

DIVERSITY & THE BAR

JAN/FEB. 2016

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AWARD WINNERS

WHAT CAN LAWYERS
LEARN FROM *PAO V
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INCLUDING DISABILITY
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WHERE ARE THEY NOW?



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Earn Your CLE with MCCA

AS 2016 KICKS OFF, the MCCA team has created three showcase educational opportunities for you. I encourage you to plan on attending any or all of these events. I will attend all three and hope to see you and members of your team participating. Not only do MCCA events offer excellent CLE-approved legal programming, they are intimate enough that you and your team can make networking matter.

The MCCA General Counsel Summit, held April 13-16 in Palm Beach Gardens, Fla., is a four-day event that provides innovative educational offerings on leadership and diversity. Many of these sessions are also CLE approved, and many people commented to me last year that the networking at this relaxed event is unsurpassed. This annual educational and recreational event is the sole fundraiser supporting the MCCA LMJ Scholarship Program, named after MCCA's Founder Lloyd M. Johnson. Since 2004, the LMJ Scholarship Program has given out \$2.85 million to LMJ Scholars—outstanding diverse individuals attending law school. We did not raise this money alone. Your generous contributions made these scholarships possible. Details about GCS are at www.mcca.com/gcs and you can learn more about the LMJ Scholarship Program at www.mcca.com/scholarships.

Washington, D.C., will again host the MCCA Creating Pathways to Diversity Conference on July 18. This full-day conference promotes the advancement of diversity and inclusion in the legal profession with cutting-edge sessions, focused on global diversity, inclusive leadership, and talent optimization, many of which are approved for CLE. Quickly following on the heels of this event are two special programs for both inside and outside counsel: The Blueprint and The Exchange. Blueprint sets up an engaging mock competition to provide corporate legal services that will enhance outside counsel business development skills in a way that matters to inside counsel. Exchange is a MCCA member-only networking breakfast that provides an



opportunity to expand your professional network in a targeted way whether you are outside or inside counsel. Both of these special sessions are open only to Pathways conference attendees. Details about these three programs can be found at www.mcca.com/pathways.

The MCCA CLE Expo hosts two days of advanced educational seminars focused on leading topics of interest to the legal community and multiple networking opportunities. Many sessions

are CLE-approved, which makes the October 6-7 time frame a perfect way to round out your professional development calendar. We are thrilled to announce that after years in Chicago, Ill., and then Southern Calif., CLE Expo is moving this year to inspiring New Orleans, La. So, save the date! Event details, including past conference agendas, can be found at www.mcca.com/cleexpo.

Thank you for partnering with us to advance diversity and inclusion in the legal profession. Your support allows MCCA to provide diverse lawyers with key leadership development programs, our member organizations with substantive research and engaging discussion about the value of an inclusive legal workplace, and opportunities for our stakeholders to develop meaningful professional relationships with each other.

Happy New Year and I look forward to seeing you at one or more of these 2016 CLE events. ■



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Community Development Venture Capital Funds

Will DOL's Recent Guidance Help Push Them across the Finish Line?

IF YOU'RE NOT FAMILIAR WITH COMMUNITY DEVELOPMENT VENTURE CAPITAL FUNDS (CDVC), please rest assured that you are not alone. However, CDVC's have seen steady growth over the last 15 years or so, and they play a critical role in the world of double bottom line investing. Of potential significance to CDVCs is new guidance issued by the Department of Labor (DOL) on October 24, 2015 (the 2015 Guidance) that may set in motion a wave of new CDVCs and serve as the underpinning for an influx of capital into these unique funds.

CDVCs are venture capital funds that are created to pursue double bottom line investments. Therefore, as a general matter, CDVCs pursue:

- market rates of return for its investors; and
- social returns by creating good jobs, wealth and entrepreneurial capacity in underinvested areas.

According to Community Development Venture Capital Alliance (CDVCA), the association for CDVCs, assets under management (AUM) for CDVCs increased from \$402 million in 2000 to \$2.3 billion in 2013.

However, DOL's 2015 Guidance reconfirms the 1998 Guidance and seeks to dispel the misperceptions resulting from the 2004 Guidance.

In addition to the fact that CDVCs provide market level returns for its investors and social benefits as well, it is also viewed favorably by venture capitalists who are starting funds because of the varied sources of funding available to them. For example, potential sources of funding include, but are not limited to, banks, foundations, corporations, fund of funds, social investors, individuals and pensions.

For traditional venture capital funds, pension funds tend to make up a large percentage of their invested capital. However, since 2008, there had been uncertainty as to whether trustees of pension funds could invest in CDVCs without breaching ERISA's fiduciary rules. Fortunately, the 2015 Guidance can significantly alter this landscape.

By way of background, DOL provided guidance over the last 30 years on the application of ERISA's fiduciary rules about pension plan investments in funds seeking double bottom lines. In 1994, DOL issued guidance (the 1994 Guidance) explaining that ERISA's fiduciary requirements did not prevent plan fiduciaries from

investing plan assets in double bottom line investment opportunities if they had an expected rate of return that was commensurate to rates of return of alternative investments with similar risk characteristics and if the double bottom line investment opportunity was otherwise an appropriate investment for the plan. Despite the 1994 Guidance, DOL issued new guidance in 2008 (the 2008 Guidance) indicating that fiduciary considerations of non-economic factors (e.g., double bottom line considerations), in making plan investments, should be rare and, when considered, should be documented in a manner that demonstrated compliance with ERISA's fiduciary standards. As you can imagine, 2008 Guidance gave plan trustees pause with respect to potential investments in CDVCs.

However, DOL's 2015 Guidance reconfirms the 1998 Guidance and seeks to dispel the misperceptions resulting from the 2004 Guidance. Specifically, the 2015 Guidance provides that double bottom line considerations may not only be tie-breakers but proper components of the fiduciary's primary analysis about the economic merits of competing investment choices. In short, fiduciaries do not need to treat commercially reasonable investments as inherently suspect or in need of special scrutiny merely because they take into consideration double bottom line considerations.

Hopefully, the 2015 guidance will lead to greater funding for these CDVCs as access to capital, by our small businesses, is a key ingredient to our nation's long-term economic success. ■



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Situational Awareness

The Hidden Secret of Success—Part One

I CAN TELL YOU THE LICENSE PLATE NUMBERS OF ALL SIX CARS OUTSIDE. I can tell you that our waitress is left-handed, and the guy sitting up at the counter weighs 215 pounds and knows how to handle himself. I know the best place to look for a gun is the cab of the gray truck outside, and at this altitude, I can run flat out for a half mile before my hands start shaking.

—Jason Bourne

I have been talking with my children quite a bit lately about situational awareness: the notion that being keenly aware of your surroundings and people around you is critical for survival. Whether we're at the mall, a restaurant or Disney World, I stress the importance of keeping a "third eye" open for any issues that might cause discomfort, pain or danger.

As I talked to them over the past several months, it dawned on me that I was teaching myself a valuable litigation lesson as well. Over the past 20 years, I have tried cases in several states across the country, and the habits, strategies and protocols used from case to case/jurisdiction to jurisdiction have been consistent.

In any litigation, it is important to be aware of the situation or the purpose of the litigation itself. If we as trial lawyers fail to understand and embrace the big picture and plan our steps accordingly, we have failed as zealous advocates for our clients.

We all learned years ago that one of the best methods for gathering information was to employ the "Five Ws, One H" method, and ask six basic questions (Who, What, When, Where, Why and How) to get the data you need to move forward successfully. Litigation strategy can/should employ the same methodology and to be fully aware of your litigation situation, the following questions are suggested as a template.

Who Are the "Players"?

With any new or changing environment, it is essential to know the people with whom you will interact. In litigation, this means knowing the judges, lawyers, team members and other professionals in the game.

It is also important—arguably more important—to know the "behind the scenes" players who charge the machine and make it move: clerks, legal assistants, paralegals and other office workers who know both the system and the tendencies of the players within it. Develop relationships with everyone you can, and listen closely to learn about them. As Stephen Covey used to say, "seek first to understand, then to be understood." Knowing who surrounds you can help to secure you.

What Is the End Game?

I cannot overstate the significance of this question: It is simply a crucial element of situational awareness to know the ultimate end game. In litigation, the ends support the means. From the completion of bellwether cases on the journey to a global settlement to the trial of a one-off bet-the-company case, awareness of the ultimate end game is essential. With the above point in mind, litigators and trial lawyers must be bold and confident enough to ask the questions that provide us with the true end game. While some may correctly argue that a litigator's job is to litigate ("ours is not to reason why ..."), it is equally correct to state that knowing what the ultimate goals and desires of the client are can assist greatly with planning and execution of litigation strategy. Indeed, proper preparation precedes productivity.

When Is the Proper Time to ...

Timing is everything, and a significant aspect of developing situational awareness is understanding the relevance of timing and knowing when decisions/judgments need to be made. The questions range

from "when do I remove myself from this environment?" to "when do I tell this person that what they are saying is not OK?" to much more. For me and my colleagues, the questions range from "when do I file a dispositive motion?" to "when do I argue (if at all) with the judge?" to "when do I relay this piece of bad news to the client?" While a good deal of litigation and trial work is impromptu and in the moment, a large part of it is planned, deliberate and coordinated. Consequently, the amount of time spent on certain decisions and the timing of the execution of those decisions is crucial to our success.

When the above questions are routinely asked at the outset and throughout the course of the litigation experience, the likelihood of success increases dramatically. Litigation is about structure and story, and both can be enhanced and strengthened when we increase our situational awareness.

In the next column, we will explore the additional three questions and add more thoughts for executing a winning trial plan. ■



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Great Minds Tackle Incomplete Work

It is my pleasure to be a new columnist for the Diverse Professional Development column. I have practiced employment law for 24 years, in both law firms and in-house. I am the daughter of first-generation immigrants, a mother of two and a woman of color.

When I graduated from law school in 1991, the legal profession looked different than it does now: It looked predominantly white and male. It was uncommon to hear lawyers in private practice talk openly about the challenges and joys of parenthood. A client dinner may be hosted at a venue that did not welcome guests based on color, gender or faith tradition. And when a visible minority walked into a reception or bar association event, he or she could count on one hand others in the room who looked like him or her.

In the mid-1990s, men and women of color began to feature more prominently in the legal landscape with the tech boom and the corresponding burgeoning entrepreneurial community. Intellect began to trade as capital, the world became flat, and project teams of all colors emerged. Military retirees with distinguished service and incomparable leadership experience formed thriving minority-owned businesses. The MCCA was founded, in 1997, to advance the hiring, retention and promotion of diverse attorneys in legal departments and the law firms that serve them. The notion of “diversity” had entered the formal vernacular.

In the past decade, support for diversity and inclusion has evolved at an impressive pace. So too has the country, as we head at break-

neck speed toward a majority-minority population and we witness the emergence of historic protections for gender and LGBT equality. Formal supplier diversity targets have become common, even in legal departments, as have diversity “report cards” and complex RFPs demanding ambitious and

Diversity 2.0 is about success in inclusion: developing and sustaining processes, practices, values and opportunities that maximize the success of each constituent in a diverse workforce.

thoughtful commitments by law firms to engage and promote women and minorities on client matters. Many client companies require outside law firms to submit annual reports on diversity efforts. Law firms employ full-time diversity managers, who monitor progress internally and compete for accolades externally. Legal search consultants sell practices in minority recruitment. It is commonly understood today that a diverse and inclusive workforce, whether in a law firm or corporate legal department, enjoys improved innovation and a competitive advantage. We have robust conversations about unconscious bias, pipelines for talent development, sponsorship, mentorship and resource

groups. We have moved from work life “balance” to work-life “integration.” Clients of law firms, and customers of law firm clients, are demanding diversity.

The issues today are different but as complex as they were in 1991. Minority is a broad category, and we must ensure that all minorities, visible and not, are part of this conversation. What is the impact of a minority-majority population? Diversity 2.0 is about

success in inclusion: developing and sustaining processes, practices, values and opportunities that maximize the success of each constituent in a diverse workforce.

The work is far from complete, but great minds are at the table. I look forward to our conversation. ■



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Dealing with Conflict in the Executive Suite

It's never a good feeling to have conflict or disagreement between the general counsel and the executive suite, but it's going to happen. How the general counsel deals with conflict will speak volumes about her effectiveness and ability to influence decision-making after the fact. The last thing the general counsel wants is to become irrelevant, or worse yet, avoided. Here are some things you can do to help manage the fall-out and increase the odds of coming out of the conflict in a good position to influence decisions moving forward.

Business is a rough and tumble process with lots of stress and frequent ups and downs. Executives are not immune from the stresses that come from competing in the business world and within the company, despite their desire to stay above the fray and remain objective. When the general counsel

understand what might be driving the emotion and behaviors behind the words and the tone. Many times, the emotion, the words, the tone are pointing to the real issue and the legal disagreement being communicated is simply the vehicle carrying that emotion. Focus on what's going on and offer to be the solution. Never answer the email with an email or pick up the phone and leave a voicemail. Get up, walk over to the executive's office, sit down and show calmness and humility. Ask questions that allow you to identify the underlying stress points and offer your assistance to help the executive get over the hump. Address the legal issue as a non-issue. Your support and assistance in addressing the real issues causing the stress will be much appreciated and will diffuse a potentially volatile situation.

Sometimes the issue isn't stress or calendar pressures; it is a disagreement on fundamental legal issues or legal advice. It usually starts with a phone call from an irate executive reporting on the crazy advice one of your lawyers gave him in a memo or during a meeting. "Your lawyer can't possibly be correct. The law department at the last company I was at always let me do this. Why won't you?"

Listen to what the executive has to say. Ask good questions. Focus on the facts and avoid blame. Then ask for some face-to-face time to discuss the matter.

Identify whether the issue is one in which both of you can compromise or is a fundamental principle of law that simply must be complied with. The answer will have a lot to do with what you do next. If it's an area of compromise, seek to get input from your attorney, bring your attorney with you to the face-to-face and work on a compromise that complies with the law but that allows the business to take reasonable risk. If the issue involves a fundamental principle of law that must be complied with, you will need to explain this to the executive, be prepared for push back, answer questions and educate the executive in a friendly, team-based manner, taking pains not to sound didactic.

Understanding whether a potential conflict is a valid disagreement about legal advice or simply the stress of daily business will make a big difference in how you approach the executive. Many times, diffusing the situation and providing assistance with what's driving the stress will go a long way toward avoiding and defusing conflict. ■

Ask questions that allow you to identify the underlying stress points and offer your assistance to help the executive get over the hump.

gets that angry call or aggressive email, the last thing she wants to do is react to the tone or words used or to act defensively.

Stop, think and see things from the perspective of the executive. Set your ego aside and ask yourself, "What's going on in his world?" Use your knowledge about what's happening at the company to



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2016 Calendar of Events



April 13-16

General Counsel Summit

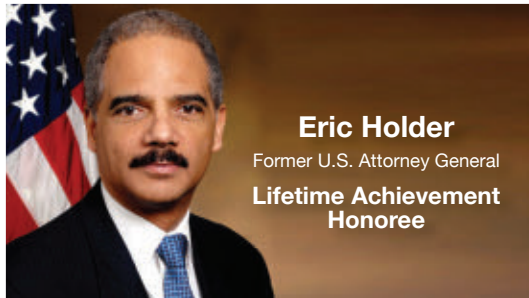
PGA National Resort & Spa
Palm Beach Gardens, FL



July 18

Creating Pathways to Diversity® Conference

Renaissance Hotel
Washington, DC



Eric Holder
Former U.S. Attorney General
Lifetime Achievement
Honoree

July 19

Diversity Gala

John F. Kennedy Center for the
Performing Arts
Washington, DC



October 6-7

CLE Expo

Hyatt Regency New Orleans
New Orleans, LA

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BESLA: Building Strong Entertainment and Sports Lawyers

“If you’re African-American and practice or aspire to practice entertainment or sports law, you need to belong to BESLA (Black Entertainment and Sports Lawyers Association). It’s a no-brainer. It’s the best source of education and business development for lawyers and professionals in entertainment, sports and related industries,” says Lawrence C. Hinkle II.

The head of Fox Rothschild LLP’s entertainment litigation group nationwide, Hinkle also serves as BESLA’s vice president and general counsel. His involvement with the association began more than 20 years ago when he was still a law student at the University of California, Hastings College of the Law. Hinkle remembers, “I was an intern at MCA Records where a senior lawyer told me there was an organization that I needed to join. She said I’d find everyone I needed to know there. I went to my first BESLA event in 1993 and haven’t missed an annual conference since.”

BESLA’s membership is comprised mostly of accomplished lawyers, industry professionals and law students. In addition to representing high-profile individuals, some of its 1,000 members count important entertainment and sports companies among their clients. Originally founded as the Black Entertainment Law Association in 1980 by a group of African-American attorneys eager to form alliances with other African-American attorneys necessary for all to grow and be successful, the association expanded to include sports law in 1986. Its founding members included ground-breaking African-

American entertainment attorney David McCoy Franklin, who had represented such talents as Donny Hathaway, Louis Gossett Jr. and Richard Pryor.

“There was a time when African-American attorneys—with a few exceptions—were adrift in entertainment law,” says Hinkle. “For all boats to rise there needed to be networking opportunities.

“We’re passionate about what we do, just as entertainment and sports personalities are passionate about what they do. It takes a passionate group of lawyers and business professionals to support this industry.”

—Elke Suber

There was a need for BESLA. It quickly became a necessary resource to those lawyers interested in entertainment and sports.”

BESLA’s featured event is an annual autumn conference, which was held in Jamaica in October 2015. “The key thing about the annual BESLA conference is that we expose participants to an intimate environment where the best lawyers and top industry representatives are concentrated in one place,” explains Hinkle. “It enables you to develop relationships with

them. Whether you’re young and looking to find mentors or already in the mix, you’re invariably going to run into people who can expose you to job opportunities or send you business. Also, we offer 12–14 seminars at each conference which are led by industry leaders. It’s an unparalleled educational experience for entertainment and sports lawyers.

“The association has very much buoyed my career,” he says. “It’s given me lots of work, and most importantly, relationships. BESLA has given me all the benefits that come from establishing good relationships with people who are successful. After all, of-

tentimes you’re only as successful as your Rolodex.”

For BESLA President Elke Suber, the association has always been a door to insight and opportunity. She first learned about BESLA through an early mentor and BESLA board member, Joi Rideout, who encouraged her to attend after she had landed her first entertainment client. At her first BESLA conference in the late ’90s, Suber attended a panel on digital entertainment. “This was around the time the music industry



was facing Internet file-sharing challenges. I left the panel knowing I wanted to pursue a career that combined cutting-edge technology with the intellectual property work I already loved doing. After the conference, I volunteered to put together a BESLA IP event in Philadelphia, where I was practicing at the time. I've been involved ever since," she says.

And it was through BESLA that Suber ended up joining Microsoft Corporation, where she is now an assistant general counsel. "After speaking at a BESLA event on a panel about copyright law, I met Bruce Jackson, who was an in-house attorney for Microsoft. Bruce asked me if I'd consider opportunities at Microsoft and suggested I apply for position in their copyright group. Here I am three years later, having joined Microsoft where I have worked on an incredible array of intellectual property and digital entertainment issues. Stories like mine aren't at all uncommon."

Everyone on the BESLA board is a volunteer, adds Suber, who has focused on IP/new media programming and scholarship efforts for BESLA. "We're passionate about what we do, just as entertainment and sports personalities are passionate about what they do. It takes a passionate group of lawyers and business professionals to support this industry."

Matthew J. Middleton, BESLA's chairman of the board, recalls an introduction to the association equally auspicious to Suber's. While still in law school at Howard University, Middleton knew he

wanted to pursue entertainment and sports law. "A professor directed me to BESLA, where I could meet people already working in the industry. I also learned they were offering scholarships to students with keen interest in the field. I submitted my information and was awarded a scholarship. That was the start of a long and rewarding relationship with BESLA."

Middleton has been an active member of BESLA and hasn't missed a conference in 23 years. He is currently counsel to the law firm of Sweeney, Johnson & Sweeney LLP, a full-service entertainment firm in midtown Manhattan where, as a transactional lawyer, he represents recording artists, producers, songwriters, young film and TV show developers, and celebrities on all aspects of the entertainment industry.

Over the years, BESLA has played an instrumental role in developing his practice. In addition to the insights Middleton has gleaned from seminars and conferences, BESLA has also provided him opportunities to forge relationships in the industry and obtain referrals for business. Mentors since law school include legendary entertainment lawyers Virgil Roberts, Leroy Bobbit, Kendall Minter and Louise West. And his current firm was founded by one of BESLA's founders, Ron Sweeney.

Thirty-five years later, the

association remains relevant, Middleton says: "I look at young lawyers and see the contacts and connections they've made and where they're working and what they're doing. I can directly trace these connections back to BESLA." In addition to its annual conference, BESLA holds regional events throughout the year offering member networking and educational opportunities. BESLA also continues to award scholarships to deserving law students.

There are things BESLA still wants to do. Mostly that includes striving to build on and grow what it is already doing. The group is focused on providing members with more programs and networking opportunities, Hinkle says. He would like to focus on more regional events and increase the number of scholarships awarded. "These things are simply accomplished by making sure people know what we're doing and getting more support from the entertainment and sports law communities and industries alike."

While BESLA has grown enormously over the years, adds Hinkle, there remains room for further growth. "There are so many more people who can benefit from what we're doing." ■

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Community of Caring

By Lydia Lum

WHEN CARMEN DOMINGUEZ SPOTTED a notice that Miami Dade College was hiring in-house counsel, she notified a friend whom she thought would want to apply.

But Dominguez, who had been a lawyer for two decades, found herself contemplating the ad long after informing her friend. Although her career in south Florida regularly intersected with government and public entities, Dominguez wasn't sure what the job of community college legal chiefs entailed. Nor could she conceive the broad array of matters that typically landed on their desks. Still, she was intrigued.

This was more than a decade ago. Dominguez applied to Miami Dade and was hired, eventually becoming the highest-ranking lawyer at the two-year college. There, she has addressed questions surrounding drones on campus, search and seizure, labor relations, real property, the Americans with Disabilities Act, student grievances and discipline, construction, procurement and bid protests, human resources, constitutional law, academic freedom, intellectual property and public records, among other issues.

"This is an incredibly rewarding job for the variety of work we do," Dominguez says. "I am constantly learning, and that's enjoyable. There's always something new."

As in-house counsel, she and others at U.S. community colleges represent their institutions in matters involving local businesses, homeowners, government agencies and other educational organizations. They advise college governing boards, presidents and other top administrators.



Carmen Dominguez

Yet their largest group of stakeholders is students.

In 2013, the most recent year for which enrollment data is available, 46 percent of all U.S. undergraduates, regardless of race, attended community college. Students of color flocked to such institutions. Among all Native Americans in higher education nationally that year, 61 percent chose two-year colleges, followed by Hispanics at 57 percent. About 52 percent of African-American undergraduates and 43 percent of their Asian Pacific Islander American peers attended community colleges.

Many students across all racial groups are disadvantaged. About 36 percent of the 12.4 million undergraduates at two-year colleges nationally are the first generation in their families to access postsecondary education, according to the American Association of Community Colleges. Moreover, 17 percent are single parents, 12 percent are disabled and 4 percent are military veterans.



sion, which hovered at 21 percent among state bar members in 2011.

Nguyen's idea took root. The "Community Colleges Pathway to Law School" is an alliance between six California law schools and 24 two-year colleges around the state, including two at Peralta, that have robust rates of students of color and low-income individuals transferring to four-year institutions.

Under the partnership, these law schools provide mentoring, financial aid counseling, application fee waivers and help preparing for the LSAT for community college alumni who earn a bachelor's degree at the undergraduate institutions that house the law schools. Community college students can take courses—English composition, U.S. government and argumentation and debate are examples—that transfer to four-year universities and strengthen their law school applications. The inaugural class of "Pathway" law students is expected in 2017.

"We're lawyers, but we have educator hats, too," Nguyen says. "We can marry these together."

None of this is lost on Jan Patrick "JP" Sherry, general counsel and director of government relations at Los Rios Community College District, the second-largest district of its kind in California.

"One of the biggest reasons I stay in this job is for the emotional capital, such as when I work at the welcome desk at the beginning of the school year and help new students," Sherry says. "It never gets old."

He is among current and former GCs around the country who have woven their influence into the campus fabric. Sometimes, their impact has reverberated far from the college legal departments.

Good deeds for the public good

Thuy Thi Nguyen left an imprint at not only the Oakland, Calif.-based Peralta Community College District, where she was general counsel until December 2014, but also at quite a few other two-year colleges.

When Nguyen served on the State Bar of California's Council on Access and Fairness, a diversity think tank of sorts, she suggested steering more community college graduates toward law school. Doing so, she reasoned, could boost racial diversity in the legal profes-



Jan Patrick Sherry

Elsewhere, GC initiatives are benefiting students whose career aspirations span A to Z. Take, for instance, a series of legal education clinics last spring at Cuyahoga Community College, or Tri-C, in Cleveland.

At the clinics, Tri-C Vice President and General Counsel Renée Tramble Richard and members of her legal team explained how students could ask the courts to seal their criminal records for minor offenses such as shoplifting, meaning prospective employers are less likely to learn about these histories and nix hiring them. With assistance from Richard's staff, 15 students had their records sealed by the end of the spring semester.

Not surprisingly, the students who approached Richard's team were uncomfortable tiptoeing into the past.

"They're nervous," she says. "They're embarrassed others will find out, but they [were] anxious and excited" to have their records sealed.

At the legal education clinics, Richard's staff also explained that some medical fields and other professions do not permit licensing to people who have certain types of felony convictions.

"Even though they have heard this already from academic advisers and counselors," Richard says, "it's



a little clearer for [them] if they hear it from us, too. Students need to understand that they shouldn't pursue a career in which they cannot obtain a license."

Some legal chiefs have recruited disadvantaged people as community college students, even when the latter cannot name a dozen professions, much less a dozen academic specialties.

This is what Dominguez has done while serving as a governing board trustee for an agency that manages foster care and coordinates child welfare services for two Florida counties. Dominguez has encouraged youth who have finished high school to enroll at Miami Dade College and pursue disciplines that produce high rates of employed graduates without needing big student loans.

Many of these young people cannot name careers besides doctors, nurses and lawyers, she says, but they become interested in other possibilities whenever Dominguez has explained that Miami Dade's curriculum makes it possible to become a dental hygienist, for example, without incurring \$100,000 in debt. Dominguez has also introduced them to academic areas such as airport management and funeral services education, which they were un-

aware of but were receptive to exploring.

Furthermore, she and other community college GCs try to educate stakeholders besides undergraduates and prospective students.

Los Rios' Sherry, who describes his practice as "a mile wide and an inch deep," periodically conducts seminars at his district's four campuses for senior administrators and college police captains so that they have a better grasp of what's legally permissible.

For instance, Sherry covered First Amendment rights in a series of seminars so that faculty would understand why nonviolent demonstrations and protests were allowed. The timing of the seminars coincided with activism and civil debate among students and other constituencies leading up to the controversial, 2008 ballot initiative over gay marriage in California known as Proposition 8.

Professional fulfillment doesn't guarantee utopia

Because community colleges are taxpayer-supported and therefore public entities, the general counsel sometimes have to endure negative perceptions and publicity.

This happened to Nguyen seven years ago when the media company that owns the *Oakland Tribune* and other newspapers sued her college district to release a report about a college official's involvement in awarding a no-bid contract to a friend.

A year passed before the case was resolved, with the district prevailing and keeping the document under wraps. In the interim, open government advocates accused the district of flouting open records laws.

"It's difficult being in the middle of something like that, and it becomes so public," Nguyen says of the suit. "It helps to believe you are doing the right thing and to be around colleagues who are supportive. It's important to have that element from within. Remain an honest broker. See the forest, but also

pay attention to the trees and little details."

Another challenging aspect of the GC's work climate lies in a longstanding pecking order within academia.



Thuy Thi Nguyen

Legal chiefs are primarily and overwhelmingly practitioners of the law rather than public intellectuals. Whereas lawyers might be accustomed to commanding undivided attention—even admiration—from an audience of non-lawyers, this usually doesn't occur at these colleges, especially when the audience consists of faculty.

"Some folks will see you as an obstacle, so be careful," Sherry says of faculty members. "Community colleges are first and foremost institutions of higher learning, and faculty and administrators must work together—we call it participatory governance—to run the institution. If I'm not patient, it undercuts my ability to effectively communicate with them. We do education here; we don't do law. My job is to speak truth to power."

Dominguez notes that faculty, many of whom hold doctorate degrees, tend to act as if the contributions to campus life by non-Ph.D. co-workers are less significant than theirs. Non-Ph.D.s tend to populate service professions, such as human resources, the finance and business affairs department, facilities management and the legal division.

"Sometimes the service professions are viewed as fringe, as if we're interlopers," Dominguez says.

So how can a community college GC navigate such an environment?

"I'm comfortable in my own skin and show a certain amount of humility," she says.

For example, soon after child sex abuse allegations surfaced at Penn State University in 2011, Dominguez conducted a seminar for Miami Dade faculty about Florida laws regarding obligations to report child abuse. At the seminar's beginning, Dominguez remarked, "I'm always so honored to be here with you," hoping they would take her seriously. She relies on this opening pleasantry at each faculty seminar, regardless of subject, occasionally interchanging it with an alternative such as, "It's always good to see the best and brightest." Each time, her motive is the same.

What job candidates need

Community college chief counsel say that young lawyers should consider in-house positions there—as long as they already have a solid foundation of experience.

"Young lawyers need to be exposed to the early prac-



Renée Tramble Richard

tice of law, but a community college isn't the best environment for that," says Tri-C's Richard. "There isn't time to teach someone how to handle contracts, how to litigate or how to deal with a public records request. This would be hard for someone fresh out of law school. [But] being around academia is refreshing. It's a positive atmosphere. The topics and subjects we work on are important."

Richard and her counterparts encourage potential job candidates to obtain public sector experience before moving to a two-year college.

Previously, Richard was a law firm partner specializing in public finance. Before law school, she was an accountant. Sherry worked in a city attorney's office and as an appellate attorney for a California judge before moving to Los Rios. And prior to joining Miami Dade, Dominguez was district legal counsel for Florida's Department of Children and Families.

"One of the biggest reasons I stay in this job is for the emotional capital, such as when I work at the welcome desk at the beginning of the school year and help new students. It never gets old."

—Jan Patrick Sherry

Richard, for one, values the vast experience she accumulated in nonprofit law, sunshine laws and revenue bonds before moving to the community college in 2012. "As a member of Tri-C's executive team, we can have discussions without my having knee-jerk reactions," she says.

The previous public law experiences multiply the emotional rewards at the college, too.

"After a career spent working with numbers, I can now help students, faculty and staff move toward the goals they're trying to achieve," she says. "Here, what we do is important to someone's academic life, and it could impact their livelihood. It's very gratifying to work on these matters." ■

A FREELANCE writer and editor, **LYDIA LUM** (lydialum999@yahoo.com) is a former reporter for the *Houston Chronicle* and *Fort Worth Star-Telegram*.



The 2015 MCCA Thomas L. Sager Awards

By Dianne Hayes

MCCA established the coveted Thomas L. Sager Award to highlight the accomplishments of some of the country's best law firms that have demonstrated a sustained commitment to hiring, retaining and promoting diverse attorneys, as well as for their strong commitment to diversity and inclusion. The Sager Awards were announced at the MCCA CLE Expo last October. For details on all 2015 award winners, visit www.mcca.com/awards.

Shearman & Sterling LLP

Northeast Region

FOUNDED IN 1873, Shearman & Sterling LLP's diverse global legal team provides insightful legal advice around the world, including Asia, the Middle East, Europe, Latin America and North America.

Its team of lawyers speak more than 80 languages, which is a major asset in advising many of the world's leading corporations and financial institutions, governments and governmental organizations for more than 140 years.

Though its offices have a global presence, the largest concentration of the firm's lawyers are located in the U.S. in Menlo Park, Calif.; New York; San Francisco; and Washington, D.C.

Shearman & Sterling's strategic global diversity and inclusion initiative is based on four core tenants: nurture, facilitate, increase and promote. Its commitment starts at the top with a leadership team that promotes and integrates diversity in all aspects of the firm.

Successful recruitment and retention at Shearman & Sterling is based on a philosophy that differences are valued and an understanding that diversity and inclusion are good for business.

At the end of 2014, Shearman & Sterling had 338 attorneys on staff. Of those attorneys, 66 percent were minority, female and LGBT attorneys.

The firm's Diversity and Inclusion Committee was established more than 20 years ago. Comprised of partners and associates from the U.S. and Europe, the committee supports many diversity projects and professional events, both within the firm and the legal community. It helped to form six internal inclusion networks and the Sterling Pride Ally Program, launched by the firm's LGBT associate-run inclusion network. It is a network of straight LGBT allies that seeks to advance an inclusive environment in which LGBT colleagues can bring their whole selves to work.

Shearman & Sterling is an innovator in its use of social media, using a Twitter feed channel, @ShearmanWomen, dedicated to advancing the promotion of women in law and business. Last year, it introduced a female-focused LinkedIn page where regular content is posted of interest to women in law and business.

The firm's diversity and inclusion efforts also extend to suppliers. The supplier diversity initiative ensures that diverse businesses are represented in its competitive selection process.

"Our senior partner, Creighton Condon, perhaps said it best: 'Diversity and inclusion are part of the DNA of Shearman & Sterling,'" says Alan Seem, a partner at the firm. "With this strong support from the top, we continually strive to find the best ways to advance our diversity and inclusion goals through strong leadership, words and actions."

To remain globally competitive, the firm has been a leader in providing extensive resources and programs to help lawyers stay competitive and grow professionally, intellectually and personally through the professional development department.

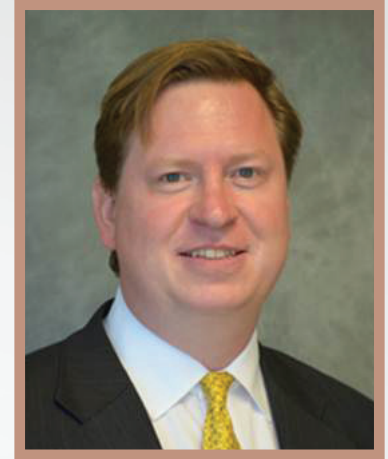
Department members design programs that offer ongoing specialized legal instruction, from corporate law and trial advocacy to global capital markets and banking. In addition, training is offered in skill areas such as writing, public speaking, financial analysis and business development. Practice group training addresses specific legal topics, while conferences bring together lawyers from its offices around the world and provide an opportunity to network, share ideas and discuss developments of importance to the firm.

The firm is an accredited provider of continuing legal education and continuing professional development courses.

Beyond training programs, Shearman & Sterling encourages mentoring to ensure that lawyers realize their full career potential. The mentoring program promotes interaction among partners and associates at all levels and facilitates an open-door policy to allow for frank discussion on all aspects of work and life at the firm.

Shearman & Sterling's innovative approaches to diversity and inclusion and long-term commitment to giving a voice to all groups has won the firm numerous accolades, including the Sager Award.

"I am grateful to the Minority Corporate Counsel Association for recognizing our firm's efforts to create a diverse and inclusive environment," Seem says. "This award represents a validation of the values and principles we hold dear, which are quite simply to weave the benefits of diversity and inclusion into every aspect of our firm and all that we do."



Alan Seem
Partner, Capital Markets

Shearman & Sterling's strategic global diversity and inclusion initiative is based on four core tenants: nurture, facilitate, increase and promote.



2015

Arnold & Porter LLP

Mid-Atlantic Region

FOUNDED ON A MANAGEMENT PHILOSOPHY that respects individuality, Arnold & Porter LLP is a firm that considers the unique experiences of all of its attorneys as one of its most valuable assets. Practicing in more than 30 distinct areas of law, the firm has a global reach. Established in 1946, it has offices in Washington, D.C.; Denver; Houston; Los Angeles; New York; San Francisco; Silicon Valley, Calif.; London; and Brussels.



William E. Cook Jr.
Partner

Arnold & Porter LLP prides itself on using the vast experiences and skills that each attorney brings to the table. The firm's commitment to diversity is paying off. The Washington, D.C., office is the firm's oldest and largest. Out of 430 attorneys in the D.C. office, more than 59 percent are minority, female and LGBT attorneys.

"Diversity remains a core value at Arnold & Porter LLP and is engrained in our firm culture," says William E. Cook, partner. "We are committed to diversity not simply because it makes perfect business sense, but because it is the right thing to do.

"Our diversity policies, procedures and programs are intended to promote a diverse and inclusive workplace, encourage a diversity of ideals and create an environment where all of our colleagues are treated with dignity and respect," Cook says. "Our commitment to diversity is reflected in the daily interactions among our colleagues."

Affinity groups for a variety of ethnic backgrounds, women, LGBT and veterans are supported at Arnold & Porter, meeting throughout the year and organizing sponsored lunches, social events, professional development programs, recruitment and retention initiatives, and community outreach.

The group Minorities at Arnold & Porter sponsors a formal mentor program in which minority associates are paired with MAP partners, and hosts an annual reception for minority attorneys and summer associates. A summit is held each year for the firm's minority lawyers, in addition to an annual forum for junior MAP associates.

Women Lawyers at Arnold & Porter is led by a steering committee of female partners, counsel and associates. WLAP hosts a summer gathering for female attorneys and summer associates and several small group gatherings of partners and associates to foster connections and communications. Recently, WLAP launched the Leadership Training Series for female lawyers in the firm and holds the Women Attorney Lunch Program.

LGBT Lawyers was founded in the late 1990s and has been instrumental in developing the firm's pro bono practice with organizations such as the Human Rights Campaign, Lambda Legal and other organizations focused on combating discrimination in the LGBT community. In addition, LGBT Lawyers provides mentoring opportunities and sponsors social events, including an event for summer associates and a forum for discussion of LGBT issues in the workplace and in law.

Veterans are supported through the Arnold & Porter Veterans & Affiliates, which was founded in 2014 and consists of individuals with and without military experience who desire to participate in recruiting and outreach programs, pro bono work and internal support networks focused on improving support for military veterans internally and externally.

Committed to a belief that attorneys should give back to those in need, Arnold & Porter has established one of the world's leading law firm pro bono programs. Attorneys average more than 100 hours per year of pro bono work, and the firm has been recognized for its efforts through dozens of awards, including the ABA's prestigious "Pro Bono Publico" award for the country's best pro bono program. Its pro bono efforts are as diverse as its attorneys and include "impact" cases such as the successful challenge to the Pennsylvania voter ID law and the ongoing challenge to the poor treatment of mentally ill prisoners at the federal Supermax prison in Colorado.

Arnold & Porter's efforts to reach a diverse cross-section of the population includes financial support to numerous organizations that promote diversity. The firm also participates in career development programs and minority job fairs, scholarships to diverse law students, and outreach to female, minority and LGBT student associations. The firm awards \$10,000 diversity scholarships to highly qualified first-year students, which helps to finance tuition costs.

Committed to a belief that attorneys should give back to those in need, Arnold & Porter has established one of the world's leading law firm pro bono programs.

Ogletree Deakins Nash Smoak & Stewart PC

Midwest Region

ONE OF THE COUNTRY'S LARGEST LABOR and employment firms representing management, Ogletree, Deakins, Nash, Smoak and Stewart PC has made diversity and inclusion an integral part of the firm, with 45 offices in 27 states, the District of Columbia, U.S. Virgin Islands and Mexico.

The numbers tell the story: Out of more than 700 attorneys, 43 percent are women, 66 percent of the associates are diverse, 30 percent of the managing shareholders are diverse, and 20 percent of the compensation committee and 22 percent of the board of directors are diverse.

"There is a difference between talking the talk and walking the walk," says Keith A. Watts, office managing shareholder. "As far as the firm goes, everyone has something to bring to the table. We offer premier service with clients that are made up of all kinds of people. Our diversity mirrors our clients."

Ogletree Deakins considers itself an innovator in the area of diversity and inclusion by combining professional development and diversity and inclusion in the same department, believing that the combination is a critical component in the firm's ability to recruit, retain and advance diversity.

In 2011, Ogletree Deakins' board of directors approved the creation of a fully staffed department dedicated to the retention, advancement and promotion of diverse attorneys and employs a professional development and inclusion team.

The PDI team's Diversity and Inclusion/Professional Development Needs Assessment surveyed the opinions of attorneys at every level in the firm with an 86 percent response, which was the catalyst for the firm's Professional Development and Inclusion Three-Year Strategic Action Plan.

Ogletree Deakins leaves no stones unturned in addressing diversity, with an array of programs and activities to support the legal team at every level. From blog posts and insights about handling difficult conversations, to diversity in law banquets, from diversity retreats, to the Diversity and Inclusion Ambassador program, the firm attempts to identify and support the needs of the legal team.

Among the numerous programs are the Pittsburgh D&I Roundtable Series: Gender Expression in the Workplace, Los Angeles LGBT Center's Annual Legal Professionals Reception, the Project Equality Diversity and Inclusion Summit, Women's Employment Network Annual Luncheon, LEGALITEA Award Reception, University of Missouri at Kansas City Pipeline Coalition



Keith A. Watts

Office Managing Shareholder
Orange County Office



Diversity and

inclusion is

not a written

piece of paper

you hang

on the wall

somewhere.

operational support, inclusive policies and programming, recruiting strategies and pipeline initiatives, advancement and promotion goals, and professional development initiatives.

"Diversity and inclusion is not a written piece of paper you hang on the wall somewhere," Watts says. "We are living the idea every day. We have a workforce with a multiplicity of ideas and from different socioeconomic classes. Everyone has blind spots, and it is difficult to walk in someone else's shoes. It helps to have a diversity of ideas around the table."

Ogletree Deakins' director of professional development and inclusion and other firm leaders participate in organizations such as the Leadership Council for Legal Diversity, the Leadership Institute for Women of Color Attorneys in Law and Business, and the Association of Law Firm Diversity Professionals. The events allow members of the firm the opportunity to exchange ideas on best diversity and inclusion practices.

The firm also supports and collaborates with groups such as the National Bar Association, South Asian Bar Association of North America, European Employment Lawyers Association, National Lesbian and Gay Law Association, Cuban American Bar Association and Hispanic National Bar Association.

The firm has received numerous accolades, including being named "Law Firm of the Year" in the Employment Law-Management category in the 2016 edition of *U.S. News—Best Lawyers* "Best Law Firms" list. The firm also received a No. 1 ranking in Black or African-American Minority Group 2015 Diversity Scorecard from *The American Lawyer*. Ogletree Deakins was a top ranked leading firm from Chambers USA 2015 and The Legal 500 ranked Ogletree Deakins among the top firms in labor-management relations.

"We've been very humbled by the praise that we've been given in all of the communities," says Watts. "We've been made to feel welcomed, and we are welcoming."

Scholarship Reception, and the annual Judge Kit Carson Roque Jr. Scholarship Banquet (Jackson County Bar Association).

Ogletree's success as a truly diverse law firm is built on formal planning, strong infrastructure and





2015

Vinson & Elkins LLP

South Region

A CULTURE OF DIVERSITY AND INCLUSION is integrated into all aspects of Vinson & Elkins LLP operations based on a top-down approach to creating an environment where differences are valued and talent is developed.

From the firm's Diversity & Inclusion Executive Committee, Talent Leads and Diversity Leads, Diversity Task Force, Women's Initiatives and Affinity Groups—its philosophy and action impacts their numbers. Out of 462 attorneys, 46 percent are women, minorities and LGBT attorneys.

"We continue to focus efforts on creating an even more inclusive environment at V&E where all of our talented lawyers can grow professionally and personally," says T. Mark Kelly, V&E chairman and chair of diversity initiatives. "Retaining and developing the best talent allows us to provide excellent service and solutions to our clients."

Understanding the importance of retention, the firm works to ensure successful early starts for all associates, building strong relationships across diversity and gender lines, providing honest feedback, increasing visibility of female and diverse lawyers, and creating opportunities for key client and leadership roles.

Some of the firm's diversity initiatives include the Diversity & Inclusion Executive Committee, which includes members of V&E's Management Committee, practice group leaders and V&E's lead partner in charge of legal talent. The firm also places a special emphasis on getting more leadership and influential partners, especially white males, involved in D&I solutions.

Vinson & Elkins' Women's Initiative ensures that recruiting, development and promotion of women are integrated into daily firm life. The Attorneys of Color Task Force, comprised of associate and partner advisors to the chairman shares the needs of attorneys and develops firm-wide strategies around retention and opportunities. The task force served as the planning committee for the 2015 Diversity Forum.

Talent leads and diversity leads are partners within practice groups in each office and actively advocate strategy for diversity and inclusion, monitor quantity and quality of work assignments (with particular focus on the first three years), facilitate constructive feedback, and assist with the development of strong relationships that are vital to the success of all of the firm's lawyers. Talent and lead partners are directly involved in recruiting, retention, evaluation and sponsorship of diverse and female attorneys. They also have input on individual associate bonuses.

The firm's affinity groups offer an opportunity to build a stronger sense of community and provide mentoring opportuni-



T. Mark Kelly
Chairman and Chair of Diversity
Initiatives

ties and facilitate business development efforts. In 2014, South Asian and Middle Eastern affinity groups were added.

V&E's Diversity Forum for lawyers of color and LGBT lawyers is a unique opportunity to build relationships that are vital to the success of the firm's lawyers. Its most recent

forum included more than 50 firm leaders and partners who participated in constructive dialogues, led roundtables and attended social activities. Vinson & Elkins earned a 100 percent score on the Human Rights Campaign's Corporate Equality Index (2015) for workplace equality.

In an effort to support work-life balance, the firm offers a variety of programs, benefits and initiatives, such as V&E's new parent mentoring program, post-family leave phase-in for transitioning back to work, flexible work arrangements, remote work, work allocation system for new associates, family-friendly events, back-up child and elder care, external career coach, and mental and physical wellness programs.

Along with actively engaging in diversity efforts at all levels, Vinson & Elkins is working to increase the pipeline through diversity scholarships for high school students, law preview scholarships for pre-law students, diversity fellowships for law students and mentoring and internship programs through various professional organizations.

Since 1990, V&E has provided \$10,000 college scholarships to more than 133 students, totaling more than \$1.3 million. Its diversity fellowships provide \$7,000 fellowships to four first-year law students from historically underrepresented groups in the legal profession. The fellows are offered a position as a summer associate, and V&E also offers paid internships to diverse high school, pre-law and law students.

V&E lawyers are actively involved in numerous diversity organizations, including the Leadership Council on Legal Diversity, Minority Corporate Counsel Association, National Association of Women Lawyers, Human Rights Campaign, ABA's Judicial Internship Opportunity Program, Sponsors for Educational Opportunities, New York Bar Diversity Initiative, Center for Women in Law and Women's Bar Association of DC.

Vinson & Elkins is working to increase the pipeline through diversity scholarships for high school students ...

Lim Ruger & Kim LLP

West Coast Region

AS ONE OF THE OLDEST MINORITY-OWNED law firms in the country, Lim, Ruger & Kim LLP is a pacesetter for diversity recruitment and retention, community support and continuing training, and development for work-life balance.

Multilingual in eight languages, the firm recognizes that a more diverse bar is critical for increasing access to justice for minority communities and offers experiences, talents, skills and cultures that inspire more impactful solutions. Lim Ruger & Kim lawyers support, collaborate and engage with ethnic bar activities, legal aid organizations and nonprofit organizations that provide services to underserved minority communities. The firm has exhibited unwavering pro bono support.

Established in 1986, Lim Ruger has more than 20 lawyers located in Los Angeles and San Francisco. Its practice areas include real estate and corporate transactions, including high-profile commercial developments, mergers and acquisitions, financing and international business transactions. The firm advises on investigations, regulatory enforcement and intellectual property matters. Its litigation docket includes high stakes commercial disputes, employment, class actions, tort actions, securities litigation and insolvency.

Leadership engagement is a priority for the firm. Seven of the firm's lawyers currently hold or have previously held top leadership, board, committee or commission positions with organizations where they have the greatest impact on promoting diversity.

Ethnic minorities comprise 79 percent of the firm's legal team, and women make up 26 percent of the firm's lawyers. Additionally, women make up 18 percent of the firm's partners.

With a major emphasis on work-life balance, the firm supports women's initiatives through its Women@theTable Series, which includes distinguished panelists and guest speakers throughout the year. The 2015 series included: "Hit or Miss? Women Lawyers' Litigation and Trial Strategies," which addresses successful strategies used by female lawyers and observations from the bench and insights on becoming a more effective advocate in the courtroom and in trial. The panel "The Woman Factor—How Women at the Top Impact Organizations" explored the impact and changes that occur when women are CEOs, general counsel or managing partners or sit on boards of organizations. The third panel, "Gender Stereotypes at the Bargaining Table," explored the effect of gender stereotypes on negotiation perfor-



John Lim
Managing Partner

Meaningful engagement in the community to promote equal opportunity for all, diversity and inclusion is a core value of the firm.

mance and how women compare to men in negotiating on behalf of themselves and their clients.

The firm's diversity and training efforts have not gone unnoticed.

"We are very grateful for the Sager Award, as it will serve as a continuing reminder to everyone at our firm that we have both the privilege and responsibility as a minority-owned firm to be a shining example of what

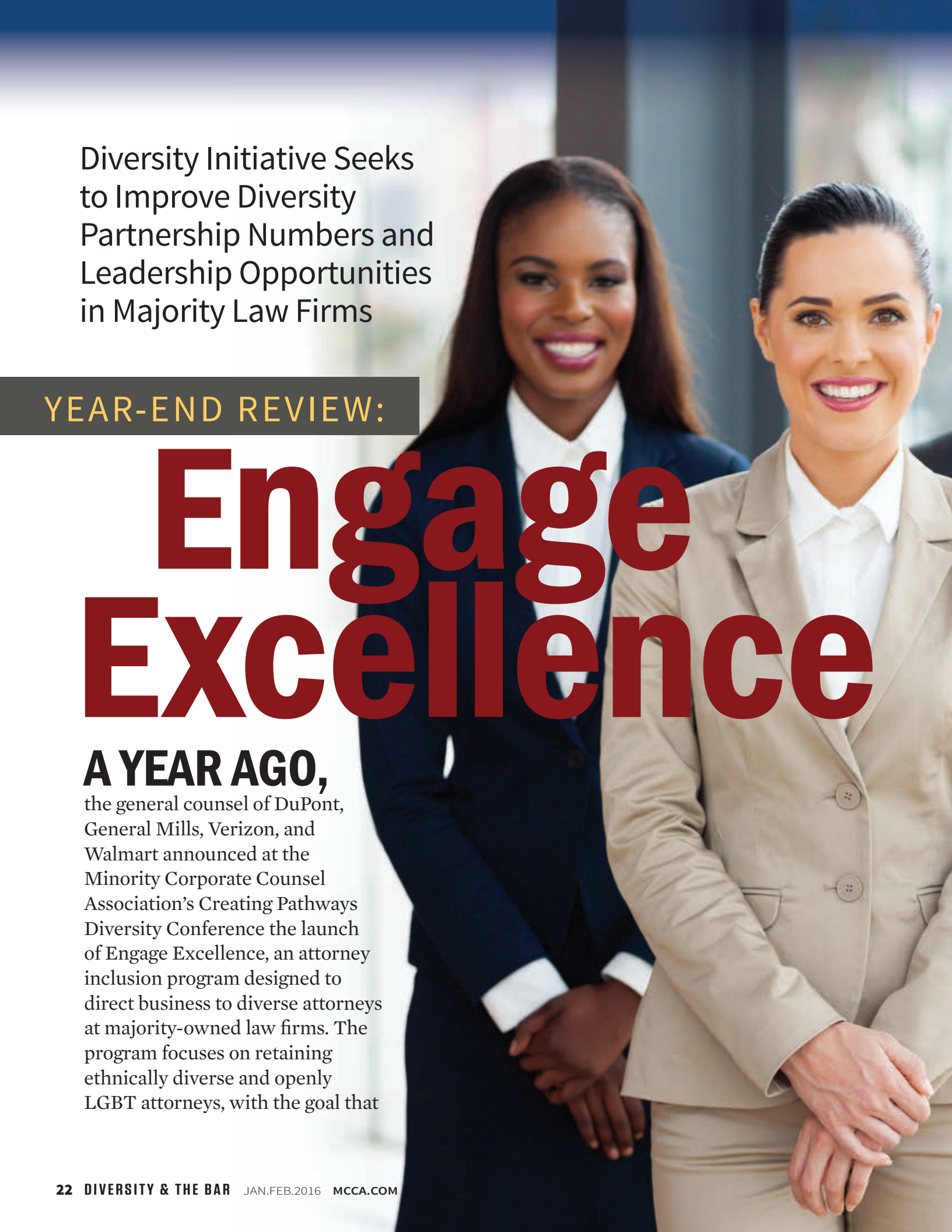
diverse firms can do in the legal profession," says John Lim, managing partner at Lim Ruger & Kim.

The firm also received the 2014 Law Firm of the Year Award from the National Asian Pacific American Bar Association, the 2013 Law Firm Diversity Award from the National Asian Pacific American Bar Association and the 2011 Builders of Peace Award from the Western Justice Center.

A leading minority-owned firm, Lim Ruger believes that its mission goes beyond doing outstanding legal work. Everyone is expected to manifest his or her commitment to diversity and inclusion by taking leadership roles in, and supporting the good work of, ethnic bar associations and other organizations committed to the promotion of diversity and inclusion.

Lim Ruger supports many ethnic bar and other legal organizations that promote diversity initiatives. These include the Asian Americans Advancing Justice, Asian Pacific American Bar Association, Asian Americans Advancing Justice, Los Angeles (formerly known as Asian Pacific American Legal Center), Bet Tzedek, Constitutional Rights Foundation, For People of Color, International Association of Korean Lawyers, Japanese American Bar Association, John M. Langston Bar, Korean American Bar Association, Mexican American Bar Association, National Asian Pacific American Bar Association, Neighborhood Legal Services, Southern California Chinese Lawyers Association, UCLA Law School, Western Center on Law & Poverty, Western Justice Center and many others. In addition, the firm is an ongoing supporter of the California Bar Foundation. ■

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Diversity Initiative Seeks
to Improve Diversity
Partnership Numbers and
Leadership Opportunities
in Majority Law Firms

YEAR-END REVIEW:

Engage Excellence

A YEAR AGO,

the general counsel of DuPont, General Mills, Verizon, and Walmart announced at the Minority Corporate Counsel Association's Creating Pathways Diversity Conference the launch of Engage Excellence, an attorney inclusion program designed to direct business to diverse attorneys at majority-owned law firms. The program focuses on retaining ethnically diverse and openly LGBT attorneys, with the goal that



half of these attorneys will be diverse women. Engage Excellence seeks to make a positive impact on those lawyers advancing within their law firms and encourages firms to increase the numbers of diverse attorneys at all levels. This effort hopes to combat the disparities and stagnation in leadership opportunities that diverse lawyers are experiencing in law firms.

ENGAGE EXCELLENCE is designed to address disparities by creating opportunities for ethnically diverse and openly LGBT attorneys for leadership on significant client matters and to ensure that diverse lawyers receive credit for the work and recognition for their contributions. Since the program launched, Engage Excellence has involved attorneys in leading significant matters in practice areas such as class action litigation, intellectual property litigation, healthcare, real estate transactions, corporate transactional, corporate governance and compliance, employment law and environmental law.

“At Walmart, having a diverse team of lawyers is a critical component of achieving great business results and reflects the values and perspectives of our customers and communities,”

said Karen Roberts, executive vice president and general counsel for Walmart. “The four participating corporations deliberately chose the name ‘Engage Excellence’ because our emphasis is on hiring the best counsel possible. By focusing on the quality of the work and the exceptional talent that exists within our profession, we undoubtedly will hire diverse counsel. Through coordinated efforts like Engage Excellence, we will be able to transform the legal profession into one that welcomes and embraces all backgrounds and perspectives.”

“We are empowering our legal team by giving them more freedom to engage excellent counsel who may be new to Walmart matters so that together we can improve the legal profession. This approach requires us to educate new counsel about our global business quickly, but we are committed to developing and investing in a diverse talent pool so we can

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Engage Excellence

grow it and make the legal profession more inclusive,” said Phyllis Harris, senior vice president and general counsel of legal administration for Walmart. “We are also communicating directly with law firm leadership to encourage that new diverse attorneys receive appropriate financial credit for all Walmart work awarded under Engage Excellence.”

“Verizon is firmly committed to diversity. We are both consumer-facing and business-to-business, and it is very important to us that our legal talent reflects the diversity in the business and consumer communities we serve,” said Craig Silliman, executive vice president of public policy & general counsel, Verizon Communications.

The need for a program like Engage Excellence is obvious when you look at the demographics of partnerships in majority law firms.

—Joseph K. West

“Effecting meaningful change requires deep resolve on the part of both clients and law firms, and a willingness on the part of firm leadership to proactively invest in diverse lawyers and long-term client development,” said Michelle C. Ifill, senior vice president and general counsel, Verizon Corporate Services. “Engage Excellence is only one part of what needs to be a larger sustained effort that includes intentional involvement of clients and commitment by the law firms to properly allocate credit to diverse attorneys. The good news is that we know it is working and positively impacting these attorneys and helping to make law firms and the law firm experience better and more inclusive for the next generation,” said Ifill.

“A year into this program, it is clear that there is still a need to be intentional about providing diverse attorneys with access to the same opportunities as their counterparts. Engage Excellence responds directly and innovatively to this need. Personally, Engage Excellence translated into an immeasurable opportunity to serve as Walmart’s lead counsel in a significant and high-profile trademark case, served as an avenue to

establish a relationship with a company that both believes in and understands the importance of diversity, and provided other diverse attorneys at my firm with opportunities to grow professionally,” said Mareesa Frederick, of counsel with Finnegan LLP.

“General Mills has a long-standing commitment to improving diversity in the legal profession. A key component of our commitment is to ensure that diverse attorneys working on General Mills matters receive appropriate credit. Engage Excellence provides an important platform for its corporate partners to discuss challenges, share opportunities, and ultimately hold ourselves and our partner law firms accountable for ensuring that diverse lawyers are appropriately recognized for the value they bring to client relationships,” said Richard Allendorf, senior vice-president, general counsel and secretary.

The Minority Corporate Counsel Association (MCCA) has been involved with Engage Excellence since it began and supports its mission with logistical support by Aracely Muñoz Petrich, vice president of strategic development and other staff members. “The need for a program like Engage Excellence is obvious when you look at the demographics of partnerships in majority law firms,” said Joseph K. West, former president and CEO of MCCA. For example, although African-Americans are 6.47% of the lawyer population nationwide, they only make up 1.72% of partners. Openly LGBT lawyers make up only 2.30% of the profession, and 1.77% of partners, while Asian American lawyers make up 7.66% and Hispanics 4.56% of the attorney population, but only comprise 2.74% and 2.16% of partners, respectively. “Each of these groups comprises less than three percent of law firm partners. We can do better,” said West.

In addition to MCCA, Engage Excellence also has the support of the Leadership Council on Legal Diversity (LCLD), an organization of more than 225 corporate chief legal officers and law firm managing partners who are dedicated to creating a truly diverse legal profession. “Engage Excellence is a way to help broaden the sometimes narrow perception of what success at a law firm looks like and who can have it,” said Robert Grey, president of LCLD.

Find out how your organization can get involved with Engage Excellence by contacting Aracely Muñoz Petrich, MCCA Vice President of Strategic Development at amunozpetrich@mcca.com. ■



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A Case Study and Analysis of the Demographic Trends Warranting a Shift Toward Diversity and Inclusion in the Legal Profession



Pao v. Kleiner

By Brandon E. Davis

THE *PAO V. KLEINER* LITIGATION RAISED AWARENESS of the implicit ways in which bias affects women's and minorities' opportunities in traditionally (white) male-dominated fields such as technology and finance.¹ The lawsuit concerned Kleiner Perkins Caufield and Byers LLC's alleged discriminatory treatment of Ellen Pao and other female employees, specifically in advancement and compensation, because of their gender.² Pao's suit succeeded in prompting a debate about women's opportunities to advance in technology and venture capital.³ However, the significance of the *Pao v. Kleiner* litigation is not limited to the technology and finance industries. *Pao v. Kleiner* involved a Harvard-trained lawyer and organizational structures that are similar to law firm culture. To better understand diversity and inclusion in the legal profession (both in theory and in practice), it helps to compare the legal profession with other regulated professions whose broad education, licensing and advancement criteria are similar.⁴ The *Pao v. Kleiner* matter is an excellent case study.



The Plaintiff—Ellen Pao

Pao is a graduate of Princeton University with a degree in electrical engineering and a certificate from the Woodrow Wilson School of Public and International Affairs. Pao received her juris doctor degree from Harvard Law School with honors. She then worked as a lawyer at Cravath Swaine & Moore. After Cravath, Pao entered Harvard Business School and graduated with a master's of business administration degree with distinction. Pao then worked at various technology-related firms for seven years with increasing responsibility. These firms included Microsoft Corporation, Tellme Networks, Danger Research and BEA Systems Inc. Pao is also a member of the 2007 class of Henry Crown Fellows at the Aspen Institute.⁵

The Defendant—Kleiner Perkins Caufield & Byers LLC et al.

Kleiner is one of the quintessential venture capital firms with deep ties to technology businesses in the Silicon Valley.⁶ It raises funds from institutional investors, wealthy individuals and its own employees and invests the money in technology companies. It invests amounts ranging from \$100,000 to \$50 million to help fund tech companies' growth. Kleiner's investments

include Google Inc., Facebook Inc. and Genentech. Kleiner also provides strategic advice and a network of relationships to the companies it supports. Kleiner's employees usually hold seats on the boards of directors of the companies Kleiner represents. Similar to most law firms, Kleiner is headed by managing partners, who manage the firm, including its investment team of senior and junior partners.⁷

Was Pao's Advancement at Kleiner Suffering from Lack of Inclusion?⁸

In February 2005, Kleiner was seeking to hire a chief of staff for one of the managing partners. Pao was hired in June 2005 as a junior partner. Pao's initial responsibilities were to manage projects for the managing partner, identify potential digital technology investments, help raise financings and support firm activities. According to the complaint, Pao was told that if she was successful in this role, then she would move to a full-time investing role after three years.⁹

But over the next five years, Pao alleged that she suffered a consistent pattern of discrimination and retaliation from a junior partner, whose sexual advances she initially rebuffed.¹⁰ According to the complaint, Pao was excluded from numerous business meetings, removed

from business emails that she had initially been included on, and excluded from information required for her job.¹¹ When Pao complained to management she was told that although the treatment would never have happened to a male partner, she should nevertheless “just accept it.”¹²

According to the complaint, Pao reported this conduct in late June 2007, but after weeks without a response, she requested that the firm provide sexual harassment training.¹³ The firm allegedly acknowledged that the behavior was inappropriate but pressured Pao to “drop the matter” because of a close firm relationship between the senior partner (for whom she worked) and the junior partner (who had

review focused on the negative feedback of partners who did not work closely with Pao.²⁰ Pao believed this amounted to retaliation and gender discrimination and that it negatively affected her compensation and promotion at Kleiner.²¹ She was finally transferred to the digital group in December 2009—almost two years after she requested to transfer to this group, which was within her expertise. However, when she was reviewed on Aug. 25, 2010, she continued to receive negative feedback from partners with whom she had minor involvement.²²

Pao’s most significant slight occurred in late 2010, according to the complaint. Pao had worked on an investment in a San Francisco-based technology company. Allegedly, she was the primary contributor and champion of the investment, but Kleiner chose a male junior partner to serve as its board representative instead of Pao, citing her upcoming three-month maternity leave. Kleiner made this decision even though multiple board members expressed unhappiness with the male junior partner’s performance. Kleiner management told Pao that she deserved the board seat but the junior male partner “needed a win.” Rather than replace him, Kleiner instructed Pao to withdraw from the work so the junior male partner could build his own client relationship. The company went public in 2011 and was perceived as a great success for Kleiner (and the male junior partner). According to the complaint, Pao, of course, received minimal recognition for the success because Kleiner removed her from the client relationship.²³

The complaint stated that in March 2012, Kleiner promoted three men to general partner and reorganized and changed the composition of the extremely important investment committee. Only one woman was invited to join the committee. The committee was extremely important because it makes investment decisions about which new companies Kleiner takes stakes in. No women were promoted to general partner. However, Pao had been employed longer than any of the men who were promoted, allegedly. Pao alleged she was not promoted because she had complained of discrimination and retaliation.²⁴ She sued two months later on May 10, 2012.²⁵

The Verdict—Kleiner Wins in Court But Loses in the Court of Public Opinion

Pao’s suit sought \$16 million in compensatory damages and punitive damages. Due to Kleiner’s reputation

Implicit bias may also be a recurring issue in the recruitment and retention process of minorities in the legal profession. At many levels, implicit bias negatively affects law firm mentorship and culture, which has a direct impact on the long-term success of diverse candidates.

mistreated her).¹⁴ After Pao continued to complain of this behavior, Kleiner asked Pao to move to the China office to separate her and the junior partner. Pao refused.¹⁵

It is alleged that in 2008, Pao was told she would receive an annual performance review before she left for a three-month maternity leave. However, that review was not provided. Typically, junior partners like Pao were reviewed annually to assess performance and determine bonuses, raises and promotion status. Because the review did not happen, Pao did not have an opportunity to present her case for promotion and additional compensation.¹⁶ In the previous year, 2007, when Pao was evaluated prior to complaining, she was told she was a top performer and would receive a significant bonus and raise.¹⁷

On August 7, 2009, Pao allegedly sought advice from Kleiner’s external human resources consultant. The HR consultant told Pao she would not be successful at Kleiner because she had complained and that going forward she should drop her complaints because no one would do anything about them.¹⁸ Pao’s annual review was again bungled in 2009, according to the complaint. This time, Pao was not reviewed by her direct supervisors or any other partners with whom she had worked closely.¹⁹ Consequently, Pao’s 2009

and Pao’s stature, it was the most prominent trial in Silicon Valley. The trial took 24 days before it went to the jury on March 25, 2015.²⁶ During the trial, Pao was described as both too timid and too aggressive.²⁷ Although Pao lost at trial, the jurors indicated that it was difficult coming to a verdict. A male juror, Steve Sammut, 62, stated that although “we were split there for a while,” a key point was how Ms. Pao’s reviews at Kleiner deteriorated over time.²⁸ Another juror, Marshalette Ramsey, 41, said she believed Pao was discriminated against. According to her, the male junior partners at Kleiner “had those same character flaws that Ellen was cited with,” but they were promoted, she said.²⁹

Even though Kleiner prevailed at trial, Pao experienced a victory beyond the courthouse steps.³⁰ The case succeeded in prompting a discussion about diversity and inclusion across corporate America by amplifying concerns about the lack of diversity in sophisticated industries.³¹ This is why the *Pao v. Kleiner* litigation provides an instructive comparative view to the legal profession.

The Dangers of Implicit Bias

Pao is a Harvard-trained lawyer with stellar legal and business credentials. However, as she alleged, she was subjected to implicit bias that thwarted her progress at Kleiner. On the one hand, when Pao complained of discrimination she received unfavorable evaluations because of unspecified “issues” she had with partners with whom she completed little work.³² Conversely, Pao was excluded from an all-male dinner in the digital group (where she worked) because a Kleiner partner stated that including women would “kill the buzz.”³³ Kleiner managers simultaneously maintained that the personalities of women did not lead to success at Kleiner because “women are quiet.”³⁴ One could argue that such a position is the result of implicit bias.

Implicit or unconscious bias is a mental shortcut “that fills in gaps in our knowledge with similar data from past experiences or cultural norms.”³⁵ It apparently shaded the experience Pao had at Kleiner because of the unfair exclusion she perceived while trying to build a career at Kleiner.³⁶ Implicit bias may also be a recurring issue in the recruitment and retention process of minorities in the legal profession.³⁷ At many levels, implicit bias negatively affects law firm mentorship and culture, which has a direct impact on the long-term success of diverse candidates.³⁸

A Statistical View—Diversity in the Legal Profession Has Not Improved in 30 Years

The American Bar Association released Lawyer Demographics in 2014.³⁹ The study analyzed demographic changes in the legal profession from 1980 through 2005. The data are not encouraging. In 1980, men dominated 92 percent of the legal profession. However, by 2005, women comprised only 30 percent of the legal profession.⁴⁰ (See Table 1.)

TABLE 1				
	1980	1991	2000	2005
Male	92%	80%	73%	70%
Female	8%	20%	27%	30%

In 2000, 88.8 percent of all lawyers identified as white, not Hispanic. Only 4.2 percent of lawyers identified as African-American, and 3.4 percent of lawyers identified as Hispanic.⁴¹ Those demographics did not change significantly by 2010. Indeed, 88.1 percent of all lawyers identified as white, not Hispanic. And, only 4.8 percent of lawyers identified as African-American and 3.7 percent of lawyers identified as Hispanic.⁴² (See Table 2.)

TABLE 2		
	2000	2010
White (Not Hispanic)	88.8%	88.1%
Black (Not Hispanic)	4.2%	4.8%
Hispanic	3.4%	3.7%
Asian Pacific American (Not Hispanic)	2.2%	3.4%
American Indian (Not Hispanic)	0.2%	—
Native Hawaiian or Pacific Islander	0.4%	—

Law school enrollment data from 2011 through 2014 amplify the need for diversity and inclusion in the legal profession. During this three-year period, women consistently comprised nearly 50 percent of law school enrollments, and minorities consistently comprised approximately 30 percent of law school enrollments.⁴³ (See Table 3.) Nonetheless, as explained above, these numbers historically do not hold steady once lawyers begin practicing law.

TABLE 3			
Academic Year	2011-2012	2012-2013	2013-2014
Total JD Enrolled	146,268	139,120	128,695
Gender			

Male	53.3%	53.0%	52.2%
Female	46.7%	47.0%	47.8%
Minority Enrollment	26.2%	27.4%	28.5%

The statistics suggest that women and minorities attempt to enter the legal profession at laudable rates. But for some reason, there is a breakdown that negatively impacts the retention and promotion of diverse lawyers. This breakdown must be remedied if a diverse legal profession is to thrive in the future. The National Association of Legal Professionals' 2005 report on attrition revealed that 42 percent of male associates of color leave their law firms within 28 months. Within

Although there are always exceptions, like Pao, women and minority attorneys are often excluded from developing meaningful relationships with rainmakers and other significant mentors in their respective firms. The difficulties that women and minorities experience in establishing these meaningful relationship with decision-makers in their firms can negatively impact their professional development.

55 months, 78 percent have left.⁴⁴ The ugly truth is the legal profession as a whole has failed to include and retain diverse talent.

It seems to many that female lawyers or attorneys of color are either relegated to the less trendy or lucrative practice groups or left to languish completing document reviews and low-level work.⁴⁵ Although there are always exceptions, like Pao, women and minority attorneys are often excluded from developing meaningful relationships with rainmakers and other significant mentors in their respective firms. The difficulties that women and minorities experience in establishing these meaningful relationship with decision-makers in their firms can negatively impact their professional development.

For example, when Kleiner's senior management excluded Pao from dinners and board meetings, she struggled to retain the clients that she had cultivated.⁴⁶ By comparison, when female and minority lawyers are excluded from engaging with firm managing partners

and other decision-makers, they often struggle to get the experience they need to advance in the practice. They often miss equal opportunities to become qualified to participate in firm succession plans, where lucrative institutional firm clients are handed down from seasoned equity partners to rising equity partners.

Women and minority lawyers often do not have significant (non-minority) stakeholders who can help them train, excel and ascend in large defense firms.⁴⁷ The economic impact upon equity partnership (or the prospects thereof) are devastating. Even when female and minority lawyers are able to attain the prestigious designation of equity status, they often struggle to develop and maintain their own client base in large firms. Too often, minority lawyers' client development opportunities are limited. And it appears that minority lawyers are rarely exposed to potential clients and decision-makers early in their careers. Female and minority equity partners often struggle to develop books of business because they have no significant benefactors or mentors within their law firms. More often than not, these engrained institutional norms simply do not foster inclusion in the legal profession. This must change if our profession is to keep pace with national trends and grow stronger in comparison with other regulated professional industries.

The Legal Profession Must Strive to Keep Pace with Shifting National Trends

National demographics have changed significantly and are projected to continue to change, increasing diversity in the United States. The legal profession must make changes to keep pace with these changing trends or risk fostering a profession that is demographically out of date. The United States Census Bureau released a study in 2014 that projected a majority-minority America by 2044.⁴⁸ According to the report, by 2020, more than half of the nation's children are expected to be part of a minority race or ethnic group. This proportion is expected to continue to grow so that by 2060, just 36 percent of all children will be single-race non-Hispanic white, compared with 52 percent today.⁴⁹ The U.S. population as a whole is expected to follow a similar trend, becoming majority-minority in 2044. The minority population is projected to rise to 56 percent of the total in 2060, compared with 38 percent in 2014. Likewise, by 2060, the nation's foreign-born population will reach nearly 19 percent of the total population, up from 13 percent in 2014.⁵⁰

Down But Not Defeated—Pao Advances Diversity in New Leadership Position

By bringing her litigation against Kleiner, Pao advanced diversity and inclusion across various industries, including the legal profession. She became the interim CEO of Reddit⁵¹ but has since stepped down. As CEO, Pao made changes to the company's hiring process to account for gender and racial disparities.⁵² For example, Pao removed salary negotiations from the hiring process on the grounds that women are statistically less likely to fare well during such negotiations. Pao also asked potential hires their opinion on diversity; applicants were screened based on their responses. Ultimately, Pao made a deliberate effort to "have different perspectives to represent people who actually look at the site."⁵³ The legal profession should follow Pao's lead.

■ **Prime the Pipeline**—Stakeholders must find ways to identify diverse law school candidates and help them enter the profession.⁵⁴ Minority law graduates pass the bar at significantly lower rates in part because bar preparation exams are financially out of reach for many minority students. If African-Americans and Hispanic/Latinos passed the bar at the same rate as whites (96.7 percent), this could have the same impact as increasing the number of African-Americans and Hispanic/Latinos in law school by 18 percent.⁵⁵

■ **Retain Talent and Prevent Attrition**—The legal profession must advance inclusion from the top down. Rainmakers and managing partners in law firms must commit to identifying and mentoring qualified female and minority candidates. There must be a conscious effort to assign women and minorities to meaningful work. Firm succession plans should include plans that allow qualified women and minority candidates to participate when institutional clients are handed down. Working parents should not be unfairly limited in their professional advancement. Qualified women and minorities should be recruited for firm leadership so diversity and inclusion issues may be advanced from within.

■ **Make it Official**—A diverse law firm reflects good business sense in light of the changing demographics. Every law firm's long-term business plan should include a diversity strategy and plan. Diversity plans should set tangible goals for hiring, retention and promotion. Business development and marketing plans should include strategies for promoting women and minority business development. Law firms should

identify stakeholders who are best-suited for implementing diversity and inclusion initiatives and also ensure that there are objective means for measuring success, as well as accounting for any short-falls.

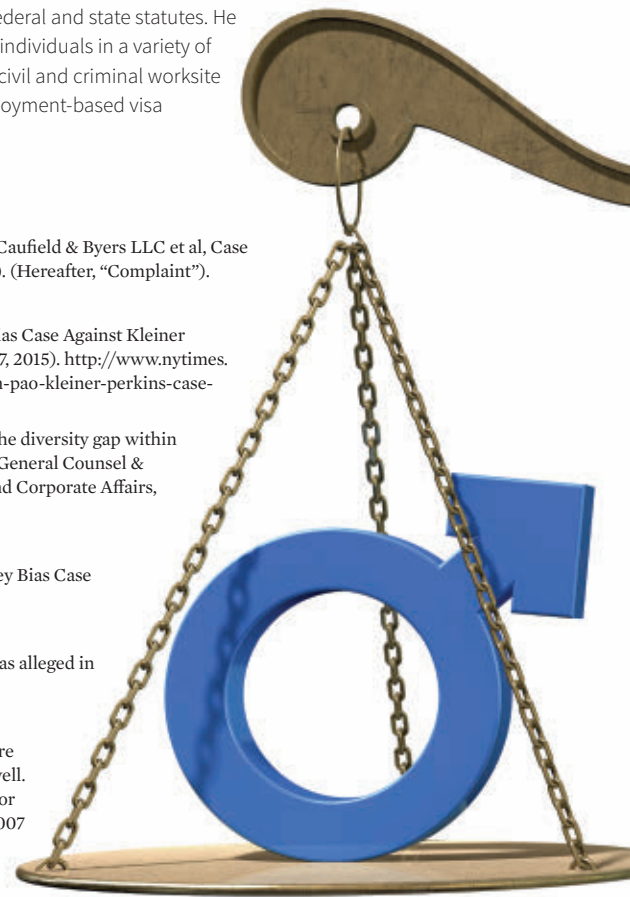
Changing the Status Quo

The first step is admitting. We first must admit that the legal profession currently does not reflect desired levels of diversity and this condition is undesirable. Then, law firms must make a commitment to change the status quo. We must develop stakeholders who are committed to cultivating legal talent in the diversity community. In response, diverse candidates must actively engage in the process so the desired changes can be achieved over time. Eventually, these efforts will yield results that are self-sustaining and beneficial to the quality and distinction of this honored profession. ■

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Endnotes

1. See *Ellen Pao v. Kleiner Perkins Caufield & Byers LLC et al*, Case No. CGC-12-520719 (May 10, 2012). (Hereafter, "Complaint").
2. See Complaint at ¶ 1.
3. *Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins*. David Streitfeld (March 27, 2015). <http://www.nytimes.com/2015/03/28/technology/ellen-pao-kleiner-perkins-case-decision.html>.
4. See *Raising the Bar: Exploring the diversity gap within the legal profession*. Brad Smith—General Counsel & Executive Vice President, Legal and Corporate Affairs, Microsoft. (December 10, 2013).
5. See Complaint at ¶ 5.
6. See *Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins* at p. 2-3.
7. See Complaint at ¶ 6.
8. The following details are stated as alleged in Pao's Complaint.
9. See Complaint at ¶ 7.
10. See Complaint at ¶ 8. There were other alleged sexual advances as well. According to the complaint, a senior partner came into Pao's office in 2007 and gave her a book titled "The Book of Longing" by Leonard



Cohen, inscribed with a handwritten note from the senior partner to Pao. The book contains many sexual drawings and poems with strong sexual content. At about the same time, the senior partner asked Pao out to a Saturday night dinner, telling her that his wife would be out of town. See Complaint at ¶10.

11. Id.

12. See Complaint at ¶ 9.

13. See Complaint at ¶ 12.

14. See Complaint at ¶ 13.

15. See Complaint at ¶ 16.

16. See Complaint at ¶ 19.

17. See Complaint at ¶ 19.

18. See Complaint at ¶ 22.

19. See Complaint at ¶ 23.

20. Id.

21. See Complaint at ¶ 24.

22. See Complaint at ¶ 27.

23. See Complaint at ¶ 28.

24. See Complaint at ¶ 34.

25. See *Pao v. Kleiner* Case No. CGC-12-520719 (May 10, 2012).

26. See Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins. David Streitfeld. <http://www.nytimes.com/2015/03/28/technology/ellen-pao-kleiner-perkins-case-decision.html>. March 27, 2015.

27. See Ellen Pao Shifted Hiring Practices at Reddit to Improve Diversity. Lizzie Plaugic. <http://www.theverge.com/2015/4/6/8352557/ellen-pao-reddit-hiring-gender-discrimination>. April 6, 2015.

28. Id.

29. Id.

30. See Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins. David Streitfeld. <http://www.nytimes.com/2015/03/28/technology/ellen-pao-kleiner-perkins-case-decision.html>. March 27, 2015. (citing Deborah Rhode, Stanford University).

31. See Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins. David Streitfeld. <http://www.nytimes.com/2015/03/28/technology/ellen-pao-kleiner-perkins-case-decision.html>. March 27, 2015.

32. See Complaint at ¶ 27.

33. See Complaint at ¶29.

34. See Complaint at ¶ 33.

35. Id.

36. Implicit Bias: The Silent Killer of Diversity in the Legal Profession. Renwei Chung. February 6, 2015.

37. Implicit Bias: The Silent Killer of Diversity in the Legal Profession. Renwei Chung. February 6, 2015.

38. Implicit Bias: The Silent Killer of Diversity in the Legal Profession. Renwei Chung. February 6, 2015.

39. See ABA Section of Legal Education & Admissions to the Bar. American Bar Association. Lawyer Demographics. Copyright 2014. http://www.americanbar.org/groups/legal_education/resources/statistics.html.

40. See ABA Section of Legal Education & Admissions to the Bar. American Bar Association. Lawyer Demographics. Copyright 2014. http://www.americanbar.org/groups/legal_education/resources/statistics.html. (citing The Lawyer Statistical Report, American Bar Foundation, 1985, 1994, 2004, 2012 ed.).

41. See ABA Section of Legal Education & Admissions to the Bar. American Bar Association. Lawyer Demographics. Copyright 2014. http://www.americanbar.org/groups/legal_education/resources/statistics.html. (citing 2000, 2010 U.S. Census, Bureau of the Census. N.B. U.S. Census considers Hispanic an ethnicity, not a race. Persons of Hispanic origin can be of any race).

42. See ABA Section of Legal Education & Admissions to the Bar. American Bar Association. Lawyer Demographics. Copyright 2014. http://www.americanbar.org/groups/legal_education/resources/statistics.html. (citing 2000, 2010 U.S. Census, Bureau of the Census. N.B. U.S. Census considers Hispanic an ethnicity, not a race. Persons of Hispanic origin can be of any race).

43. See American Bar Association. Lawyer Demographics. ABA Section of Legal Education & Admission to the Bar. 2014.

44. See Impact Bias: The Silent Killer of Diversity in the Legal Profession. Renwei Chung. <http://abovethelaw.com/2015/02/implicit-bias-the-silent-killer-of-diversity-in-the-legal-profession>. February 6, 2015.

45. See Diversity in the Practice of Law: How Far Have We Come? Volume 29, No. 5. Aviva Cuyler. http://www.americanbar.org/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_have_we_come.html.

46. See Complaint at ¶ 28.

47. See Diversity in the Practice of Law: How Far Have We Come? Volume 29, No. 5. Aviva Cuyler. http://www.americanbar.org/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_have_we_come.html.

48. See Projecting Majority-Minority. Non-Hispanic Whites May No Longer Comprise Over 50 Percent of the U.S. Population by 2044. www.census.gov/content/dam/Census/newsroom/releases/2015/cb15-tps16-graphic.pdf.

49. See www.census.gov/newsroom/press-releases/2015/cb15-tps16.html.

50. Id.

51. Reddit is an entertainment, social networking and news website where registered community members can submit content, such as text posts or direct links. Registered users can then vote submissions “up” or “down” to organize the posts and determine their position on the site’s pages.

52. See Ellen Pao Shifted Hiring Practices at Reddit to Improve Diversity. Lizzie Plaugic. April 6, 2015. <http://www.theverge.com/2015/4/6/8352557/ellen-pao-reddit-hiring-gender-discrimination>.

53. Id.

54. See Raising the Bar: Exploring the Diversity Gap Within the Legal Profession—Microsoft on the Issues. Brad Smith, general counsel and executive vice president, legal and corporate affairs, Microsoft. December 10, 2013.

55. Id.

Get involved. Stay fluent in industry trends. Join MCCA Today.

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DISABILITY

How to Include Disability in Your Firm's Diversity Strategy

By Sarah Babineau,
MHR, PHR, SHRM-CP

Most people who witness a colleague (or even a stranger) trying to carry a heavy load wouldn't hesitate to offer to help. Yet, when we encounter those with disabilities, we often struggle with whether and how to offer assistance. Most people say they didn't want to say or do the wrong thing and inadvertently offend the person they wished to help. This comes down to etiquette, and the fact that people do want to help but no one wants to be embarrassed or offensive. While people with disabilities are not a monolithic group, providing some ways to offer assistance can reduce anxiety and help develop the allies firms need to be to create an inclusive workplace.

ETIQUETTE



The first step in becoming an ally for people with disabilities is to learn how to think and talk about disabilities. We use “people first” language. Similar to how the phrase “colored people” evolved to become people of color to emphasize their personhood over their skin color, we no longer use the term “disabled people,” but rather “people with disabilities.” The term “handicapped” may still be used to refer to parking spaces, accessible restrooms and the like but is no longer used to refer to people.

People with disabilities don’t usually think of themselves as the heroic or tragic figures portrayed in media and literature. Generally, people have parts of themselves they are proud of and parts they would change if they could, and most of those have nothing to do with a disability. Aimee Mullins, an athlete, fashion model and keynote speaker, compared her disability to her shadow, saying, “Sometimes I see a lot of it; sometimes I don’t see it at all; it’s just always there. It’s part of me, not all of me.”¹

Greetings, Common Sayings

When meeting a person with a disability, it is appropriate to offer to shake hands, including with people who have missing or partially missing arms or hands. If the person is accompanied by someone else, assume that the person can speak for themselves. Direct your questions to the person unless they or their companion indicate that you should speak with them instead.

In general conversation, we say things like “Did you see the article about ...?”, “Did you hear that ...?”, “Do you want to walk over to ...?” These common phrases can seem fraught with peril when speaking to a person who is blind or deaf or has mobility impairments. Unless someone very recently lost these functions, for the most part, they understand this to be an invitation to take part in a social convention without qualification. If you feel that you may have been insensitive, you can always ask the person if this is the case and apologize if appropriate. A good practice for any interactions in which you feel unsure how to proceed is

Instead Of	Why?	Try
There is always someone worse off than you.	This can make the person feel weak. While they may know there are people in the world who are suffering, it does nothing to minimize their own suffering or may make them feel selfish.	You're not alone in this. It's OK to not be OK.
Try not to be so [fill in condition].	Implies that the person has a choice in having the condition (and that they did not think of just feeling better on their own).	How can I help?
I know how you feel.	Unless you have the same condition, this comment minimizes the effort the person is making to continue to participate fully in their life. Sometimes even if you do have the same condition, the person may be experiencing different symptoms than you.	I'm sorry you have to deal with this.

to ask how the person prefers to move forward. If they ask you to do something different, it's not a criticism or something to be embarrassed about, just say, "Oh, thank you for telling me. I didn't know the etiquette."

Deafness

There is a cultural difference between a person who is deaf and a person who is Deaf. The lowercase indicates a loss of function or inability, where the uppercase denotes Deaf culture, in which many participants feel they have gained a common language, community and set of social norms that hearing people cannot access. A person with any disability may not view themselves as someone who has lost something but rather that they may have gained skills, knowledge and insight that they would not have otherwise.

Remember that if the person declines your offer, it doesn't mean you have done something wrong. It means they have the situation under control.

When speaking with a person who is deaf, bear in mind that not everyone reads lips. There is no need to speak loudly, but do speak clearly, making sure that your mouth is not obstructed. If there is an American Sign Language interpreter, make eye contact with and speak to the person, not the interpreter. Though they may be watching the interpreter, it is appropriate to look at the person to whom you are speaking, and when they respond in sign language, they will make eye contact with you and you can listen to the interpreter. Interpreters will not find you rude if you do not include them in the conversation.

Blindness

When you see a blind person in a crowd, it can be difficult to know how to offer assistance. The phrase we recommend is "Would you like a sighted guide?" If the person accepts your offer, they will either put their hand on your shoulder and walk slightly behind

you or take your elbow from behind. This way, they can feel your movements and know if you are stepping around, up or down. It may also be helpful if the terrain is rough to describe what you are going over and how much distance there is to cover.

If you notice a problem that the person doesn't know about, describing it in a clear and respectful manner is the best way to approach offering assistance. Remember that if the person declines your offer, it doesn't mean you have done something wrong. It means they have the situation under control. Being respectful of the goal of people with disabilities to remain as independent as possible will help you remember that an offer declined doesn't mean it wasn't appreciated.

Mobility and Service Animals

When you meet someone who uses a wheelchair, it is appropriate to offer more personal space during conversation than you might with someone standing at your level. If you will be speaking for a while, find a place where you can sit so you can be at eye level. This will save both parties a stiff neck. Wheelchairs are considered a part of a person's body. If you wouldn't lean on or grab someone's body, then you would show the same deference to the wheelchair. Some people find it tempting to signal affection by patting a person on the head when they are lower than your standing height. This gesture can come off overly familiar or condescending when applied to a professional adult.

People who have service animals often find that others are tempted to pat or play with it. While a service animal is working, they should not be touched or spoken to so they do not become distracted. You can ask the person if it's OK to speak to or touch their service animal, understanding that they may say, "She's working right now, so you can just ignore her."

Hidden Disabilities

Hidden or non-apparent disabilities can be particularly tricky because sometimes the only outward indication that the person has a disability is unusual behavior. A person who is preparing for knee surgery may prefer to walk a longer distance to a ramp than to walk up



two or three stairs. They may also prefer to take the elevator one floor to avoid stairs. For someone with a psychological disability, such as post-traumatic stress an exaggerated startle reflex can be one of the symptoms, which may result in the person jumping at a seemingly insignificant trigger, such as someone approaching from behind or a sudden loud noise. Even if it is the kind of stimulus that might make most people jump, a person with PTS can be much more startled. The same stimulus may cause the same response in a person with PTS, where others will eventually become accustomed to the stimulus and be able to tune it out.

This reflex is comparable to motion sickness. Anyone who gets motion sick knows that it is not a matter of logically understanding that there is no reason to feel ill. While there is a conscious awareness that there is nothing about reading in the car that should make someone ill, that knowledge will have no influence on how you feel physically. This is not to suggest that people with PTS or other hidden disabilities have no control over their impulses. Most people with PTS are not violent or dangerous, and many prefer to avoid confrontations.

Because there is a much higher level of stigma around psychological disabilities than there is related to other disabilities, there are far fewer people willing to discuss their hidden psychological disabilities, resulting in more misinformation about how to approach a person who may be struggling. See page 36 for some commonly used remarks, a description of their possible impact and suggestions for what you might say instead.

Platitudes that you find comforting may also not have the intended effect. Comments like “this too shall pass,” “everything happens for a reason,” “count your blessings,” “every cloud has

a silver lining” and the like can feel dismissive. Demonstrating empathy in a way that lets the person feel like their hard work is acknowledged can go a long way toward making them feel comfortable and may help mitigate some symptoms that could interfere with work.

Integration

Adapting a firm’s culture to one that is inclusive of attorneys with disabilities requires that others be willing to expand their comfort zone, meaning the initial stages will be uncomfortable. Becoming comfortable takes only a willingness to slow down long enough to learn how this new person would like to be treated. The learning curve is frequently very short, with those who were initially uncomfortable later feeling quite proficient in the culture of disability, and firms quickly reap the benefits of a more creative, authentic and innovative firm. ■

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Endnotes

1. Mullins, A. (2009). The Opportunity of Adversity Ted Med Retrieved December 8, 2014 from http://www.ted.com/talks/aimee_mullins_the_opportunity_of_adversity/transcript?language=en

Finding the Class of 2006

By Glenn Cook

DAVID LEWIS HAS LEARNED how to treat life's crossroads like an intersection. You have to stop for a moment and look at your surroundings. Occasionally, you have to yield to others. Then you move forward, always keeping an eye on what's in your rearview mirror.

"Growing up in the environment I did, and seeing some of the things I've seen, I had to learn that as long as I believed I could do it and persevere, then I really could do anything I put my mind to," says Lewis, who was part of the second class of the Minority Corporate Council Association's LMJ Scholarship recipients in 2006.

In the decade since receiving the MCCA scholarship, Lewis' perseverance has paid off. He earned his juris doctorate from Indiana University's Maurer School of Law, worked as a prosecutor for 18 months, moved into investment banking at Loop Capital Markets and received his MBA from the University of Chicago Booth School of Business. In 2013, he founded his company, which acquires and builds companies in the transportation, distribution and logistics industry.

"I am the byproduct of a lot of help and a lot of prayers," says Lewis, who lives in Chicago with his wife, Dakisha, and two young sons, Joshua and Jacob. "I'm just like everyone else, except that I just have a lot of people pulling for me. And once they grabbed me, I didn't let them go."

Make the Best of What You Have

Over the past 11 years, MCCA has awarded LMJ Scholarships to more than 180 first-year law students who were highly qualified but faced steep financial hardships. In many cases, the \$10,000 scholarship has been carried over into the winners' second and third years in law school.

While the majority of the recipients finish law school and

go into some legal work, many have moved on to varied careers in the corporate, government and nonprofit sectors. What they have in common are the significant barriers—cultural, financial and socioeconomic—they've managed to overcome.

Lewis grew up in Gary, Ind., in the 1990s, a period when the town was called the "murder capital of the U.S." The oldest of three boys raised by a single mother, Lewis says his family "moved around a ton when I was growing up." His father, with whom he maintained a close relationship, was killed when Lewis was in high school.

"Life has been tough for a lot of people," he says declining to discuss his childhood in more detail. "It hasn't been easy for me. I try not to lead with [family history] anymore because that's not where I am. I've moved past that. I was fortunate to be close to my father and my uncle, and I'm lucky to still be close to my mom and my stepmother. I know the value of family."

Lewis also learned the value of hard work. In high school, he cut hair to help his family make ends meet. He worked in a warehouse as an undergraduate at Hampton University and became a supervisor on the graveyard/sunrise shift at UPS while attending law school.

"One of the things my dad and my uncle instilled in me and preached to me was 'make the best of what you have,'" Lewis says. "I've always had an entrepreneurial itch and a strong intellectual curiosity. I gobble up the things that I find interesting. What has always resonated with me, though, is to leave a legacy. I want to build something that lasts beyond my years, something that has value." That's why he named his company Darrell & Bailee after his father and uncle, who died while Lewis was getting his MBA. It was an opportunity to honor his family while building his legacy.

SCHOLARSHIP



Mentors Matter

An accounting major at Hampton University, Lewis worked for Price Waterhouse Cooper before law school, serving as an auditor for corporate warehouses in the Midwest. Interning during the summers at General Electric and a startup tech company in San Francisco, he thought he would move into financial law after graduating from Indiana in 2009.

The recession limited jobs in that sector, however, so he took a job with the Lake County District Attorney's Office in his home county. He refers to that time as "just a big blur for me."

"My long-term goal has always been to move into private equity," he says. "Most JDs come out and take the bar, then ideally they do something in the practice of law, be it criminal or corporate. I've always been more interested in doing deals directly, and I wanted to get into investment or private equity consulting, so it was really tough to be there working as a prosecutor."

It was during that period, however, that he met one of his mentors, Myron Chenault, a fellow attorney who had built two telecommunications companies and sold them to Ameritech.

"He was the IT manager in the prosecutor's office, a man on his third career, and he pulled me aside one day and asked me what I wanted to do," Lewis says. "I said I wanted to do private equity, and he got me a face-to-face meeting with Darrell Williams."

Williams, a managing director at Loop Capital Markets, hired Lewis and quickly became another mentor. He helped Lewis get into the University of Chicago and continues to work with him as an executive advisor at Darrell & Bailee.

"What this has taught me is that everyone and everything has a purpose," Lewis says. "I got my dream job working in private equity only because I was working at the prosecutor's office. It wasn't the traditional, easy path, but working in that environment taught me

David and Dakisha Lewis with their sons, Joshua and Jacob.

you have to maintain some serenity when what you're doing is against the grain. If you work hard, make and maintain good connections, it all comes in due time."

LMJ Scholarship & Contacts Provided Opportunities

Lewis credits the LMJ Scholarship with giving him the "financial upside" he needed to finish law school. Like other recipients, he said the contacts he made thanks to the scholarship have proven to be just as important.

"It has provided me with opportunities, exposure and resources," Lewis says. "I talk to the attorneys I worked with at G.E. to this day. I can shoot text messages to the attorneys I know with questions, and they get back with me. Having those people that I can bounce things off of is quite refreshing."

Being a beneficiary of others' generosity also has prompted Lewis to give back as well. He is on the board

of directors for the Chicago Hope Academy, a private school that serves inner-city children growing up in the same conditions that Lewis did.

"I look at these kids, and I see myself. I feel called to do this and to help," he says. "Before I started my company, my world revolved around other things—corporate life, getting good grades, being at the top of my class, whatever was the 'next big thing.' Now, having gone through all of these varied experiences, I'm centered and focused on what matters most. I have my own gravity. Whether it's acquiring and rebuilding companies, or coaching my son's T-ball team and taking him to wrestling practice, at the end of the day I want to be a servant to others. I want to help show that perseverance pays off because that's how I am where I am now." ■

GLENN COOK (glenncook117@gmail.com) is a freelance writer and photographer who lives in Northern Virginia.

The 2006 recipients of the Minority Corporate Counsel Association's LMJ Scholarship have gone on to varied careers in the corporate, government and nonprofit worlds.

Here is an update on the class and what they are doing now:

■ **Jazmine Abadia Russell** is a special victims counsel for the United States Air Force, representing victims of sexual assault as they navigate the legal system.

■ **Grace Aduroja** is an associate with the Polsinelli law firm in Washington, D.C.

■ **Michael W. Anderson** is an associate at Goodwin Proctor in Washington, D.C.

■ **Melanie Nicora Baptiste-jean Noel** is an attorney with Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York City.

■ **Jessica Lynn Corsi** is an instructor and private tutor for TestMasters, teaching full-length and weekend LSAT courses in the U.S. and abroad.

■ **Lisa Gonzalo** is an associate with Bressler, Amory & Ross P.C., a multi-disciplinary law firm headquartered in Florham Park, N.J.

■ **Kerry Jefferson** is an associate at Morgan, Lewis & Bockius LLP in Princeton, N.J.

■ **Harris Khan** is Legal Counsel at Google in Mountain View, California.

■ **Dionna Little** is assistant city attorney for the City of Orlando, Fla.

■ **Tanisha McCullen-Manning** is an assistant district attorney for Harris County, Texas.

■ **John Oh** is an associate with Bassil, Klovee, and Budreau, a private firm based in Boston.

■ **Ami M. Parekh** is the medical director for Health Systems Innovation for UCSF Medical Center and an assistant professor at the UCSF School of Medicine in San Francisco.

■ **Samorn Selim** is a career coach, attorney and associate director for graduate class advising at the University of California's Hastings College of Law in San Francisco.

■ **Arturo Villarreal, Jr.**, is a founding partner at Jilpas Villarreal, PLLC, in Austin, Texas.

■ **Willie White** is an attorney with Wells Fargo in Charlotte, N.C.

■ **Shannon Wilson** is an attorney with the U.S. Postal Service in Chicago, Ill.

Whereabouts unknown on the following:

■ **Frank Sien Chen** was admitted to the bar in California following his graduation. He has been inactive since 2012.

Details about the **LMJ Scholarship Program** can be found at www.mcca.com/scholarships. If you are interested in working with this or donating to this program, contact Aracely Muñoz Petrich, vice president of strategic development, at amunozpetrich@mcca.com.

MCCA Research News You Can Use

www.mcca.com/research

Minority attorneys represent **15%** of the attorney population of surveyed firms.

Law firms now employ **fewer black lawyers** than they did eight years ago.

African-American, Asian American and Hispanic women, are each still **less than 1%** of all equity partners in law firms.

Representation on law firms Executive, Management Committees and Partner Review Committees was **less than 1%** for all minority groups surveyed.

Source: The Vault/MCCA Law Firm Diversity Survey and Database

2015 NAPABA
BEST LAWYERS
UNDER 40

IN THEIR WORDS

By Brett Schuster

Christine S. Bautista—U.S. Securities and Exchange Commission

Christopher Y. Chan—RedMart Limited

Mark Junichi Furuya—Clark Construction Group LLC

Josh M. Hsu—U.S. Senate Judiciary Committee,
Office of Sen. Patrick Leahy

Miranda L. Lam—McCarthy Tétrault LLP

Gloria Lee—Rutan & Tucker LLP

Christine Li—Nationwide

Sujit Raman—U.S. Department of Justice

Darren S. Teshima—Orrick Herrington & Sutcliffe LLP

Stacey H. Wang—Holland & Knight

Karen I. Wu—Perlman & Perlman LLP

Hli Lee Xyooj—Farmers' Legal Action Group Inc.

Amy Yoshimi Yeung—ZeniMax Media Inc.

Gary Zhao—SmithAmundsen LLC

DURING THE ANNIVERSARY GALA AT THE 2015 Annual Convention, the National Asian Pacific American Bar Association honored the 14 men and women selected as NAPABA's Best Lawyers Under 40 class of 2015. The NAPABA BU40 Award recognizes talented Asian Pacific American lawyers who have achieved prominence and distinction in their respective fields at a relatively young age while also displaying a deep commitment to the APA community.

The class of 2015 saw almost 40 lawyers nominated, with each candidate being carefully evaluated and interviewed by the selection committee. This year's list recognizes rising APA lawyers encompassing vast and varied experiences, such as representing clients in nationwide high-stake and complex business litigation matters, investigating violations of federal securities laws, providing legal services to family and underrepresented farmers and serving as the senior counsel to a ranking member of the U.S. Senate Judiciary Committee and assistant general counsel for one of the nation's oldest construction firms.

So what separates good lawyers from great ones—victories in the courtroom or successful acquisitions and case outcomes? While these are good measuring sticks on a tangential level, these 14 awardees distinguish themselves from the pack with their hunger, drive, tenacity and passion to go above and beyond what is required. They strive for greatness, whether it's a high-value real estate client or a pro bono family court case. Not everyone who pursues a career in law is guaranteed success, and this is what makes these 14 the best in their field under 40.

Stacey Wang, Holland & Knight partner: "My motivation goes back to the reason that being a lawyer became my calling: because I love to help solve problems. It is this problem-solving challenge that motivates me. Through our role as counselors and advocates, we have the opportunity not only to help our clients navigate the legal system but also identify areas where our justice system can be improved. Taking this broader view of my practice makes every detail an important one, both from the perspective of fixing the problem at hand, to the changes needed in order to improve how these problems are resolved in the future."

Mark Furuya, associate general counsel for Clark Construction Group LLC: "Two things motivate me: First, my wife and kids, who sacrifice so much so that I can do what I need to do both at work and outside of work that has led me to where I am now. I owe them to try and be the best at what I do, whether it's at work or at home. Second, I truly love being a lawyer and doing what I do. When you love what you do, it's a true motivator."

Karen Wu, partner at Perlman and Perlman LLP: "My firm's motto is 'empowering our clients to change the world.' By helping my clients navigate the maze of laws and regulations that apply to charitable organizations, I am able to help them find strategic

solutions for achieving their charitable goals. It is that end goal of helping my clients make a positive social impact that drives me to do my best."

Gary Zhao, partner at SmithAmundsen LLC: "I'm motivated by the love and support of my family—especially my wife, Rita, and my daughters, Zoe and Emily. I want to do well so to provide a better future for my family."

Christopher Chan, legal and government affairs director for RedMart Inc.: "One of my favorite mentors likes to say that I 'thrive in chaos.' I'm extremely driven to do things outside the normal career scope while always learning new skills. The unknown excites me, thus, working for startups has been a thrill and a motivation."

Amy Yeung, assistant general counsel for ZeniMax Media Inc.: "I want to show the next generation of minorities what is professionally possible. [I want to] be in a position that affords me the privilege to use the same skills to improve the ability for women and minorities to succeed within this field and to help improve the skill sets of the business leaders that we work with. As an added bonus, my work feeds my curiosity."

Darren Teshima, Orrick Herrington & Sutcliffe LLP partner: "It's all about the people. When you are surrounded by people who are passionate about their work, it's motivating and contagious. At Orrick, we define leadership as making the people around you better. I love that because it's something everyone can aspire to and which enables us to achieve great results for our clients and our community."

Christine Li, assistant general counsel for Nationwide: "I am motivated by the people around me. There are so many amazing, accomplished people in this world who are able to inspire others and make their mark in this world. I hope that I too can effect change and one day leave this world a better place."

Each of this year's honorees can pinpoint a significant case or transaction that helped shape his or her career. Chan recalls his days as a former litigator, "I thought it would be winning the big case. Instead, it has been knowing that I'm the person my company or friends turn to when something bad happens. Building trust takes time, and knowing you have [gained someone's trust] is a great feeling."

"One of the highlights of my career was being invited to speak at the annual Brooklyn Law School Asian Pacific American Law Student Association alumni dinner in 2013," Wu says. "I had the opportunity to encourage law students and attorneys to pursue their legal passions while seeking out opportunities to serve their community in meaningful ways—especially through the provision of pro bono services to help those in need."

Zhao had the opportunity to provide pro bono counsel for an elderly woman suing her employer—a large energy company—for age discrimination. "I achieved a satisfactory settlement for her in that case when no other lawyer had wanted to take her case,

he says. “It was my first labor and employment case, and I was way outside of my comfort zone. I had secured trial victories and summary judgments in favor of clients before and after this matter, but this case was the most rewarding for me.”

For Yeung, it was an opportunity to develop ZeniMax’s digital platform initiatives—something she had no prior experience with. “This was a completely new space for the company and an honor to be able to work with all of our teams to tackle such a challenging goal under intense time pressures,” Yeung says. “Building out all of the necessary legal considerations to serve my clients on a scale that had not previously been accomplished, while managing to keep everything moving forward, was a tough but intensely rewarding experience.”

Furuya had a career-defining moment when he decided to switch jobs and move to in-house counsel. “I have a job that I love and feel I excel in, which is the kind of fulfillment I think we all hope we can achieve in our careers,” he says. “It certainly would not have happened without the support and networking that I was able to get through various contacts, especially with Japanese American Bar Association and NAPABA.”

Likewise for Li, moving in-house with Nationwide’s legal department proved to be a significant moment. “I am surrounded by a supportive team, wonderful clients and equally amazing sponsors and mentors,” she says. “I am privileged to work with leaders who are great teachers and have opened up many opportunities for me to continue developing my abilities and expand my skills. I can safely say that at Nationwide, I have not only learned how to become a better attorney but also a better collaborator, leader and friend.”

Sujit Raman, assistant U.S. attorney for the U.S. Department of Justice, believes that the ultimate goal as a prosecutor is achieving justice and doing the right thing because “the most satisfying moments have been bringing justice to victims’ lives and making the world better for that person—at that moment—no matter what terrible things might have happened [to them] before.”

Josh Hsu, senior counsel to U.S. Sen. Patrick Leahy, feels “it’s important that we live in a country that treats people equally, with dignity and with fairness. I have dedicated the better part of my career to advancing these principles and hope to continue to do so.”

The highlight of Teshima’s career has been “working with an Orrick team and the Habeas Corpus Resource Center on a suit against the federal government,” he says. “Through an injunction, we were able to stop the implementation of a federal regulation that would have greatly truncated the time within which death-sentenced inmates can pursue federal habeas petitions. Our team worked tirelessly to seek the injunction and help me

prepare for the oral argument. Whether an engagement is pro bono or not, it’s inspiring to work with a team that passionately believes in a client’s cause.”

Being named one of the top lawyers in your field, or any profession for that matter, is an exceptionally humbling moment. “It means a tremendous amount to me that my mentors, colleagues and friends from the Asian Pacific American Bar Association of Washington, D.C., nominated me even though I am now living and working in Singapore,” Chan says. “When I first moved to Washington, D.C., as a newly minted lawyer, I sought out a community to grow with and learn from. Now that I’m no longer living there, I am extremely proud of all the transformative work we [accomplished] in building a greater NAPABA community.”

According to Hsu, “The Best Under 40 Award is significant to me because it reaffirms my belief that when you do something you care deeply about, the accolades come naturally.”

Raman believes that “as a public servant, this kind of award is the last thing one looks for. It means a lot that NAPABA has chosen to recognize the hard work that government lawyers do every day around the nation—often anonymously and without garnering any headlines.”

For Li, being named a BU40 recipient is an important milestone. “I am grateful that all of my hard work is being recognized,” she says. “I’m also incredibly humbled by this honor, particularly when I look at all the accomplished people who are my fellow recipients this year and those who have received it in the past.”

“The (BU40) award is a tremendous honor for me,” Zhao says. “I’m delighted to be part of a very distinguished and highly respected group of APA lawyers who have previously received this award from NAPABA.”

“Being selected for the BU40 award is a great honor—especially when you think about the past winners, their accomplishments and their legacies they are creating for themselves,” Furuya says. “It is a privilege to be a part of such an extraordinary group of attorneys and definitely one of the highlights of my career.”

“I am truly honored for being recognized with this award,” Yeung says. “We have so many talented attorneys, and I’m grateful to be recognized by NAPABA and the broader APA community for my personal and professional endeavors. This is also a moment of self-reflection for me, as I had yet to step back and take a look at the cumulative body of my accomplishments in this way. It was very cathartic.”

As the BU40 class of 2015 continues its ascension and follows in the steps of those that came before, there is little doubt that these honorees will become trailblazers in their own regard. NAPABA congratulates the 2015 BU40 award winners and wishes them nothing but success in their already prospering careers. ■

Christine S. Bautista



Christine Bautista is an attorney in the Enforcement Division of the U.S. Securities and Exchange Commission, responsible for investigating violations of federal securities laws. Prior to joining the SEC, she was a litigation partner at Akerman LLP. Bautista was the first Asian-American female partner

at Akerman and a member of its diversity committee. Between 2007 and 2014, she was an assistant U.S. attorney for the U.S. attorney's office in Los Angeles, where her efforts led to the historic 2014 takedown in the Los Angeles fashion district. Subsequently, she received the 2015 National High Intensity Drug Trafficking Areas Award for Outstanding Financial Investigative Effort and 2015 FinCEN law enforcement award. Bautista has not only represented indigent defendants pro bono but also co-founded a 501(c)(3) organization that provides legal representation to asylum-seekers and started the Chicago chapter of Sponsors for Education Opportunity Law Career program. She is a graduate of the University of Chicago and University of Maryland School of Law.

Christopher Y. Chan



Christopher Chan is director of legal and government affairs for RedMart and responsible for its legal, privacy, compliance and government relations functions in Singapore. Previously, Chan was general counsel and an angel investor in Silicon Valley's doxIQ that was successfully acquired this year. Prior to

working at startups, Chan was a senior associate at Finnegan Henderson. He also served as the first law clerk to the Honorable Raymond T. Chen, at the U.S. Court of Appeals for the Federal Circuit. In law school at Case Western, Chan interned on the Sixth Circuit and in house at the Bridgestone Corp. After graduating from Duke University and before he began his law career, Chan was a business consultant and opened his team's first international office in India. He previously served as president of Asian Pacific American Bar Association-DC and its Educational Fund and on the D.C. Mayor's Commission on Asian Pacific Islander Affairs.

Mark Junichi Furuya



Mark Furuya is the assistant general counsel for Clark Construction Group LLC. He serves as the legal director for the Western Region of the company and its largest subsidiary, Atkinson Contractors LP, covering eight offices across the Pacific. He negotiates, drafts and advises on various

construction, real estate and commercial agreements. Furuya is currently the treasurer for the Japanese American Bar Association, manages JABA's website and founded the JABA Foodie Group. He has served on the boards for the JABA Educational Foundation and USC Law School Alumni Association. He obtained his juris doctor from the University of Southern California Gould School of Law and his bachelor of arts degree from Claremont McKenna College.

Josh M. Hsu



Josh Hsu currently serves as senior counsel to ranking member Patrick Leahy on the U.S. Senate Judiciary Committee, where he advises Sen. Leahy on a range of issues, including civil rights, judicial nominations, federal courts, campaign finance and constitutional law. During his tenure, Hsu has

provided counsel on various nominations to the U.S. Courts of Appeal, the U.S. District Courts and the Department of Justice, including the attorney general of the United States. Prior to serving on the committee, Hsu worked as an attorney for Paul Weiss Rifkind Wharton & Garrison. A graduate of Georgetown Law and Georgetown University, he clerked for the Honorable Denny Chin, then-judge at the U.S. District Court for the Southern District of New York. Following his clerkship, he worked as an attorney at the American Civil Liberties Union, focusing on First Amendment and campaign finance issues. Hsu is a member of Asian Pacific American Bar Association-DC and a former member of Asian American Bar Association of New York, where he served as a member of AABANY's Judiciary Committee team.

Gloria Lee



Gloria Lee is a real estate transactional attorney and the chief business development officer at Rutan & Tucker LLP, where she focuses her practice on the financing, development and subdivision of commercial, residential and resort properties. Lee is the recipient of numerous local awards,

including Top Women Lawyers (*Los Angeles Magazine*), Top Orange County Young Lawyers (*Orange Coast Magazine*), Southern California Super Lawyers Rising Stars and Orange County's Top 40 Under 40 Young Business Professionals (*OC Metro Magazine*). She chairs Rutan's Business Development Committee and plays key roles in the firm's recruiting and diversity committees. She is a past president of the Orange County Asian American Bar Association and actively serves on the executive advisory council for both Asian Americans Advancing Justice and the U.S.-Korea Law Foundation. She mentors several law students and attorneys and is committed to several charitable organizations. Lee graduated with distinction from Stanford University with two bachelor of arts degrees and a master of arts degree in four years and earned her juris doctor from UC Berkeley School of Law.

Miranda L. Lam



Miranda Lam is a litigation partner at McCarthy Tétrault in Vancouver, British Columbia, Canada. Her practice centers exclusively on commercial litigation matters and business disputes, including contractual claims and economic torts. Lam is ranked in the 2015 edition of "Benchmark Canada: The

Definitive Guide to Canada's Leading Litigation Firms & Attorneys" as a future star (British Columbia) in the field of general commercial litigation. She is the recipient of the Association of Women in Finance 2014 PEAK Women in Finance "Rising Star" Award and was recognized as one of Business in Vancouver's 2013 Forty Under 40. She is a frequent speaker on shareholder disputes and dispute

resolution processes and has served as faculty for the Continuing Legal Education Society of British Columbia and The Advocates Society. Lam was called to the British Columbia bar in 2004 and graduated from the University of British Columbia in 2002, where she received the Honorable Ray Herbert Award as the All-round Graduating Student. After graduation, she clerked for five justices of the British Columbia Supreme Court. An active community leader, Lam currently serves on the board of the Vancouver Foundation.

Christine Li



Christine Li is a corporate attorney with Nationwide Insurance, focusing on capital markets transactions. In this role, Li advises Nationwide's Office of Investments on a wide variety of matters affecting its portfolio of approximately \$90 billion. Her practice includes structured finance, private

placements, private equity, debt financing and investment-related litigation, an insurance investment regulation and compliance. In addition to her legal duties, she manages Nationwide's legal rotation and summer law clerk and fellowship programs and serves on the legal department's Diversity & Inclusion Council. Prior to joining Nationwide, Li practiced at Porter Wright Morris and Arthur LLP. She is a current board member and past officer of the Asian Pacific American Bar Association of Central Ohio. Li received her bachelor of science degree in finance with honors from the Fisher College of Business at The Ohio State University and her juris doctor from the University of Virginia School of Law.

Sujit Raman



Sujit Raman is the chief appellate lawyer in Maryland's U.S. attorney's office, one of the nation's youngest supervisory federal prosecutors. Raman has conducted a number of high-profile public corruption, fraud and national security prosecutions and has assisted in several of the government's

most significant recent matters concerning the intersection of technology, privacy and security. A graduate of Harvard College (where he captained the national champion rowing team) and of Harvard Law School (where he was co-president of the South Asian Law Students Association), Raman studied the South Asian diaspora as a Marshall Scholar in Britain and served for several years as pro bono counsel to the Hindu American Foundation. He is active in bar association activities, serving on the Board of NAPABA's Law Foundation and as president of Asian Pacific American Bar Association-DC's Educational Fund. In 2011, he received APABA-DC's Rising Star Award, and in 2015, the South Asian Bar Association of North America awarded him its Cornerstone Award in recognition of his leadership and public service.

Darren S. Teshima



Darren Teshima is a partner at Orrick, Herrington & Sutcliffe LLP in San Francisco. His commercial litigation practice focuses on the representation of corporate policyholders in insurance coverage disputes, including cyber coverage and data breach matters. He is also passionate about his pro bono

work, which includes representing unaccompanied children seeking asylum. Teshima serves on the board of directors of Asian Americans Advancing Justice | Asian Law Caucus and is a former director of the Asian American Bar Association of the Greater Bay Area. He graduated summa cum laude from Amherst College and received his juris doctor from the Georgetown University Law Center. Teshima previously clerked for the Honorable David O. Carter, U.S. District Court for the Central District of California.

Stacey H. Wang



Stacey Wang is a litigation partner for Holland & Knight. Her practice is focused on complex commercial and intellectual property disputes, white-collar criminal and regulatory matters and internal investigations. She has also served as a special prosecutor, handling trials for the Los Angeles County District

Attorney's Office. Among her leadership positions, she is the immediate past president of the Southern California Chinese Lawyers Association, a member of the American Bar Association's Litigation Section Federal Practice Task Force and chair-elect of the ABA Tort Trial and Insurance Practice Section's International Law Committee. In addition, Wang chairs the firm's Asian Pacific Islander Diversity Affinity Group and sits on the Diversity Council. She is also the pro bono and charitable services partner for her office and leads the firm's representation of immigrant children referred by Kids in Need of Defense.

Karen I. Wu



Karen Wu is a partner at Perlman & Perlman LLP. She advises nonprofit organizations on corporate governance, federal tax law compliance, fundraising regulation, contract negotiations and intellectual property matters. She also counsels a broad range of for-profit businesses, including Fortune® 500 and startup

companies, on emerging issues involving corporate philanthropy and cause marketing. Wu is a frequent author, blogger and speaker on legal issues affecting the philanthropic sector. She also serves as the board chair and a legal volunteer with Open Hands Legal Services, a faith-based nonprofit organization that provides free legal services to the poor in New York City. She previously served as co-chair of the Pro Bono and Community Service Committee for the Asian American Bar Association of New York. In 2012, Wu received the Outstanding Young Lawyers Award from the New York State Bar Association, and in 2013, she received the American Bar Association's Nonprofit Outstanding Young Lawyer Award and the Brooklyn Law School Asian Pacific American Law Students Association Alumni of the Year Award.

Amy Yoshimi Yeung



Amy Yeung is assistant general counsel at ZeniMax Media Inc., an entertainment media organization. She provides products counseling, marketing and transactional support for the Dishonored video game franchise. Prior to joining ZeniMax, Yeung was at WilmerHale in the Securities practice group and

previously clerked for Vice-Chancellor Donald Parsons of the Delaware Court of Chancery. Yeung received her juris doctor from Duke University and her bachelor of arts degree from the University of Chicago. She has served as the chair of the Young Lawyers Section of the Bar Association of D.C. and of the Duke Law Alumni Association New Lawyers Division and is an active member and leader of Asian Pacific American Bar Association–D.C. Yeung’s experience and involvement in the community has earned her honors such as being selected by the Association of Corporate Counsel as a “Top Ten 30-Somethings” of 2015 and as a regional finalist for the White House Fellowship, one of the nation’s highest opportunities in leadership and public service.

Hli Lee Xyooj



Hli Xyooj is a senior staff attorney and the Hmong community outreach coordinator with Farmers’ Legal Action Group. She provides technical and legal services to family farmers and community organizations in agricultural, contract, debtor-creditor and administrative law. Xyooj serves

on the planning committee for the annual Minority and Immigrant Farmers Conference and is a board member for the Ombudsperson for Asian Pacific Islander Families, community activist with Building Our Future, and volunteer with Coalition of Asian American Leaders. She received honorable mention for the 2013 Facing Race Ambassador Awards presented by the Saint Paul Founda-

tion and was a 2015 IMPACT Award Top 10 presented by Hmong National Development. She earned a bachelor of arts degree from the University of Wisconsin–Madison, a juris doctor from Hamline University School of Law and a master of business administration degree from Hamline University School of Business.

Gary Zhao



Gary Zhao is a partner in SmithAmundsen LLC’s commercial litigation group, where he represents clients in high-stake and complex business litigation matters nationwide. Zhao is a native speaker of Mandarin Chinese and his understanding of the Chinese language and culture, coupled

with his legal expertise, allows him to serve as outside general counsel to several publicly traded Chinese companies and their subsidiaries in the U.S. He is the immediate past president of the Chinese American Bar Association and is a recipient of the Presidential Leadership Award from the organization. Zhao is a past board member of Asian American Bar Association of Chicago and received its Member of the Year Award in 2010. *Chicago Daily Law Bulletin* recognized him as one of 40 Illinois Attorneys Under 40 to Watch. He has also been selected to the Illinois Super Lawyers “Rising Stars” list for the last five years. Zhao has co-chaired the NAPABA litigation committee since 2011. ■

BRETT SCHUSTER (bschuster@napaba.org) is the communications manager for the National Asian Pacific American Bar Association.

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The POWER *of* STORY

BY LISA A. LINSKY



Obergefell v. Hodges and the Transformation of a Country

IN her January 12, 2015 essay, *The Power of Story*¹, science writer Elizabeth Svoboda writes about the power of stories to move, touch and inspire us to reexamine our lives by altering our thinking, which in turn, can result in actions that change our world. Educators, social scientists, politicians, clergy, writers and activists know first-hand of the “change-creating potential” in a good story and how tales of the past can provide a connection to the present. Ms. Svoboda says:

Stories allow us to travel, time and again, outside the circumscribed spaces of what we believe and what we think possible. It is these journeys-sometimes tenuous, sometimes exhilarating- that inspire and steel us to navigate uncharted territories in real life.

The fight for marriage equality in the United States is a story that dates back to 1970 when a Minnesota couple, Richard Baker and James McConnell were denied a marriage license by the Hennepin County District Court clerk.

Richard and James brought a lawsuit, which they lost in every state court that heard their case, because the state of Minnesota only allowed marriages between men and women. In 1972, the Supreme Court of the United States summarily affirmed the dismissal of Richard and James’ lawsuit for want of a substantial federal question in the case captioned *Baker v. Nelson*.² By taking this position, the Supreme Court condoned the reasoning of the Minnesota Supreme Court that the “institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis...” There was no constitutional question for the Supreme Court to decide at that time because the idea of a lawful marriage between two people of the same-sex was unimaginable.



It would take another 43 years, until 2015, for marriage equality for same-sex couples to be declared the law of the land by the Supreme Court and *Baker v. Nelson* to be overturned. While much had changed during that time in terms of social acceptance of LGBT people, due in large part to the commitment of activists, civil rights attorneys and other advocates, and those in the corporate world who saw the importance of equality to business, it was the human stories of gay and lesbian Americans and their families that ultimately shifted the collective mindset.

The Stories

Jim Obergefell and his long-time partner, John Arthur, lived in Ohio and wanted to get married. Marriage was not an option for Jim and John however, since Ohio did not permit same-sex couples to marry. Nor did their home state recognize the lawfully-entered marriages of same-sex couples from other jurisdictions.



When the United States Supreme Court struck down Section 3 of the Defense of Marriage Act as unconstitutional in the 2013 case of *United States v. Windsor*³, Jim and John decided it was time to tie the knot, for time was not on their side. In 2011, John had been diagnosed with amyotrophic lateral sclerosis (ALS) and by 2013, was dying. A wedding occurred in the state of Maryland, which permitted same-sex couples to marry. The 10-minute ceremony was held on a tarmac at Baltimore-Washington International Airport aboard a medically-equipped plane with a nurse present for a paralyzed John. Three months later, John was dead and the state of Ohio refused Jim the right to be listed as the surviving spouse on John's death certificate. The import of Ohio's refusal to allow Jim's name on John's death certificate was to tell the world that John died a

single person, and not a lawfully married man, and to deny James recognition as a grieving widower.⁴

Ohio also refused to recognize the marriages of four same-sex couples who sought acknowledgment of their lawfully-entered out-of-state marriages and placement of their names on the birth certificates of their respective children. Three of these couples had given birth in Ohio hospitals, while the fourth couple, two married men living in New York, adopted a son who was born in Ohio. The import of Ohio's refusal to recognize these lawful marriages and designate the names of both parents on their children's birth certificates was to deny these families the same recognition afforded opposite-sex spouses and their children, thus relegating these families to second-class citizenship.

In Kentucky and Tennessee, lawfully married same-

CONNECTING the PAST to the PRESENT

Uncovering the Deleted Histories of LGBT Americans

Many people remain unaware of the history of pervasive discrimination and animus exhibited toward lesbian and gay people in the United States as sanctioned by the government. The Mattachine Society of Washington, D.C. (Mattachine Society) is a non-profit organization dedicated to achieving full civil equality for LGBT Americans, and its mission is to uncover the deleted stories of these citizens.

The Mattachine Society conducts original archival research at The National Archives; U.S. Presidential Libraries; the Library of Congress; the libraries of government agencies, such as the FBI and Office of Personnel Management; the Stonewall National

Museum and Archives; and, other private and public repositories across the country. The Mattachine Society finds government documents and then tells the stories of lesbian and gay Americans who faced persecution at the hands of their employers-federal, state and local governments-for over 65 years. The Mattachine Society connects the dots found in these historic documents to accurately portray the history of people whose pasts have been hidden, misinterpreted and ignored. These are stories of lost lives, jobs and families, blackmail and cover-ups; stories that came about because of paranoia and ignorance by members of the federal government who created an accepted milieu for institutionalized homophobia.

In connection with the *Obergefell* case, the law firm of McDermott Will & Emery submitted an amicus brief to the Supreme Court on behalf of The Mattachine Society.¹ Like the stories of Jim and John, April and Jayne and the other plaintiffs in these consolidated marriage cases, there are many other stories that have been uncovered by the Mattachine Society that paint a sad, and sometimes tragic picture of LGBT lives that were shattered. These stories are told to preserve the history of the broader LGBT community and to hold the government accountable for its actions and misconduct toward lesbian and gay citizens since the 1940s. The Mattachine Society's amicus brief, dubbed by the popular press as the "Animus Amicus" presented the Justices with a basis to better understand the nature and extent of this discrimination and animus as they considered the marriage bans before them, which were the direct outgrowths of the country's historical treatment of lesbian and gay people.

Original source materials obtained and released by The Mattachine Society were incorporated into the brief and highlighted some of the little-known stories that comprised the "culture of animus" that existed in this country and permeated every aspect of American life.

The Mattachine Society brief focused



on the story of FBI Director, J. Edgar Hoover and his Sex Deviate Program which started in 1951. This program attempted to ferret out homosexuals, whether known or suspected, from government service. President Eisenhower's Executive Order 10450 is featured in the brief as the basis for the authority given to the FBI to hunt down and investigate known or suspected "sex deviates," a code term for homosexuals. The collusive relationship among the Executive Branch, FBI and other agencies of the federal government, such as the former Civil Service Commission, is discussed in the brief and demonstrates how the government's policies on homosexuals in federal employment led to the termination of jobs and ruination of careers for thousands of American citizens.

The brief also brings to light the little-known story of William Lyman Dew, a young, African-American air traffic controller who was fired from his job with the Civil Aeronautics Agency in the 1950s, allegedly because of a few isolated same-sex encounters as a teenager. Dew was not gay, and at the time of his termination from federal employment, was married to a woman and had a child. Dew sued to get his job back. After rejection of his case in the lower courts, Dew's petition for *certiorari* was granted by the United States

Supreme Court. Fearing an adverse ruling, the government reached a settlement with Dew and reinstated him with back pay. The Dew story demonstrates the lengths to which Hoover, the Civil Service Commission and the Department of Justice went to bring the full weight of the federal government down on the head of a man who was not gay, but who personified the government's position: "Once a homo, always a homo." This despite a written policy of "rehabilitation" that was supposed to permit a federal employee to remain in his or her job.

The work of The Mattachine Society is the subject of a recently-released documentary by Yahoo! News Chief Investigative Correspondent, Mike Isikoff.² The title of the film, "Uniquely Nasty: The U.S. Government's War on Gays" is taken from a 1964 memo from John Steele of the Civil Service Commission in which he writes:

We do not apply Commission policy at all (regarding homosexuals and evidence of "rehabilitation"); we apply our own individual emotional reactions and moral standards. Our tendency to "lean over backwards" to rule against the homosexual is simply a manifestation of the revulsion which homosexuality inspires in the normal person.

What it boils down to is that most men look upon homosexuality as something uniquely nasty, not just a form of immorality...

The Mattachine Society's brief to the Supreme Court revealed documents and stories that reinforced what that Court already knew. For decades, the culture of animus set the tone in this country to tyrannize and subjugate LGBT people and force them into hiding, alone and in some cases, unable to support themselves or their families. This culture of animus took no prisoners and marriage was one of a number of civil institutions that was caught up in the dragnet. As noted in the brief:

To say that the marriage bans now at issue are not somehow the product of this historical animus is to deny reality. We may not see the air that feeds the flame, but for decades, the animus against LGBT Americans fed the flames of hatred, revulsion and disgust from which the current marriage bans arose.

Notes

1. http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_The_Mattachine_Society_of_Washington_DC.pdf

2. <https://www.yahoo.com/news/uniquely-nasty-the-u-s-governments-war-on-gays-191808993.html>



sex couples challenged those states' laws which prohibited recognition of the couples' out-of-state marriages and withheld respect for those unions. Kentucky's law prohibiting same-sex couples the freedom to marry in that state was also challenged. The import of these laws was to unconstitutionally discriminate against these same-sex couples and their families by relegating them to second class citizenship.

April DeBoer and Jayne Rowse have been together as a couple for over a decade. Both women are nurses and work for Detroit hospitals. Committed to each other and to raising a family together, April and Jayne took in four special needs children as newborns. They wanted to marry and to adopt the children but the state of Michigan did not permit adoptions for unmarried couples. Michigan placed April and Jayne between the proverbial rock and hard place: They could not adopt their children because they were unmarried, and they could not marry because Michigan did not allow same-sex couples the freedom to marry. The import of these laws was to discriminate against same-sex couples and their families by preventing the children from having two legally-recognized parents and relegating these families to second class citizenship.

In total, 16 couples stepped forward to challenge the marriage bans in their respective states and in so doing, courageously told their stories and put their lives, love and families in the hands of courts of law and public opinion.

The Courts

The respective federal district courts for the four states whose laws were under scrutiny all determined that the marriage bans imposed on these same-sex couples were unconstitutional.

Representatives from the states of Ohio, Kentucky, Tennessee and Michigan appealed the federal district court rulings to the Sixth Circuit Court of Appeals. Judge Jeffrey Sutton wrote the majority opinion for the Sixth Circuit and determined that the marriage bans from these four states should be upheld, relying principally on the Supreme Court's 1972 opinion in *Baker v. Nelson*.⁵ Judge Sutton's decision, which failed to recognize either a fundamental right to marry for same-sex couples, or the right to have their lawful out-of-state marriages respected, represented the first departure for a Circuit Court of Appeals since the Supreme Court's decision in *Windsor*. Indeed, there had been no fewer than 65 victories in marriage equality cases since the *Windsor* decision, and judges from the Fourth, Seventh, Ninth and Tenth Circuits had all determined the

unconstitutionality of the state marriage bans that had come before them. With a split in the Circuit Courts of Appeals, the time had come for the United States Supreme Court to decide the broader issue of marriage equality, the very issue that Court had evaded in 2013 when it decided *Windsor*.

On June 26, 2015, Justice Anthony Kennedy, a 78-year old Ronald Reagan appointee considered by many to be politically conservative, once again showed himself to be a civil rights hero to the lesbian and gay community and its allies, as he had when he wrote the Court's majority opinions in *Romer v. Evans* (1996), *Lawrence v. Texas* (2003) and *United States v. Windsor* (2013). Again writing for the majority, Justice Kennedy declared in *Obergefell* that the fundamental right to marry cannot be denied to same-sex couples under the Fourteenth Amendment of the United States Constitution. The *Obergefell* opinion rests on the shoulders of these and other earlier civil rights cases, and provides additional important protections for lesbian and gay people and their families with its acknowledgment that marriage safeguards children and families.

Justice Kennedy's eloquently written decision reaffirmed that marriage and family are values that conservatives, moderates and liberals can *all* get behind as these are fundamental rights for all Americans desirous of undertaking the privileges and responsibilities of this cherished institution. Justice Kennedy's majority decision reflects an understanding of the profundity of this "keystone of the Nation's social order," and why the Constitution cannot allow same-sex couples to be deprived from enjoying this right of citizenship. His words are moving and powerful and will no doubt be quoted in other civil rights cases that come before the courts for years to come.

For example, Justice Kennedy wrote:

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than they once were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves... They ask for equal dignity in the eyes of the law. The Constitution grants them that right...

Justice Kennedy's opinion also did much more for the gay and lesbian community which has long suffered dis-



crimination at the hands of the government and private citizens alike; the opinion restored some of the dignity that has been taken from lesbian and gay people in this country for over 65 years. (See the sidebar on page 50.)

What's Next?

Now that same-sex couples can marry in all 50 states, the District of Columbia and U.S. territories, is the work of LGBT civil rights advocates and activists finished? The answer is unequivocally, no. Since the *Obergefell* decision was handed down by the Supreme Court in June 2015, we have seen the backlash manifest in the actions of state officials who continue to refuse to issue marriage licenses to same-sex couples. There are politicians and political candidates who have vowed to retract the advances made by LGBT people and are committed to maintaining the second-class citizenship that has permeated this group's past. LGBT Americans still face rampant discrimination in the workplace and in public accommodations, and are victims of violence and hatred by representatives of government and private citizens in this country and abroad.

There are still many hurdles to overcome before LGBT people can breathe a sigh of relief and put down their guard. It has been a long and winding road to marriage equality, fraught with stories of injustice, animus and discrimination. Lives and livelihoods have been lost along the way, and families torn apart. But the significance of the *Obergefell* decision is sweeping and with it, Justices Kennedy, Ginsburg, Breyer, Sotomayor

and Kagan have opened the door to the possibility of full equality. And so the stories must continue to be told, and the brave women and men fighting for recognition and validation of their lives must continue to come forward for in the words of the 14th Dalai Lama, "every change of mind is first of all a change of heart." ■

LISA A. LINSKY (llinsky@mwe.com) is a partner with the international law firm of McDermott Will & Emery LLP. Linsky's practice includes product liability, trust and estate, business and civil rights investigations and litigations. Before coming to McDermott, Linsky was a prosecutor who handled high-profile felony cases as the Chief of the Special Prosecutions Division, Child Abuse and Sex Crimes Bureau in the Westchester County New York District Attorney's Office. Linsky is a published author and public speaker on issues involving Lesbian, Gay, Bisexual and Transgender (LGBT) civil rights and diversity in the legal profession. Linsky was McDermott's first partner-in-charge of Firm-wide Diversity and partner-in-charge of LGBT Diversity and Inclusion. She created and chaired the Firm-wide LGBT Diversity Committee and currently serves on the Firm's Pro Bono and Community Service Committee. Linsky was a 7-year member and officer of the national Lambda Legal Board of Directors, and currently sits on the board of the New York LGBT Community Center.

Endnotes

1. <http://aeon.co/magazine/psychology/once-upon-a-time-how-stories-change-hearts-and-brains>.
2. 409 U.S. 810 (1972)
3. 133 S. Ct. 2675 (2013)
4. David Michener and William Ives, a second same-sex Ohio couple, were also named plaintiffs in the *Obergefell* lawsuit as Michener too was denied the right to be listed on Ives' death certificate as his surviving spouse.
5. *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014)



MOVERS & SHAKERS



**DEBRA GATISON
HATTER**
Strasburger

Debra Gatison Hatter has joined the firm as a partner. Hatter, who will work in Strasburger's Houston office, focuses her practice on corporate transactions, including mergers and acquisitions, joint ventures, strategic

partnerships, debt and equity, financings, corporate governance, structuring and general business matters.

Hatter represents private equity funds, public companies and privately held businesses in a broad array of industries, including energy, technology, telecommunications, waste management, retail and industrial services, in both domestic and international transactions. Her experience includes representing investors and sellers of businesses with a significant focus on technology assets and organizing joint ventures and other strategic partnering arrangements, including the governance aspects of these transactions. She also counsels clients on premerger regulatory compliance and filings under the competition laws (HSR Act) in U.S. based and cross-border transactions.

Hatter is admitted to practice in Texas, Pennsylvania, the District of Columbia and Maryland and is a member of the National and American bar associations. She was co-founder and former chair of the Mergers and Acquisitions Section of the Houston Bar Association. Hatter belongs to the Women's Energy Network Houston, is currently a director of Julia F. Thompson Inc. and previously served as a director of the Houston Area Urban League. She received her J.D. from the University of Pennsylvania Law School in 1994, where she was editor of the *University of Pennsylvania Law Review*. She holds a bachelor's degree in mechanical engineering from the University of Pennsylvania.



**CHRISTOPHER
WILKINSON**
*Orrick, Herrington &
Sutcliffe LLP*

Christopher Wilkinson, the former associate solicitor for civil rights and labor management at the U.S. Department of Labor, has joined Orrick, Herrington & Sutcliffe LLP as a partner, resident in

Washington, D.C.

Wilkinson has over 15 years of broad DOL experience including policy advice, regulatory counseling and enforcement litigation. He has litigated complex wage and hour matters, discrimination cases, Sarbanes-Oxley and other whistleblower cases and health and safety matters. He has also advised the DOL on a wide range of matters in the appellate courts, including the Supreme Court, and has extensive first chair litigation experience, having served as trial attorney and then counsel for civil rights programs in the DOL's San Francisco regional office. His federal trial career also includes handling back-wage recovery and civil penalty actions arising under the Fair Labor Standards Act, the Service Contract Act and the Davis-Bacon Act.

As associate solicitor, Wilkinson was the senior legal advisor to the Office of Federal Contract Compliance Programs in setting all of its enforcement priorities and strategies. He has also worked closely with OFCCP in overseeing and counseling on broad audits of government contractors in large-scale, government-based discrimination investigations.



KENJI PRICE

Carlsmith Ball LLP

Kenji Price, a former assistant U.S. attorney in New York City, has joined Carlsmith Ball LLP as of counsel. An experienced federal prosecutor, Price will focus his practice on white-collar criminal defense, and appeals, complex civil litigation, and alternative dispute resolution. He joins the firm's expanding litigation practice.

Price served most recently as assistant U.S. attorney in the prestigious Eastern District of New York, where he prosecuted a wide variety of federal cases related to large-scale domestic and international narcotics trafficking, organized crime, bank robbery, insurance fraud, tax fraud, social security fraud, illegal immigration and child pornography. He also served as a law clerk to Judge Kent A. Jordon in the U.S. Court of Appeals for the Third Circuit and Judge Robert B. Kugler in the U.S. District Court for the District of New Jersey.

Prior to his legal career, Price served in the U.S. Army and was awarded two Bronze Star Medals for his service in Iraq as a rifle platoon leader and Ranger rifle platoon leader. He was also awarded the Army Commendation Medal for serving in the 75th Ranger Regiment, an elite special operations force stationed in Savannah, Ga. Price served a total of four combat tours in Iraq and Afghanistan.

Price is admitted to practice law in New York. He earned his law degree from University of Pennsylvania Law School, where he served as editor-in-chief of the *University of Pennsylvania Law Review*. Price is an alumnus of Mililani High School and a magna cum laude graduate of Gonzaga University in Spokane, Wash., with a bachelor's degree in criminal justice.



JOSÉ D. VEGA

Bradley Arant Boult Cummings LLP

Charlotte associate José D. Vega from Bradley Arant Boult Cummings LLP was elected president of the Mecklenburg County Hispanic Latino Lawyers Bar. He will serve as president for a two-year term.

The Mecklenburg County Hispanic Latino Lawyers Bar, an affiliate of the Mecklenburg County Bar, was established in 2006 to increase diversity in judicial and legal communities by encouraging Hispanics and Latinos to enter into the legal profession. Vega is a member of the firm's Litigation and Banking and Financial Services practice groups. His practice concentrates on representing financial institutions and mortgage companies in a variety of residential and commercial litigation matters. In his financial institution practice, Vega has defended financial institutions and mortgage companies in both federal and state court. He has defended federal causes of action, alleging violations of the Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Debt Collection Practices Act, Home Ownership and Equity Protection Act, Fair Credit Reporting Act and the Service Members Civil Relief Act. Vega earned his J.D. from Wake Forest University School of Law and his B.A. summa cum laude from Birmingham-Southern College. He was named a 2015 North Carolina Super Lawyers "Rising Star" for civil litigation.

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