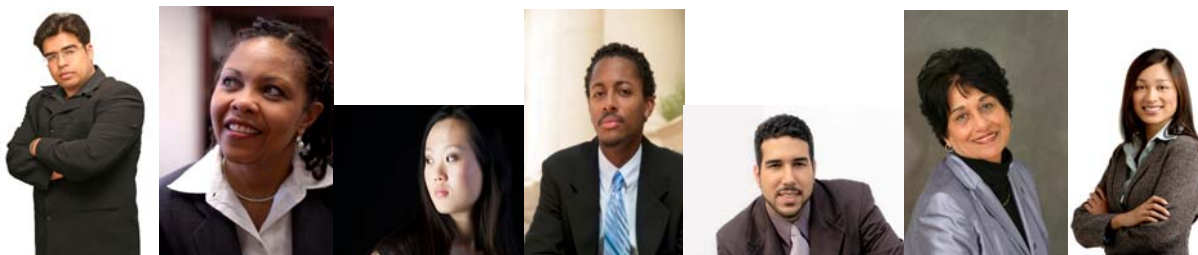


EMBRACING DIVERSITY



A publication of the TIPS Diversity in the Profession Committee



Vol. 1, Issue 2

Dedicated to Sharing Ideas that Create a Diverse Profession

November 2006

Message from the Chair

TIPS has always found ways to serve its members and the profession. This newsletter, "Embracing Diversity," is but another example of how TIPS is helping to make the practice of law more diverse. We hope that the articles in this newsletter will not only make you think about diversity but will actually help you take steps to embrace the diversity that surrounds you.

The Standing Committee on Diversity in the Profession is reaching out to diverse lawyers and helping them get plugged into TIPS. If you know someone who would be interested in becoming more involved, let us know. Also, if you have a contribution for this newsletter, contact our tremendous newsletter editor, Pam Carter at pcarter@bakerdonelson.com.

Diversity is about different perspectives, so your ideas and comments are welcome. Tell us what you think, because we do want to hear from you. In the meantime, keep embracing diversity.

H. Wesley Sunu

Chair, TIPS Diversity in the Profession Committee

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A New Way to Develop Leadership and Diversify the Section

The TIPS Leadership Academy, which has been almost two years in the planning, will commence this fall at our meeting in Pinehurst. It is the first program of its type to be instituted by the American Bar Association or any of its Sections. The goal of the TIPS Leadership Academy is to develop young lawyers, including those who are racially and ethnically diverse, for future leadership in either their communities or in bar service such as TIPS. The TIPS Leadership Academy curriculum will provide education and training at each of our four Section meetings during the year on such varied topics as justice, ethics and values, leadership in the profession, and leadership in the community. In terms of presentation, the Academy will employ various creative educational techniques designed to enhance and accelerate the development of skills for these young lawyers in order to excel wherever their interest and talents take them.

The competition for the 25 positions in the Leadership Academy was intense. The TIPS Leadership Academy Task Force devised an initial search by sending 300 letters to bar leaders, judges, lawyers, managing partners and others influential in the practice of law seeking the names of bright young lawyers who have already demonstrated a talent and an inclination for community involvement and bar service in addition to demonstrating outstanding performance in the practice of law. From those letters, we received almost 100 recommendations, and from that, almost 80 young lawyers applied for the 25 positions which were available. In the end, we selected 13 men and 12 women with a racial composition of 10 Caucasians, 10 African-Americans, 3 Hispanics, and 2 Asian-Americans. Their interest and practice areas are as diverse as their racial and ethnic make-up. All of these young lawyers have already proven themselves through their prior commitment and performance either through their communities or in bar service. In addition to their year of training, these young lawyers will also be involved in the TIPS General Committees in the practice area of their interest, as well as being funded on our Standing Committees, which are the organizational entities that have many of the responsibilities for running the Section. Whether these young lawyers choose to remain with TIPS or return to their communities or to their local or state bar associations for future service there, it doesn't matter since, in my opinion, it is a win-win situation for all involved.

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The Leadership Academy, however, is not without its challenges inasmuch as the funding necessary for the attendance of these 25 young lawyers and to make the Academy run efficiently and productively is well in excess of our traditional annual budgets. We are working hard to identify corporate sponsors who see the value of supporting this type of program as partners with TIPS in promoting this Academy and its values in the future.

Nevertheless, the expense is an excellent investment for our Section and for our profession and represents a positive first step in an area critical to the long-term health and vitality of this great organization. Hopefully, it will represent a benchmark for others to follow as we institutionalize this program in the years to come.

Peter J. Neeson, Chair of TIPS
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Diversity Can Help the Bottom Line

The definition of diversity has changed over the years. A law firm used to be considered diverse if it could say "we hire lawyers from *lots* of fraternities," in other words, all white males. Now, fortunately, the word "diversity" has a bit more heft to it, and a law firm can't boast of diversity unless it has a meaningful percentage of women and minority lawyers in its partnership ranks.



As we all know, very few firms can actually make such a claim. In my own state of Texas, according to a recent survey by *Texas Lawyer*, women account for 30.7 percent of the lawyers at the largest firms, down slightly from 31.1 percent in 2005. But they only make up 17.6 percent of the partners, up slightly from 17.1 percent the previous year. Similarly, the percentage of minority lawyers in Texas' largest firms edged upward just a bit in 2006, to 11.1 percent from 10.7 percent in 2005. Minorities comprise 6 percent of the partnership ranks, up slightly from 5.6 percent in 2005.

Nationally, minorities still make up a very small percentage (single digits to low-teens, typically) of the partnership ranks at major firms, according to a survey by *The American Lawyer*.

As any law firm will tell you, recruiting and retaining talented women and minority lawyers is difficult. Between work and family obligations, the lack of peers and support networks, and subtle (sometimes not-so-subtle) discrimination, the forces working against having diversity at the top of the American legal profession seem insurmountable. But there may be a very good reason for firms to keep plugging away: they may make more money if they have a more diverse set of voices at the table.

Why should lawyers care about corporate diversity? For a number of reasons. As corporations—which are firm clients—push to diversify their boards and management teams, they will want to see more diversity among the firms that represent them. Secondly, lawyers, particularly corporate lawyers, frequently are tapped to serve on boards. In addition, as our clients' trusted

advisers, we're called on to help find candidates to fill open board seats.

Not only can having a variety of voices in the decision-making process ward off so-called "group think," which has been blamed for everything from intelligence failures to corporate collapses, but there is also reason to believe that it's better for a company's bottom line.

Catalyst, a New York-based organization that studies women's advancement in business, found that companies with the largest proportion of women in top management had better financial performance than those with the lowest proportion of women in those positions. Specifically, of 353 Fortune 500 companies between 1996 and 2000, the companies with the most women at the top had a return on equity 35.1 percent higher, and a total return to shareholders 34 percent higher, than the companies with the lowest female representation, according to Catalyst.

The link worked the other way, too: On average, top-performing companies had more women in their leadership teams. (Catalyst cautions that its survey doesn't directly attribute those companies' financial performance to the presence of women in top management, something that statistically would be impossible to prove.)

The Catalyst study did not address the presence of ethnic or racial minorities on corporate boards, but if the logic behind the findings is that a diversity of opinions helps ward off "group think," then it stands to reason that having a more ethnically or racially diverse group of decision-makers would help as well.

Granted, I'm biased when it comes to diversity. Not only am I a woman, but I'm also Asian. So of course I'd like to see people like me in seats of power. But I'm also a businesswoman, having served in several management positions at my own firm and on a variety of boards outside the firm. And I can attest to the worth of having more than one viewpoint represented in the decision-making process.

It makes intuitive sense that the more heterogeneous a decision-making body is, the more likely it will be to challenge management and ask the probing questions that might find weaknesses than an otherwise similarly qualified but homogeneous body.

Yes, we all want to reach consensus, to work and play well with others. But it's easy to overestimate the value of consensus. As any good lawyer knows, unless we challenge our own assumptions and actively seek out divergent opinions, we can't make the sound decisions our clients need and deserve.

A primary function of board members is to bring their varied expertise and experience to the corporate decision-making process. It only stands to reason that a more diverse board is more likely to bring additional (but previously unheard or unknown) views to the table.

It's hard to dispute the notion that diversity on decision-making bodies is good business. And, as an Asian woman in the professional world, I certainly want to see every available avenue open to me and others like me.

So it's nice to know that, if all other arguments for diversity fail, we can always fall back on "there's more money in it."

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How Gender Schemas Shape Women Lawyers' Lives

Gender Schemas Are Largely Responsible for the Lack of Advancement of Women Lawyers to Positions of Leadership and Power. What Can You Do to Succeed in Spite of Them?

The expressions of incredulity as I delivered my presentation at a law firm retreat several years ago are vividly engraved in my memory. It was the period in the history of the legal profession in America when firms so feared losing their associates to Silicon Valley that salaries had sky-rocketed and retention initiatives were *de rigueur*. Since law school enrollments of women had just reached the 50 percent mark, the managing partner had asked me to address the implications of this milestone for law firms.



The Huge Disparity Between Policy and Practice

I knew he expected me to discuss flexible schedules; he was quite proud of the fact that for the first time in the firm's history one woman lawyer was now telecommuting one day per week. However the Massachusetts Women's Bar, Catalyst and the Project for Attorney Retention had already released reports demonstrating that the choice to utilize reduced-hours schedules was the death knell for women lawyers' careers. It seemed to me that if this firm really wanted to create opportunities for advancement for its women lawyers, it would have to address the huge disparity between policy and practice. Specifically, I needed to direct my comments to the ways in which implicit assumptions about gender were insidious, though invisible, obstacles to career success for women lawyers.

From the moment I began this section of my talk, the interest on the faces of firm managers changed into some combination of bewilderment and outrage. The women attorneys stared at me impassively. At the end of my presentation, the firm moved on to the next order of business. No one said goodbye when I left to catch my flight.

It's Easy To Deny a Bias When It's Unconscious

The chilly reception I received should not have surprised me. After all, no one—particularly someone whose career is devoted to justice—likes to think of him or herself as guilty of stereotyping. It's difficult to convince ourselves or others that our judgments may be wrong; it's particularly difficult to convince lawyers who are certain of the logic and rationality of their thinking that their conclusions could be incorrect. And since the nature of the bias I was highlighting is not conscious, it is easy to deny.

To organize and make sense of our complex social world, we all rely on strategies to categorize information. Stereotypes are simply hypotheses about social groups that allow us to make our world predictable. To the extent that our cognitive schemas allow us to make accurate predictions, they reduce our brain's

workload and are adaptive. For example, when the stereotype or schema of teacher is activated for a child in school, the child is likely to "clean up his or her act," focus his or her attention and prepare to listen and learn.

However, if the content of our categories systematically disadvantages members of particular groups, then we have a problem. To the extent our schemas distort our perceptions and blind us to an individual's competencies, both the perceiver and the person being judged lose.

How Gender Schemas Shape Professional Lives

Gender schemas are culturally shared, socially constructed hypotheses about how men and women are and should be. They are usually implicit, unarticulated and unacknowledged assumptions. However, they play a central though invisible role in shaping professional lives.

In white, middle class, Western society the gender schema for men describes them as independent, assertive, autonomous, decisive, strong, competitive and task-oriented. In contrast, the gender schema for women describes them as nurturing, sensitive, communal, self-sacrificing, emotional and expressive. It's not that there is little truth to these stereotypes, but they are extreme oversimplifications which emphasize some characteristics at the expense of others.

The "No Problem" Problem

Gender schemas are largely responsible for the lack of advancement of women lawyers to positions of leadership and power. But because these schemas are implicit and exert their power without our awareness, they are largely invisible. Deborah Rhode described the presence of gender inequity in the legal profession as the "No Problem" Problem.¹

The failure to perceive inequality leads to complacency about gender issues. This point was driven home for me recently in my "Mothers in Law" coaching group. Several group members bemoaned the fact that the diversity initiatives in their firms had recently been redefined to exclude gender issues. Apparently, their firm's managers believe that they've recruited a sufficient number of women lawyers so the "gender problem" no longer exists.

Law is a Gendered Profession

If you're a woman lawyer reading this, you know that gender inequities are still alive and well in the legal profession. Gender discrimination is maintained by work practices and cultural norms that have been in place for so long in the legal profession that they appear "normal" and unbiased. Legal practice was created and run by men for more than 130 years. Not surprisingly, the accepted norms, goals, ideals, work practices, and measures of success reflect men's experiences and life situations.

The ideal attorney is supposed to be tough, aggressive, decisive, competitive, unemotional, forceful, and authoritative—the very traits associated with the male gender schema. The ideal lawyer has a singular devotion to the law. A committed lawyer is always available; work is his or her undisputed top priority. By definition, women are a poor fit for the law. The characteristics associated with a lawyer are at odds with the traits traditionally associated with women.

Lawyers Assume Their Practices Are Gender-Neutral, But They Are Not

I am not saying that men are to blame for the gender inequities that exist in the legal profession today. In fact, many of the men I coach feel constrained by the male gender schema. They are not satisfied with the role of provider; they would prefer to be more actively involved in family life. But to express this wish publicly is to behave in a manner that is counter to the male gender schema—and to risk humiliation, ostracism, possibilities for advancement, or worse.

The problem lies in the profession's or firm's failure to question its normative assumptions about competence and work. Lawyers simply assume their practices are gender-neutral when in fact they are gendered. They place anyone who doesn't "fit" at a disadvantage. Although there may be no intention to discriminate, the failure to question work practices results in unequal opportunities for success and advancement.

Furthermore, just because something has been done in a particular way for a long time does not mean it is the best way. Lawyers suffer the highest rates of depression among all professions measured. Rates of substance abuse, divorce, heart disease and work dissatisfaction far exceed those of the population at large. There is ample evidence that a re-examination of work practices would benefit everyone in the profession.

Schemas Influence Perception, Evaluation and Memory

Obviously, it's unfair to make a lawyer's success conditional on conforming to a stereotype. But this is exactly what happens on a non-conscious level every day. Because gender and race are immediately visible, these schemas are easily activated. Once a schema is triggered, it affects how information is perceived. Information consistent with the stereotype becomes salient, and inconsistent information is ignored. For example, many women lawyers have had the experience of answering the phone, only to have the caller assume he or she is speaking with a secretary.

People are also more likely to remember information that is consistent with a gender schema and to forget information that is not. Women lawyers who are mothers know only too well that the times they left the office early are easily recalled while their late nights at work have been forgotten.

Social status strongly influences perceptions of competence. Women attorneys of color face the additive effects of gender and racial stereotypes—the "concrete wall" that makes it extraordinarily difficult for women of color to succeed in their firms.

And if all this weren't enough, in-group members benefit from leniency bias. Male lawyers have to work almost as hard to prove their incompetence as women their competence. Evaluators tend to gloss over their errors and readily forget their mistakes. Considering the ways evaluations are conducted in most law firms, it's easy to see how schemas can distort reviews while reviewers are certain they're only responding to the facts.

This is why I didn't want to just talk about flexible schedules at the law firm retreat. Flexible schedules can only serve as a vehicle for the success of women lawyers if normative assumptions about commitment change.

Typically, once a woman lawyer reduces her hours, she's branded "uncommitted." The quality of her work assignments plunges; her opportunities for advancement vanish. The prophecy that women "don't fit" has been fulfilled.

Double Binds and Catch-22s

Even women lawyers who've achieved partnership have to struggle with the effects of gender schemas. Many of the women partners I coach have been stunned by upward evaluations indicating that they're harsh, bitchy and unsupportive. Since the female gender schema is nurturing and self-sacrificing, these women face different expectations from their supervisors than do their male counterparts.

Women lawyers are constantly dealing with double standards. What is assertive in a man is abrasive or overly aggressive in a woman. As a person of lower status, a women lawyer doesn't have the presumption of competence. Psychological research has repeatedly demonstrated that the identical work product will be judged more severely if it's attributed to a woman rather than a man.

That means that women have to work harder to prove their ability. However, this is exactly what gets in the way of many of the women attorneys I coach. While they're busy at their desks trying to make sure they're producing a perfect work product, their male counterparts are crafting career strategies, proactively seeking out plum assignments and making sure that the right people are aware of their accomplishments.

What happens if a woman lawyer promotes herself? She risks censure. Recently a woman attorney I was coaching related a story about a meeting she'd attended that day. The firm was interviewing new associates and one of the partners remarked that a woman candidate who'd called attention to her accomplishments was obnoxious and self-aggrandizing. He was quite impressed, however, with a young man who'd touted his achievements. The partner praised him for demonstrating the kind of confidence needed in a lawyer. After years of hearing remarks reflecting this kind of double standard, she'd reached her limit. "Why," she asked, "is it that when a man promotes himself it's a sign of confidence but when a woman does the same thing, her behavior is criticized?"

Giving the Problem a Name

Debra Meyerson would call my client a "tempered radical."² According to Meyerson, tempered radicals are individuals who differ from the dominant culture of the profession but still feel a commitment to pursue the work they love and/or to earn a livelihood. Rather than conform or quit, they straddle a fine line between assimilating and losing their identity and being marginalized. They fit in just enough to have the knowledge and leverage of an insider while retaining their commitment to work for change in the workplace. Like my client, they raise objections cautiously and selectively. They give the problem a name. One step at a time, they illuminate the invisible.

It's Not Your Fault

Perhaps the worst part of gender schemas is the degree to which women internalize them. It's all too easy for a woman lawyer to see herself as "not tough enough" when she's upset by another attorney screaming at her.

Fear of being seen as too sensitive and/or aggressive silences many women lawyers. Trying to prove one's competence can easily slide into perfectionism. Anxiety about backlash for being too competent often leads women attorneys to minimize their accomplishments or even to feel like a fraud. The possibility of antagonizing the powers-that-be is frightening. This is what often gets labeled as "fear of success."

Several years ago I coached a senior associate who had impeccable evaluations and a long history of wins for her clients. In fact, her firm had recently won an appeal in the Supreme Court, and she'd written the bulk of the brief. The managing partner sent out a firm-wide announcement about the successful appeal and included every participant—except my client (the only woman on the case).

I encouraged her to bring the oversight to his attention. She was sure she'd receive a negative reaction, but accepted my challenge anyway. She wrote him an email noting that he'd accidentally omitted her name, as well as the names of all of the (women) support staff who'd contributed to the case.

The next day the managing partner sent out an updated announcement including all of the women who'd not been given credit before. My client received a personal email from the MP, scolding her for being a prima donna. Interestingly, only a week before, she'd been criticized by a senior partner as "lacking in confidence" because she hadn't advocated aggressively enough for an assignment she wanted.

Succeeding in Spite of Bias

If you're going to be a "tempered radical," you have to have support: like-minded colleagues, other women struggling to accomplish similar changes, a coach. Working to illuminate the invisible is not a task to be taken on in isolation. Most of all, you have to commit yourself to prevent the assumptions that surround you from becoming self-fulfilling prophecies. If your competence is questioned, you may in fact receive lousy assignments. It may seem as though your chances for career success have dwindled. When you can't move the earth, you can find a better platform for success. Don't confuse your job with your career. There are legal workplaces with more women in leadership roles. It's easier to succeed where you're not a "token."

Paradoxically, at the same time you work to reveal the implicit assumptions that block women's career success, you need to forget about these biases and approach your own career with optimism. Rather than focusing on the risks, set your sights on the opportunities. **Women lawyers, who believe they can, find a way.**

Notes

¹ "The Unfinished Agenda: Women and the Legal Profession," by Deborah Rhode for the ABA Commission on Women in the Legal Profession (2001, available at <http://www.abanet.org/women>)

² *Tempered Radicals: How People Use Difference to Inspire Change at Work*, by Debra E. Meyerson, Harvard Business School Press, 2001

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Diversity Update

Diversity is increasingly important to corporations and law firms. In fact, it is one of the criteria many corporate counsel consider when they select outside counsel to staff their legal matters. In this second annual diversity roundtable, our panelists of in-house and outside counsel discuss the issues and challenges they face today. They are Jim Colopy of Farella Braun + Martel and his guest Julie Mar-Spinola of Atmel Corporation; Nancy Geenen of Foley & Lardner and her guest Marci Rubin of Wells Fargo; and Joan Haratani of Morgan Lewis & Bockius and her guest Jill Dessalines of McKesson Corporation. Our roundtable was moderated by California Minority Counsel Program (CMCP) Executive Director Tania Shah Narang and Custom Publishing Editor Chuleenan Svetvilas and reported for Barkley Court Reporters by Lindsey Perry.

CMCP: Wells Fargo has had a long history of being involved with diversity and has been a real corporate leader in this area. How important is diversity in your decision when hiring outside counsel?

RUBIN: We have a major diverse supplier initiative at Wells Fargo. And in the Legal Group, diversity has long been important to us—even before the company initiative. It is part of each attorney's annual goals. Like everybody else, we're struggling to make our corporate initiatives real cultural values.

Diversity is a factor that we consider in every outside counsel engagement. Every month we track and report, by attorney, total outside counsel engagements, engagements to minority firms, and engagements to minority associates or partners in majority firms.

MAR-SPINOLA: Diversity is very important in my hiring decisions for Atmel's litigation matters. Because we're a high-tech company, the first skill set that we require, if it's going to go to trial, is that we need to have excellent trial counsel. We also need folks who have the requisite technical expertise, in our case, circuitry and semiconductor processing.

But I also think a successful group is a group that's diverse. So it is very important to me that who we choose as our outside counsel is balanced in that sense. A diverse group learns from each other. You brainstorm from different perspectives.



Julie Mar-Spinola

DESSALINES: Promoting diversity at McKesson is not only our policy, but it's also our actual practice. We're very hands-on in managing our matters. I do litigation management. We work with our outside counsel very, very closely, so we can see on a case-by-case matter who's staffing the case.

So often a firm does a dog-and-pony show—you like what they look like; you like what they say. And then the staffing team may bear no resemblance to the team that showed up for your dog-and-pony. So part of our litigation management strategy is very close monitoring. Diversity is one of the five factors we look at, and it's extremely important to me personally.

CMCP: Jill, you've served on the leadership for the local bar association and obviously you know that many firms have diversity committees and other such efforts in place. How can a law firm distinguish itself in this particular arena?

DESSALINES: Diversity initiatives are only as good as the results that they generate. Too often you get these wonderful glossy brochures, and they have a tab that's even dedicated to minority participation or diversity, and you turn the page and see nondiverse people. So you've got to walk the talk.

The real key is creating an environment that welcomes diversity: diversity of ideas and perspectives. When you create that environment, you create a system not only by replacing the good-old-boy system with a system that is more inclusive by referrals to new lawyers, for example, but you show future candidates that this is a welcoming place.



Jill Dessalines

MAR-SPINOLA: The goals of diversity committees are very important, but being tolerant of differences is not enough. Firms have to give individuals of diverse backgrounds—whatever that diversity is—the opportunity to show what they can do. I have a set group of law firms that handle our matters, depending on their skill sets and the particular matter, but what's very important to me is that I don't have to ask for a diverse makeup of our team. I don't permit dog-and-pony shows and then let the firm select who's going to staff the matter. I also pick and choose who's going to be on the team for Atmel.

Diversity needs to be a natural part of a firm's makeup. It can't be just by numbers because numbers don't impress, really. If you never see the individuals in the glossy brochures or you always see them doing background things and not getting opportunities to strut their stuff, that's not good for us either.

RUBIN: I polled our Legal Group Diversity Council; one member said, "What doesn't work is shameful advertising and boasting of diversity successes." If you're going to introduce us to your firm, bring your attorneys who are qualified for the work we have, and bring your diverse attorneys. Don't come to the meeting and tell us about the African-American woman back at the office who's really great; we want to meet her.

We want diverse attorneys to be given challenging assignments, and we want to deal directly with them. We have matters that can go directly to an associate. I don't always want to pay a partner to oversee that work. We have to agree to the staffing. Foley & Lardner, headquartered in the Midwest, is a good example of reality versus marketing. Making Jimmy Nguyen—a gay Vietnamese attorney I met at a CMCP conference in L.A., and who is totally impressive—a partner; being here with Nancy; and hearing that Teveia Barnes was doing diversity training and is now a partner at Foley, is more impressive than a firm marketing that it won the MCCA [Minority Corporate Counsel Association] Diverse Firm Award or even the Catalyst Award.

It is really not in-house counsel's responsibility to make a law firm diverse. Diversity has been important to me all my life so it's very frustrating to still hear firms ask, "What should we do? You tell us what to do."

The flip side is that I personally won't hire anyone who says, "I went to the minority counsel program and interviewed with Wells," or "I've talked to you" and "Wells isn't serious about diversity; they didn't hire me." We don't have work for everybody. Also, not everyone is a qualified attorney, regardless of gender, color, or ethnicity.

MODERATOR: Do you try to involve your in-house counsel to get buy-in at your firm?

GEENEN: One of the strongest things that clients can say is, "Who's getting the origination credit?" It's not just looking at the names on your invoices to see if they're the same and whether you've met them and are they diverse. But it's whether somebody's compensation is affected.

Law firms can call it origination credit, billing partner credit, or supervising credit. There is something to being the client relationship manager and getting fully compensated for that. Building strong client relationships is one key to success.

DESSALINES: It's an uncomfortable situation because, as in-house counsel we're obviously the client. And my position is—to quote James Brown—"You got to pay the cost to be the boss." I have no problem whatsoever asking those questions, but a lot of in-house counsel don't like to because they feel that at a certain point, it's not their business.

The mindset needs changing because if you want people of color and women to ascend in a firm, there's one route to success and that's having client control. All of the in-house here have made people partner over and over again. You develop that relationship. Firms aren't fools. They're like, "If you leave, you might take them with you." And they're reassessing exactly who has the relationship.

COLOPY: What really makes a difference is when clients for whom diversity is a priority establish relationships with attorneys in firms that also have diversity as a priority. In terms of promoting somebody's professional success, there's no substitute for a client calling an attorney on a new matter and saying, "I have a new case. I'd love to work with you on it." In-house counsel has both the opportunity and an obligation to develop relationships with people in the firms that they partner with to help promote people who are diverse.

GEENEN: Jill, would you feel comfortable calling me, the office managing partner, or someone else, the CEO or department chair and saying, "This is really important to us. What are you doing to make sure that my lawyer at Foley gets the recognition and the compensation?" It really makes a stronger statement than an attorney coming to me and saying, "Nancy, Jill says I have to have the billing partner credit."



Nancy Geenen

DESSALINES: In more instances than I can count, I've had those conversations right up front before I deliver a case to a firm. In that instance, I'm usually talking to the managing partner or certainly somebody on the executive committee.

MAR-SPINOLA: I deal with that indirectly by picking and choosing who is going to be representing the company, and that is the person who's going to get the credit. Everybody in that team is expected to be given substantial tasks so that they grow. Then you want to also have smaller firms that can handle your business because they're not bet-the-business-type matters, and they're doing work just as well and probably more economically, and they get to build their client base.

MODERATOR: So is that how you get buy-in at your firms?

COLOPY: That's how you get buy-in as a business imperative—when diversity is a client concern whether or not the individuals there are diverse, so it is not perceived as someone's individual concern about who to hire as outside counsel.



Jim Colopy

HARATANI: To get firms to buy in to the concept of diversity, clients can do random visits. Clients can call the law firm and say, "I'm going to visit your office and meet with you and my team. Let's talk, Managing Partner, about staffing and what I'd like to see in terms of continued relationships and continued performance."

But the onus cannot be on the inside counsel alone. As pioneers in this area—I still feel like a pioneer after 21 years of practicing law—we all have to be able to take risks within our organizations. Part of what helps those of us in law firms deliver the message effectively is consistent behavior by a number of clients showing how important it is to them that law firms recognize, retain, and develop minority and women attorneys.

RUBIN: Law firms need to start recruiting new attorneys at a much wider range of law schools. That is where the diversity is. We'd see real change if law firms figure out how to recruit and interview at all levels of schools to hire the best people.

DESSALINES: People ask, "Well, how do you create a diverse firm?" Let's say you're a general-service firm, and one of your biggest clients has a need that you don't currently serve. What do you do in that situation? You look around. You do the research. You find out who's who. Where they are. How to get them. And then you do a cost-benefit analysis and determine, is it worth what I can get to get what they want?

HARATANI: A great source of trying to find talent is to go to the diverse minority and gay and lesbian bar associations and ask around. Employers can do very concrete things if they honestly want to recruit a diverse workforce.

RUBIN: At the beginning of last year, we asked firms to tell us about their diversity. We didn't tell them how to do it. We wanted to hear their story. We don't ask that law firms report to us who works on our matters. We do the hiring, so we do our own reporting. We trust our own numbers best. We've been hearing recently from people that law firms are having a great year. How can those of us who care about diversity make inroads when partners are taking home high profits without making change?

COLOPY: There are two halves to the equation. One is the communication that we've talked a lot about, which is critical. But the second half is the accountability. If you're a small business with ten employees, you're unlikely to effect change at a major law firm in downtown San Francisco. But if you're Wells Fargo, Atmel Corporation, or McKesson, then you're likely to effect change at any law firm in San Francisco and any law firm in the United States.

Taking the information about diversity and using it effectively either in telling your counsel that they're being evaluated or that there are consequences is ultimately the most effective yardstick in making change.

RUBIN: I've seen that happen certainly within recruiting, but I'm still not seeing it with the firms' retention. Firm culture isn't changing unless, for some reason, like at Foley, there's been a push.

GEENEN: In 2001, Foley appointed Ralf Boer as CEO. At the partnership meeting he said, "Here are my top five priorities: Open in Boston, open in Silicon Valley, open in Miami, diversity, and increase profits." The entire partnership embraced these goals, including the commitment to diversity. The department chairs, practice group leaders, office managing partners said, "Since we're running a business, our compensation is going to depend on how well we achieve these milestones." I opened the Silicon Valley office and I implemented programs for the Bay Area offices that embrace a culture of inclusiveness.

RUBIN: If the senior person in the firm doesn't buy in, it's no different than in a corporation; the CEO sets the tone.

DESSALINES: You must have senior management buy-in. They drive the process. It always works from the top down. The other thing is the business scorecard. If it's a priority, put your money where your mouth is. If it's not on the business scorecard, it's not truly a priority.

HARATANI: Fran Milone, the chair of Morgan Lewis, announced that diversity was one of the firm's top goals. To show the firm's commitment, we have now partnered with MCCA, which is housed in our Washington, D.C. office.



Joan Haratani

In California, each office has a Managing Partner, and one of their charges is to make sure that diversity is on the top of the radar screen. If the message doesn't come consistently from the top as an action item, then that message gets lost.

MAR-SPINOLA: Conceptually that's right, but to a certain extent, if that's the sole way, you lose the majority of the effort because not all of the people at the top are going to make that change because they don't believe in it.

Each of us has a certain amount of authority and the ability to make change. Of the firms that I retain to do work for Atmel, probably one firm isn't as diverse as I would like it, but they've been very successful in the results. But all the other firms, including Farella, Jim Colopy's team for Atmel, are very diverse.

One of the things that I can do is give company matters to smaller firms that are owned by minorities or women or any other diverse group. And so we do. We send a lot of work to one outside patent counsel where the senior partner is African-American.

When you start to take work from big law firms that are used to getting the work and you give that to smaller firms because of diversity or quality, you're not giving up one for the other. The big law firm has to start thinking about how they can change because business is going somewhere else.

If you can get your CEO or other folks to buy into diversity, great, but if they don't, you just have to barrel through. You can be as effective or maybe even more effective because by not having people who you might have to fight with and take some of your energy away, you can just go ahead and do it.

CMCP: Julie, you mentioned earlier that you do want to determine the counsel you work with. So, in a sense, you do have a preferred-counsel list. Marci, do you maintain a preferred-counsel list?

RUBIN: We have no preferred outside counsel list. I don't know if we would ever go that route, partly because we engage counsel throughout the U.S. and partly because banking is a retail business, and our business is in many communities. One company goal is to give back to our communities. We hire attorneys on a matter-by-matter basis, and that helps us meet company diversity and community goals. We also use small firms where possible, as they can be very effective at a much lower cost.

For outside counsel, it's about building relationships. We want to hire people who get to know our business and what is important to us so that we don't waste our time or our legal dollars.



Marci Rubin

DESSALINES: In litigation, everything is cyclical. There was one time when everything was preferred counsel. Then the pendulum swung the other way, and now people have discovered small firms, the lower billing rates. In my opinion, you really can't work off 100 percent preferred counsel for litigation, but having said that, McKesson's law department as a whole is in the process of developing a preferred-counsel list. And it's really very interesting because the people who are running the RFPs, myself included, are very diverse. The interviewing process should be absolutely fascinating.

MODERATOR: Any last thoughts?

MAR-SPINOLA: Small firms, minority firms need to do a better job of talking to people who are connected to big corporations and say, "Give us a chance," or they need to spend a little more money and do some better marketing to compete with the larger firms because they're not that visible.

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Leading to Diversity

During the two to three years leading up to 1999, in-house counsel began collaborating in earnest, brainstorming strategies to diversify the legal profession. Between 1999 and 2004, 500+ corporate law department representatives signed "Diversity in The Workplace—A Statement of Principle." By signing the "Statement of Principle," these corporate signatories reaffirmed their commitment to diversity and began the process of encouraging the outside law firms they retained to focus more closely on diversity and inclusion. Thereafter, before choosing whether to hire a firm as outside counsel, corporate signatories asked outside law firms to explain what they were doing to address diversity within their own organizations.

Five years later, in-house counsel experienced a growing disappointment that the "Statement of Principle" had prompted very little progress toward the stated goal of increasing diversity in the legal profession. Determined to reenergize the intent and spirit of the "Statement of Principle," these attorneys crafted "A Call to Action—Diversity in The Legal Profession." Corporate signatories who sign "A Call to Action" pledge to (1) select and retain law firms based "in significant part" on efforts to create a diverse workforce and (2) "end or limit" relationships with firms that cannot demonstrate support for diversity goals. Many of these corporations now require outside counsel to meet specific hiring goals and to prove that diverse lawyers are handling their legal matters.

Both the "Statement of Principle" and "A Call to Action" have created moral and business imperatives for law firms to hire, retain and promote diverse legal professionals. But how do law firms translate these good intentions and sound business goals into action and results? They empower firm leaders who are dedicated to championing a top-down, enterprise-wide commitment to diversity. This level of commitment means that senior firm leadership—whether the firm chairman, the firm executive committee or practice group chair—must actively and conspicuously support and embrace firm diversity initiatives. These "diversity pacesetters" must (1) own the commitment to diversity; (2) communicate the commitment to diversity; and (3) intentionally and actively pursue the firm's commitment to diversity.

Owning the Commitment to Diversity

The presence of leaders who are committed to diversity is key to building and sustaining an inclusive law firm environment. How can a leader demonstrate ownership of the commitment to diversity?

First, she can work relentlessly and intentionally to ensure that the firm's diversity goals are front and center at all times. An effective firm leader will cultivate and nurture a culture where diversity is "top of mind" for everyone in the enterprise—in all activities the firm undertakes and all issues the firm considers, including hiring decisions, development and promotion of professional and support staff and the firm's process for distributing and evaluating work.

Second, the committed leader can position diversity as a compelling part of the firm's strategic plan. He or she will state the business case for diversity at each available opportunity. This leader might look for ways to increase diversity by holding those vendors with whom the firm does business accountable to describe their diversity initiatives. The same leader might choose to offer firm-wide diversity training, even though it will necessarily pull timekeepers and those who support them away from their billable work for a period of time. This leader will also back the commitment with a healthy budget.

The committed firm leader can spend meaningful and substantial time cultivating relationships with attorneys from a variety of backgrounds. Nothing surpasses the impact of a mentoring program that pairs minority attorneys with committed firm leaders. These mentoring relationships enable minority associates to experience, first-hand, the firm's commitment to their personal and professional successes. The firm leader/mentor can communicate directly with the minority associate thereby addressing whatever issues arise quickly and efficiently.

Finally, a leader who owns the commitment to diversity can actively participate in, promote and support a firm's diversity initiatives. Such leadership often fuels and inspires similar commitments from others at all levels of the organization. In other words, the presence of a committed firm leader will encourage others to "catch the excitement" of an empowered diversity effort and trigger a growing spirit of innovation and creativity.

Communicating the Commitment to Diversity

Once a firm identifies diversity as a core value or goal, the committed leader must ensure that the message is communicated throughout the firm. One way to accomplish this is to craft and publish a clear and unambiguous diversity statement. An effective diversity statement describes the firm's ongoing commitment to diversity and provides a timeline for developing and tracking diversity initiatives, a method for allocating firm resources, and benchmarks for measuring the firm's progress.

Communication of the diversity commitment can also occur effectively through the collaborative activity of small groups. Firm leadership can convene a diversity committee or council to develop and monitor programs to ensure compliance with the mission statement, fund events both in-house and outside of the firm that touch on diversity issues, and sponsor cultural observations and celebrations. The committee or council can also serve as a clearinghouse for ideas and issues that may arise.

Firms can also develop specific communication tools to sharing diversity successes within the entire firm. These tools might include a regularly published diversity newsletter that summarizes all of the firm's news, programs and sponsorships. The firm might also develop a marketing pamphlet or brochure spotlighting the firm's attorneys of color and highlighting the firm's diversity initiatives. Brochures, newsletters and internal intranets that broadcast a firm's diversity accomplishments build morale and equip and inspire the firm community to collaborate through shared experience and knowledge. By fostering teamwork and collaboration, these communication tools ultimately help to foster a more inclusive environment.

Pursuing the Commitment to Diversity

Firm leaders pursue the commitment to diversity through (1) sponsoring diversity-related events and activities in the community; (2) offering training and providing mentoring, both inside and outside of the firm; and (3) encouraging networking and relationship building through affinity groups.



Firm leaders can investigate, identify and support community and other non-profit organizations that sustain and promote diversity. In some cases, this will involve a monetary contribution. In other cases, however, law firms can partner with community and other non-profit organizations to promote diversity through dedication of time and talent. For example, law firm leaders can speak at affinity group gatherings about topics, such as résumé writing and interviewing, that will equip the attendees to find greater success in the legal field.

Law firm leaders can also pursue the firm's commitment to diversity through mentoring. Mentor relationships are key to helping diverse attorneys who practice as associates in law firms achieve success. Some firms have implemented formal mentoring programs. These programs have the greatest chance for success where committed firm leaders "mentor by example."

Firms that underwrite the cost of attorney attendance at diversity seminars and conferences enable their attorneys to learn about and bring back new and innovative ideas for supporting and achieving diversity. Annual conferences such as the Charting Your Own Course conference, the Pathways to Diversity Conference, and the National Conference for the Minority Lawyer offer wonderful opportunities to network, grow professionally and learn more about cutting-edge diversity strategies.

Firm leaders can pursue the firm's commitment to diversity by encouraging minority attorneys to establish or join affinity groups. Affinity groups share common connections such as race, cultural heritage, sexual orientation, gender, and family responsibilities, and provide significant opportunity to identify other informal mentors through business and networking connections.

Committed law firm leaders can contribute much to fostering an inclusive atmosphere for people of diverse backgrounds at all levels. Law firms must continue to strive to provide challenging opportunities, meaningful guidance and positive incentives to assist professionals in achieving their greatest potential. In doing so, we will ultimately create advantage from our differences to build richer, broader common values and goals.

Lynn Anne Baronas, Director of Professional Development and Diversity at Day, Berry & Howard, LLP. labaronas@dbh.com

If Inaugural Session Is Any Indication, Future of Profession Is In Capable Hands

On October 18 through October 22, 2006, the ABA's Trial Tort & Insurance Practice Section's (TIPS) inaugural Leadership Academy convened in Pinehurst, NC. I had the distinguished honor of being part of the inaugural class, which included a group of highly spirited and successful attorneys from across the country. At its conclusion, I came to the profound realization that the TIPS Leadership Academy was one of the most rewarding professional experiences of my career.

I was highly impressed by the diversity of the Leadership Academy with respect to geography, practice, gender, race, political affiliation, and divergent points of view. My academy colleagues were a committed collective of dedicated professionals, each of whom contributed in some way to an overwhelmingly positive experience and a sense of security that the profession's future is in very capable hands.

Robert Grey, former ABA President, spoke to the group about the benefits –and obligations—of professional service. What made his remarks particularly relevant and meaningful were the poise and grace with which they were delivered. Mr. Grey's elegance of speech and insightful remarks were truly inspiring and motivational and, like the other academy members, I was deeply moved by his sincerity and words of encouragement. He had me absolutely convinced that one day I, too, would have a place in the ABA's esteemed leadership.

One of the program sessions included stories of triumph by TIPS attorneys overcoming staggering odds to make a difference in their communities. **Cynthia Antonucci** told a harrowing story of leading her firm after the 9/11 attacks and rebuilding in the midst of formidable obstacles.

Jennifer "Ginger" Busby, the self-proclaimed "one woman wrecking crew," spoke of her experiences as a mayor who spearheaded the redevelopment of her town. And **Darleene Peters** offered a vivid depiction of her firm's altruism in the wake of Hurricane Katrina.

Finally, and most importantly at least in my mind, **John Tarpley** should be credited for his boundless energy and unwavering dedication to the Academy's success. His easy-going style and approach made attendees feel welcomed and relaxed, allowing him to eagerly encourage full participation from each member.

Whether or not leadership can actually be taught is a philosophical question. However, after attending this program, it is indisputable that leadership can be inspired, nurtured, and developed. There is no doubt in my mind that the Leadership Academy's noble mission to improve the profession by identifying and cultivating young leaders will indeed be successful. In fact, I personally have

already begun establishing and setting in motion proven leadership principles and best practices that I learned at Pinehurst, such as identifying and leveraging differences in others' management and leadership styles.

I do realize that the Leadership Academy's inaugural program is a leap of faith for TIPS. Each academy member appreciates the fact that this program is a rare opportunity and a generous offering from TIPS that enables each of us to make great strides in terms of our personal and professional development.

Most assuredly, each academy member takes this investment of time and effort very seriously and genuinely aspires to make significant contributions to both TIPS and the ABA in return. I am already looking forward to our next meeting in Miami and reuniting with my honorable cohorts to share with one another our new experiences and stories of leadership success.

Nadia P. Bermudez, Brown Law Group, bermudez@brownlawsd.com

Leadership Academy Experience

The opening session of the Inaugural Leadership Academy is in the history books and I am honored and humbled to be a part of the program. I have participated in other leadership programs, but none on the national level. The Selection Committee did a great job of bringing together a group that is diverse in gender, ethnicity, practice areas and geographic location.

The Leadership Academy opened up with an ice breaker session that I am sure my classmates will never forget. The facilitators asked class members to pair off and introduce each other. The introductions were both witty and informative. The next day began with remarks from former ABA President, Robert Grey. President Grey's remarks described his path to becoming ABA President and challenged us to "fly." President Grey's remarks were inspiring to say the least. Additionally, we heard inspiring stories from three accomplished female attorneys regarding how they have made a difference in their respective communities. The quality of speakers and ABA leaders involved in the opening session was unparalleled.

In addition, the opening session allowed Academy members to lay the foundation for the bonding process, where professional and personal relationships will be galvanized. I knew the program would pay professional dividends, but I did not know how soon. Two days after returning to Birmingham, an issue arose relating to the treatment of a group of civil employees in Tennessee. I did not hesitate to contact one of my classmates for guidance and he did not hesitate to help me. I consider it an honor to be a part of this Leadership Academy and

consider it a privilege to call my dynamic classmates friends.

Wyndall A. Ivey, Maynard Cooper & Gale PC,
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NOVEMBER DIVERSITY CALENDAR

- November 11** Remembrance Day (Canada, UK, Bermuda, Australia), Veterans' Day (USA, Puerto Rico, Guam), Independence Day (Angola), Armistice Day (Belgium, France), Guru Nanak's Birthday (India)
- November 13** World Kindness Day (UN)
- November 17** Day of National Revival (Azerbaijan)
- November 18** Independence Day (Latvia), Beni Local Festival (Bolivia)
- November 20** Revolution Anniversary (Mexico), Universal Children's Day (UN), Africa Industrialization Day (UN)
- November 24** Thanksgiving Day (USA, Guam, Puerto Rico), Nativity Fast/Winter lent (Eastern Orthodox)
- November 25** International Day for Elimination of Violence Against Women (UN)
- November 30** Independence Day (Barbados), International Computer Security Day, St. Andrew's Day (Scotland)



Tort Trial & Insurance Practice Section

TIPS CALENDAR

2006

- December 9-11** U.S. Supreme Court Admissions Ceremony Washington, DC

2007

- January 11-14** 33rd Annual Committee MidWinter Meeting Laguna Beach, CA
- January 25-26** FSLC MidWinter Meeting San Francisco, CA

- February 7-13** ABA Midyear Meeting Miami, FL
- February 15-18** ICLC MidWinter Meeting Tucson, AZ
- March 8-9** Transportation MegaConference VIII New Orleans, LA
- March 28-30** Emerging Issues in Motor Vehicle Product Liability Phoenix, AZ
- March 29-31** Toxic Torts & Environmental Law Committee Meeting Phoenix, AZ
- April 14-18** TIPS National Trial Academy Reno, NV
- April 18-22** Property Insurance Law Meeting Amelia Island, FL

HELPFUL WEBSITES	
American Bar Association Commission on Racial & Ethnic Diversity in the Profession	www.abanet.org/minorities
American Bar Association Commission on Women in the Profession	www.abanet.org/women
Black Women Lawyers Association of Greater Chicago	www.bwla.org
Charting Your Own Course	www.cyoc.org
Cook County Bar Association	www.cookcountybar.org
Hispanic National Bar Association	www.hnba.com
Minority Corporate Counsel Association	www.mcca.com
National Asian Pacific American Bar Association	www.napaba.org
National Association for Law Placement	www.nalp.org
National Association of Women Lawyers	www.nawl.org
National Bar Association	www.nationalbar.org
National Native American Bar Association	www.nativeamericanbar.org
The Association of the Bar of the City of New York (Diversity Statement and Signatories)	www.abcny.org/pdf/diversity_principles.pdf
The Bar Association of San Francisco Breaking the Glass Ceiling Commitments	www.sfbar.org/about/diversity.html

The Bar Association of San Francisco Goals and Timetables for Minority Hiring and Advancement	www.sfbar.org/about/goals.html
"Walking the Talk—Creating a Law Firm Culture Where Women Succeed", 2004, by Sharon E. Jones and Jane Pigott, ABA Commission on Women	www.abanet.org/women
American Society for Women Accountants	www.aswa.org
Association for Women in Science	www.awis.org
Catalyst	www.catalystwomen.com
National Black MBA Association	www.nbmbaa.org
National Society for Hispanic MBAs	www.nshmba.org

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Robert Grey and Wyndall Ivey in Pinehurst, NC, at TIPS Fall Meeting - Photo courtesy of John Pavlou

EMBRACING DIVERSITY

"Embracing Diversity" is published semi-annually by the Diversity in the Profession Committee. News contributions, manuscripts and articles are welcome and should be emailed to Pamela W. Carter at Baker, Donelson, Bearman, Caldwell & Berkowitz, PC by the first of the month at pcarter@bakerdonelson.com.

