

To Advance Diversity, Philanthropic Mission

# Fund Small Law Firms

By Yolanda Young (Contributors: Tracey G Jackson, Ph.D. and Natalia Marte)

The philanthropic community has long understood that its priorities - combating poverty and injustice, improving education, protecting democracy, and supporting human rights – are inextricably tied to the legal system. These aims can't be fulfilled without community lawyers, solo practitioners equipped to handle the immediate criminal, family, environmental, and immigration law needs of local clients. There is an extreme shortage of such lawyers. We are proposing a new legal services organization that scales the solo practice and puts more lawyers in local and marginalized communities.

The importance of lawyers was established at the nation's inception – 25 of the 56 signers of the Declaration of Independence were lawyers as were 32 of the 55 framers of the Constitution. Litigation has played a crucial role in advancing civil rights since 1886 when lawyers took the discrimination case of Chinese laundry owner, Yick Wo all the way to the Supreme Court, which ruled that a supposed race-neutral law administered in a prejudicial manner is an infringement of the Equal Protection Clause of the Fourteenth Amendment. Since then, the primary battle ground for upholding the civil and constitutional rights of all Americans, particularly its most vulnerable citizens of our society, has been the courtroom.

## Essential Role of Lawyers in Advancing Civil Rights & Public Interests

**LAWYERS**

**25** of the 56 signers of the Declaration of Independence

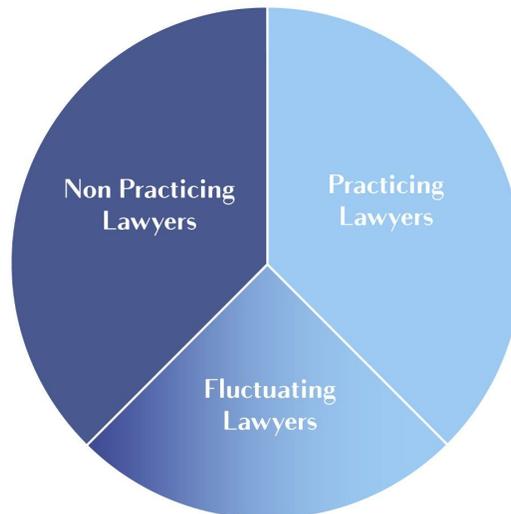
**32** of the 55 framers of the Constitution

<p><b>Brown v. Board of Education</b> Separating black and white students in public schools is unconstitutional.</p>	<p>1 9 5 4</p>	<p><b>1886</b> <b>Yick Wo v. Hopkins</b> A facially neutral law applied in a racially discriminatory manner violates the Equal Protection Clause of the Fourteenth Amendment.</p>
<p><b>Miranda v. Arizona</b> Prisoners must be advised of their rights before being questioned by police.</p>	<p>1 9 6 6</p>	<p><b>1963</b> <b>Gideon v. Wainwright</b> Criminal defendants have a right to an attorney even if they cannot afford one.</p>
<p><b>Jones v. Alfred H. Mayer Co.</b> The Civil Rights Act of 1866 bans racial discrimination in housing by private, as well as governmental, housing providers.</p>	<p>1 9 6 8</p>	<p><b>1967</b> <b>Loving v. Virginia</b> Invalidated state laws prohibiting interracial marriage.</p>
<p><b>Roe v. Wade</b> Women have a constitutional right to an abortion during the first two trimesters.</p>	<p>1 9 7 3</p>	<p><b>1971</b> <b>Griggs v. Duke Power Co.</b> Title VII of the 1964 Civil Rights Act prohibits not only intentional job discrimination, but also employer practices that have a discriminatory effect on minorities and women.</p>
<p><b>Obergefell v. Hodges</b> Same-sex marriage is legalized across all 50 states.</p>	<p>2 0 1 5</p>	<p><b>1998</b> <b>Bragdon v. Abbott</b> HIV-positive individuals, and those with other disabilities, are protected under the Americans with Disabilities Act (ADA).</p>

New Law Firm Model Needed to Advance Diversity & Social Justice by @yolandayoungesq @lawyersofcolor

Despite the fact that lawyers are an invaluable resource in the pursuit of justice, this resource is eroding. **Nearly forty percent of law school graduates don't practice law. Only 62% of 2016 law school graduates had full-time legal jobs 10 months after graduation,** according to the 223 law schools reporting employment figures to the American Bar Association (ABA). Even the 62% figure is artificially inflated as it includes graduates who have been awarded fellowships or judicial clerkships, or have jobs financed by law schools that may not last beyond a year. That year, fifty law schools had legal job placement rates of 50% or less, and not a single one of the 153 graduates of Pontifical Catholic University of Puerto Rico reported having a legal job.

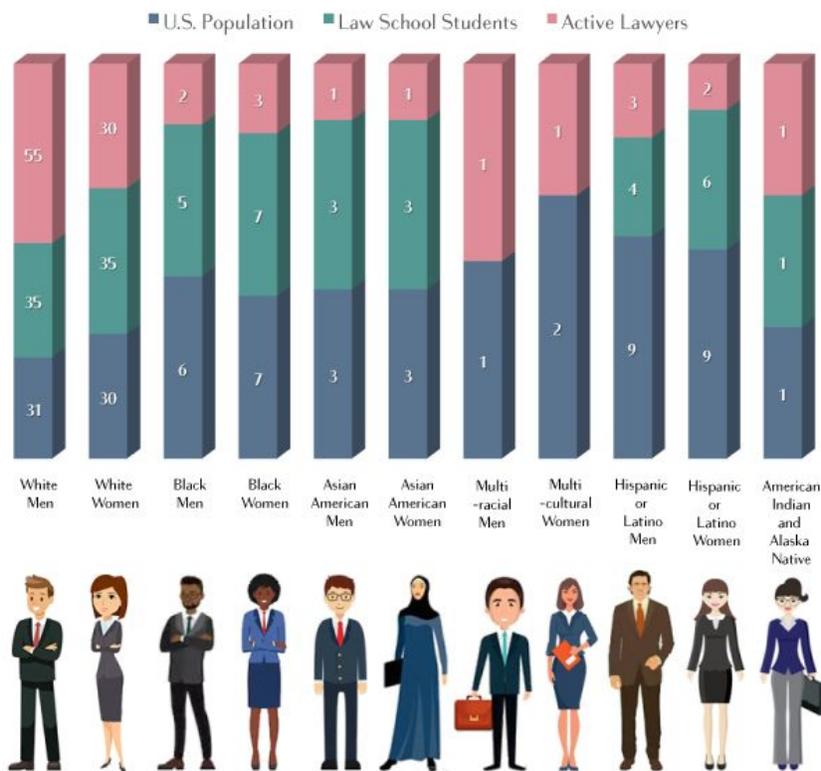
40% of Law School Graduates Don't Practice



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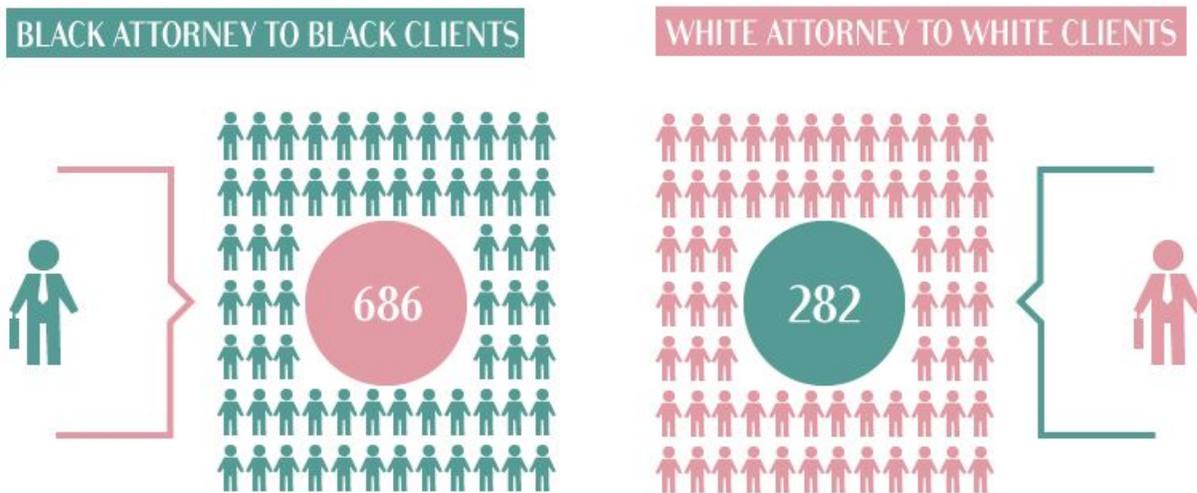
This lack of employment is even more pronounced among black and Hispanic lawyers. Ten years ago, Lawyers of Color was founded to inform and promote black lawyers, and we eventually expanded our efforts to encompass all minority attorneys. As we published legal periodicals, convened conferences, and hosted networking events, we noted an alarming trend: **black and Hispanic law graduates were underrepresented in every legal job sector and severely underrepresented in corporate law firms.** Data suggest a much higher percentage of women and minorities graduate law school than go on to practice law.

Minorities: 30% of law school graduates; 15% of active lawyers  
 Women: 50% of law school graduates; 35% of active lawyers  
 Hispanics: 10% of law school graduates; 5% of active lawyers  
 African Am: 12% of law school graduates; 5% of active lawyers



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While at first glance, this may appear to be a problem solely for the legal profession, our aggregated study, [“Why Black Lawyers Matter,”](#) revealed the lack of black lawyers and judges has a negative impact on black clients because in both criminal and civil cases, black clients have better outcomes when they have black lawyers or judges. Additionally, our study revealed there is a much greater lawyer disparity in the black community where there are 1 black attorney for every 686 black clients while there is 1 white attorney for every 282 clients.



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In addition, our earlier report found that black and Hispanic attorneys are underrepresented in the judiciary and in public interest jobs, even as black and Hispanic communities are disproportionately victimized by unfair and inequitable treatment in the criminal justice system, as well as in housing, immigration, and environmental policies. **So everyone should be as alarmed as the American Bar Association (ABA) that “despite decades of reports, task forces, and goals, in 2000 the legal profession remained about 90% Caucasian.”**

In 2010, the ABA Presidential Initiative Commission on Diversity (2010 Commission) released the report, [Diversity in the Legal Profession: The Next Steps](#), in which it established that the legal profession plays a critical role in advancing democracy and promoting equality and that diversity within the profession is critical to achieving these ends. Lawyers and judges help conceive, defend, and implement democracy in the United States, a nation with a “commitment to equality, broad political participation, social mobility, and political representation of groups that lack political clout and/or ancestral power.” Neither the legal profession nor society can succeed at advancing democracy without solving the legal profession’s lack-of-diversity problem.

Every other year sees a new diversity study, task force, or call to action, that, like the over 150 recommendations made by the 2010 Commission to stakeholders — the bar, law schools, corporate firms and departments, government and judiciary - results in no meaning progress.. **“The legal profession is less**

racially diverse than most other professions, and racial diversity has slowed considerably since 1995.”

It is time organizations turn some of their attention away from diversity “box checking” and “costly and time-wasting training sessions,” in order to create a strength out of what the commission saw as a weakness: **the majority of lawyers are in solo practices or very small partnerships.”** To increase the percentages of black and brown lawyers working within the profession, we need to create a new organization whose mission is to support and scale the solo and small law practice.

While such a realignment of resources and focus might get the legal industry to full employment and almost certainly would **improve the participation of women who make up the [majority of law school students](#) but only [35% of active lawyers](#),** the Bar must take care to ensure that special efforts in the form of stipends and other resources, are provided to the most marginalized legal professionals, particular those committed to serving the most marginalized clients.

Such a disruption is radical but required. As David B. Wilkins, who heads programs and studies on the legal profession at Harvard Law School, was quoted in the New York Times, “In some areas we probably do have an oversupply of lawyers, but in others we have a chronic undersupply, and that problem is getting worse...The health care model is unbelievably subsidized, and while I favor finding some version of it for legal needs, it is never going to be ratcheted up to that level. We

should think more about public-private partnerships and loosening up some of the restrictions on law practice without junking them all. What we need now is experimentation, like what is happening in South Dakota.”

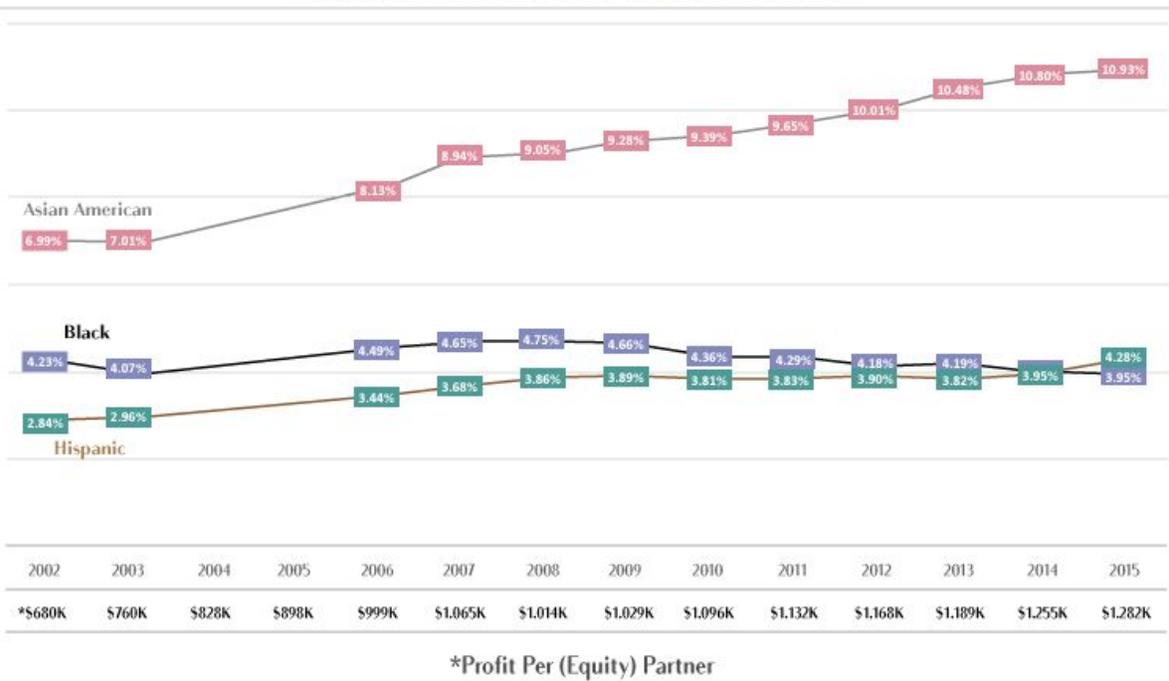
To reverse this trend, the legal profession needs to utilize all of the lawyers it currently has, especially its minority lawyers. Every sector of the legal community should support this, especially corporate law firms where almost no progress has been made since Wilkins and G. Mitu Gulati wrote their 1996 Duke Law Review article, “Why Are There So Few Black Lawyers in Corporate Law Firms?” That year the National Law Journal reported only 2.4 Black lawyers in corporate firms. The American Lawyer’s 2016 Diversity Scorecard, black lawyers make up 3%.

The pipeline isn’t the problem. For the 2013-2014 academic year there were 10,241 black law students compared to 8,696 and 11,215 Asian American and Hispanic law students, respectively. Even among the top 50 “go-to” law schools for law firms, black students percentages are more than double that of law firms. According to National Association for Law Placement, Inc. (NALP), “Minorities made up almost 27% of graduates in the class of 2014, yet the representation of minorities among lawyers as a whole at large law firms in 2015 is only 13.97%”

**According to NALP data, while Asian American associate percentages have tripled over the last fifteen years, Hispanic percentages have been mostly stagnant while black**

percentages have decreased. This even as law firm profits have gone up.

As Partner Profit Rose  
Asian American Associate % Increased  
Hispanic and Black Associate % Stagnated, Decline



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The closest corporate firms have come to increasing diversity occurred about 15 years ago when they began hiring large numbers of attorneys primarily for document review work. I wrote of my experience as a “staff attorney” at Covington & Burling LLP, in the essay, “Law Firm Segregation Reminiscent of Jim Crow.”

“Covington's black staff attorneys (like its black partners and associates) hail from top law schools like Harvard, Duke and Georgetown while several white associates and partners attended schools like Catholic, Kentucky and Villanova (all ranked well below 50). Taken as a whole, the black staff attorneys' average law school rank is higher than that of white staff attorneys at the firm.”

I eventually brought a discrimination lawsuit against the firm, alleging that just prior to building a diverse staff attorney group, Covington promoted its only two white male staff attorneys, one from a 4th tier law school, another from a 2nd tier law school, (neither with honors), but never promoted any attorneys from the black staff attorneys. **The judge noted in his opinion granting summary judgement to Covington:**

**“In all, Covington hired 170 staff attorneys as part of the program in D.C. [started] in 2005. Not one of the 170 staff attorneys hired in the same staff attorney program as the plaintiff, the program created in 2005, was ever promoted to the position of associate, counsel, or partner.”**

The case was widely publicized, yet diversity champions in the legal community never questioned why the firm and the sector as a whole wouldn't use this innovative recruitment strategy to identify, train, and evaluate minority attorneys for promotion.

The legal profession's efforts to diversify its ranks are pursued through local affinity and social legal organizations, state

licensing boards, and the large and powerful, American Bar Association (ABA). Though well-intentioned, the Bar has been largely ineffective in its diversity efforts in part because of its blind spots.

For example, the ABA currently features the Institute for Inclusion in the Legal Profession's IILP Review 2017: The State of Diversity and Inclusion in the Legal Profession.

IILP was established in 2010 with what are undoubtedly the best intentions. It has a distinguished and diverse board of directors with decades of experience and a commitment to diversity. Yet, its primary consulting firm, The Claro Group, lacks diversity.



Of the 40 people identified on the organization's Our People website page, 6 are women, one person appears to be of Pacific Asian descent and another of South Asian descent, so to clarify, 32 (80 percent) members of the diversity team of the ABA's diversity consulting firm appear to be white men. This means its **leadership is far less diverse than the numbers IILP provides for the least diverse corner of the profession – law firms partners where in 2015 women made up 21.5 percent and minorities made up 7.5 percent, a number the report termed “terribly low” though it is higher than the 5% minority IILP leadership.**

It is also too close to the factions it is charged to police. The ABA oversees and accredits law schools so it bears a some responsibility for the alleged misconduct of 15 law schools in “tortiously misrepresenting job placement statistics and violating state consumer protection laws.”

More than a dozen class action lawsuits were filed against law schools for inflating post-graduate employment rates, a key factor a student uses to select a law school. Lawyers of Color became aware of just how complicit the law school community has been when we attempted to add a Thumbs Down category to our law school rankings in our Black Student's Guide to Law Schools. Our efforts to identify the law schools that had been named in lawsuits and articles as having inflated tuition, misleading employment statistics, and other predatory practices, were vocally opposed by law school admissions and

diversity officers, even those at law schools we'd identified as outstanding. It seemed no one wanted to upset the status quo.

The legal community has demonstrated with three decades of failed diversity initiatives that it is unable to solve this problem alone. It needs the economic, innovative and technical support of philanthropic and tech communities.

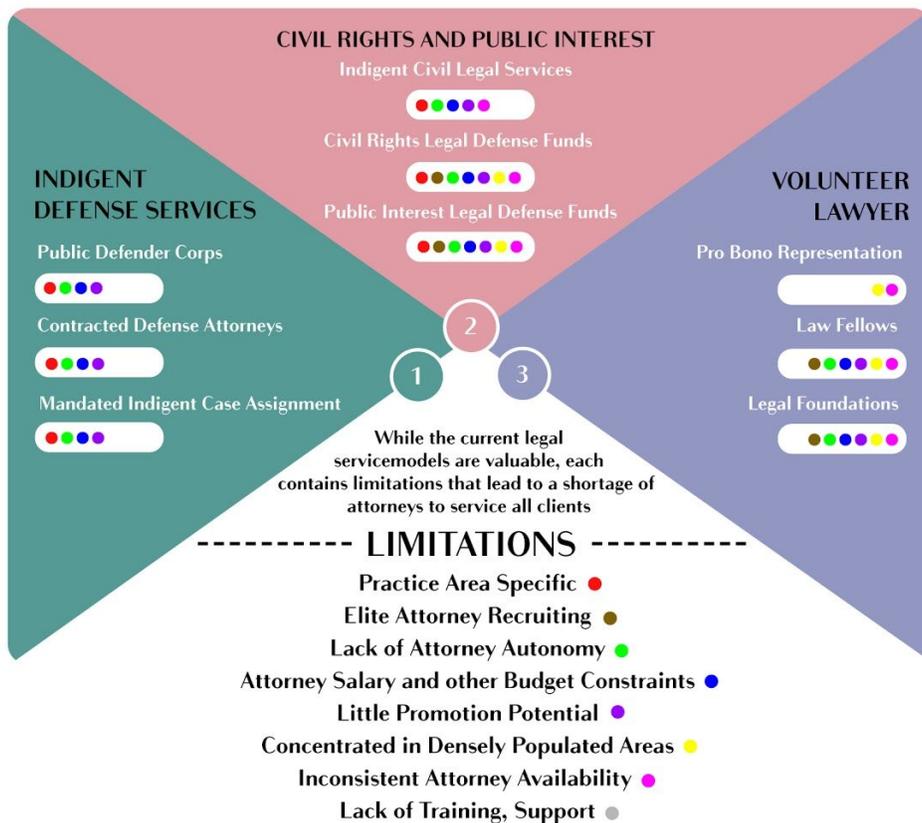
Figuring out how to get the legal profession to full employment is especially vital now as U.S. Attorney General Jeff Sessions reverses course on his predecessor, Eric Holder's agenda. The Department of Justice has disbanded civil rights programs in many federal agencies and advanced policies that ensure voter suppression, police brutality, and mass incarceration. By slashing budgets, dissolving programs, and appointing incompetent or unsympathetic officials, the DOJ has abandoned its traditional role of protecting marginalized communities from environmental, educational, employment and housing discrimination.

Civil Rights and Public Interest legal organizations are doing what they can to protect marginalized people. Legal professionals were heralded as heroes for waging legal battles after the Trump Administration began using the U.S. Department of Homeland Security Immigration and Customs Enforcement (ICE), the Muslim ban, and other policies to disrupt people's lives. The Southern Poverty Law Center, ACLU, and other legal organizations have mounted lawsuits to stop voter

suppression, the policy of separating children from their parents seeking asylum, and the denial of due process.

These organizations are doing essential work, but they have a number of limitations.

### Three Legal Service Models Currently Exist for Marginalized Communities



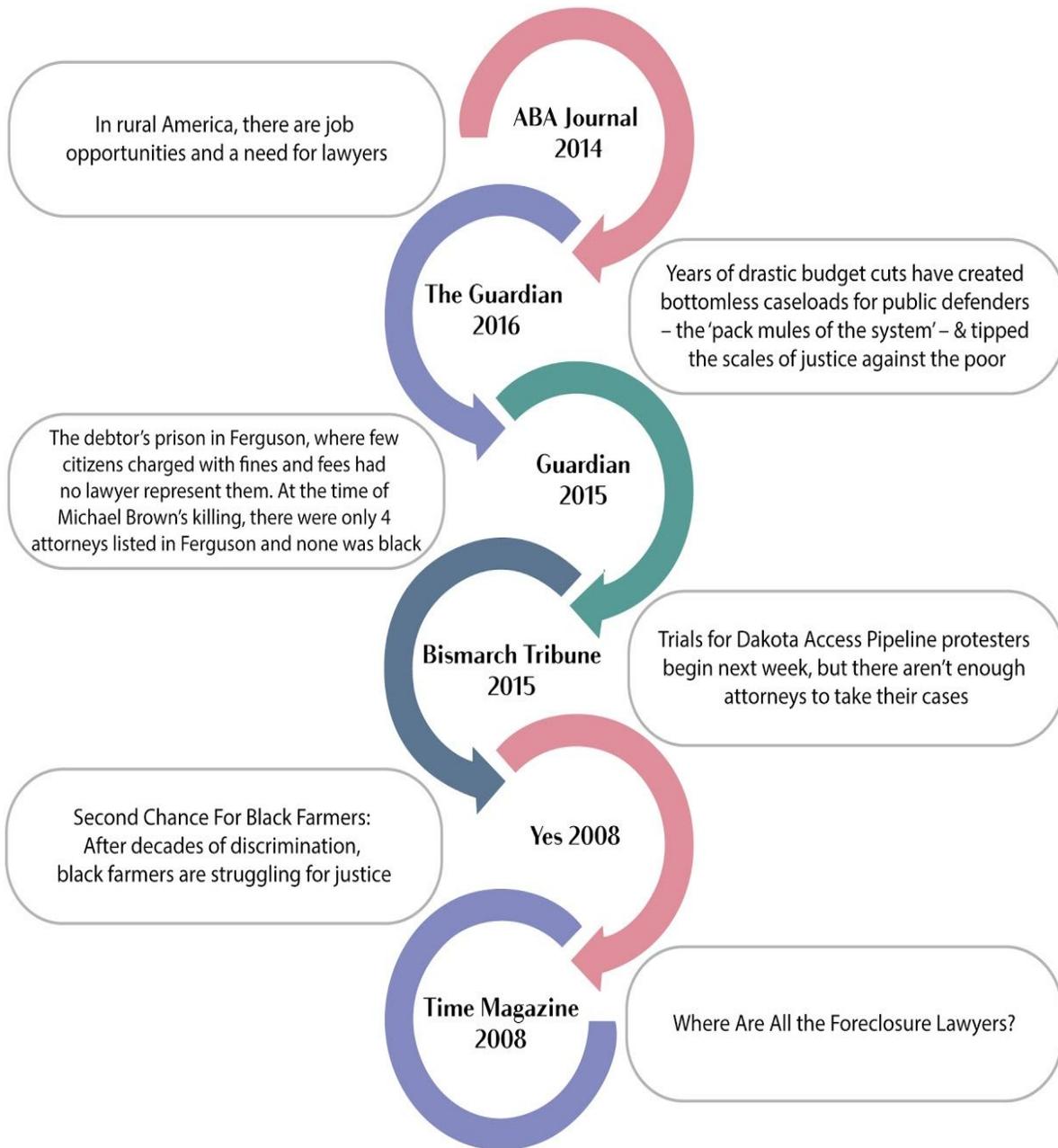
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Legal Services Corporation reported it is unable to serve the vast majority of people needing assistance. Increased funding wouldn't solve the problem because the bulk of pro bono, public defender, and Legal Aid type services are provided to people in major cities with large populations of lawyers and companies.

In the vast majority of the country, almost no legal assistance is available to residents. In Louisiana where the state can't afford to pay for public defenders, defendants who can't afford bail either sit in jail for months until trial or plead guilty even if they didn't commit the crime.

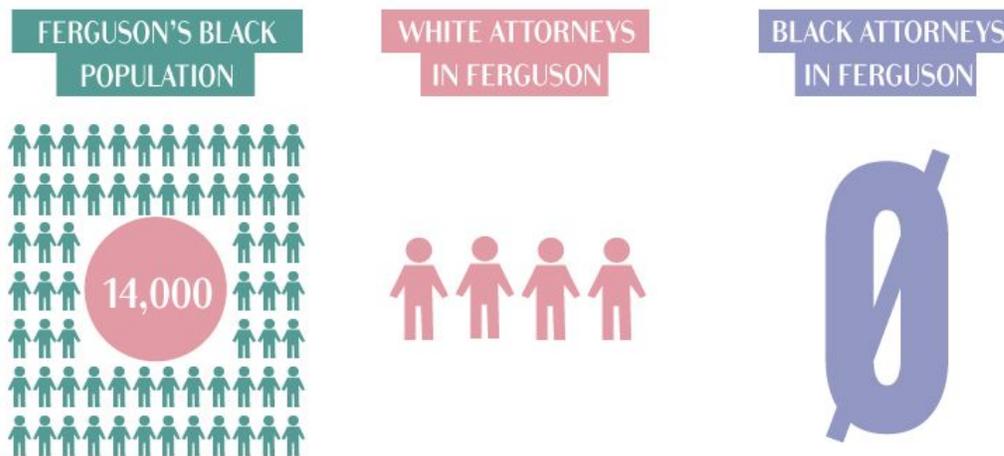
In North Dakota where there were only 70 barred criminal defense attorneys, lawyers petitioned the state's Supreme Court to allow out-of-state lawyers to represent activist arrested for protesting on the Standing Rock Sioux reservation construction on section of the Dakota Access Pipeline (DAPL), America's longest crude oil pipeline which runs near the reservation.

## Recent Headlines Reflect Need for More Lawyers



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Lawyers working locally can prepare for a crisis or surge in better ways. The city of Ferguson, Missouri was able to make systemic changes so quickly in the aftermath of the killing of an unarmed Michael Brown because ArchCity Defenders, a small social justice law firm based in St. Louis, had already compiled research on how disparities in municipal tickets and fines was violating the fundamental rights of the poor and were able to quickly published a white paper. Most of those fined had no legal representation. One reason for this is that at the time, there were only 4 lawyers serving Ferguson’s predominantly black population of nearly 14,000, and none of the four lawyers was black.



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To advance social justice, A new legal model is needed, one that can scale to holistically service the legal needs of local communities and provide training, practice area expertise and financial and administrative support to solo practitioners, especially those working in marginalized communities.

We propose designing tools and automation systems that make operating a solo practice economically and managerially viable...



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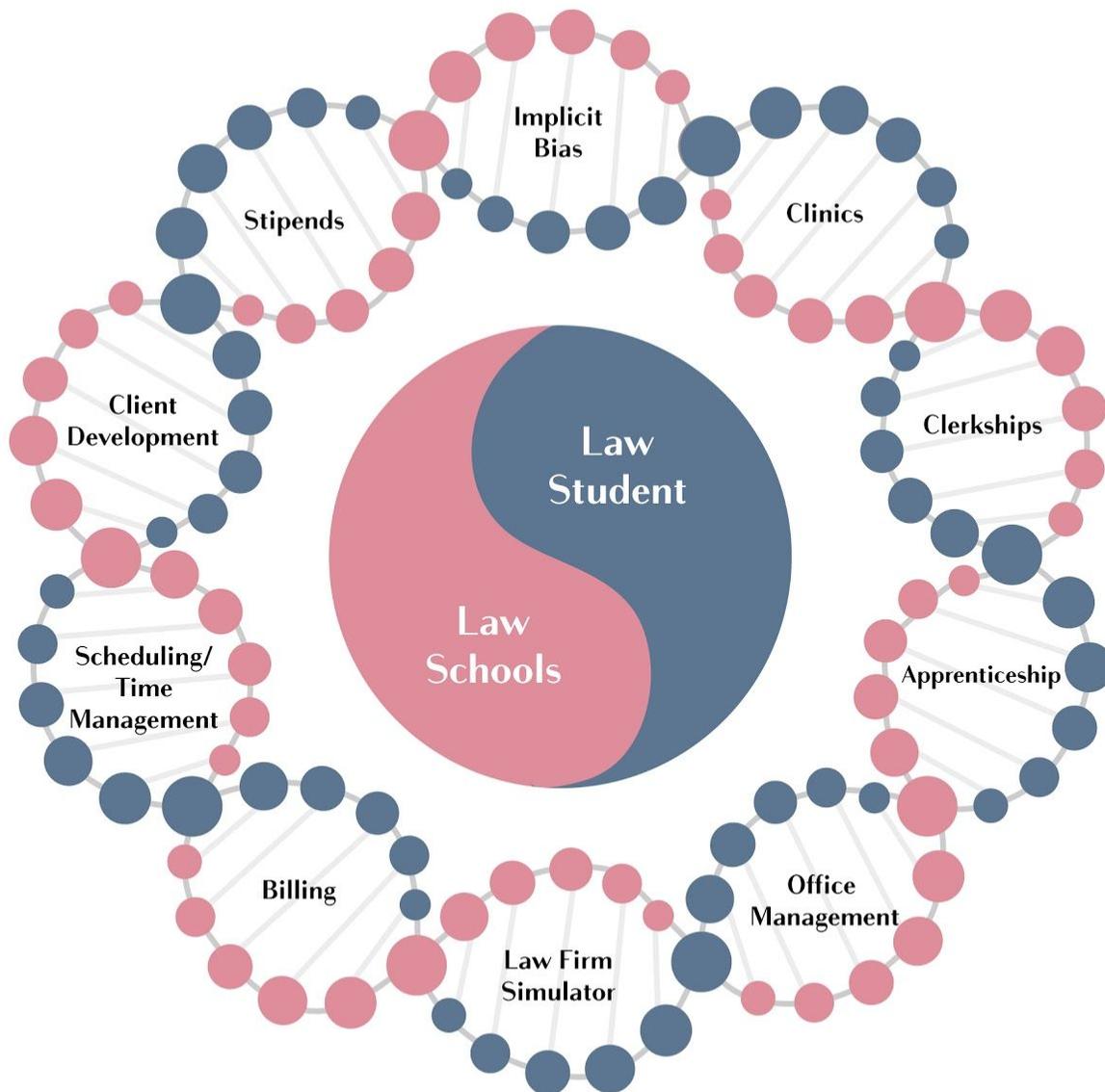
...While eliminating the stigmas and barriers associated with the



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solo practice.

We will work with law schools to create incubators and curriculum to make law students lawyer-ready.



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*\*We're bringing together the philanthropic, tech, and legal sectors for a free, day-long conference To Advance Diversity Philanthropic Mission, Fund Small Law Firms. The conference will be hosted by Foley & Lardner LLP in their Washington, D.C. offices on September 25, 2018 and will feature civil rights attorneys and legal practice scholars, as well as technology and security experts. Click here for more information. [Register now](#).*