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Congratulations to Philadelphia Diversity Law Group, Winner of the 2014 Diversity Leadership Award
The consortium of Philadelphia’s leading law firms and corporate law departments is committed to fostering participation of a more diverse group of lawyers in the Philadelphia region.
Letter from the Editor

By Judge Karen Wells Roby

Welcome to the Section of Litigation’s Diversity & Inclusion newsletter. This is our inaugural newsletter, which will be published on a quarterly basis. The newsletter will feature articles on the topic of diversity, highlight the Section’s accomplishments in the area of diversity, and feature stories on our JIOP program and its alumni. We will also feature Leadership Fellow Success Stories and their impact on both the Section and the legal community.

We have launched our mentor-mentee program designed to help Leadership Fellows become acclimated to the Section and also to help develop them as leaders both in the bar and in this Section. We also are excited that the Section will have its first Leadership Fellows Class Graduation in June and we look forward to working with the incoming class of Leadership Fellows for 2014–16. Watch for a story on our graduating class in the September issue of this newsletter.

In an upcoming issue, we will feature an article on the ABA’s 2015 President, Paulette Brown, who is a member of the Section of Litigation and the Association’s first African-American woman to serve as president of this 136-year-old organization. We hope you find our articles interesting and thought-provoking.

Judge Karen Wells Roby is a magistrate judge in the U.S. District Court of the Eastern District of Louisiana in New Orleans.
Note from the Chair
By Don Bivens

Diversity and inclusion are core commitments of the Section of Litigation. We stand for full and equal participation in our profession of women, persons of color or differing sexual orientations, and individuals with disabilities. We focus on diversity and inclusion in our Section leadership. Over the last five years, the diverse composition of Section leadership has steadily increased from 26.12 percent in 2009 to 33.79 percent in 2014. We have further to go.

Our Leadership Fellows Program creates opportunities for young lawyers from under-represented groups to serve on a Section committee of their choice and to participate in the substantive work of the Section. We will graduate a new class of Fellows in June 2014. Our Judicial Intern Opportunity Program (JIOP) provides real-world opportunities for diverse law students to work in a judge’s chambers and develop their research and writing skills under an experienced judicial mentor.

This year our Diversity and Inclusion Committee has sponsored panel discussions at Section leadership meetings to consider new ways for the Section to promote and nourish diversity throughout our profession. One result has been the creation of this newsletter for distribution to all Section members, with the goal of keeping diversity and inclusion on the forefront of every Section activity.

I encourage you to read this newsletter with a question in mind, “What might I do personally today to advance the cause of diversity and inclusion in the legal profession?” The Section of Litigation offers a number of answers to that question. Pick one, and join your nearly 60,000 Section colleagues in making the faces of our bench and bar mirror the faces of our country.

Don Bivens is the chair of the Section of Litigation for 2013–2014. He is a partner at Snell & Wilmer, LLP, in Phoenix, Arizona.
Calling All Mentors

The ABA Section of Litigation is currently seeking Section leaders to provide mentoring and guidance to ABA Leadership Fellows. The Section has a goal of increasing diversity and has created the Leadership Fellows program as an avenue toward that goal. However, we can be effective only if we have current leaders willing to step in and mentor an up-and-coming leader of the Section. We invite you to accept this opportunity.

The term is for one year and is subject to renewal only upon the consent of the mentor. If you are interested, please email Veronica Munoz.

Leadership Fellows Program Accepting Nominations

The Section of Litigation is now accepting applications for the 2014–2016 Leadership Fellows Program. The program provides opportunities for lawyers in underrepresented groups such as racial/ethnically diverse lawyers, persons with disabilities, and lesbian, gay, bisexual, and transgender persons, to participate in leadership roles within the Section of Litigation. The primary objectives of the program are to attract, retain, and develop talented diverse lawyers, foster a culture of diversity and inclusion, to further demonstrate the Section’s commitment to ensuring equal opportunity in the profession, and to create a pipeline of future leaders of the Section.

Each applicant must be a member of the ABA for at least one full bar year, a member of the Section of Litigation, a member of one of the underrepresented groups who practices litigation in a law firm, corporate entity, or government agency, and whose practice coincides with the work of a substantive committee of the Section. While favorable consideration is given to applicants who are active members of a national bar association for lawyers of color or other applicable affinity bar group, being an active member of such organizations or group is not a requirement.

Each applicant must complete an online application along with the following documentation:

- Three letters of recommendation
- Resume
- Cover letter describing why the applicant is interested in being a Fellow of the program

Fellows will be notified no later than July 31, 2014.

Download the Leadership Fellows Brochure to learn more.
ANNOUNCEMENTS

Supporting the Careers of Minority Attorneys

By Joseph M. Hanna

The Minority Trial Lawyer (MTL) plays an important role within the ABA’s Section of Litigation. Our goal is to support the career success of minority attorneys by serving as a resource for litigation and business development strategies and as a network for the sharing of experiences and referrals. We aim to offer a practical and useful resource for diverse attorneys at all points in their career, ranging from young associates to senior partners and from in-house counsel to members of our judiciary. The committee also aims to contribute to minority communities by facilitating discussion of the impact of race on the law and vice versa, addressing issues of racial bias in the courts and the profession and promoting programs to prepare minority students—from high school through law school—for careers in the law.

As a committee, we are halfway through a very productive 2014. The MTL has always distinguished itself by the unique composition of its members. By definition we members are characterized by our inherent diversity. We are litigators, of course, but aside from that our members are individuals of every race, national origin, religion, age, gender, and sexual orientation.

We practice in every area of the law in large-, small-, and medium-sized firms, in government and in-house positions, across the country, and around the world. Our interests and lifestyles are broad and varied. This diversity is our strength, and this strength builds success in our personal and professional lives. Our committee allows us the opportunity to build, nurture, and benefit from its inherent strength.

This year, the MTL is focusing on bringing value to our membership. We have published insightful content for our members, held informative roundtable discussions, and continued to record Sound Advice pieces to help better the careers of our colleagues. The MTL continues to build and promote the importance of leadership in our personal and professional lives and in helping our members forge commercially significant relationships. The Section of Litigation has always recognized the MTL’s value as a pipeline for leadership. MTL members and alumni populate every level of the leadership ranks of the Section of Litigation, and the committee’s resources and contacts provide an exceptional platform for success.

One of the most important values that we offer to our membership is our award-winning “Ask a Mentor” column. The column, a regular part of the quarterly newsletter, provides members of the Section of Litigation with the opportunity to seek advice from more experienced mentors in various fields on topics that would be beneficial to their everyday lives as minority litigators.
These topics are varied, offering insight on how to succeed in a large law firm, advice on dressing for an interview, ways to develop business, and tips on trying cases before a jury.

In April, the MTL cosponsored a roundtable discussion with the Young Advocate Committee and LGBT Committee, entitled “Surviving and Thriving: Success Tips for Diverse Litigators” (clicking will open an MP3 file). We focused our discussion on topics of interest to young, diverse lawyers. The speakers from the panel have followed up and discussed specific issues that were brought up on the call with our participants, with the goal of mentoring them. Participation of our members is critical to our committee’s success and so, as we plan and prepare events for the rest of 2014, we encourage all of our members to actively participate in committee events, submit articles for our newsletter and web page, or consider volunteering for subcommittee chair positions. There are many ways to get involved.

MTL is your resource for information, training, mentoring, and professional and personal development.

Joseph M. Hanna is a partner at Goldberg Segalla in Buffalo, New York.
The data is in and it's unassailable: diversity and inclusion are enormously profitable. Supposedly, the business case for diversity is weak. It’s mainly “wishful thinking.” That’s what the Chicago-based Institute for Inclusion in the Legal Profession (IILP) concluded in its 2011 report “The Business Case for Diversity: Reality or Wishful Thinking?” The IILP’s review of data was so comprehensive, the study was widely accepted as definitive. There’s just one problem: the report never actually took a direct look at whether diversity is profitable.

The IILP considered a number of factors: whether corporate law departments incentivize law firm diversity; whether corporations disengage from law firms that fail diversity standards; whether corporate clients ask about law firms’ performance in becoming diverse; and how many lawyers are told they received business as a result of their firm’s diversity. These are all important issues, but they don’t directly speak to the profitability of diversity. If you want to know whether one product is more profitable than others, you could ask consumers whether they will buy it, but that won’t answer the question. You could ask them whether they will stop going to stores that don’t sell it, but that won’t answer the question, either. You need to look at customer, revenue, and profit numbers.

The same is true for the business case for diversity. The issue is whether diversity is more, less, or equally profitable than less diverse business models. Specifically, the issue is whether it is more profitable for law firms to have diverse leaders—people who look more like the composition of the legal community in terms of their gender, race, religion, sexual orientation, nationality, age, disability, and other metrics—or whether law firms with more homogeneous leaders are more profitable. You can’t find out from asking in-house counsel whether they seek out diverse law firms. You have to look at which companies are more profitable.

Moving Past Assumptions: Diverse Companies Outperform Their Homogeneous Counterparts

Having Women at the Top Pays

A number of recent business studies including a 2011 research report in Catalyst, Inc. by Nancy M. Carter and Harvey M. Wagner entitled “The Bottom Line: Corporate Performance and Women’s Representation on Boards (2004–2008),” looked at the financial returns of companies with three or more women on the board. The findings are...
astounding. Those companies outperform companies with all-male boards by 60 percent in return on invested capital, 84 percent in return on sales, and 60 percent in return on equity. These numbers suggest that diversity and inclusion are not just profitable; they have a synergistic impact on profits.

Compare the Fortune 500 companies with the most women on their boards with those with the least. The companies with the most outperformed those with the least by 66 percent in return on invested capital, 42 percent in return on sales, and 53 percent in return on equity. Firms with few to no women at the helm should take stock of the enormous economic advantage had by their competitors with more women in charge.

You can see it looking at Fortune 500 companies. The positive influence of female board members is so strong that as the percentage of women board members of Fortune 100–500 companies drop, so does the success of the companies, according to the Catalyst, Inc. report “2010 Catalyst Census: Fortune 500 Women Executive Officers and Top Earners.” Of the most successful U.S. companies, the top Fortune 100 companies, women represent 18 percent (nearly one in five) board members. Catalyst found that as you move from Fortune 100 companies to their slightly less successful Fortune 200 counterparts, the number of women on the board decreases to 16.7 percent. Fortune 300 companies have slightly fewer women on the board, 14.9 percent, and so on down to Fortune 500 companies. Fewer women in leadership equates with less financial success.

This squares with what Jack Zenger and Joseph Folkman discussed in their 2012 article, “Are Women Better Leaders than Men?” in the Harvard Business Review. Looking at a 2011 study of 7,280 leaders in which 16 competencies that go into outstanding leadership were evaluated, Zenger and Folkman found “at all levels, women are rated higher in fully 12 of the 16 competencies” and that “the higher the level, the wider that gap grows.” In fact, “two of the traits where women outscored men to the highest degree—taking initiative and driving for results—have long been thought of as particularly male strengths. [M]en outscored women significantly on only one management competence in this survey . . . .”

Forward-thinking companies as trailblazing as The Coca-Cola Company are paying attention. Catalyst reports in “The Coca-Cola Company—Global Women’s Initiative: Women as the Real Drivers of the 21st Century” (2013), that Coca-Cola is engaged in enabling the economic empowerment of 5 million women entrepreneurs across its value chain by 2020.

**Racial Diversity at the Top Pays, Too**

Companies with greater racial diversity at the top leave their more homogeneous counterparts in the dust, too. According to research cited in a 2009 article, “Does Diversity Pay?: Race, Gender, and the Business Case for Diversity” by Cedric Herring in the American Sociological Review, on average, the most racially diverse companies bring
in nearly 15 times more revenues than the least racially diverse. In fact, Herring found that for every percentage point increase in racial or gender diversity up to that represented in the relevant population, sales revenues increase approximately 9 and 3 percent, respectively. Again, the figures indicate that diversity and inclusion’s impact on revenues is synergistic.

Racial diversity, Herring found, is a better determinant of sales revenue and customer numbers than company size, age, or number of employees at a worksite. Companies with the highest rates of racial diversity reported having on average 35,000 customers, whereas companies with the least racial diversity reported having only 22,700. According to Herring, companies that even only marginally increase their racial diversity gain an average of over 400 customers.

IBM and RBC: Examples of Diversity and Growth

Diversity and inclusion represent a competitive advantage, and you can measure their financial benefits just as IBM did. As a result of implementing a diversity task force initiative, IBM grew its female executives ranks by 370 percent, its ethnic minority executives ranks by 233 percent, and the number of self-identified gay, lesbian, bisexual, and transgender executives by 733 percent. As David A. Thomas wrote in “Diversity as Strategy” in the Harvard Business Review in 2004, the result was stunning:

[T]he work of the women’s task force and other constituencies led IBM to establish its Market Development organization, a group focused on growing the market of multicultural and women-owned businesses in the United States. . . . In 2001, the organization's activities accounted for more than $300 million in revenue compared with $10 million in 1998. Based on a recommendation from the people with disabilities task force, in October 2001 IBM launched an initiative focused on making all of its products more broadly accessible to take advantage of new legislation—an amendment to the federal Rehabilitation Act requiring that government agencies make accessibility a criterion for awarding federal contracts. IBM executives estimate this effort will produce more than a billion dollars in revenue during the next five to 10 years. . . .

(Emphasis supplied.)

Workforce diversity helped IBM attract a more diverse base of customers that included women and minority-owned businesses. As Thomas put it:

IBM’s efforts to develop the client base among women-owned businesses . . . quickly expanded to include a focus on Asian, black, Hispanic, mature (senior citizens), and Native American markets. The Market Development organization has grown revenue in the company's Small and Medium-Sized Business Sales and Marketing organization from $10 million in 1998 to hundreds of millions of dollars in 2003.”

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When IBM became more diverse, its revenues skyrocketed.

RBC has likewise been focusing on creating a diverse and inclusive workforce. According to the January 30, 2014, article “Moving Past Diversity: RBC’s Journey to Rid Its Upper Ranks of ‘Unconscious Bias’” by Dan Ovsey in the Financial Post:

Current CEO Gord Nixon—who will be retiring later this year—has made diversity of gender, culture, age and professional experience a priority for the bank, believing it to be good for business. **If RBC’s track record is any indication, he’s right. The bank has generated $58-billion in total profit during Mr. Nixon’s 12-year tenure and saw its share price soar 164%**.

(Emphasis supplied.) RBC made diversity a company priority, and saw its share price go through the roof.

**Diversity: The Potential for Much Higher Law Firm Profits**


Even controlling for hours, location, and firm size, the study’s authors found that “differences in diversity are significantly correlated with differences in financial performance.” In fact, according to the study, “a firm ranked in the top quarter in the diversity rankings will generate **more than $100,000 of additional profit per partner** than a peer firm of the same size in the same city, with the same hours and leverage but a diversity ranking in the bottom quarter of firms.” (Emphasis supplied.)

The most diverse of the Am Law 200 firms could be far more diverse and inclusive than they currently are. The $100,000 per partner additional profit differential could presumably be even greater.

Money at law firms is not equally distributed among partners. Those at the top are paid far more than the partners below them. That means those in the highest positions of law firms, those in the best position to change the direction of their firms, have the greatest economic incentive to embrace diversity and inclusion. They stand to profit the most from them. To do so, they should not only recruit diverse talent, but retain it, engage it, promote it, and invite it to the management table.

The reason diversity works is that when a company’s leadership becomes more diverse, far more changes than the fact the people in it become a melting pot microcosm of their community. Studies show the company performs better.
There may be a host of reasons why. Perhaps women and minorities see that they have a real opportunity for advancement and become more motivated to not only stay in the company, but invest themselves in its success.

Maybe when companies become more diverse, they are better able to solve problems and seize potential opportunities. There is data suggesting so. According to Scott E. Page, author of *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*, on almost every measure, greater racially, ethnically, and culturally diverse workplace teams function more effectively than more homogenous teams. In fact, Page found diverse thinkers (defined as those with different educational backgrounds, experience levels, and/or racial, gender, and ethnic identities) are markedly better at solving problems than teams selected for their intellectual ability. The diverse team’s collective intelligence, he found, is generally significantly greater than a team whose individual members are uniformly “smart.” According to Deloitte, *Only Skin Deep? Re-examining the Business Case for Diversity* (Sept. 2011), the most plausible explanation for these findings is that teams with members from diverse backgrounds, experiences, and perspectives avoid “groupthink,” whereas nondiverse teams approach problems from the same angle.

This data suggests that diversity is not just good for profits. Diversity can enhance even nonprofit entities because it enhances group performance. In fact, diversity enhances profits in for-profit companies precisely because it enhances company performance.

**Companies That Don’t Diversify Face Greater Exposure**

Diversity not only holds great potential to increase law firm profitability; openness to candidates from diverse backgrounds—for employment, raises, bonuses, equity, etc.—is essential to minimizing a law firm’s exposure.

In December 2012, Sanford Heisler LLP announced that it was representing Francine Griesing, founder of Griesing Law LLC, in a discrimination suit against Greenberg Traurig LLP, where she had previously been a partner. Sanford Heisler had previously won a massive judgment against Novartis for gender discrimination. Ms. Griesing claimed that Greenberg Traurig officials denied her the compensation, promotions, and support that the firm gave to less-productive partners. Sanford Heisler sought class action certification for the 215 current and former female Greenberg Traurig partners who could join the lawsuit.

The lawsuit followed a multi-year investigation by the Equal Employment Opportunity Commission that concluded, according to a Sanford Heisler news release, that there is “reasonable cause to support class-wide claims of gender discrimination in compensation” and “reasonable cause to support claims that women are treated less favorably in the terms and conditions of their employment.” The matter settled for an undisclosed amount in 2013. Ms. Griesing’s lawsuit should be a wake-up call to law firms engaging in discriminatory practices. Many law firms fall into that category. According to “A Current Glance at Women in

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the Law” (Feb. 2013) by the American Bar Association Commission on Women in the Profession, one-third of lawyers are women (33.3 percent). However, according to the National Association of Women Lawyers (NAWL®) and The NAWL Foundation’s® “Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms” (Feb. 2014), only 17 percent of equity partners are women, and many of those equity partners are being paid between 85 and 89 percent of what their male peers are.

In “ Compensation in Law Firms: Why Women Equity Partners Are Compensated Less for the Same Billable Hours and Business Origination as Male Equity Partners,” Harry Keshet, PhD. and Angela A. Meyer, PhD., PE reported on the results of their groundbreaking attorney compensation study of 1,729 lawyers. They found:

\[
\text{Compensation is gender based} \quad \text{with male equity partners receiving more compensation than women equity partners do. This fact is true when women and male equity partners bill the same number of hours, generate the same levels of origination, have the same level of law firm tenure and work in the same size of law firms.}
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(Emphasis supplied.) The fact that women in the profession are not being paid the same as men and are not being equally credited for the business they generate isn't because they're not putting in as many hours, have less business, or are more junior. Women lawyers are compensated less even when they bill the same number of hours, have the same amount of business, and are equally tenured.

In fact, Sky Analytics’ comprehensive “White Paper / Gender Study” of $3.4 billion of legal spending shows that the hourly billing rate for female attorneys is significantly lower than that of male attorneys from the start of their careers, and that where male and female lawyers bill the same number of hours to complete a task and bill the same amount of hours per day, female associates’ work is more often discounted than male associates’ work. Not only are female attorneys underpaid, their work product is undervalued by their firms. As a result of this discounting of their work, women lawyers have to bill more hours to generate the same amount of revenues as male lawyers.

Minority lawyers are not being treated fairly, either. In the piece “Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners Continue to Make Small Gains” (Dec. 2013), NALP reported that minorities accounted in 2013 for 7.1 percent of the partners in the nation’s major firms, whereas as of 2013, minorities made up 13.36 percent of the lawyers—nearly double the number of lawyers—at those firms.

On average, law firms are failing to promote women and minorities to partnership in representative numbers, law firms are underpaying those that are partners relative to their white, nondiverse male counterparts, and law firms are discounting the work of women lawyers who
are just as productive as men, causing women lawyers to have to work longer hours to generate the same revenues.

I minimize companies’ exposure to employment and general liability matters for a living. A great way companies can lower their exposure and increase their retention of women and minority lawyers is by implementing practices to correct these discrepancies.

RBC Chief Human Resources Officer, Zabeen Hirji, is quoted as saying in the 2014 "Moving Past Diversity" Financial Post piece, “If you start with the belief that men and women and people from different backgrounds have come in with the same experience, skills, education and we’ve given them the same opportunities, they’re going to be equally qualified . . .” This thinking applies to law firms. If women and minorities come into law firms with comparable educational backgrounds, skills, and experience—and there is no data to suggest otherwise—and are given comparable opportunities, they are equally qualified as well. If they are not advancing at the same rate as white, nondiverse male lawyers, and/or are being paid less, then they are not being given comparable opportunities and/or are not being fairly and equally evaluated, promoted, and compensated.

To correct this, law firms need to put representative numbers of women and minorities on their compensation committees and in governance and other leadership positions. If 30 percent of a firm’s attorneys are women, 30 percent of the members of its compensation committee and other leaders should be. Likewise, if 15 percent of a firm’s attorneys are minorities, 15 percent of its compensation committee members and other leaders should be.

Law firms should conduct internal audits of their hiring, pay, evaluations, and promotions as part of a comprehensive program to identify and minimize gender and minority bias. They should check how assignments, networking opportunities, and client development resources (including in dollars) are distributed along gender and minority lines among firm lawyers. Firms should institute flexible working arrangements to minimize the drain of talented female and minority lawyers. If a male lawyer is given funds for a golf outing to attract a client and a female lawyer seeks funds for a luncheon, show, wine tasting, or other outing to attract one, she should receive equal funding.

The call for these measures must come from the top. The fact diversity drives law firm profits and performance shows that those at the top should call for them. Increased performance will enhance a firm's brand in the marketplace. Given the huge positive financial impact diversity and inclusion can have, law firm partners should be required to take ownership of the impact of their actions on diversity. They should have to pay in dollars--out of their pockets--for the women and minorities under them who leave. Partners who better retain them should receive additional compensation. Such measures have the added effect of showing lawyers within the firm, as well as clients, the importance the firm places on diversity.
From corporate America to American law firms, the business case for diversity is overwhelming. Law firms that hold women and minorities back from their full potential not only expose themselves to liability, they prevent themselves from potentially multiplying their customer base and earning greatly increased profits. They lose out on the synergistic financial competitive advantage that diversity and inclusion represent.

Although the title and certain content within this piece has changed, it has been reprinted substantially in its original form. The original piece, "Disregard Diversity at Your Financial Peril: Diversity as a Competitive Financial Advantage," was published by the Minority Corporate Counsel Association in the May/June 2013 issue of Diversity & the Bar.

My Path to Serving the Profession

My parents left the island of Jamaica in search of better opportunities in the United States. After becoming educated here, they returned home to serve their country. They both worked for the Jamaican government as well as for not-for-profits and were passionate about community service. I am the product of people who spent their lives in the service of others and who knew the value of education.

I was born in New York City and moved to Kingston, Jamaica, at age five. I remember the first time I saw poverty-ridden communities there, how they stood in stark contrast to my well-groomed middle-class neighborhood. I also saw children whose parents simply could not afford to send them to school. Growing up in that reality made me abundantly aware that education was a tremendous opportunity I must never take for granted. I returned to the United States 10 years later and brought with me a passion to serve.

As an attorney, I have served as a leader in the legal community in South Florida where I live. I was president of the T.J. Reddick Bar Association and Broward County's Black Bar Association and have served on The Florida Bar Young Lawyers Division Board of Governors. I have participated in a wide range of community service projects, including citizenship drives, educating the community on issues such as voting rights, providing pro bono service, and working to increase diversity in the judiciary and in the legal profession. After spending many years in various leadership roles in South Florida and throughout the state, I was inspired to get involved in the American Bar Association (ABA) and serve at the national level.

I found the Section of Litigation particularly attractive because the Ethics & Professionalism Committee coincides with my area of practice. I work as senior bar counsel in the Fort Lauderdale Branch of The Florida Bar. My duties include investigating and litigating ethical and professionalism violations. In my position, I protect both the public and our noble profession. The Florida Bar is very supportive of diversity and work-life balance and strongly encourages our involvement in the legal community and the community at large. As a member of the LGBT community, I was also very pleased to see the existence of the LGBT Litigator Committee.

The American Bar Association Section of Litigation Leadership Fellows Program is a conduit for diverse leaders of the legal community to become an integral part of the leadership structure of the ABA. Being selected as a fellow has been an invaluable opportunity for me to continue to fulfill my passion to serve and now at the national level. The program is well structured, providing both a stipend to assist with travel to the ABA leadership meetings throughout the country and a mentor to help the fellow navigate the intricacies of the ABA leadership. I was perfectly paired with Jennifer Bechet who is co-director of Division I (Operations) and a former
chair of the Ethics and Professionalism Committee. She has helped me gain an understanding of the leadership structure and how to be a successful leader in the Section of Litigation. We also share the experience of balancing motherhood with being active members of our profession.

At present, I cochair the Diversity Subcommittee of the Ethics & Professionalism Committee and look forward to rising in the ranks within the Ethics and Professionalism Committee. I am programming a roundtable for this committee, addressing the ethical considerations in legal marketing and will conduct another roundtable addressing ethical issues regarding attorney fees.

I am also passionate about the LGBT Litigator Committee. I'm working to assist with increasing membership. It is truly an exciting time of change and progress for the LGBT community, with our civil rights being addressed in lawsuits throughout the country. The LGBT Litigator Committee works to keep our colleagues abreast of legal developments affecting this community and serves as a resource and network for LGBT lawyers.

As our fine profession continues to call for diversity, it is programs such as the Leadership Fellows Program that answers that call and leads to true diversity and inclusion within our profession and the American Bar Association.

Ghenete Wright Muir is senior attorney at the Florida Bar in Fort Lauderdale, Florida.
Why Effective Retention Requires Attention to Our Implicit Biases

By Vernā Myers

When we talk about retention, we mean the ability to keep qualified and experienced lawyers over the long term. I think the word retention is misleading, however, because it implies passivity on the part of the firm—as if it were merely a receptacle that “held” the talented employee. Retention is anything but a passive process. It is about investing in individuals, about cultivating skill sets rather than simply hoping for the best, on the one hand, or culling the herd on the other, when economics dictate or an individual’s performance falters.

Frequently you will hear the term retention applied to matters of diversity. As a diversity consultant, I regularly hear a variation of this statement: “I don’t know why [women/people of color/LGBT (lesbian, gay, bisexual or transgendered)/or some other historically excluded group] don’t stay here; we treat everyone the same way.” Treating every individual the same may well be part of the problem. As we will discuss, the presence of implicit bias in a law firm often means that the more everyone is treated the same, the more the status quo perpetuates itself.

Three Structural Factors

Senior partners may say that they want their firm to be welcoming to everyone, yet serious structural issues exist that make it harder for women, people of color and other historically excluded groups to succeed. One of these is the billable hour. With such enormous attention placed on this aspect of the bottom line, nonbillable tasks, such as mentoring, training, evaluating and implementing a sustainable diversity effort, are often ignored or pushed to the side—much to the detriment of the firm’s ultimate profitability.

Another issue that obstructs hiring, training and ultimately retention of underrepresented groups in the senior ranks of a firm is a very thin management structure. Traditionally, very few people have been “managing the shop” and its human resources. A change in this area has begun as more firms have installed workflow coordinators, hired diversity directors and added staff to their professional development departments. However, the most important people in a law firm remain the lawyers—those who bill time. They have the most influence over the careers of attorneys from historically excluded groups, yet most of the people heading up departments or practice groups earned their positions by being great lawyers and business generators. They often know little about managing people or cultivating inclusion in their spheres of influence.
In addition to a thin management structure and the tyranny of the billable hour, there is planned attrition, otherwise known as the “up or out” system, which assumes that losing attorneys is just part of how business works. But study after study shows that attrition is higher and the average tenure is lower for female attorneys and attorneys of color when compared to their white male counterparts. These people from historically excluded groups also report more dissatisfaction in their shorter careers in law firms.

Implicit Bias
While the three structural issues mentioned above affect all talent, no single factor is responsible for a lack of diversified retention more than implicit bias. Implicit bias refers to the stereotypes and assumptions we have that are automatic and unintentional. These biased attitudes get unconsciously embedded into an organization’s culture and systems, and impact how opportunity is distributed and talent is evaluated. Implicit bias is difficult to see, hence its name. It affects everyone in the workplace, but especially those who are not well represented in positions of power.

Below are five common unconscious and unintentional biases that I have identified and parsed in my book *Moving Diversity Forward: How to Go From Well-Meaning to Well-Doing*. I frequently see these implicit biases operating in the legal workplace and have included suggestions for how they can best be offset.

1. **In-Group Favoritism**
   In-group favoritism is a bias toward assisting and giving opportunity to others who are part of your own group. While in-group favoritism may appear blameless, in effect it restricts the allocation of what may be scarce resources (jobs, promotions, etc.), effectively discriminating against those who are in another group. When an in-group plays favorites, it makes it difficult for the entire organization to achieve equal opportunity.

   Countermeasures: When making decisions about hiring, evaluation and promotion, try to apply standards consistently. Consider the entire list of people in your department or section who could take on a particular opportunity. Whom have you been missing? Who hasn’t had an opportunity to take on this kind of project recently? If you learn to rotate responsibilities, you may be avoiding bias while strengthening the capabilities of your whole team. If you only use your mental list, however, you might find yourself leading with your biases all over again. We may know more quickly that we are discriminating against someone than when we are discriminating for someone else. In the long run, both behaviors are antithetical to true diversity.

2. **Guilt by Association**
   Guilt by association occurs when those in positions of power have had limited experience with historically excluded groups in the workplace—and those experiences have not been
entirely positive. I often hear of the “spectacular failures” of a particular woman or person of color in a law firm—and these are always presented as if the failures were caused by the individual alone, with no fault attributed to the organization. Worse yet, each individual from that group, no matter who they are, gets painted with the same negative brush of failure.

Countermeasures: Notice, count and acknowledge the “spectacular failures” that your firm has had with individuals in the majority. My experience is that the percentage of such failures is usually very similar across the board. Removing the guilt-by-association implicit bias allows each individual to be evaluated on his or her own merit, rather than by a presumption against him or her because of group identification.

3. The One-Mistake Rule

Everyone makes mistakes; what we may not realize is how minorities have the experience of seeing their mistakes magnified and their accomplishments minimized—so much so that one mistake can sometimes fix a negative opinion of an individual in a supervisor’s or employer’s mind. This is only possible, of course, if the implicit bias was lurking there all along. I call this the one-mistake rule, a negative assessment made hastily or out of context.

Countermeasures: Ask yourself: If this person were in the majority, would I evaluate this situation? Has someone made a mistake that confirms your stereotype of his or her group in your mind? Do you remember being a little concerned or nervous about the person’s ability to do the job even before he or she started the project? Based on what? Are you attributing a certain mistake to a person, when perhaps you should look more closely at the entire situation—for example, timing, instructions and expectations—and all of the other people involved? What about the other positive things this person has done? Is the ledger on both sides being compared fairly?

4. The “Prince” Syndrome

The “prince” is an individual from a historically excluded group in your law firm who has reached the highest levels of the institution. He or she is charismatic, able to get along with everyone, industrious, even-tempered and able to put those in the majority at ease. A managing partner once confided to me his frustration over his firm’s failure to make more black partners. He said earnestly, “We have X [a black partner]. If everyone could be like X, we wouldn’t have this problem. X is a prince.”

Countermeasures: The problem with this reasoning, of course, is that not every white partner in this particular firm was a prince, either. Many had been able to progress by being capable, while not necessarily being superstars. Insisting that individuals from a historically excluded group perform better or have higher credentials than others is
actually an attempt to overcome unconscious assumptions about the inferiority of their group—thus its status as an implicit bias.

5. Sloppy Sentimentalism
Sloppy sentimentalism happens when a person in the majority finds it hard to give negative feedback to supervisees from historically excluded groups or to hold them accountable for their behavior. It is also demonstrated when the supervisor gives such an employee less challenging work assignments or responsibilities, even when there is no evidence that the employee isn’t capable of doing higher-level work.

Countermeasures: Establishing a fair set of criteria for work performance and then applying those criteria fairly is crucial. For example, once you have articulated a set of competencies for hiring and promotion—including for promotion to the highest position in the organization—you can’t and shouldn’t expect more or less from a member of a historically excluded group. Between the two extremes of sentimentalism and suspicion lies a path of judicious interaction that in turn enhances the value of an employee and his or her motivation for excellence.

Acknowledging What We Can Change
Retaining women attorneys and attorneys of color, those from the LGBT and disability communities, and from other underrepresented groups means creating an environment that causes them to be more productive rather than less, that enhances their performance rather than lessens it. Because there are such difficult structural impediments to retaining and developing talented attorneys of all backgrounds in law firms, we seem to throw up our hands and decide nothing can be done. Certainly, we can’t change on our own the billable hour model that values hours over many other intangibles or the flat partnership structure that makes it hard to create or reinforce change. However, implicit bias is something we can do something about.

By becoming aware of our implicit biases, we can “bias-proof” our organizations, beginning with our role in them—the way we do things. Systemic change is not easy, but we can start by being honest about our own biases and taking steps to counter them. If each individual undertakes this work, more of those from underrepresented and traditionally excluded groups will feel included and invested in. Their workplaces will cause them to stay rather than to leave prematurely. The retention of employees from historically excluded groups in turn adds tremendous value to a firm because of the cohesion, equitability, richness, perspective and expanded client base that such a diversified employee base brings. Remember, however, that retention is not a passive act. It does not happen without our willing it. To achieve retention, we must take the explicit and unbiased actions necessary to retain.

Vernā Myers is the principal of VMCG, a diversity and inclusion consulting firm in Baltimore, Maryland.
Judicial Intern Opportunity Program: Ten Alumni Who Shine
By Cindy Tsai

Last month, Law360 named JIOP alumnus Joseph Hanna as one of its 2014 Rising Stars. This national honor is awarded to a selective group of attorneys under 40 whose legal achievements belie their age. A quick review of his bio easily explains why Law360 selected Mr. Hanna for this distinction, but it didn’t take more than a few minutes into our conversation for me to realize that the depth of his contribution to the legal industry exceeds his resume.

As a fellow JIOP alumnus, I wasn’t surprised when he told me that he credits many of his legal accomplishments to JIOP. For him, the benefits of JIOP started as early as the application process. Interviews were opportunities for him to network with attorneys practicing in the same geographic region he hoped to practice after school and meetings with judges helped him identify the skills necessary to become a successful litigator. In the end, Joe secured a State Court clerkship in Houston, TX. During that summer, he enhanced his writing skills, and picked up on how the law is interpreted and how judges think. All of these skills continue to be highly relevant in his legal career.

Today, Joe is a partner at Goldberg Segalla, concentrating his practice in commercial litigation with a primary focus on sports and entertainment law and retail, hospitality, and development litigation. He represents sports franchises and professional athletes relating to licensing and contract disputes. Being named as a leader in this highly specialized practice area did not come easy. Joe joined Goldberg Segalla in 2005. At that time, Goldberg Segalla did not have a Sports and Entertainment practice group, but the firm supported his interest in this area. His mentor, Rick Cohen, encouraged him to develop the practice and provided him with the necessary resources to be successful. But how does an associate straight out of law school build a practice from bottom up? Joe explained when you are a first-year associate at a firm that had never hired anyone directly out of law school, partners are not running to you with assignments. “I took full advantage of that. From the first week, I was researching and writing. I reached out to the ABA and various bar associations and organizations.” The ABA and the DRI published his article about the Cleveland Browns and its famed Dawg Pound mark before he celebrated his first anniversary at the firm. Fast forward almost a decade later, Joe continues to write and participate in panel discussions. He believes this is one of the best way to grow the practice.

Joe is also dedicated to diversity in the workplace and is the founder of many diversity and outreach programs, including Goldberg Segalla’s Diversity Task Force. The firm was recognized in 2012 by the Minority Corporate Counsel Association for its innovative program. Under Joe’s leadership, the Diversity Task Force is pushing diversity beyond the walls of the firm; it is committed to increase diversity in the wider legal and business communities. Joe’s message is clear—in order to keep moving forward, law firms need to do a better job retaining minority attorneys by assigning them meaningful projects, and mentors need to stay in touch with their law student mentees and provide guidance through the three years of school and the bar exam.
Forty minutes into our phone call, Joe took me down memory lane and revealed that he was on the Syracuse University (my college alma mater) campus, finishing up a paper due the next day. At which point, I had to ask —“Why another master’s degree? Why Syracuse?” The decision to go back to school was a ‘no brainer’. Five years ago, Joe started Bunkers in Baghdad, a nonprofit organization that collects and ships new and used golf equipment for recreational purposes to American troops around the world. The organization also works with schools nationwide to have their students write letters to our overseas soldiers. Bunkers in Baghdad partners with various VA hospitals and centers in the United States to aid in rehabilitation process. Joe explained that the golf swing helps develop muscle throughout the entire body. As the charity is about to ship its 5 millionth golf ball, Joe wants to ensure that the charity continues its success. Thus, it was a no brainer for him to return to school and learn about how to manage nonprofit organizations. Why Syracuse? His response: “I wanted to learn from the best”. I couldn’t help but smile.

Given the endless list of achievements, it is hard to believe that Joe is less than 10 years out of law school. I, for one, am looking forward to see what he has in store for the next 10 years!

1. Joseph M. Hanna
   - State University of New York
   - 2004 JIOP Alum. The Hon. Elizabeth Ray. Houston, TX
   - Partner, Goldberg Segalla
   - Co-Chair, Minority Trial Lawyer Committee, JIOP Working Group, Young Lawyer Leadership Program, Outstanding Subcommittee Co-Chair Award, Section of Litigation Good Works Award.
   - Founder and President, Bunkers in Baghdad
   - Minority Bar Association of Western New York, President 2011
   - Minority Bar Association of Western New York Foundation, President
   - Commercial Litigation Committee: Chair, Sports and Entertainment Law
   - Young Lawyers Division: Chair, Seminar Planning Committee; Chair, Minority Outreach Committee
   - Fellow, Leadership Council on Legal Diversity
   - Upstate New York Super Lawyers, Rising Stars 2013 (Entertainment and Sports)
   - MCCA George B. Vashon Innovator Award, 2012
   - New York State Bar Association Diversity Trailblazer Award, 2012

2. Christina Liu
   - University of Miami School of Law
   - 2005 JIOP Alum. The Hon. Donald L. Graham. Miami, FL
   - Assistant General Counsel, Illinois Department of Insurance
   - Co-Chair, Young Advocates Committee, Young Lawyer Leadership Program, Outstanding Subcommittee Chair Award, 2012, for Small and Solo Firm Committee.
   - Committees and Liaisons Director for ABA Young Lawyers Division (YLD), YLD Treasurer-Designee 2014–2016 term, Star of the Quarter Spring 2012 and Winter 2013
   - Member, Council for Racial and Ethnic Diversity in the Educational Pipeline.
3. Alexis Foster
- Arizona State University
- 2003 JIOP Alum. The Hon. Matthew Kennelly. Chicago, IL
- Deputy Prosecuting Attorney, Kitsap County Office of the Prosecuting Attorney
- Young Lawyer Leadership Program, Minority Trial Lawyer Committee, social media chair, Young Advocates Committee social media chair, JIOP working group

4. Patrick Soon
- Whittier Law School
- 2011 JIOP Alum. The Hon. Michael J. McCarthy. Washington, DC
- Trademark and Litigation Associate Attorney, WHGC, PLC
- Co-chair multimedia subcommittee, editor for Technology for the Litigator
- Minorities in the Profession Co-Chair, Young Lawyers Division Scholarship Award

5. Erika Glenn
- Thurgood Marshall School of Law at Texas Southern University
- 2009 JIOP Alum. The Hon. Andrew Hanen. Brownsville, TX
- Attorney at Rodney Jones Law Group
- Membership co-chair for Pretrial Practice & Discovery Committee, contributing editor for Access to Justice Newsletter, web editor for the Minority Trial Newsletter, web editor for JIOP. Member of the Minority Trial Lawyer Committee, Pretrial Practice & Discovery Committee and JIOP alumni committee
- Legal Assistance Volunteer to lawful permanent residents. Neighborhood Centers Incorporated volunteer, pro bono attorney for Kids in Need of Defense.

6. Chantal Kazay
- Loyola University Chicago
- 2008 JIOP Alum. 19th Judicial Circuit Court of Lake County. The Hon. Mary Seminara-Schostok
- Associate at Wilson Elser Moskowitz Edelman & Diker
- Committee Roundtables Co-Chair, JIOP Alumni Committee subcommittee co-chair, interviewing and screening

7. Aaron V. Gleaton
- American University Washington College of Law
- 2011 JIOP Alum. The Hon. Anna Blackburne-Rigsby. Washington, DC
- Associate at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
• Former law clerk, JIOP alumni mentoring committee, Section of Intellectual Property Diversity Action Group, Co-chair Virginia State Bar’s Northern Virginia Minority Prelaw Conference, Just the Beginning-a Pipeline Organization, National Bar Association, National LGBT Bar Association and American Intellectual Property Law Association

8. Roberto Martell  
• Chicago-Kent College of Law  
• 2011 JIOP Alum. The Hon. Brigid M. McGrath. Chicago, IL  
• Assistant Attorney General, Labor Division, General Law Bureau, Illinois Attorney General’s Office, Technology for the Litigation contributor, JIOP alumni group, JIOP mentoring circle  
• Hispanic Lawyers Association of Illinois, Federalist Society, Chicago Bar Association, Illinois State Bar Association

9. Christina O. Alabi  
• University of Illinois College of Law  
• 2008 JIOP Alum. The Hon. Patricia B. Martin. Chicago, IL  
• Attorney, National Labor Relations Board  
• Employment and Labor Relations Law Newsletter Co-Editor; JIOP alumni committee, JIOP mentoring program

10. William H. Knight  
• Arizona State University, Sandra Day O’Connor College of Law  
• 2011 JIOP Alum. The Hon. Jon Thompson. Phoenix, AZ  
• JIOP alumni subcommittee website editor and outstanding subcommittee co-chair award, Access to Justice member, Young Lawyers Division liaison to the commission on Hispanic Legal Rights and Responsibilities
NEWS & DEVELOPMENTS

Cooley Partner Joseph Drayton Honored with New York City Bar Diversity Award

Cooley LLP announced today that partner Joseph Drayton was selected as one of only four attorneys in New York to be recognized by the New York City Bar Association with a 2014 Diversity & Inclusion Champion Award. The award recognizes the critical role that the recipients have played in initiating and sustaining change to promote diversity within their organizations and the New York legal community.

Joe Drayton is a member of Cooley's intellectual property litigation practice group and resides in the firm's New York office.

The New York City Bar will present the 2014 Diversity & Inclusion Champion Awards at a June 18 dinner to celebrate the organization's 30 years of efforts to promote diversity. According to the New York City Bar, the recipients "embody the New York City Bar's Statement of Diversity Principles, which defines diversity as an inclusive concept, encompassing race, color, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, age, disability and marital and parental status."

The organization specifically noted Joe's participation in its Enhance Diversity in the Profession Committee and his active memberships in other bar groups.

Congratulations to Philadelphia Diversity Law Group, Winner of the 2014 Diversity Leadership Award

The Philadelphia Diversity Law Group (PDLG) is a consortium of Philadelphia’s leading law firms and corporate law departments committed to fostering participation of a more diverse group of lawyers in the Greater Philadelphia region in order to make our legal profession stronger, more productive, and better equipped to address the challenges of the 21st century. For the past 13 years, the PDLG has engaged in innovative programmatic activity to promote meaningful diversity in the legal community, to provide educational opportunities for diverse individuals to help them prepare for entry
into and advancement in the legal profession, and to increase growth and leadership opportunities for diverse individuals. Incorporated in 2001 with 12 members, PDLG has grown to 37 members—25 law firms and 12 corporate law departments.

The PDLG’s signature program is the 1L Fellows Program, which seeks to recruit diverse 1L students to work at our member law firms and corporate law departments during the summer after their first year of law school with the hope that they will work for PDLG member organizations after graduation, then advance to senior positions with our PDLG law firms and corporate law departments. Since the inception of the Fellows Program in 2003, the PDLG has placed 300 diverse 1Ls as summer associates or clerks with Philadelphia law firms and corporate law departments.

The PDLG has also developed several pipeline programs to support diverse students who have been accepted into law school or who are considering going to law school. The PDLG’s week-long Boot Camp introduces incoming students to basic concepts and courses typical of the first year of law school with mini-courses taught by area law professors and panel presentations about what is expected of law students and how to study. The PDLG’s Law School Exam Prep takes place in late fall where panels of law school professors explain what they are looking for in exam answers, and successful law students give advice on how they approached their studies and exams to excel during the first year of law school. The PDLG also conducts seminars for diverse college students who are considering law school, where panels of law students, young lawyers, and more experienced lawyers discuss what they wished they knew as they considered making law their profession and as they moved forward with their careers.

The PDLG’s retention and promotion efforts include programming for diverse first-year associates about how to succeed as new associates, and a Ring of Champions mentoring program that partners business and/or practice leaders in PDLG law firms with diverse associates. As part of our commitment to the broader community, the PDLG publishes a regular column on diversity in The Legal Intelligencer and presents symposia on such issues as the Liacouras Committee’s impact on bar exam reform to increase the number of African-American lawyers in Pennsylvania, the advancement of women lawyers of color in the legal profession, and diversity and inclusion efforts in law firms and corporate law departments.
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