inclusion for African Americans has been steadily falling, from a high of 7.8% in 2002 to the 2014 rate of 3.6%. Even if the immediately preceding value of 7.7% for 2013 is taken as more representative, that number still means that there has been no improvement in the past fifteen years.

In every column of table 6, postsecondary teachers are a better integrated professional category than either law or librarianship. In the case of Asian Americans, it even exceeds the standard of reflective diversity by more than 100%. As discussed above, this raises the question of whether a group can claim too much of an occupational category. This finding also reminds us that aggregated numbers can be misleading: Despite this spectacular performance for one group, the aggregate minority representation is still below reflective diversity.

Comparing the longitudinal numbers, law librarianship is well behind the three allied professions of law, librarianship, and postsecondary teaching in terms of its ability to attract and retain minorities. Even if we apply the generous (but

### Table 5

**Employed Librarians by Race**

<table>
<thead>
<tr>
<th>Year</th>
<th>Librarians (1000)</th>
<th>Percentage Black or African American</th>
<th>Percentage Asian or Asian American</th>
<th>Percentage Hispanic or Latino Ethnicity</th>
<th>Percentage Blacks + Asians + Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Not published</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
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<tr>
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<td>5.1</td>
<td>12.9</td>
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<tr>
<td>2003</td>
<td>194</td>
<td>5.6</td>
<td>2.7</td>
<td>5.0</td>
<td>13.3</td>
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<tr>
<td>2004</td>
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<td>4.5</td>
<td>4.6</td>
<td>14.7</td>
</tr>
<tr>
<td>2005</td>
<td>214</td>
<td>5.8</td>
<td>2.5</td>
<td>4.6</td>
<td>12.9</td>
</tr>
<tr>
<td>2006</td>
<td>229</td>
<td>8.8</td>
<td>1.1</td>
<td>2.9</td>
<td>12.8</td>
</tr>
<tr>
<td>2007</td>
<td>215</td>
<td>6.0</td>
<td>2.0</td>
<td>4.1</td>
<td>12.1</td>
</tr>
<tr>
<td>2008</td>
<td>197</td>
<td>6.7</td>
<td>3.5</td>
<td>3.7</td>
<td>13.9</td>
</tr>
<tr>
<td>2009</td>
<td>206</td>
<td>5.3</td>
<td>3.0</td>
<td>6.8</td>
<td>15.1</td>
</tr>
<tr>
<td>2010</td>
<td>216</td>
<td>9.2</td>
<td>1.7</td>
<td>5.2</td>
<td>16.1</td>
</tr>
<tr>
<td>2011</td>
<td>198</td>
<td>10.1</td>
<td>2.6</td>
<td>3.9</td>
<td>16.6</td>
</tr>
<tr>
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<td>181</td>
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<td>3.6</td>
<td>4.0</td>
<td>5.7</td>
<td>13.3</td>
</tr>
</tbody>
</table>


101. Although this discussion focuses on the challenges to recruit minority librarians, we should also recognize that there exists a significant problem with retention as well.
unsubstantiated) “+10” corrective proposed earlier, law librarianship still trails college professors, is about equal to lawyers, and can claim to be only marginally more successful than general librarians.

¶104 On the most generous reading, law librarianship on the whole has been able to attain no special success in terms of underrepresented peoples, but also no outstanding failure. If that conclusion holds, the inability to rise to the standard of reflective diversity lies with broader social issues, such as the pipeline problems discussed below. There exists, however, the possibility that the profession is performing well below that level, at least as determined by the currently best available

That credentialed librarians under age 45 comprised almost a third, 30%, of the total for that category in 2000, yet accounted for 44% of credentialed librarians leaving the work force, speaks not so much to an inability to effectively recruit individuals to LIS education and practice as to an inability to effectively retain them.

AM. LIBRARY ASS’N, OFFICE FOR RESEARCH & STATISTICS, DIVERSITY COUNTS 11 (2007), http://www.ala.org/offices/files/diversity/diversitycounts/diversitycounts_rev0.pdf [https://perma.cc/M2E3-7H2B]. It does little good to vex ourselves concerning recruiting minority librarians if we cannot provide an environment in which they wish to stay. See Chan et al., supra note 44, at 25 (noting “the conundrum that many librarians of color face—how to ‘sell academic librarianship or librarianship in general, as a positive career choice when they themselves are pondering their own rationales for staying in this profession’”).

102. See supra ¶ 6–7.

Table 6

Employed Postsecondary Teachers by Race

<table>
<thead>
<tr>
<th>Postsecondary Teachers (1000)</th>
<th>Percentage Black or African American</th>
<th>Percentage Asian or Asian Americans</th>
<th>Percentage Hispanic or Latino Ethnicity</th>
<th>Percentage Blacks + Asians + Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Not published</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Not published</td>
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<td>11.9</td>
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</tr>
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<td>2010</td>
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<td>11.0</td>
<td>5.0</td>
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<td>2011</td>
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<td>2012</td>
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<td>7.9</td>
<td>11.3</td>
<td>6.2</td>
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<td>2013</td>
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<tr>
<td>2014</td>
<td>1259</td>
<td>6.1</td>
<td>12.2</td>
<td>6.1</td>
</tr>
</tbody>
</table>

a. Data from annual reports of the U.S. Bureau of Labor Statistics, Labor Force Characteristics by Race and Ethnicity (various tables, Employed People by Detailed Occupation, Race, and Hispanic or Latino Ethnicity).
data. If that outcome holds the field, AALL has a major difficulty, one largely of its own making, yet one that it has backed away from in recent years. So the options thus far appear to be: at best, we are performing poorly, but not consistently worse, than other similarly situated professions; or we are falling far behind. Neither of these is cause for pats on the back.

Table 7

2005 Minority Data for Lawyers, Librarians, Postsecondary Teachers, and Law Librarians

<table>
<thead>
<tr>
<th></th>
<th>Percentage Black or African American</th>
<th>Percentage Asian or Asian American</th>
<th>Percentage Hispanic or Latino</th>
<th>Percentage Minority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers</td>
<td>4.7</td>
<td>2.0</td>
<td>3.5</td>
<td>10.2</td>
</tr>
<tr>
<td>Librarians (General)</td>
<td>5.8</td>
<td>2.5</td>
<td>4.6</td>
<td>12.9</td>
</tr>
<tr>
<td>Postsecondary Teachers</td>
<td>6.7</td>
<td>11.2</td>
<td>4.1</td>
<td>22.0</td>
</tr>
<tr>
<td>Law Librarians</td>
<td>5.0</td>
<td>4.1</td>
<td>2.6</td>
<td>11.7</td>
</tr>
<tr>
<td>2005 Population Percentage Rates</td>
<td>12.23</td>
<td>4.43</td>
<td>14.56</td>
<td>31.32(^{a})</td>
</tr>
</tbody>
</table>

\(^{a}\) This figure differs from that generated in table 1 because in that case the percentage of minorities was calculated as all those who were not Caucasian; here the number is found by adding the identified census groups.

2005 Comparison

¶105 Before we accept such a depressing result, we can take one more look. AALL data from 2005 are old and may not offer an accurate sketch of how things stand today. Despite those limitations, rather than chunking all minorities into a single block, the statistics from the last *Salary Survey* to include member demographics by race permit the granularity needed for a nuanced analysis by identity group. If AALL has a disappointing performance in the aggregate, perhaps it can claim better outcomes in particular subsets. We can draw no conclusions about trends, but this single snapshot offers a window onto how things once stood.

¶106 Table 7 shows that, relative to the chosen allied professions, AALL in 2005 was less diverse than both librarians and postsecondary teachers, but more than lawyers. This same ranking describes its rate of inclusion of African Americans, but AALL was worse than all three in terms of its Hispanic and Latino members. On a more positive note, AALL approached reflective diversity with its percentage of Asian Americans.

¶107 Twelve years later, we cannot judge how well AALL performs on these measures when compared to these related professional choices. If we assume current conditions approximate those from 2005, we might conclude that, while all groups fall shamefully short of the target of thirty-one percent minority members, if AALL has a special difficulty, one that is not shared with similarly situated occupations, it lies in its failure to attract Hispanics and Latinos into the profession of law librarianship. AALL’s failings in these regards have perhaps been obscured due
to our stronger success among Asian Americans, so that the combined figure for minority members does not appear to deviate markedly from other professions.

¶108 To more clearly underscore the practical conclusion, what programs AALL intends to address its lack of minority members should prioritize the group it appears to have an idiosyncratic, as opposed to a shared society-wide structural inability to attract, namely Hispanics. Its second priority according to this analysis should be African Americans, a group represented better among law librarians than lawyers, but worse than general librarians and teachers.

**Pipelines into Law Librarianship**

¶109 The finding that AALL continues to have a diversity problem is only one part of the larger discussion. Another concerns the degree to which it can look to feeder pipelines to generate more qualified candidates that fit the necessary demographic profile. As pointed out long ago, “To increase the numbers of minorities in law librarianship, there must be either a corresponding increase in the source from which candidates are drawn or a more effective way to attract and recruit candidates to law librarianship from the existing pool of students, graduates, and practicing librarians.”

¶110 The previous sections have shown that on the second prong of that directive law librarianship has fared about as well as most other similarly situated professions, but that due to the constricted size of the pool none can reach its goals. This section asks whether looking toward the pipeline to expand that pool is a reasonable option. That strategy would not address immediate shortfalls, but could provide an assurance that with sufficient time more minority law librarians will appear. There may still be a scramble to convince them to join our profession rather than another, but with enough suitable students the hope would be that, in time, all recruitment needs could be satisfied.

¶111 The most likely graduate program pipelines into law librarianship are from either law or librarianship. In both these educational settings, however, minority students are in short supply. Without major changes to the pipelines into those programs, we cannot expect that either will award degrees to diverse students in sufficient numbers to break the racial homogeneity of AALL.

**Law Schools**

¶112 To the extent we look to law schools as a source of potential minority law librarians, this seems unwise. They can barely produce enough for their own profession, with high bars to entry and significant attrition through the process.

¶113 The chokepoints for the law school minority pipeline occur in three places: the requirements for admission, rates of graduation, and rates of bar passage. Each winnows the initial pool of potential minority attorneys and, in combination, they prove devastating to any hope that AALL can capture some of the graduates who inevitably realize that the daily practice of law is not a fulfilling path for them, but who still wish to apply their legal education in a challenging professional environment. This choice has proven especially true for those law students who worked in the library during school: “Half of the twenty-six [minority law librarian] respondents

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103. King et al., supra note 85, at 254.
with a J.D. degree reported that they had worked in a library when they were law students.\textsuperscript{104} Law librarianship can be a viable alternative for these individuals, but so few minorities survive the process that this route offers an unreliable source for future legal information specialists.

In table 8, minority students display an interest in legal careers in full measure of reflective diversity: in 2014 almost thirty-eight percent of those taking the LSAT were members of racial and ethnic minorities. The systematic if unintentional frustration of these aspirations begins almost immediately. Because the ABA “generally denies accreditation to any school for which the average LSAT score is below 143,”\textsuperscript{105} most schools cannot afford to admit too many students with low LSAT scores. But the most recent data show that the average LSAT score from 2007–2013 for African Americans is 142, about ten points less than the mean scores for Caucasians,\textsuperscript{106} while that for Hispanics falls between 145 and 146.\textsuperscript{107}

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Law School Applicants</th>
<th>Caucasian Applicants</th>
<th>Percent Non-Caucasian Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>74,600</td>
<td>48,680</td>
<td>34.75</td>
</tr>
<tr>
<td>2001</td>
<td>77,200</td>
<td>51,190</td>
<td>33.69</td>
</tr>
<tr>
<td>2002</td>
<td>90,900</td>
<td>59,570</td>
<td>34.47</td>
</tr>
<tr>
<td>2003</td>
<td>99,500</td>
<td>64,110</td>
<td>35.57</td>
</tr>
<tr>
<td>2004</td>
<td>100,600</td>
<td>64,870</td>
<td>35.52</td>
</tr>
<tr>
<td>2005</td>
<td>95,800</td>
<td>62,560</td>
<td>34.70</td>
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<tr>
<td>2006</td>
<td>88,700</td>
<td>58,070</td>
<td>34.53</td>
</tr>
<tr>
<td>2007</td>
<td>84,000</td>
<td>54,180</td>
<td>35.50</td>
</tr>
<tr>
<td>2008</td>
<td>83,400</td>
<td>52,960</td>
<td>36.50</td>
</tr>
<tr>
<td>2009</td>
<td>86,600</td>
<td>55,110</td>
<td>36.36</td>
</tr>
<tr>
<td>2010</td>
<td>87,900</td>
<td>54,540</td>
<td>37.95</td>
</tr>
<tr>
<td>2011</td>
<td>78,500</td>
<td>46,180</td>
<td>41.17</td>
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<tr>
<td>2012</td>
<td>67,900</td>
<td>42,800</td>
<td>36.97</td>
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<td>2013</td>
<td>59,400</td>
<td>37,850</td>
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</tr>
<tr>
<td>2014</td>
<td>55,700</td>
<td>34,600</td>
<td>37.88</td>
</tr>
</tbody>
</table>


104. \textit{Id.} at 262–63.


same period, Puerto Ricans average 138 to 139 points. As Justice Clarence Thomas noted, “In 1992, 63 black applicants to law school had LSAT scores above 165. In 2000, that number was 65.” All told, only “about 6% of African-American students who take the LSAT match or exceed the median LSAT score of 156 for matriculation into ABA approved law schools.”

As Redfield explains, “Achievement gaps are not facts of nature. They are mostly because of differences in life experience.” Low LSAT scores should be viewed as the outcomes of a lifetime of lack of educational opportunities, both formal and informal. Increased likelihood of being raised in poverty can lead to lower exposure to reading and vocabulary, a deficit that carries over on entering

Table 9
First-Year and Total J.D. and Minority Enrollment in ABA-Approved Law Schools

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Number of Schools</th>
<th>First-Year Enrollment</th>
<th>First-Year Minority Enrollment</th>
<th>Percentage</th>
<th>Total J.D. Enrollment</th>
<th>Total J.D. Minority Enrollment</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>183</td>
<td>43,518</td>
<td>9335</td>
<td>21.5</td>
<td>125,173</td>
<td>25,753</td>
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<tr>
<td>2001</td>
<td>184</td>
<td>45,070</td>
<td>9557</td>
<td>21.2</td>
<td>127,610</td>
<td>26,257</td>
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<tr>
<td>2002</td>
<td>186</td>
<td>48,433</td>
<td>10,229</td>
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<td>132,885</td>
<td>27,175</td>
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<td>187</td>
<td>48,867</td>
<td>10,468</td>
<td>21.4</td>
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<td>10,694</td>
<td>22.2</td>
<td>140,376</td>
<td>29,489</td>
<td>21.0</td>
</tr>
<tr>
<td>2005</td>
<td>191</td>
<td>48,132</td>
<td>10,389</td>
<td>21.6</td>
<td>140,298</td>
<td>29,768</td>
<td>21.2</td>
</tr>
<tr>
<td>2006</td>
<td>195</td>
<td>48,937</td>
<td>10,898</td>
<td>22.3</td>
<td>141,031</td>
<td>30,557</td>
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<td>2007</td>
<td>198</td>
<td>49,082</td>
<td>11,016</td>
<td>22.4</td>
<td>141,719</td>
<td>30,657</td>
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<td>49,414</td>
<td>11,320</td>
<td>22.9</td>
<td>142,922</td>
<td>31,368</td>
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<td>2009</td>
<td>200</td>
<td>51,646</td>
<td>11,840</td>
<td>22.9</td>
<td>145,239</td>
<td>32,505</td>
<td>22.4</td>
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<td>2010</td>
<td>200</td>
<td>52,448</td>
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<td>25.2</td>
<td>147,525</td>
<td>35,045</td>
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<td>2011</td>
<td>201</td>
<td>48,697</td>
<td>12,779</td>
<td>26.2</td>
<td>146,288</td>
<td>35,859</td>
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<td>2012</td>
<td>201</td>
<td>44,481</td>
<td>12,446</td>
<td>27.9</td>
<td>139,055</td>
<td>35,914</td>
<td>25.8</td>
</tr>
<tr>
<td>2013</td>
<td>202</td>
<td>40,802</td>
<td>11,892</td>
<td>29.1</td>
<td>128,712</td>
<td>34,584</td>
<td>26.9</td>
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</table>


108. Id.
111. REDFIELD, supra note 79, at 69 (quoting Ronald Ferguson, Recent Research on the Achievement Gap (Nov. 30, 2006), http://cnpublications.net/2006/11/30/closing-the-achievement-gap/).
school leading to other performance gaps.112 While this relationship holds for all those living in poverty, it becomes especially important for present purposes because thirty-eight percent of African American children live in poverty as compared to only twelve percent of whites.113 These economic and educational deficits cannot help but remove many from the professional pipeline. “Given the leakage and deficits along the pipeline before law school, it is hardly surprising that the pool of underrepresented minority applicants approaching the law school gates is smaller than their proportion of the population might predict.”114

¶116 While a third of all law school applicants, minorities comprise a significantly smaller percentage of the first years, which table 9 shows rising no higher than about one-quarter of enrolled students. This milestone, however, is but the first in a long process that disproportionately impacts minorities.

### Table 10

<table>
<thead>
<tr>
<th>Cohort Entering Year</th>
<th>First Year</th>
<th>Second Year</th>
<th>Third Year</th>
<th>Percent Lost</th>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>9335</td>
<td>8172</td>
<td>7898</td>
<td>15.4</td>
</tr>
<tr>
<td>2001</td>
<td>9557</td>
<td>8326</td>
<td>8062</td>
<td>15.6</td>
</tr>
<tr>
<td>2002</td>
<td>10,244</td>
<td>9144</td>
<td>8766</td>
<td>14.4</td>
</tr>
<tr>
<td>2003</td>
<td>10,468</td>
<td>9280</td>
<td>9061</td>
<td>13.4</td>
</tr>
<tr>
<td>2004</td>
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<td>2005</td>
<td>10,462</td>
<td>9539</td>
<td>9203</td>
<td>12.0</td>
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<td>2006</td>
<td>10,898</td>
<td>9639</td>
<td>9311</td>
<td>14.6</td>
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<tr>
<td>2007</td>
<td>10,992</td>
<td>10,028</td>
<td>9629</td>
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<tr>
<td>2008</td>
<td>11,320</td>
<td>10,227</td>
<td>10,267</td>
<td>9.3</td>
</tr>
<tr>
<td>2009</td>
<td>11,840</td>
<td>10,714</td>
<td>10,502</td>
<td>11.3</td>
</tr>
<tr>
<td>2010</td>
<td>13,191</td>
<td>11,649</td>
<td>11,326</td>
<td>14.1</td>
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<tr>
<td>2011</td>
<td>12,779</td>
<td>11,268</td>
<td>10,847</td>
<td>15.1</td>
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<tr>
<td>2012</td>
<td>12,446</td>
<td>10,947</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


114. REDFIELD, supra note 79, at 48.
Table 11

Total J.D. Attrition Rate, 2000–2012a

<table>
<thead>
<tr>
<th>Year</th>
<th>Total J.D. Enrollment (Table 9)</th>
<th>Total Three-Year Attrition</th>
<th>Total Attrition Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>125,173</td>
<td>5775</td>
<td>4.61</td>
</tr>
<tr>
<td>2001</td>
<td>127,610</td>
<td>5899</td>
<td>4.62</td>
</tr>
<tr>
<td>2002</td>
<td>132,885</td>
<td>6179</td>
<td>4.65</td>
</tr>
<tr>
<td>2003</td>
<td>137,676</td>
<td>6784</td>
<td>4.93</td>
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<tr>
<td>2004</td>
<td>140,376</td>
<td>6264</td>
<td>4.46</td>
</tr>
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<td>2005</td>
<td>140,298</td>
<td>6838</td>
<td>4.87</td>
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<td>2006</td>
<td>141,031</td>
<td>6465</td>
<td>4.58</td>
</tr>
<tr>
<td>2007</td>
<td>141,719</td>
<td>6433</td>
<td>4.54</td>
</tr>
<tr>
<td>2008</td>
<td>142,922</td>
<td>6155</td>
<td>4.31</td>
</tr>
<tr>
<td>2009</td>
<td>145,239</td>
<td>6151</td>
<td>4.24</td>
</tr>
<tr>
<td>2010</td>
<td>147,525</td>
<td>6765</td>
<td>4.59</td>
</tr>
<tr>
<td>2011</td>
<td>146,288</td>
<td>6672</td>
<td>4.56</td>
</tr>
<tr>
<td>2012</td>
<td>139,055</td>
<td>6334</td>
<td>4.56</td>
</tr>
</tbody>
</table>


¶117 Table 10 begins with the enrollments from table 9 and pairs these data with similar numbers from the second and third years of law school. Shifting the columns allows us to see the changes not in annual totals but in cohorts as they move through law school. For example, the cohort that entered law school in 2000 with 9335 minority members had only 7898 by its third year, for an attrition rate of 15.4%.

¶118 Averaging the twelve years for which we have full information, we find that law schools lose another 13.3% of the already low minority enrollments with which their programs began. Even if that number matched the standard attrition rate for all students from law school, the losses would still be critical given the low enrollments of minorities at the outset. Table 11, however, reveals that an average attrition rate of over thirteen percent for minorities is several times higher than the overall rate at which students resign from the J.D. program. While successful completion of a program of legal education can be a challenge for even the most gifted person, these figures point to special obstacles encountered by minority students on their way to this achievement.

¶119 For the comparatively few minority students who graduate with their J.D. degrees, one final hurdle remains: passing the bar. In the only major study to examine lifetime success, the LSAC found that while 94.8% of members of the class of
1991 eventually passed the bar, this success was not evenly distributed across groups:

The eventual passage rates for racial and ethnic groups were: American Indian, 82.2% (88 of 107); Asian American, 91.9% (883 of 961); black, 77.6% (1062 of 1368); Mexican American, 88.4% (352 of 398); Puerto Rican, 79.7% (102 of 128); Hispanic, 89.0% (463 of 520), white, 96.7% (18,664 of 19,285); and other, 91.5% (292 of 319).\(^\text{116}\)

\(\S 120\) In addition to finding new pools of candidates to enroll in law school, law schools may have better success making sure that the students they already have are able to complete the training. According to one analysis, “if under-represented minorities passed the bar at the same rate as whites, this would have the same impact as increasing the number of under-represented minorities in law school by 18%.”\(^\text{117}\)

\(\S 121\) In sum, despite being equally interested in pursuing a legal career, minorities are underrepresented among those who are actually admitted to law school, disproportionally find themselves leaving the programs after they are admitted, and pass the bar less successfully even when managing to be one of the few to graduate with the J.D. degree.

\(\S 122\) The pipeline into the legal profession consistently “leaks” its flow of minority candidates, leading to the often-noted inability for the field to meet its own diversity goals. While the occasional crossover should be encouraged, we have no reason to believe that law schools will prove a consistently rich source of diverse librarians.

**Library Schools**

\(\S 123\) Given the rising skepticism that a legal degree is a desirable qualification for law librarianship, the inability of law schools to provide the next generation of law librarians diverse or otherwise may not prove worrisome to some. Library schools are perhaps the more natural feeder pipeline—although some have expressed similar doubts that the library degree is needed any more than the J.D.\(^\text{119}\)

\(\S 124\) Although the available data lack the depth collected from law schools, the same broad pattern emerges. Like law, libraries suffer an intractable lack of diversity. The title of a new volume frames the problem bluntly—*Where Are All the Librarians of Color?*\(^\text{120}\)—and like Thurston’s conclusions about law libraries, its contributors observe the heavy expenditure of resources yielding little improvement.\(^\text{121}\)

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116. *Id.*


120. *WHERE ARE ALL THE LIBRARIANS OF COLOR?*, supra note 44.

121. AGNES K. BRADSHAW, *Strengthening the Pipeline-Talent Management for Libraries: A Human Resources Perspective*, in *id.* at 95, 117 (“In spite of ALA’s diversity initiatives over the decades, the diversity of the profession has not increased significantly.”).
The information in table 12, taken from the Association for Library and Information Science Education (ALISE), describes the demographics of library school students. Barely enough minority students enroll to maintain the low level of racial and ethnic diversity currently recorded for libraries in table 5. There are not enough of either to improve the profiles of general libraries or to expect that adequate numbers are consistently available to noticeably alter the skewed ratios in AALL.

Beyond the obvious sense in which a library degree is typically required for professional employment in any library, there seems to be no special basis to expect library schools to be an abundant source of diversity candidates. If anything, the relationship may flow in the opposite direction. A recent survey found that sixty percent of African American librarians, forty-one percent of Asian Americans, and forty-four percent of Hispanics considered a library career after first working in libraries. 122 This cause-and-effect relationship between library work experience and later pursuit of a career in librarianship holds as well for minority law librarians.

M]ost library graduate student respondents had previous library work experience, and an overwhelming majority of these students had credited that work experience with influencing their decision to enter the library profession. . . . Respondents not only worked in libraries while students, over half (57%) entered the law library profession having already been employed in non-law libraries.123

¶127 This pattern was repeated in the follow-up survey fifteen years later.124 Despite close proximity to the library on a daily basis, many law students do not “see” the library, and certainly do not perceive it as a possible career choice until after they have spent time on the other side of the desk as a student worker. In this way, law libraries can expose more students to the value in professional librarianship, first planting the idea that it can be a real career at all, and then that it can be a good career for them. The best pipeline for future librarians may be those who have already found themselves working there.

¶128 Although the traditional pipelines will continue to disappoint for the foreseeable future, this may not be an entirely bad outcome. Scott Page, who brought to our attention the benefits of cognitive diversity, has suggested that the conditions under which different viewpoints are likely to emerge should rule out a structured source of applicants.

This insight should temper our enthusiasm for pipelines used to recruit minorities. These programs nurture potential employees or students from underrepresented groups. They may improve numbers, but they can limit the amount of cognitive diversity that a firm gets. By hiring only African American engineers who graduated from Berkeley and attended the same summer internship program, a company such as Cisco sacrifices cognitive diversity on the altar of identity accounting. Its employees look different, but they may not think differently. Thus, the use of pipelines probably has a negative effect on the benefits of diversity.125

¶129 To the extent we wish to realize the full range of benefits from diversifying the workplace, from representative reflective diversity to productive cognitive diversity, we should perhaps decline to invest in constructing formal pipelines.

Conclusions

¶130 We live in a time when twenty percent of supporters of the new Republican President believe that Abraham Lincoln’s Emancipation Proclamation, which freed slaves in the southern states during the Civil War, was wrong.126 Another candidate has argued the libertarian opinion that the part of the Civil Rights Act of 1964 that outlawed discrimination in public accommodations was a mistake.127 In a milieu where disagreement with equal rights is openly applauded, focusing our attention on preventing discrimination and bias and mitigating the obstacles to diversity will only become more urgent in the years ahead. As one part of that

123. King et al., supra note 85, at 263.
124. Ballard-Thrower et al., supra note 85, at 280–81, ¶¶ 43–44.
125. Page, supra note 38, at 364.
larger project, this article has offered a detailed critique of the efforts by AALL to expand its membership to include minority law librarians.

¶131 The primary threads running through this discussion lead to unambiguous conclusions regarding the success of AALL in attracting underrepresented groups into its ranks, and suggest specific actions the organization should adopt going forward.

Empirical

¶132 Review of the data results in the following findings of fact:

- By any standard, AALL membership lacks diversity within its racial and ethnic member demographics.
- In the local view, the last fifteen years reveal a small but consistent increase in the rate of minorities within AALL.
- From the global perspective, however, the growth of minority populations within the United States has outpaced the addition of minorities to AALL. The 2014 rate of diversity within AALL relative to the population as a whole is less than it was in 2000.
- The lack of minority librarians within AALL is not evenly distributed. The rate of diversity within academic law libraries is about twice that of others, such as law firm, court, and corporate libraries.
- While statistically greater, academic law library diversity plateaued over the examined span, with most of the improvement within AALL occurring within the other sectors of AALL member libraries.
- When compared with allied professions such as law, general librarianship, and postsecondary teaching, law librarianship at best fares equally well (or poorly) at attracting minorities excepting Hispanics.
- AALL cannot look to an influx of qualified potential law librarians through pipelines from law schools and even library schools because these lack sufficiently diverse students to satisfy even their own needs.

¶133 This article began by asking who had the better argument, Thurston with her skepticism about the lack of progress of AALL to more successfully address the lack of minorities within the organization, or Wheeler with his certainty that AALL has made real strides on the problem. As between these two choices, the data favor Thurston. The programs and efforts designed by AALL to attract minorities into the profession\(^{128}\) have yielded small gains, not even enough to keep pace with the growing population of minorities.

Policy

¶134 Two policy implications build on these findings, the first less controversial than the second. The success of AALL in opening the profession of law librarianship to persons of all backgrounds has not been evenly achieved. A principle of parsimony suggests that we should husband sparse resources and target them where they

\(^{128}\) Although this discussion includes no description of specific programs by AALL to increase diversity within the profession, a brief summary is offered by Michele A. Lucero & Beau Steenken, *Into the Breach with AALL’s Diversity Committee: Law Libraries’ Struggle to Achieve Diversity Goals*, AALL Spectrum, Feb. 2013, at 15.
can do the most good. Paragraphs 52 through 87 demonstrated that, by the standard of reflective diversity, we have a poor record of racial and ethnic diversity; paragraphs 88 through 129 refined that generalized finding to show that in most cases our ability to attract minorities is no worse than that of similarly situated professions. That result suggests that the issue is not attracting minorities to law librarianship—there simply are not enough in the pipelines to meet the needs of the professions. While our ability to redress these broad social ills may be limited, we would be more effective in using scarce resources to target the one identity group in which we lag behind all our peers. Admitting our shortcomings across the categories, the success among Hispanics is singularly poor and appears to be unique to our organization.

¶135 A more controversial observation notes that, as a practical matter, the emphasis on reflective diversity may be due to the inadequacies of the kinds of data that are available for comparison. For multiple reasons this standard should be questioned, not least being that the exceptionally rigid requirements of reflective diversity mandate an inflexible quota for each identity group through census statistics. This strategy may be reasonable when counting race because nothing relevant follows on mere variations of skin color. But greater challenges arise when applying the reflective standard to ethnic and linguistic differences that can generate real differences in values, desires, and perspectives. In those situations, culture may make some professional options more attractive than others, resulting in divergence from the census proportion for reasons that have little or nothing to do with the legacies of discrimination and bias we aspire to redress through diversity initiatives.

¶136 For example, in table 7 the census rate for Asian Americans is 4.43%; is the inclusion of this group within AALL at 4.1% a problem requiring corrective actions or the consequence of a preference by this group for postsecondary teaching in which it is overrepresented? We lack adequate information to draw this line, but we have enough to recognize that either can be a possible conclusion. We should not transform our lack of insight into a certain judgment by building our priorities on the convenient, if blunt, proxy of census figures. Attentiveness to the true range of diversity should lessen the literalness of the use of census figures and allow more nuanced understanding of the personal choices behind statistical deviations.

¶137 When deviations from census targets are the result of free choice rather than structural obstacles or discriminatory policies, we should not require or desire a different outcome. We do not celebrate the value of diversity when demanding that all groups behave identically.

Remediation

¶138 The data show that in most instances the lack of diversity within AALL is caused not by a closed gate at the front of the profession, but by a broken educational process that drains the pool of possible candidates. According to Wolf,

by five years of age some children from impoverished-language environments have heard 32 million fewer words spoken to them than the average middle-class child . . . . The sheer unavailability of books will have a crushing effect on the word knowledge and world knowledge that should be learned in these early years.129

129. WOLF, supra note 73, at 102–03.
These early differences persist and negatively impact the future success of the child moving through school: “A student who is not a ‘modestly skilled reader by the end of third grade is quite unlikely to graduate from high school.”

§139 Correction of such massive structural failures is beyond both the mission and the resources of AALL. One activity that AALL offers that already targets this pivotal deprivation is the book drive for underprivileged children organized by the Social Responsibilities Special Interest Section each year at the annual meeting.

Introducing reading material into homes responds to the primary cause of the lack of diverse members within all professions, including AALL. Adopted more broadly and pursued more vigorously as a permanent undertaking, in partnership with other organizations to generate donations and oversee placement, an enlarged book drive would have a measurable impact on the problem while perhaps being the single most effective strategy within AALL’s mission and identity as a library organization.

Organizational

§140 While the lack of diversity within AALL may in large measure be beyond its control, our lack of knowledge about the lack of diversity within AALL is not. After the 2005 Salary Survey, AALL made the deliberate choice to discontinue collection of data about its member demographics.

§141 If there is a perception that AALL has a strong commitment to diversity, that reputation is perhaps less deserved than once it was. The first AALL strategic plan in 1990 included as one goal to “foster diversity in the profession by increasing minority membership and participation.” The intent to promote diversity was present through the 2000–2005 document but was omitted thereafter. Diversity merited no mention in the 2013–2016 plan. The dropping of diversity as an organizational goal, and the cessation of data collection tracking its progress in that area, happened at approximately the same time. Although the background of these

130. Redfield, supra note 79, at 39 (quoting Comm. on the Prevention of Reading Difficulties in Young Children, Preventing Reading Difficulties in Young Children 21 (Catherine E. Snow et al. eds., 1998)).


132. A credible partner would be Reading Is Fundamental [RIF], an organization with more than fifty years of work giving free books to economically disadvantaged children. To date RIF has given 412 different titles to more than 40 million children. See Books for Ownership, Reading Is Fundamental, http://www.rif.org/about-us/books-for-ownership/ [https://perma.cc/B56R-TJFN].


136. Strategic Directions 2013–2016, Am. Ass’n of Law Libraries (July 2012), http://aallnet.org/mm/Leadership-Governance/strategic/strategic-direction-2013-2016 [https://perma.cc/TB4U-D27H]. It should be noted that the latest version of the Strategic Directions, published after this article was written, includes a “commitment to diversity” as one of AALL’s Core Organizational Values. Strategic Directions 2016–2019, Am. Ass’n of Law Libraries (July 2016), http://www.aallnet.org/mm/Leadership-Governance/strategic [https://perma.cc/AV6T-ZYM5].
decisions may offer an intriguing organizational history, they complicate any attempt such as this to formally analyze the standing of minorities within law librarianship. More important, they reflect poorly on AALL and, taken together, can call into question whether its diversity talk is only that, talk. Or at least surrender.

¶142 It was noted twenty years ago that “the need to diversify and to recruit should be accompanied by information about the existing AALL minority membership in order to provide a more meaningful direction for recruitment, retention, and promotion of minorities in the law library profession.”137 That advice remains as true today. AALL should recommence its former data collection and publication procedures.

137. King et al., supra note 85, at 248.