

# 2015 GOALS AND TIMETABLES REPORT

# REVEALS DEEPER DIVERSITY CHALLENGES

**Kathleen Guthrie Woods**

*“Racial insensitivity still exists.”*

**T**hat statement may seem obvious, but as the team members who put together the *2015 Goals and Timetables for Minority Hiring, Advancement, and Retention Report* discovered, the statistics and anecdotes they collected from interviews and an online survey reveal that discrimination in the legal field today is more subtle, and complicated, than they anticipated. “It’s more granular,” says Vidhya Prabhakaran, who, along with Paul Henderson, Miriam Montesinos, and Quyen Ta, is a co-chair of The Bar Association of San Francisco’s (BASF) Equality Committee. “There are more issues, more questions to be dealt with.” Are large law firms inhospitable to attorneys of color? Has anything changed in the last quarter century? What is being masked by the data?

The unconscious biases of well-intentioned people came up frequently during interviews. “When is the lawyer going to show up?” a Latino attorney was asked when he was mistaken for the interpreter. “Why do you speak English so well?” one Japanese American lawyer is often asked. Attorneys of Asian descent felt they are perceived to be “passive,” a label that may limit their opportunities in the competitive legal field.

This is just a sampling of what BASF’s Equality Committee uncovered as the team interpreted the data and hours of interviews to create the 2015 report.

## TAKING A FRESH LOOK AT BAY AREA DIVERSITY

In the late 1980s, when a study by the University of California at Berkeley documented barriers and disadvantages faced by racial and ethnic minorities in the legal profession, BASF began developing goals and timetables for minority hiring, advancement, and retention. The objective was to achieve greater diversity in the Bay Area by establishing and measuring goals for five-year periods.

The twenty-fifth anniversary report, released in November, relied on an online survey completed by approximately 180 respondents and confidential interviews of approximately 200 attorneys working as in-house counsel and in fifty-two law firms. BASF’s Equality Committee began its work in early 2012 with optimism. However, “not much has changed over the last twenty years,” says Yolanda Jackson, executive director of BASF and the Justice & Diversity Center (JDC). “We heard the same stories: how difficult it is for diverse attorneys to get a foothold, to network, to find mentors and champions.” Respondents indicated that the legal profession has not made progress toward their diversity goals at the hoped-for pace. “There are still issues around discrimination,” says Lauren Luke, who worked on the 2010 report when she was BASF’s Diversity Pipeline Programs manager. Luke, who now works in business development for Pocket Gems, stepped in to help manage the twenty-fifth anniversary update project. “It’s very subtle. There are biases, all the things that happen behind closed doors. It’s a whole new challenge.”

As the team began to lay the groundwork, they asked themselves, Were BASF’s efforts as effective as they could be? Were there issues BASF could be studying



**26%**  
Women partners

**12%**  
Minority partners

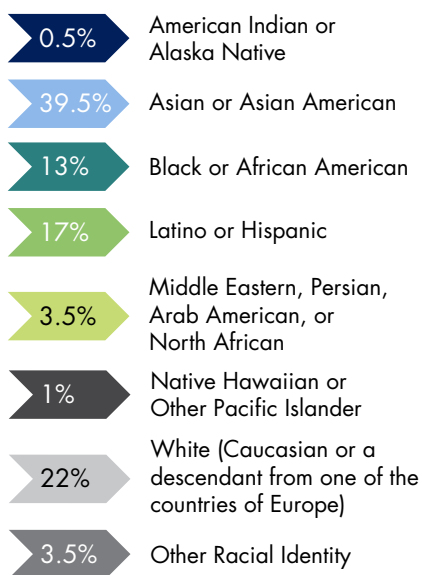
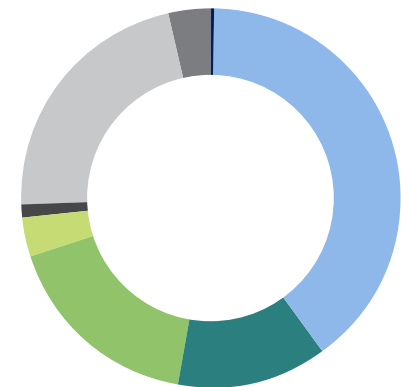
**0.4%**  
African American women partners

**2.6%**  
Asian women partners

**0.81%**  
Hispanic women partners

1. From the National Association for Law Placement’s (NALP) “Ten Year Trend Data 2004–2014—Women and Minority Law Firm Partners and Associates.”

## What is your racial identity?<sup>2</sup>



to be more strategic, more practical? Clearly, focusing on just the numbers was not working, and it was time to get to the “heart” of the issues, to “discuss how old approaches have impeded success in the advancement of diversity in the legal profession,” says Jackson.

After the 2012 diversity summit, titled “Unmasking Diversity,” the team culled categories they felt needed further exploration. “This 2015 study goes above and beyond the data to talking to people,” says Ta. They felt more attention was warranted for three new areas: ethnic subgroups, intersectionality, and retention.

“It was a huge team effort,” says Montesinos, who is of counsel at Gresham Savage Nolan & Tilden, and the team’s efforts reveal that the profession has more work to do to bring about real change.

Following are some of the report’s highlights and observations.

## ASKING THE DEEPER QUESTIONS

“We asked, ‘Who do we need to reach out to: practitioners and law firms? How do we plug data into the report to enhance the responses?’” says Prabhakaran, who also serves on the Board of Directors of JDC and as president of the South Asian Bar Association of Northern California. “The four of us [Henderson, Montesinos, Ta, and Prabhakaran] looked into issues of inequality/race within law firms and in-house legal departments, and broadened the term ‘What is a minority?’ to include LGBT and people with disabilities.”

Several things surprised Prabhakaran as he reviewed the data. “It was interesting to wrestle with other socioeconomic factors,” he says, “such as the number of employers folks had had since graduating from law school and how long they were at their current employer.” Although the report doesn’t include a comparison to the general population of attorneys, the data seems to indicate a high rate of turnover for diverse attorneys, something he’d like to see tracked and studied in more detail.

## EXPLORING ETHNIC SUBGROUPS

The thirty-four attorneys who self-identified as Latino or Hispanic broke into thirteen subgroups, including Caribbean, Guatemalan, and Peruvian. For

2. Based on data provided by the BASF Equality Committee from an online survey that included around 180 diverse attorneys and individual interviews with about 200 diverse attorneys working as in-house counsel and in fifty-two law firms.

seventy-nine Asians or Asian Americans, the list of eleven subgroups included Filipino, Hmong, and Pakistani. Ethnic subgroups—and their unique experiences of discrimination—is an area ripe for further exploration.

Ta, a Vietnamese American and a partner at Kecker & Van Nest, says, “Micro-aggression is experienced every day in small ways.” Ta sees that firms want to improve, but have had difficulty realizing there is an issue when biases and inequality are so subtle. “There have to be some cultural teachings and it must have a real impact on people,” she says.

Fortunately, she remains optimistic. “It’s heartening to see there are success stories, to see people’s resilience, tenacity, and will to change things—even if it’s slow.”

## UNDERSTANDING INTERSECTIONALITY

Intersectionality is defined as “attorneys who identify as belonging to two or more minority groups.” Almost fifty diverse attorneys who self-identified as intersectional were interviewed, most of whom were women, and they covered the categories of being LGBT, racially diverse, and disabled.

Respondents spoke about their unique challenges. “Do I want to play the race card or the woman card?” one interviewee asked. “Women reported having experienced more bias because of their gender or child-caring responsibilities than their color,” says Montesinos. “For me, it’s not that I didn’t know it existed—I’ve experienced it.” Yet she was encouraged when she read the comments. “There’s a lot of positive spin: respondents felt stronger for having successfully faced these challenges.”

## STUDYING RETENTION

Out of the 180 attorneys and law firm staff who responded to the online survey, only 31 have been with one employer since law school. A significant number have been with their current employer less than five years. Within the profession, there’s a lot of speculation as to why, and the team studied patterns of retention of diverse attorneys in big law firms. “It’s dangerous for the profession to not be diverse,” says Henderson, who is deputy chief of staff and public safety director for Mayor Ed Lee. “Everyone has a role, so we need to make sure as



**50%**  
Women associates

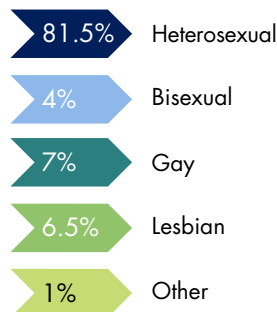
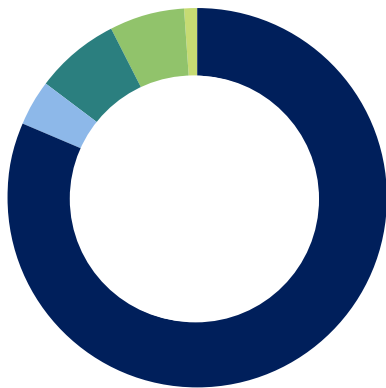
**26%**  
Minority associates

**0.6%**  
African American women associates

**10%**  
Asian women associates

**2%**  
Hispanic women associates

## With regard to your sexual orientation, do you identify as:<sup>2</sup>



many voices and communities as possible have a place at the table.”

Expressed and implied racism and bias come up as reasons for quick turnover. “People want to work on cases with people they are comfortable being around,” said one survey respondent, and that may translate to diverse attorneys having fewer opportunities or being overlooked for plum case assignments, which can play a crucial role in making partner. Interviewees responded in the positive when asked if their firms had minority recruitment and retention programs in place, but there was some concern that the “firm doesn’t walk the talk.”

Another factor may be the lack of diverse attorneys in leadership positions. Young attorneys look to firm leaders as role models, mentors, and champions. If they don’t see someone like them, they may not have hope that they can succeed on the partnership track. “We’re just scratching the surface of retention,” says Jackson, and she’d like more firms to keep and measure statistics so that practical recommendations for improvement can be included in future reports.

## PROGRESS, NOT PERFECTION

While it’s hard to not feel discouraged, positive trends were reported. For one, many interviewees said that their most effective mentors and champions were of different genders and ethnicities. “Mentors come in all shapes, sizes, colors, and genders,” said one woman of color who had white men take her under their wings. “To overlook people not like you is a lost opportunity for a mentor.”

In keeping with that spirit, the report includes practical recommendations for legal employers seeking to improve their diversity, and for individuals seeking to better face the challenges of being a diverse attorney. A firm looking to improve its mentorship/sponsorship program, for example could create a “Take an Associate to Lunch” program that commits each partner to take two or more associates, at least one of them diverse, to lunch annually. For attorneys looking to improve business development, one suggestion is to “Make an effort to observe rain-makers in action, and find ways to adapt and incorporate those actions to fit your own style.” Prabhakaran himself is a success story. Five years ago, for the 2010 report, he interviewed partners. “I met with them and incorporated best practices into my own.” In part because of the lessons he learned, this year he became a partner at Davis Wright Tremaine.

A key finding of the report encourages attorneys seeking employment to re-

quest a firm's statistics on diversity and retention, for "such requests will increase the importance of gathering, maintaining, and improving such statistics . . . and will provide an important variable for attorneys to consider when evaluating a job offer."

"There's a clear indication there's work to be done and more people need to be involved," says Henderson. While there's a perception that diversity is an issue that needs to be on the agenda of senior people, "the reality," he says, "is *you* are the person who needs to focus on diversity right now."

What can you do? "Think about it," says Ta. "Would your firm be better with more diversity? Who do you relate with? Who's in your comfort zone? People have to challenge their own ideas." The report suggests that attorneys find out what their firm's diversity policy is and determine whether it's hindering or helping efforts. If there isn't one in place, help create one. Recruit at undergraduate and law schools, collect résumés, or sit on your firm's hiring committee. Invite your firm to participate in events and diversity job fairs. "Ask 'How can we do better?'" says Henderson. "Even better, ask how *you* can do better."

The team remains hopeful that the numbers in the 2020 report will reflect their efforts. At that time, the committee may choose to follow up on the categories explored for 2015, or they may pursue new categories and issues that arise in the interim, such as digging into the subgroups of the African diaspora and collecting diversity data from government offices.

"The bottom line for the leaders who have spent the last three years putting together this report is that there is still a lot of work to be done—by all of us. If it's not important to you, you can't expect it to be important to others," says Henderson. "If you remain silent, you can't expect change."

*Kathleen Guthrie Woods is a San Francisco–based freelance writer.*

**84.5%**

of diverse attorneys who responded to BASF's survey had no others in their immediate family who attended law school or practiced law.

**71%**

had no others in their extended family who attended law school or practiced law.