

Diversity, Equity, Inclusion and Belonging

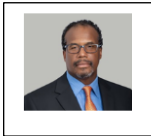
February 2026

IN THIS ISSUE

This month's newsletter highlights key developments shaping today's legal and cultural landscape—from honoring Black History Month and the Lunar New Year within the IADC community to significant shifts in DEI-related oversight involving the U.S. Equal Employment Opportunity Commission, a dismissed lawsuit in Missouri challenging Starbucks' diversity initiatives, and the federal government's withdrawal of its appeal over the 2025 Dear Colleague Letter.

February Insights: Culture, Compliance, and Shifting DEI Landscapes

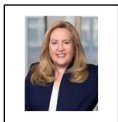
ABOUT THE AUTHOR



Kenneth E. Sharperson is the Chief Diversity Officer at Armstrong Teasdale LLP and a nationally recognized DEI leader, speaker, and author. A graduate of Hampton University and Rutgers School of Law–Newark, he previously practiced in insurance coverage and commercial litigation before transitioning to DEI leadership. A nationally recognized DEI leader, speaker, and published author, Kenneth has been a champion for DEI in the legal profession since 2001. He served as Chair of the New Jersey State Bar Association's Diversity Committee from 2010 to 2016 and was a member of its Board of Trustees during that same period. His legal background informs his work driving inclusive strategies that strengthen firm culture, client service, and talent development. He can be reached at ksharperson@atllp.com.

ABOUT THE COMMITTEE

The Diversity, Equity, Inclusion and Belonging Committee is charged with actively increasing the involvement and participation of diverse attorneys in the organization through membership strategies and professional programming that recognizes the strength and benefits of inclusion and diversity in the practice of law. For these purposes, diverse attorneys include lawyers from groups of people who are underrepresented in the IADC's membership. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

Editor's Note: The Upside of Adversity

In his book *David and Goliath*, Malcolm Gladwell challenges our traditional understanding of obstacles and disadvantages. He argues that what we often perceive as a setback—whether it is facing a literal giant, coping with a disability, or attending a mediocre school—can actually become a source of unexpected strength and "desirable difficulties." Much of what is beautiful and important in our world, Gladwell posits, arises directly from the struggle against adversity.

For those of us dedicated to Diversity, Equity, Inclusion, and Belonging (DEIB), the current legal and regulatory landscape can certainly feel like a "Goliath" moment. From administrative inquiries to high-stakes litigation, the pressure on corporate and legal DEIB initiatives is immense. However, as this month's featured articles demonstrate, these challenges are also refining our practices, forcing us to move beyond "regulatory ambiguity" toward more robust, defensible, and intentional strategies.

Navigating the Giant's Reach

Our first featured piece explores the resolution of a high-profile dispute involving the Equal Employment Opportunity Commission (EEOC) and major law firms. While the EEOC eventually retreated, acknowledging that its detailed DEI data requests were voluntary and the matter is

now closed, the episode serves as a vital reminder of the need for rigor.

- **Proactive Governance:** The dismissal is a win for privacy, but firms are encouraged to treat even voluntary inquiries with the same seriousness as formal subpoenas.
- **Documented Rationales:** Moving forward, the "David" strategy involves meticulous documentation of legal and operational rationales for data collection and retention.

Resilience in the Face of "Lawfare"

In our second article, we look at the dismissal of a lawsuit against Starbucks in Missouri. The court's rejection of this "factually thin" attack on corporate inclusion initiatives provides a moment of legal reassurance. Yet, the broader campaign of litigation—or "lawfare"—has already caused many organizations to scale back programs out of caution.

- **Addressing Operational Harm:** These pressures have led to program rollbacks and a slowing of diverse talent progression.
- **The Path Forward:** To rebuild, corporate leaders must tie DEI initiatives to clear, measurable business outcomes—such as recruitment and innovation—ensuring programs are narrowly tailored and consistently applied.

Recovery After Regulatory Retreat

Finally, we examine the fallout from the Department of Education's 2025 "Dear Colleague" letter, which signaled heightened scrutiny of race-conscious programming. Although the federal government has since withdrawn its appeal, effectively ending the immediate regulatory threat, the "preemptive action" taken by 437 campuses has left a significant void.

- **Institutional Fallout:** The rapid dismantling of programs—often driven by fear rather than legal necessity—has led to lost institutional knowledge and disrupted talent pipelines.
- **Deliberate Restoration:** Institutions are now encouraged to conduct legal audits to identify which reductions were unnecessary and to prioritize the restoration of mission-critical programs.

Like the shepherd boy who realized that his perceived weakness was actually his greatest tactical advantage, the DEIB community is finding strength in this period of scrutiny. By auditing our data practices, refining our response protocols, and grounding our initiatives in documented business justifications, we ensure that our commitment to fairness remains not just a goal, but a resilient and defensible reality.

Honoring Black History Month and Welcoming the Lunar New Year: A Message for the IADC Community

February offers the IADC an important moment to reflect on the values that define our global defense community—professional excellence, principled advocacy, and a commitment to fairness in every forum where we practice. Black History Month and the Lunar New Year each invite us to deepen our understanding of the diverse experiences and traditions that strengthen our organization and the clients we serve.

Celebrating Black Legal Trailblazers Who Shaped the Defense Bar

The work of today's civil defense lawyers is built on the foundation laid by Black legal pioneers whose courage and intellect reshaped the American legal system. Their influence continues to guide how we approach complex litigation, champion due process, and uphold the integrity of the civil justice system.

- **Thurgood Marshall** – Marshall's strategic brilliance as both a civil rights litigator and Supreme Court Justice transformed constitutional law by systematically dismantling legalized segregation and strengthening 14th Amendment protections—work that continues to guide defense lawyers in evaluating equal protection,

procedural fairness, and the limits of governmental authority.

- **Constance Baker Motley** – Motley was the first Black woman to argue before the U.S. Supreme Court. She played a central role in litigating major school desegregation cases, including *Brown v. Board of Education*. Her mastery in the courtroom and later on the federal bench set enduring standards for clarity, preparation, and principled argument—qualities central to effective defense practice.
- **Charles Hamilton Houston** – Houston believed that a lawyer was either a "social engineer" or a "parasite on society," arguing that lawyers must use their training to actively fight for justice and expand the rights of the underprivileged. His insistence on rigorous legal training and strategic litigation mirrors the discipline and precision that define the IADC's commitment to elevating the practice of civil defense worldwide.
- **Jane Bolin** – Jane Matilda Bolin made history as the first Black female judge in the United States and the first Black woman to graduate from Yale Law School. Her trailblazing judicial service and advocacy for equitable treatment resonate with defense lawyers who work every day to ensure that systems, institutions, and

processes operate fairly for all parties.

These leaders remind us that the pursuit of justice is not abstract—it is lived out through the daily work of lawyers who challenge assumptions, uphold the rule of law, and ensure that every litigant receives a fair and impartial process.

Recognizing the Lunar New Year Across Our Global Membership

The IADC's international membership makes the Lunar New Year (February 17, 2026) especially meaningful. Celebrated across East and Southeast Asia, the holiday marks a time of renewal, reflection, and connection. For many of our members, clients, and colleagues, it is one of the most significant cultural observances of the year.

Acknowledging these traditions strengthens our ability to collaborate across borders, understand diverse business cultures, and serve multinational clients with cultural fluency—an increasingly essential skill in global defense practice.

Moving Forward Together as a Global Defense Community

As we honor both Black History Month and the Lunar New Year, we reaffirm the IADC's commitment to fostering a profession where every member feels valued, respected, and empowered to contribute. These observances remind us that diversity is not simply a demographic fact—it is a source of

insight, innovation, and professional strength.

By celebrating the histories and traditions that shape our colleagues and clients, we strengthen the fabric of our global defense community and advance the IADC's mission of promoting excellence in civil justice.

EEOC Inquiry Closed: Stipulated Dismissal in Law Firm DEI Information Dispute

A high-profile dispute over the Equal Employment Opportunity Commission's ("EEOC") March 2025 outreach to major law firms requesting detailed DEI-related information has reached a quiet conclusion. Litigation brought by three law students, represented by the Democracy Forward Foundation ("DFF"), challenged the EEOC's letters, and in a stipulation of dismissal filed recently, the EEOC acknowledged that responding to those letters was voluntary, that compliance was not mandatory, and that the agency "considers the matter of responding to those letters closed."

Case background

The EEOC's letters sought demographic and programmatic information tied to firms' diversity, equity, and inclusion ("DEI") efforts. Recipients (and observers) raised concerns about privacy, the scope of the agency's authority, and the potential chilling effect on careers and confidential personnel processes. Most firms declined to provide the requested data. The DFF has hailed the

dismissal as a significant victory for privacy and professional protection.

Practical implications for law firms: The EEOC's retreat reduces immediate regulatory pressure to disclose sensitive DEI data, but it does not eliminate the need for careful governance and defensible practices.

- **Voluntary does not mean risk-free.** Even voluntary requests can create reputational pressure and internal uncertainty. As such, firms should always treat external inquiries with the same rigor they apply to formal subpoenas or regulatory demands.
- **Protect sensitive information.** Data that could identify individuals or affect careers should be handled under strict privacy protocols.
- **Document decision processes.** When firms collect or decline to provide DEI information, they should document the legal and operational rationale behind the decision.

Recommended actions

1. **Review response protocols.** Ensure that any external information request triggers counsel involvement and a documented decision pathway.
2. **Audit data practices.** Reassess what DEI data the firm collects, why it is collected, how it is stored,

and who has access. Limit retention of personally identifiable information unless there is a clear, documented business need.

3. **Communicate with employees.** Explain how the firm will handle external requests and what protections are in place for career-sensitive information.

Why this matters

The dismissal is a win for privacy and for the many individuals whose careers could have been affected by broad, agency-driven data collection. But the episode also illustrates how regulatory ambiguity can create operational stress. Firms that take a proactive, documented approach to data governance will be better positioned to protect employees and to demonstrate compliance if future inquiries arise.

State Challenge Fails: Missouri Suit Against Starbucks Over DEI Dismissed

A Missouri court recently dismissed the state's lawsuit alleging that Starbucks' diversity, equity, and inclusion ("DEI") programs discriminated against White men. The judge found no evidence that a Missouri resident suffered harm and criticized the vagueness of the claims. The ruling is another judicial rebuke to broad, factually thin attacks on corporate inclusion initiatives, but it also highlights a larger pattern of "lawfare" that has already reshaped corporate behavior.

The ruling: The court's dismissal turned on two central findings: lack of identifiable harm to a state resident and insufficiently specific allegations. The decision signals judicial skepticism toward sweeping challenges that do not tie alleged injury to concrete, local plaintiffs.

Corporate responses and consequences:

Despite favorable rulings in several high-profile cases, many corporations have already scaled back DEI programs in response to political and legal pressure. The practical consequences are significant:

- **Program rollbacks.** Companies paused or narrowed initiatives aimed at diversifying leadership and improving workplace equity.
- **Talent and succession impacts.** Reduced investment in mentorship and development has slowed the progression of diverse talent into senior roles.
- **Cultural erosion.** Employees report uncertainty about organizational commitments to fairness and inclusion.

Guidance for law firm leaders:

1. **Design programs with clear business justifications.** Tie DEI initiatives to measurable business outcomes — recruitment, retention, client service, innovation — and document those links.

2. **Ensure narrow tailoring and consistent procedures.** Programs that are targeted, time-limited, and applied through neutral processes are more defensible.
3. **Train managers and document decisions.** Provide training on lawful implementation and maintain records that show nondiscriminatory rationales for program design and participant selection.

The broader lesson:

The Starbucks dismissal is legally reassuring for companies that have maintained well-documented, business-driven DEI efforts. Yet the broader campaign of litigation and administrative pressure, even when unsuccessful in court, has already produced self-inflicted operational harm. For firms that have withdrawn prematurely, rebuilding requires intentional strategy, legal foresight, and a commitment to restoring the programs that drive long-term organizational health.

Federal Retreat: Appeal Withdrawn Over 2025 Dear Colleague Letter

The Department of Education's February 14, 2025 "Dear Colleague" letter set off one of the most consequential administrative episodes in recent higher-education policy history. Intended to signal heightened scrutiny of race-conscious spending, teaching, and programming on campus, the memo was quickly enjoined after a lawsuit

alleging First and Fifth Amendment violations. Almost a year after the issued its "Dear Colleague" letter, the department dropped its final appeal of a federal court ruling that blocked it enforcing the directive.

What happened: The Dear Colleague letter never took full legal effect. A court injunction halted enforcement after plaintiffs argued the guidance unlawfully chilled protected speech and imposed unconstitutional constraints on institutional decision-making. With the administration's appeal withdrawn, the legal posture that prompted the injunction has effectively receded.

The operational fallout: Legal risk was only part of the story as the letter's mere issuance produced rapid, preemptive action across the country: 437 campuses in 48 states and the District of Columbia dismantled DEI roles, offices, and programs in the months that followed. Many of those programs were legally defensible at the time and remain so now. The speed of the retrenchment — driven by fear of enforcement rather than by reasoned legal analysis — created substantial collateral damage:

- Lost institutional knowledge. Offices and staff who managed recruitment, retention, and student support were eliminated or reassigned, eroding continuity.
- Disrupted talent pipelines. Programs that identified and mentored underrepresented students and faculty were paused

or ended, narrowing future candidate pools.

- **Weakened campus climate.** Students and staff reported lower morale and a sense that the institution had retreated from commitments to inclusion.

In sum, although the legal threat has eased, the institutional harm remains. Recovery will require careful legal review, strategic prioritization, and patient rebuilding of programs and trust.

What institutions should do now: The withdrawal of the appeal creates an opening for deliberate recovery. Institutions should not rush to restore programs without legal and operational review, but neither should they accept the damage as permanent.

1. **Conduct a legal and operational audit.** Identify which reductions were taken solely in response to the Dear Colleague letter and evaluate whether those actions were legally necessary.
2. **Prioritize mission-critical programs.** Restore initiatives that demonstrably support student success, compliance, and recruitment pipelines.
3. **Document decisions.** Maintain contemporaneous records explaining why programs were cut and why restorations are being pursued; this protects governance and informs future risk assessments.
4. **Engage stakeholders.** Communicate transparently with faculty, staff, students, and alumni about restoration plans and legal safeguards.

Past Diversity, Equity, Inclusion and Belonging Committee Newsletters

Visit the Committee's newsletter archive online at www.iadclaw.org to read other articles published by the Committee. Prior articles include:

DECEMBER 2025

[The DEIB Brief: Building Belonging in Law](#)

Kenneth E. Sharperson

OCTOBER 2025

[Truth and Soul: Advancing Inclusion in the Legal Profession](#)

Kenneth E. Sharperson

JUNE 2024

[A Series \(Part III\): Tackling the Recent Wave of Challenges to Diversity, Equity, Inclusion and Belonging Efforts](#)

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MAY 2024

[A Series \(Part II\): Tackling the Recent Wave of Challenges to Diversity, Equity, Inclusion and Belonging Efforts](#)

Lucy R. Dollens and Kenneth E. Sharperson

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[Inclusion Comes First: An Active Ally Profile Featuring Melanie Margolin, Chief Legal Officer at Thumbtack, Inc.](#)

MARCH 2022

["The Right Thing to Do" An Active Ally Profile Featuring John Browning](#)

John G. Browning

DECEMBER 2017

[Thought Leadership: Championing Diversity and Inclusion; A Conversation with Connie Lewis Lensing, Senior VP of Litigation Department at Federal Express](#)

Pamela W. Carter

NOVEMBER 2017

[Making the Case: How Diversity and Inclusion Can Improve Your Firm's Financial Outlook](#)

Paul M. Fires and Kenneth E. Sharperson

JUNE 2017

[Clarity on the Horizon? Another Appeals Court Grants En Banc Review of Sexual Orientation Discrimination under Title VII](#)

Eve B. Masinter and Rachael M. Coe

SEPTEMBER 2016

[Hively v. Ivy Tech Comty. Coll., S. Bend, 15-1720, 2016 WL 4039703 \(7th Cir. July 28, 2016\): Sexual Orientation Discrimination not \(yet\) Covered by Title VII](#)

Eve B. Masinter and Rachael M. Coe