



Diversity Coalition Building: From Theory to Practice

BY RACHEL SALOOM



Rachel Saloom

Law firms are steadily increasing efforts to improve diversity through a variety of mechanisms. The majority of firms in the AmLaw 200 for 2008 have in place a diversity committee or task force. In addition to formal diversity committees, affinity or network groups provide a mechanism for attorneys to gather together based upon common background and experiences. Over the past 10 to 15 years, law firms have increased the number of diversity and affinity network groups available to attorneys.¹ Studies have shown that 97 percent of law firms have in place—or have plans to start—affinity groups.² Additionally, over 90 percent of Fortune 500 companies have affinity groups.³ Other efforts to increase diversity include diversity training and education, workshops, speaker series, community involvement, pipeline programs, diversity scholarships, and fellowships.

In a time where more law firms are expanding their focus on diversity, it is important also to focus on building coalitions among diverse attorneys of different backgrounds. Common affinity or diversity groups⁴ that have emerged at law firms include:

- African American
- Asian and Pacific Islander
- GLBT (Gay, Lesbian, Bisexual, Transgender)
- Hispanic or Latino
- South Asian
- Middle Eastern
- Women

Initially, these groups grew organically within firms when a core group of like-minded people decided they wanted to form an affinity group. When the popularity of affinity groups increased, many firms supported or even spearheaded efforts to start affinity groups. These affinity groups are often touted by firms in their recruiting efforts to diverse students as a

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Litigating in the Limelight: Lawyers Representing Celebrities

BY ROSS JOHNSON



Ross Johnson

An attorney representing a celebrity in a high-stakes civil or criminal trial litigation is akin to someone playing blackjack in Vegas: It's not an exact science, and rules are made to be broken. In the end, those who can do the math live to fight another day. In other words, repping a celebrity in litigation can be an express train to money and glory, a lawyer's worst nightmare, or, in some cases, simply another day's work for a certain type of attorney.

For the purposes of this discussion, let's define a celebrity as a plaintiff or defendant who, by the mere fact that he or she is involved in litigation, makes the litigation noteworthy. The litigation thus draws the attention of the media, who will eventually become another stakeholder in the litigation's outcome.

After years as a journalist covering high-stakes litigation for such publications as the *New York Times* and various Los Angeles publications, in 2007, I went to work for Sitrick and Co., which specializes in crisis management. Recently, I started my own firm, LA Strategic, LLC, where I specialize in litigation consulting and assisting lawyers in growing their businesses. I have helped a number of celebrities and prominent businesspeople involved in high-stakes litigation, including *Crash* producer Bob Yari in his battles with the Academy of Motion Picture Arts and Sciences, and actor Wesley Snipes during his 2008 trial in Florida. I have recently been in the press (not all of it good) for my work on the felony tax case in which "Girls Gone Wild" founder Joe Francis is a defendant.

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Minority Trial Lawyer (ISSN 1555-0893) newsletter is published quarterly by the Minority Trial Lawyer Committee, Section of Litigation, American Bar Association, 321 N. Clark Street, Chicago, IL 60654-7598; www.abanet.org/litigation. The views expressed herein do not necessarily reflect the views or policies of the American Bar Association, the Section of Litigation, or the Minority Trial Lawyer Committee. Issue: Spring 2009, Vol. 7 No. 3 Copyright © 2009 American Bar Association. All rights reserved. For permission to reprint, contact ABA Copyrights & Contracts, 321 North Clark St., Chicago, IL 60654-7598; fax: 312.988.6030; email: copyright@abanet.org. Address corrections should be sent to the American Bar Association, c/o ABA Service Center, 321 North Clark St., Chicago, IL 60654-7598.

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CHAIRS' COLUMN

Tough Talk

BY JENNIFER BORUM BECHET, TIMOTHY L. BERTSCHY, AND RAYMOND B. KIM



Jennifer Borum Bechet



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Raymond B. Kim

When the going gets tough, the tough get going. With today's struggling economy, the going is indeed tough for a large and growing number of our colleagues in the law.

Headlines blare the news of layoffs, budget cuts, and hiring freezes. These grim reports remind us that the legal profession is not immune from the effects of economic downturn. Clearly, the going is tough. And it is incumbent upon each of us to get going—to optimize our individual skill sets and professional network. Our individual efforts should help each of us to withstand, and indeed, thrive, in these tough economic times and beyond. The Minority Trial Lawyer Committee is a valuable resource for achieving these goals.

By working to further the goals of our subcommittees, including the newsletter, programs, membership, listserv, website, business development, and pipeline subcommittees, you can exercise and enhance innate talents and skills—and you may even discover new ones. Serving alongside

other highly motivated and capable trial lawyers from across the country, you are able to build a dependable network of contacts. You can further publicize your skills, talents, and ideas by contributing to the dialogue on the committee's discussion board or authoring an article for publication in our award-winning newsletter or on our website.

Remember that even though the going is tough, do not let it keep you from going. We urge you to attend ABA conferences and seminars. The knowledge to be gleaned and contacts to be gathered from these quality programs will remain with you when the bleak economy is a distant memory.

The Minority Trial Lawyer Committee was a primary sponsor of two programs during the Section Annual Conference, held this year April 29 to May 1, in Atlanta, Georgia, including "First Look at the Obama Administration's Regulatory Policy" and "Litigating in the Limelight: Media Training for Representing the Celebrity Client." During the conference, our committee also hosted a luncheon discussion on the timely topic "The Obama Effect: A Black President's Impact on the Diversity Dialogue." Make plans now to attend the ABA Annual Meeting in Chicago, Illinois, from July 30 to August 4, for more program and networking opportunities.

In the meantime, enjoy the thought-provoking content of this issue of the *Minority Trial Lawyer* newsletter and, above all else, stay tough. ■

The Advancement of Minority Coaches in Professional Athletics

BY JOSEPH HANNA AND JOOHONG PARK



Joseph Hanna



JooHong Park

Change and diversity are two words that have gained prominence in mainstream America’s vernacular since the recent election of our nation’s first African-American president. Unfortunately, collegiate and professional athletics—arenas very often viewed as trailblazers in the field of diversity—still face many issues

related to the hiring and retention of minority coaches.¹

The disproportionate representation of minority head coaches is most evident in college football. For instance, among the 119 NCAA football programs, there are only four African-American coaches.² A recent example of a collegiate coaching hire that evokes talk of discrimination is the hiring of Gene Chizik as the head coach of football at Auburn University.³ What was notable in the hiring of Chizik, who had previously compiled a losing record of 5–19 for two seasons at Iowa State, was the fact that a highly qualified African-American candidate, Turner Gill, was also interviewed for the position but did not receive an offer. Gill took over as head coach at the University at Buffalo three years ago and succeeded in turning around one of the country’s worst football programs by guiding Buffalo to a winning record—its first Metro Atlantic Conference championship and its first bowl bid in 50 years.⁴

Auburn’s passing over of Gill evoked an emotional response in some quarters. NBA Hall of Famer Charles Barkley, a notable Auburn alumnus, has been

quoted as saying that “race was the No. 1 factor . . . you can say it’s not about race, but you can’t compare the two résumés and say [Chizik] deserved the job. Out of all the coaches they interviewed, Chizik probably had the worst résumé.” Barkley also stated: “I told him you can’t not take the job because of racism. [Turner] was worried about being nothing more than a token interview. [Turner] was concerned about having a white wife. It’s just very disappointing to me.”⁵

The Auburn controversy has focused a spotlight on the issue of minority hiring within collegiate sports. Now the choice is up to the NCAA whether it will choose to remedy this situation on its own prerogative or whether it will be forced to do so by the courts.

Self-Regulation and Non-Litigious Means

Collegiate and professional sports have often mirrored each other both on and off the field. For example, NCAA Division I-A football and the NFL often adopt the ideas, policies, and on-field rules of each other’s respective organizations. Instant replay is one example of an on-field policy that was initially adopted by the NFL in 1986⁶ (and fully implemented in 1997)⁷ that the NCAA then also later adopted in 2006.⁸

One rule that has not been implemented by the NCAA, but that exists in the NFL, is the Rooney Rule, enacted in 2002.⁹ The Rooney Rule was named after the owner of the Pittsburgh Steelers, Dan Rooney, who chaired the NFL Committee on Workplace Diversity and helped formulate a policy that any NFL club seeking to hire a head coach must interview one or more minority applicants for the vacant position.¹⁰ The fact that today, approximately one-fourth of all NFL teams have minority head coaches, can arguably be attributed directly to the NFL’s implementation of the Rooney Rule. Conversely, in collegiate athletics, which lacks a

functional counterpart to the Rooney Rule, approximately only four percent of NCAA football programs have African-American coaches.¹¹

As a result of the apparent disparity in minority hiring between the NCAA and NFL, it has been argued that the NCAA should also adopt its own version of the Rooney Rule. Furthermore, if the NCAA or its member institutions could not be persuaded to enact such a rule on their own accord, litigation through Title VII has been discussed as an avenue of implementing such a policy change.¹² It must be noted that the NCAA has stated publicly it does not believe it can implement a collegiate version of the Rooney Rule because, even though it is a governing body, it cannot instruct its members how to hire.¹³ At a hearing before the House Subcommittee on Commerce, Trade, and Consumer Protection in 2007, Myles Brand, president of the NCAA, stated that

[j]ust as no central authority dictates to American higher education who among all educators and administrators they ought to interview or hire, the colleges and universities will not cede to the NCAA the authority to dictate who to interview or hire in athletics. This is not a challenge that can be managed through Association action in the same way we have done with academic reform. The universities and colleges retain their autonomy and authority in the case of hiring and in the case of expenditures, and they will not cede it to the NCAA or any other national organization.¹⁴

When specifically asked about the implementation of the Rooney Rule, Brand stated that he believed “[s]uch a rule will not work for higher education as a whole, nor can a specific sport be singled out to operate apart from the institution.”¹⁵ More tellingly, Brand indicated that he believes such a rule is not

necessary.¹⁶ Although Mr. Brand cited his work with the Black Coaches Association (BCA) in helping them design the Minority Hiring Report Card that grades and publicizes the results of interview and hiring efforts in Division I,¹⁷ it is clear that little progress has been made to date.

Directly suing a university may not only bring more attention to the issue of minority hiring than just the Minority Hiring Report Card, but may also spur the NCAA or its member universities to enact its own type of Rooney Rule to avoid negative publicity and further litigation.

Accelerating Minority Hiring Through Litigation

Title VII Litigation

Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin.¹⁸ Specifically, Title VII states:

(a) Employer practices

It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.¹⁹

If an organization wanted to initiate a lawsuit on behalf of minority coaches against an institution based upon a violation of Title VII, a number of requirements must first be met. The organization would have to: (1) establish that it has standing to bring a lawsuit on behalf of the coach (plaintiff);²⁰ (2) if applicable, achieve certification as "class"; (3) establish that plaintiff is a member of a protected group/class; (4) prove that plaintiff was qualified for the position; (5) demonstrate that plaintiff suffered

an adverse employment action; and (6) prove that the adverse employment action occurred under circumstances that give rise to an inference of discrimination.²¹

In the context of federal court litigation, standing is the basic legal requirement that determines whether an individual or class of individuals is a "proper party to request an adjudication of a particular issue."²² Specifically, the courts have stated that to establish standing, a party must prove

(1) that the plaintiffs have suffered an injury in fact—an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) that there be a causal connection between the injury and the conduct complained of—the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) that it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.²³

The racial bias must originate from a decision-maker, and race must have had a role in the employer's decision-making process and a determinative influence on the hiring decision.

Courts have held that "[o]nly someone who claims he has been, or is likely to be, harmed by [an] ongoing discriminatory practice has an adequate stake in the litigation to satisfy the "case or controversy" requirement of Article III.²⁴ "If [a] named plaintiff lacks standing to sue, he cannot prosecute the pattern or practice claim, and unless an employee who has been, or is likely to be, harmed by the discriminatory practice is substituted as the named plaintiff, the claim fails."²⁵

If an organization wanted to bring a lawsuit on behalf of minority coaches who were denied interview opportunities or otherwise denied coaching positions, it would also have to seek class certification. In order to establish a "class" of litigants, the law requires that there exist numerosity, commonality, typicality, and that adequacy are satisfied so that relief is appropriate for the class as a whole.²⁶ A class of minority coaches could fulfill the requirement for class certification, since there are a number of qualified minority coaching candidates and the basis of their claim could fall under the rubric of discrimination and Title VII. However, the difficulty would be in establishing a class of minority coaches that faced commonality of circumstances with regard to the alleged hiring practices of a university.

The next set of elements—(1) that plaintiff is a member of a protected class; (2) that plaintiff was qualified for the position; and (3) that plaintiff suffered an adverse employment action—would not be difficult to establish. First, race is a protected class. Therefore, an African-American coach who was denied a head coaching position will fall under the definition of a protected class.²⁷ Second, a minority coach can often cite his prior coaching experience to prove that he was qualified for the head coaching position at issue. Finally, failing to be hired will suffice as an "adverse employment action."

The thorniest issue to be resolved for both educational institutions and any coach who believes that he was discriminated against is the issue of proving such discrimination. In a Title VII action, the plaintiff has the burden of establishing the case of racial discrimination.²⁸

The Supreme Court has cited two methods of analysis under a Title VII lawsuit: (1) the pre-text analysis;²⁹ and (2) the mixed-motive method.³⁰ Under a pre-text analysis, plaintiff carries the initial burden of establishing a prima facie case of racial discrimination. In *McDonnell Douglas Corp. v. Green*, the Supreme Court set forth a model for resolving claims of intentional discrimination where there is no direct evidence of discriminatory intent. The Court stated that plaintiff could establish a prima facie case of racial discrimination by

showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.³¹

The Court added that “[t]he burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee’s rejection.” Plaintiff must then establish that the reason offered by the employer was merely a pretext for an employer’s discriminatory hiring practices.³²

According to the Court, one method of establishing that an employer’s reason was merely pretext for its racially discriminatory decision would be to establish that “whites engaging in similar illegal activity were retained or hired by petitioner.”³³ The Court also added that other relevant evidence in establishing pretext could include facts that an employer had followed a discriminatory policy toward minority employees. Finally, the Court stated that “statistics as to [an employer’s] employment policy and practice may be helpful to a determination of whether [an employer’s] refusal to rehire [plaintiff] in this case conformed to a general pattern of discrimination against blacks.”³⁴

“Under the mixed-motive method, a plaintiff must present sufficient evidence, direct or circumstantial, that, despite the existence of legitimate, nondiscriminatory reasons for the adverse employment action, an illegal factor (i.e., race) was a motivating factor in that decision.”³⁵ A party does not have to establish that race was the only motivating factor, only that race did play a motivating part.³⁶ In addition, the racial bias must originate from a decision-maker, and race must have had a role in the employer’s decision-making process and a determinative influence on the hiring decision.³⁷ However, it must be noted that standing alone, a deviation from an institution’s policy does not establish discriminatory intent.³⁸

Conclusion

When all of the legal tests and factors are viewed together, it becomes clear that the burden for a party or an individual attempting to bring litigation against the NCAA or an educational institution regarding the disparity in minority coaching hires is steep, and a potential plaintiff faces significant evidentiary challenges. An organization would have to find a minority coach that was clearly discriminated against by an educational institution and then attempt to find some direct or circumstantial evidence of discriminatory intent. In addition, statistical imbalances, although very real and prevalent, may not prove to be decisive in proving a case of minority hiring discrimination.

Unlike professional sports leagues, such as the NFL, the government could not force the NCAA to pass regulations by threatening to withdraw an entity’s anti-trust exemption. Additionally, the NCAA does not even have the authority to tell its members how they should hire. However, similar to the NFL, the threat of litigation and the related negative publicity could spur universities to self-regulate by instituting their own version of the Rooney Rule. ■

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Endnotes

1. <http://sports.espn.go.com/ncf/news/story?id=3780386>
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3. <http://auburntigers.cstv.com/sports/m-footbl/spec-rel/121308aab.html>
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8. www.ncaa.org/wps/ncaa?ContentID=4802
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12. *Id.*
13. *Id.*
14. www.ncaa.org/wps/ncaa?ContentID=3303
15. *Id.*
16. *Id.*
17. *Id.*
18. www.eeoc.gov/policy/vii.html
19. 42 U.S.C.A. § 2000e-2
20. *Bennett v. Spear*, 520 U.S. 154 (1997); *Murray v. U.S. Bank Trust Nat. Ass’n*, 365 F.3d 1284 (11th Cir. 2004). *See also* *Hall v. Alabama Ass’n of School Boards*, 326 F.3d 1157 (11th Cir. 2003) and *Cotter v. City of Boston*, 323 F.3d 160 (1st Cir. 2003).
21. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).
22. *Flast v. Cohen*, 392 U.S. 83 (1968) states “The ‘gist of the question of standing’ is whether the party seeking relief has ‘alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions’” (citing *Baker v. Carr*, 369 U.S. 186 (1962)). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable.
23. *Bennett v. Spear*, 520 U.S. 154, 167 (1997) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).
24. *Flast v. Cohen*, 392 U.S. 83, 99–101 (1968) (internal citation omitted).
25. *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955 (11th Cir. 2008).
26. *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, FN 20 955 (11th Cir. 2008); and *Fed.R.Civ.P. 23(a)*, which states that “One or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

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Stories of Success: The Judicial Intern Opportunity Program

The Judicial Intern Opportunity Program (JIOP) is a six-week summer internship program open to all first- or second-year minority and/or financially disadvantaged law students who want to do legal research and writing for state or federal judges in participating cities. The program, sponsored by the American Bar Association's (ABA) Section of Litigation, commenced its ninth year this spring with 650 applicants

for internships with federal and state judges in Washington, D.C.; Los Angeles and San Francisco, California; Houston, Dallas, and both the Southern and Eastern Districts of Texas; Miami, Florida; Phoenix, Arizona; and Chicago, surrounding suburbs, and all circuits throughout the state of Illinois.

At the time JIOP was created, only 15 percent of all judicial clerkships were held by minority lawyers even though

minorities made up 30 percent of the nation's population and 20 percent of the law student population. Minority lawyers remain underrepresented in judicial clerkships. This year, JIOP will place approximately 200 minority and underrepresented law students in judicial internships across the country.

The Importance of Giving Back

BY KUBS LALCHANDANI

The parties finished making their arguments to the judge, and we retreated back into his chambers. After dropping his robe on a hanger and taking a seat on the couch, he turned to me and said, "OK counselor, who should win?"

That was one of the memorable moments from my experience as a participant in JIOP during the summer of 2002 after my first year of law school. I certainly was not aware of it at the time, but for those six weeks working for Judge Patrick Walsh in the Central District of California, I discovered the most important aspect of being a lawyer: the sense of obligation to give back. Judge Walsh and his clerks took time from their tremendously busy schedules to help each intern improve his or her writing and advocacy skills, discuss the substantive law at issue, and promote a greater understanding of our jurisprudential system.

Additionally, since that summer, Judge Walsh has played a significant role in my life as an advisor in my career decisions. Seven years later, those efforts that Judge Walsh and his staff made are being paid forward. As a federal judicial clerk, I had the opportunity to supervise several new JIOP interns. In addition to ensuring that these interns are equipped with the proper legal skills, I try to pay tribute to my JIOP experience by ensuring that each one of these law students understands the non-negotiable obligation to give back when the time comes. The JIOP experience gave me this gift, and for that I am eternally grateful. ■

Kubs Lalchandani is an associate at White & Case LLP in Miami, Florida.

Hay una Razón (There Is a Reason)

BY KARLEANA LAHENS-ABNER

Growing up in Puerto Rico, I never imagined that I would finish college. As the youngest girl in a very large family, there weren't many attorneys around to suggest a legal career for me. After graduating high school, I was admitted into college and vaguely dreamt about someday becoming a politician. I never imagined that those same dreams would take me to Africa to study abroad, back to Washington, D.C., to work with at-risk Latino youth, and eventually to law school to find my passion.

Before starting law school, I was terrified. I knew that I would be one of the few minorities there. I knew that when called upon to recite on a case, I was going to get nervous, and my peers would hear my accent. In addition to my fear of being foreign, I was also weary of not being accepted. After all, I am a blonde-haired, blue-eyed, white-skinned Puerto Rican and Cuban. Ever since my first day living in the United States, everyone has been puzzled by my appearance. I just do not look or sound like people expect me to.

As I look back, I have realized that my law school experience is far from what I was expecting. *Hay una razón*—there is a reason—for that. Along the way, I have found many other minority attorneys and professionals who have shown great enthusiasm to help, mentor, and guide me through this journey. Before I knew it, I was attending meetings for the Hispanic Law Student Association, gathering at events sponsored by the Hispanic Bar Association, and receiving helpful tips from minority attorneys throughout the entire state of Texas.

Next, I heard from fellow South Texas College of Law alumni that there was a program for minorities that offered the opportunity to intern for a judge. I applied for the position and got the job. Then I thought to myself, "*Y ahora que hago?*" (And now what do I do?) After completing my first year in law school—the most exhausting and confusing

year of my life—I was assigned to work in the chambers of a federal judge who had over 20 years of experience on the bench and an impressive reputation of fairness, compassion, and objectivity. Who was I to get this opportunity? *Hay una razón.*

There is a reason why I was chosen for this opportunity. My first year as a law student, I was caught up with legal concepts, extracurricular activities, drafting my monthly budget at least three times per week, and simply taking care of my daily responsibilities. But once I began my internship at the federal courthouse, I realized that there was something much bigger involved in what I had chosen as a career: compassion and a true sense of understanding of the human condition. Even though I had always thought of the legal profession as one in which ethics and honesty are crucial, the reality of just how much compassion for other people is intrinsically connected with this profession didn't sink in until my internship that summer.

As an intern, I saw trials and the *voir dire* process (pronounced in a way that goes beyond my bilingual skills!) firsthand, and I was able to see people at their best and at their worst. Regardless of who or what issue was before the court, I saw how the justice system balanced justice and the rule of law with compassion and human dignity. No matter how complex or simple the issue, I saw the court treat people with respect. I saw pro se plaintiffs exercise their rights to access the system, and I realized that some of the brightest minds in our courts respected and understood the need to protect those rights.

There was a reason why I was chosen for this internship, why I continue to pursue my degree, and why I aspire to become an attorney. I want to be part of a profession that protects civil rights, considers the struggles that people face, and is a voice in helping those who need it most. There is compassion in the law, and the duty of an attorney goes beyond that of a guardian of rights. Attorneys serve the important function of being counselors and advisors to people who need a voice of reason, neutrality, and objectivity at a time when they feel wronged by another party or by the system. It is important for me as a citizen, and for others as members of our community, to know that attorneys are aware of the task at hand and the importance of their service.

Even during my days traveling through southern Africa and comparatively studying the civil-rights and anti-apartheid movements, I was not fully cognizant of just how important the role of an attorney truly is. We enjoy and sometimes take civil rights for granted in this country, but seeing how attorneys guard those rights and pursue justice on a daily basis is truly an inspiring task.

I am motivated to see attorneys—both minorities and non-minorities—serving their communities in the important role of counseling and advising those in need. Further, I have learned how important it is for me to get involved in my community and show others compassion. Whether through pro bono work, involvement with our churches, non-profit organizations, or even by motivating young students like myself, I think it is important for everyone

to show society that the legal profession is more than just courtrooms, motions, intellectual arguments, and negotiations. As I have learned, the legal profession has much more to offer. It is an avenue that will open your eyes to the world of reasoning in a way you probably never imagined, and it will also give you the opportunity to serve.

Si, hay una razón—yes, there is a reason—why I want to be a member of this profession. I have seen firsthand how having compassion for those in need can have an effect on society as a whole, and I cannot wait to have the honor of being a part of this group. On a final note, I recently heard a distinguished member of the judiciary assert that “If you have integrity, nothing else matters. If you don't have integrity, nothing else matters.” This way of thinking has also had a significant impact on my view of the legal profession. I am reminded each day that without integrity, compassion means nothing. Be truthful in your dealings and others will be compassionate toward you when the time comes to pass judgment on you. This is a valuable lesson that I will take with me everywhere I go.

How did I use my internship as a springboard to success? Simple. I have learned some of the most important responsibilities that attorneys must honor as members of the legal profession: integrity and compassion. Last summer, I learned that there is a reason why I am attending law school. I have a passion for helping people. *Hay una razón.* What's yours? ■

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A Stepping Stone to Success

BY HYANG LEE

Less than a year ago, I applied to JIOP for a judicial internship. After an initial screening interview with a local attorney, I interviewed with Judge Patricia Seitz, her three law clerks (Kubs Lalchandani, Piper Hendricks, and Jamie Ogden), and her court deputy (Linda Webb) at the U.S. District Court in Miami. I distinctly recall how nervous I felt before and during the interview. In retrospect, the sweaty palms and butterflies in my stomach were not the usual pre-interview nerves; prior to this interview, I had never been inside a courtroom or spoken with a judge. In fact, I had never even known a single lawyer. Growing up in a relatively small Korean-American community in South Florida, I never had the chance to encounter any lawyers. Despite this disadvantage, I knew my inexperience was merely a small hurdle, and through opportunities like the JIOP internship, I would be able to use my time at Judge Seitz's chambers as a springboard for clearing these hurdles and attaining future success.

From my first day as an intern, the internship was paying dividends. I met my fellow JIOP intern, Suhail Machado, and we quickly became friends. Soon after we found our seats, the law clerks assigned us our share of work. My first assignment was to research a pending motion and write an order granting or denying this motion. I understood the gravity of granting or denying any motion, fully aware that the order will eventually bear the judge's signature and become an official court order. The law clerks, however, assuaged my worries and did a great job in getting my feet wet by starting me off with routine motions and then quickly progressing to more interesting and complicated issues of law.

Throughout the internship, I learned practical legal research and writing skills, interesting facets of substantive and procedural law, and unique insights to the daily operation inside the judge's chambers. I gained this knowledge through close working relationships with Judge Seitz and her law clerks, who allowed me to dissect their thought processes during their analyses on both meritorious and erroneous legal arguments that confronted them.

At the end of my internship, Judge Seitz and her law clerks conducted an evaluation of all of the summer interns. Their evaluation of my research and writing were as positive as I predicted; however, I was surprised to hear that they noticed my change from a nervous, inexperienced first-year law student to a more confident aspiring legal professional. I had not immediately noticed this change, but the sweaty palms and butterflies did not resurface during on-campus interviews, a journal-writing competition, or a clerkship at Holland & Knight. Through my experience, I had gained the confidence and the skills I needed to help me in my future endeavors of becoming a successful and confident lawyer.

Since my internship, I have used the legal research and writing skills I gained to write for the University of Miami's *Inter-American Law Review*. I have utilized the lessons I learned at the court on every submission I edit and every footnote I check. With the experience and confidence I developed that summer, I was able to secure a part-time clerkship at Holland & Knight to further improve my skills and research various practice areas at a large law firm. Most importantly, my time at the court has helped me define my future career goals. I now know that I want to use the legal experience I gained during my internship to work as a judicial law clerk before I enter private practice as a litigator. Although it has been less than a year since my internship, I have been able to use my internship experience to gain current opportunities, and at this point in my young legal career, I am still on my way toward more success in the future. ■

Hyang Lee is a second-year law student at the University of Miami School of Law. He is also the articles and comments editor-elect for the University of Miami Inter-American Law Review.

A Step in the Right Direction

BY RICHARD VU

The JIOP program is a wonderful opportunity for law students. The purpose: to admirably promote diversity in the legal profession in addition to placing minority students in externships so that they can learn from judges and help springboard their careers by having a judicial externship on their resumes. Has JIOP succeeded? This is a difficult question to answer. Has JIOP helped me find a post-grad job? Quite possibly (cross your fingers). Has JIOP benefitted me? Absolutely.

Last summer, JIOP placed me under the supervision of the Honorable Teri L. Jackson and Charles Haines at the San Francisco Superior Court. The job was important for me because I started in California Western's spring admissions program and that summer was my only opportunity to work, as opposed to students who start in the fall and have two summers to work. I had to make the most of it, and I did. The experience was amazing. As a native San Diegan, living in the Bay Area was a complete 180. San Francisco had a fun, upbeat, and urban vibe, which was intoxicating, while Berkley exuded a liberal college town experience that I'll never forget.

While working for Judge Haines and Judge Jackson, I was able to submerge myself in the criminal court system. Both Judge Jackson and Judge Haines were former assistant district attorneys, and both knew the ins and outs of the judicial system. I was lucky enough to split my summer between these two judges, because Judge Jackson did a one-month rotation in the overflowing courts of Riverside County, California.

I spent the first half of the summer with Judge Haines and another intern in his chambers. Judge Haines worked in an experiment settlement department that summer, and the three of us spent most of the days in his chambers while attorneys shifted in and out of the room, trying to settle their cases. Seeing Judge Haines in action was an amazing experience. Both the other intern and I would sit back while Judge Haines mingled with representatives from the district attorney's office and the public defender's office. During my time with Judge Haines, I learned about the importance of dealing with other people in the legal profession. Being a lawyer involves socializing with people and dealing with their problems. And through my experience, I was able to see Judge Haines interact with other attorneys. They talked, laughed, and developed a comfortable and friendly rapport before delving into the meat of the issue—the case itself. I realized that many attorneys can analyze legal problems and apply the law. There are those, however, who have a hard time dealing with clients and other attorneys and empathizing with the clients' problems. Clients look to attorneys for guidance, and most importantly, for their advocacy. If the client has a difficult time developing a rapport with you, then chances are that the attorney-client relationship will suffer.

As my tenure with Judge Haines ended and Judge Jackson returned from his rotation, I switched gears and was able to witness the high-octane San Francisco trial court. Judge Jackson handled only felony trials, and this made things very exciting, especially to a developing law student. I was able to watch attorneys voir dire jurors, argue motions in limine, and try cases. Not only was I in court every day, but I also was able to see firsthand the judge's critiques and theories on the cases themselves. During each break, Judge Jackson picked our brains (seeing how we were both somewhat lay witnesses ourselves, having only been in law school for a year or two). Afterwards, we would talk about the situation, and she would tell us her thoughts on the trial. It was essentially a trial workshop. And best of all, evidence finally made sense!

As I finished up my stint in the Bay Area and went back to reality and my third year of law school, I thought a lot about JIOP and other diversity programs. Being the president of my school's Asian Pacific American Law Student Association, I've been to my fair share of mixers and county bar events geared toward minority outreach. This made me think of a couple questions. First, does discrimination still exist? Second, are these programs helping to remedy the racial disparity? And third, will we ever get to the point where we won't need these minority programs because there simply won't be any minorities to help?

You see, the dilemma about diversity-related programs is that it's hard to measure the program's success. How do I know that JIOP has succeeded? Has JIOP helped me succeed in the legal market, especially during a time when the economy is a disaster and the unemployment rate is at an all-time high? Moreover, if a firm does hire me, how do I know that I was not hired based on some other achievement, such as my grades or extracurricular activities? Just

recently, I went on a job interview and the interviewer's first question referenced my ability to speak Vietnamese. The employer didn't ask me about my work experience or my role as executive editor of my school's law review. The truth is, ethnicity, sexual orientation, and religion will always exist. And as long as there is a legal market of minorities, diversity-related issues will always arise.

The problem with trying to eliminate discrimination is that it's hard to quantify and create empirical data in this day and age where there are laws punishing discrimination. Discrimination still exists. Although we've come a long way since "separate but equal," discrimination still exists in the form of stereotypes. For example, a friend of mine, who is a public defender and is Vietnamese-American, told me a story about his client, who was an immigrant. When he interviewed his client, the client pointed to a Caucasian female attorney and told him "I want an American attorney, you know what I mean." My friend and I knew exactly what he meant.

Although my friend and I laughed at this story, I believe his client's act represented a very serious kind of discrimination. In this case, the client had absolutely no faith in my Vietnamese-American friend. This stereotype is probably rooted in the fact that Caucasians make up a huge majority of attorneys and judges in the United States. Most likely, the client had never even seen an Asian attorney before and thought that my friend was incapable of representing him. My friend's story raised the question of whether or not I will be treated fairly in the legal field. Unfortunately, I cannot answer this question. However, I can say that JIOP attempts to remedy this problem by addressing the issue of stereotyping head-on instead of ignoring this problem and sweeping it under the rug.

JIOP is important for two reasons. First, it demonstrates that the Section of Litigation and the ABA are aware that minorities are significantly underrepresented in the legal community. Second, it encourages minority students to aim high and apply for prestigious judicial externships. Third, programs like JIOP benefit students because they give students an intangible experience—and a much-needed boost in confidence—by providing them with avenues to socialize with distinguished members of the legal community. ■

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Endnote

1. See ASSOC. PRESS, *Jobless Claims Remain at a Record High*, N.Y. TIMES, Feb. 19, 2009, available at www.nytimes.com/2009/02/20/business/economy/20data.html?_r=1&scp=4&sq=employment%20rate%20alltime%20high&st=cse.

Diversity Coalition Building

Continued from page 10

way to demonstrate the firm's commitment to diversity.

While law firm affinity groups that focus on each group's diversity are important and empowering, diverse attorneys should also not foreclose the opportunity to work across diverse and non-diverse groups to form broader coalitions for the common good. Diversity and affinity groups within the legal community perform very valuable functions, and these groups should continue to flourish and grow. However, the potential to bring about even broader changes in the legal field grow exponentially when these groups work together for a larger purpose.

For example, by working across different diversity groups, those individuals in the groups gain a better understanding of the important issues that each group faces. Once this dialogue is started, space is opened for further dialogue with non-diverse attorneys. Diversity goals cannot be reached until non-diverse attorneys in the majority are also involved in diversity efforts.

Theoretical Underpinnings

Everyone's diversity issue is not the same. The problems and obstacles facing African-American, Latino and Latina, South-Asian, Middle-Eastern, and other diverse groups can vary greatly. Ethnic and racial diversity issues are often different and separated from gender-based diversity issues. By actively engaging and cooperating with other groups, there is an opportunity to build coalitions that can bring about change as well as greater awareness of different diversity issues.

Too often in society, there exists a quiet tension between diversity groups for a number of reasons, including lack of resources, time, and ability to change. Each group often wants "their piece of the proverbial pie."⁵ Thus, coalition building between diversity groups can be a difficult task because of the various competing interests. As diversity groups within law firms become more popular, members of these groups have to be

cognizant of their positions vis-à-vis other groups. No single diversity group is more important than another. The purpose of diversity or affinity groups is not to exclude, but rather to provide a space to come together based on shared experiences and interests. A theory on coalition building was put forth by Mari Matsuda that by working in coalitions "we compare our struggles and challenge one another's assumptions. We learn of the gaps and absences in our knowledge."⁶ Often, diverse attorneys from different backgrounds will have many varied experiences to share that add to overall diversity goals and ideals.

Strength in numbers is also a concept that applies in the context of diversity. Coalitions are absolutely necessary to

**Networking and mentoring
across groups within and
outside the firm can be a
valuable way to find mentors
that you may not find
within the firm.**

stand against injustices that do occur, because "in unity there is strength."⁷ So instead of further splintering diversity efforts into singularly focused affinity groups, those groups would be better served to not only look within but also outside their groups for opportunities to improve diversity. Further, "separating out and ranking oppression denies and excludes these identities and ignores the valid concerns of many in our constituency."⁸

This is not to say that diversity groups need to try and compare or find an exact experience amongst the others. Working to form coalitions is not meant to homogenize or try to make all experiences the same. Many academics and theorists have explained that essentialism or pure analogy of one form of oppression to another is a dangerous move.⁹ In this context, essentialism is the idea that there is such a thing as the "Black experience" or "women's experience" that exists independent of

other important variables.¹⁰ Assuming that because a person falls into a certain category, he or she will have the same experiences as all other persons in that group is erroneous. Therefore, it is important not to put forward a monolithic "Black experience" or "women's experience."¹¹ There are ways, however, to discuss and understand varying experiences without falling into the trap of pure essentialism. The first step in this process is always dialogue, which is why building bridges between different diversity groups is so vital.

The purpose of coalition building is not to separate out and rank experiences but to increase awareness and understanding amongst the different groups. The challenge then is to build bridges without assuming or trying to find a commonality that does not exist. There is still a powerful potential to share experiences and move beyond our differences to our interests that are common.

From Theory to Practice

While examining the theoretical underpinnings of coalition building is important and worthwhile, concrete and pragmatic steps need to be taken to garner this knowledge and put it into action. Diversity and affinity groups can work together to make practical gains both inside the firm and within the larger community. Instead of a single diversity or affinity group working on a pipeline program, groups could come together to work on projects. For example, the Urban Debate League (UDL) effort, spearheaded by the Minority Trial Lawyer Committee, is a prime example. UDL trains high school students in policy debate, which is the "most academically rigorous of all interscholastic speech activities."¹² The benefits of those who participate in UDLs have been thoroughly documented through studies.¹³ This pipeline effort can dramatically impact a student's life, and attorneys can volunteer their time and energy into this activity. Instead of one affinity group working with the UDL, affinity groups at the firm could combine forces to work together with the community UDL. This effort not only brings more people into the process, but it is also a practical

way to bridge divides and create coalitions for change. Additionally, diversity groups could judge and work with their local mock trial and moot court teams both at the high school and college levels. This form of outreach is yet another way to be involved in the community in a positive way.

While affinity group meetings are important, different groups could consider periodic joint meetings to increase dialogue and understanding. Small steps such as this could go a long way to moving beyond the issues that divide us. If one affinity group hosts an event—whether it is within the firm or the community—other groups could show their support by attending. Groups could co-sponsor speakers, events, and social outings. Attorneys should follow the lead of law student diversity groups that often pair together to sponsor events on campus. Much of the outreach that occurs between diversity groups at the law-school level gets lost once graduating students start practicing law.

Often, a platform of many diversity groups is to increase outreach within the community, and by joining forces with different groups, great strides can be made in volunteer efforts that impact the larger community. Diversity groups could work together on important community service projects or pro bono work. Service projects within the community serve the valuable purpose of helping the community and also provide

an opportunity for coalition building between different diversity groups. A community service project sponsored by affinity groups could also be opened up to everyone as a mechanism to encourage greater involvement.

Finally, building bridges between different diversity groups also provides the opportunity for mentoring relationships. Especially at firms where diversity may be lacking, a diverse attorney may find a mentor in another group that he or she may not have been exposed to otherwise. Mentoring is important to all attorneys, and coalition building increases the opportunity for mentoring relationships to form. This idea applies to diversity groups in the community outside law firms. Networking and mentoring across groups within and outside the firm can be a valuable way to find mentors that you may not find within the firm.

Ultimately, the more coalitions that can be built and the more understanding that is gained between and within diversity groups, the more likely change is to occur. Once coalitions between diversity groups are solidified, the process of reaching out beyond diversity groups must begin. Non-diverse attorneys have a significant role to play in diversity initiatives because they are in the majority. Building upon relationships forged by diversity coalitions is the first step to building longer and wider bridges between all different groups. By fostering coalitions, diversity groups can also reach out to

non-diverse attorneys to increase dialogue and work together to try to reach diversity goals. ■

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5. Victor R. Romero, *Rethinking Minor- ity Coalition Building: Valuing Self-Sacrifice, Stewardship and Anti-Subordination*, 50 VILL. L. REV. 823, 823 (2005).
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7. *Id.* at 1990.
8. *Id.* at 1191.
9. Trina Grillo and Stephanie M. Wild- man, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism*, 1991 DUKE L.J. 397, 404.
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12. www.urbandebate.org/quickfacts. shtml.
13. *Id.*

Minority Coaches

Continued from page 5

(4) the representative parties will fairly and adequately protect the interests of the class.”

27. *Johnson v. St. Luke’s Hosp.*, 2007 WL 3119845 (E.D.Pa., Oct. 23, 2007). *See generally* Title VII.

28. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

29. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Ward v. City of North Myrtle*

Beach, 457 F.Supp.2d 625 (D.S.C. 2006).

30. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *See also Hill v. Lockheed Martin Logistics Management, Inc.*, 354 F.3d 277 (4th Cir. 2004).

31. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973)

32. *Id.*

33. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973) citing *Jones v. Lee Way Motor Freight, Inc.*, 431 F.2d 245 (10th Cir. 1970); *Blumrosen, Strangers in Paradise: Griggs v. Duke Power Co.*

34. *Id.*

35. *Ward v. City of North Myrtle Beach*, 457 F.Supp.2d 625 (D.S.C. 2006) citing *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277 (4th Cir. 2004) and *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

36. *Id.*

37. *See generally Ward v. City of North Myrtle Beach*, 457 F.Supp.2d 625 (D.S.C. 2006) citing *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277 (4th Cir. 2004).

38. *Mitchell v. USBI Co.*, 186 F.3d 1352, 1355–56 (11th Cir. 1999).

Litigating in the Limelight

Continued from page 1

I've learned—sometimes the hard way—that celebrities and their lawyers are basically looking at four possible outcomes to any litigation:

1. The celebrity gets a favorable outcome to the litigation, and the lead lawyer, by the very nature of the increased attention focused on his work in a celebrity case, sees his or her own brand and reputation pumped up in the media, the public, and—most importantly—among his fellow lawyers and their attendant referral networks.
2. The celebrity receives a favorable outcome to the litigation, but the lawyer's reputation does not necessarily spike upwards, because the lead lawyer chose to concentrate on the case and ignore the media. Thus, the media—denied access to the lead attorney—is inclined to assign credit for the lawyer's victory to someone who did play ball with the press. This recipient of media love could be a handling attorney or just about any other member of the celeb's entourage who didn't do the legal grunt work but spun a good, self-serving story to a reporter.
3. The celebrity receives an unfavorable outcome, but the lawyer's business benefits greatly only by having his name in the press. This is especially true for criminal defense attorneys.
4. Both the celebrity and his or her legal team come out of the litigation looking like idiots. (Google "Roger Clemens and Rusty Hardin.")

Let's examine some basic celeb representation rules of engagement. Consider these rules "Attorney-Celeb 101."

Q. What rules should a lawyer follow when he or she is representing a celebrity and media queries start to come in?

A. Unless the lawyer has a deal with the client that allows the lawyer a free pass to solicit the media, the lawyer

must understand the basic legal and business objectives of the client and judge each media query on its own merits before issuing the standard, "We'll try our case in court, not the media."

One of the lawyers who greatly impressed me during the Wesley Snipes tax trial was litigator and transactional attorney Daniel "Meach" Meachum of Atlanta, Georgia. Mr. Meachum made it very clear to everyone involved in the Snipes litigation that he was there to represent Mr. Snipes's best interests. Period.

In the 14-month period between Mr. Snipes's indictment and his January 2008 trial in Ocala, Florida, for tax fraud, conspiracy, and willfully failing to file a return, Mr. Snipes gave just three interviews.

Every conversation with a reporter is on the record from the time the reporter opens his mouth.

Mr. Snipes had a business objective—he wanted to work as much as possible while he was out on bail pretrial. Thus, he gave his first interview to a showbiz trade paper, *Variety*. This is where Mr. Snipes addressed the fact that he could obtain cast insurance while out on bail and could even travel to foreign locales pursuant to his bail restrictions. The upshot? Producers were made aware that Mr. Snipes was employable, and Mr. Snipes quickly went back to work post-indictment.

After Morris Kelly lit into Mr. Snipes on the "Mo' Kelly Report," a blog widely read by Mr. Snipes's core audience, Mr. Snipes responded in writing, on the record, to Mr. Kelly. Thus, Mr. Snipes very quickly defended his reputation to his core audience when his reputation was attacked.

The lesson? Both Mr. Snipes and his attorney Mr. Meachum understood the value of reaching out to the "core"

before trial. If the core constituency abandons a celebrity client before the trial, a potential jury, while researching a litigant pretrial and during a trial, is very likely to ascertain this in today's Internet age. (Anyone who thinks jurors don't use Google News search engines after a long day in a celebrity trial has lost touch with planet Earth.)

A month before the trial, an extensive interview with Mr. Snipes was published in the magazine *Entertainment Weekly*. Mr. Snipes was given a forum to express his personal feelings (e.g., how much he was going to miss his family if convicted) to a reporter who did not have a great interest in getting into the details of Mr. Snipes's criminal case. Thus, Mr. Snipes was personalized in a wide forum before his trial, but the forum was not one in which his quotes could later incriminate himself in his criminal trial.

The lesson? Someone on the litigation team had better understand the audience of each publication requesting interviews and also had better understand how the editorial product of those publications is put together.

Q. When should contact with the media be initiated by a representative of the defense team?

A. There are two truths in celebrity litigation: the truth in the courtroom and the truth on the street. Whenever the truth in the street threatens the truth in the courtroom, going proactive is often warranted.

Let's say you're in a criminal trial where the defense rests its case without calling a single witness and decides on going straight to closing arguments. An unsophisticated reporter might consider this tactic as a sign that the defense case is so weak that merely calling one witness and presenting evidence is futile. This is where a smart lawyer would insist that the media know as quickly as possible—often via a statement handed out to reporters covering the trial—that the defense rested its case because the prosecutors did not come within a mile of meeting its burden of proof. This is a message that, in this instance, cannot be pounded on too much in an age where the jury—despite a judge's admonition—is going online after each day's trial proceedings.

Q. How long should a statement released to the media be?

A. The shorter the better. What reporters are looking for every day is a “nut graph” for their stories (usually the second or third paragraph of the story that says why the story even exists). Tell the press what you want in the nut graph via your statement, and leave it to the press to round out their stories via ancillary reporting. Don’t ever be the proverbial blowhard lawyer who thinks that the more he talks or writes, the better it is for his client. Professional media consultants earn their living by honing message points to what’s important, not what sounds cool or smart.

Q. What exactly does “off the record” mean?

A. Conversations with reporters fall into three categories: on the record, not for attribution, and off the record. Unless it’s explicitly agreed upon, every conversation with a reporter is on the record from the time the reporter opens his mouth. Don’t spit something out and then say, “That’s off the record,” and expect the reporter to play by your ad hoc rules. When quotes and information are given to a reporter that can be used in a story verbatim, a source will often demand that the information not be attributed to him. The attribution is negotiated, à la “a source familiar with the case.”

When a source gives a reporter information that is off the record, he or she is *only* claiming that the information is true. The source is depending on the reporter to verify the information with another source. Implicit in this agreement is that the source has the option of denying that the conversation with the reporter ever took place if the source is ever questioned by a third party.

Of course, anyone who tells a reporter who is in the business of releasing information that the identity of the source giving the information must be kept secret is playing a dangerous game. Off the record is a device that should only be used when a source has an extreme level of trust with a reporter and is confident that a reporter won’t bow to pressure from an editor to

attribute the information to a source. Reporters “burn” sources sometimes if they think they can get away with it. If you’re sure you want information given to a reporter but want to ensure that it can’t be attributed to you, make someone else give the reporter the information. (That’s what media consultants are for.)

Q. Can the attorney-client privilege be endangered if a litigant gets too chatty with the media consultant?

A. You bet. In a very well-known case that I was recently brought in on, a criminal defendant was allowed to make over 1,000 hours of telephone calls while incarcerated pretrial. All of these phone calls were recorded, many of the calls were made to a previous media consultant outside the scope of the attorney-client privilege, and the content of some of these phone calls is starting to turn up in government motions to modify bail restrictions.

It’s a horror show of what can go wrong when media consultants and lawyers don’t work together. Thus, the first rule of thumb is never work with a media consultant who won’t put the legal needs of the celebrity first. In real life, media consultants are just like lawyers—they can get seduced by the celebrity of the client and do stupid things they would never do with an

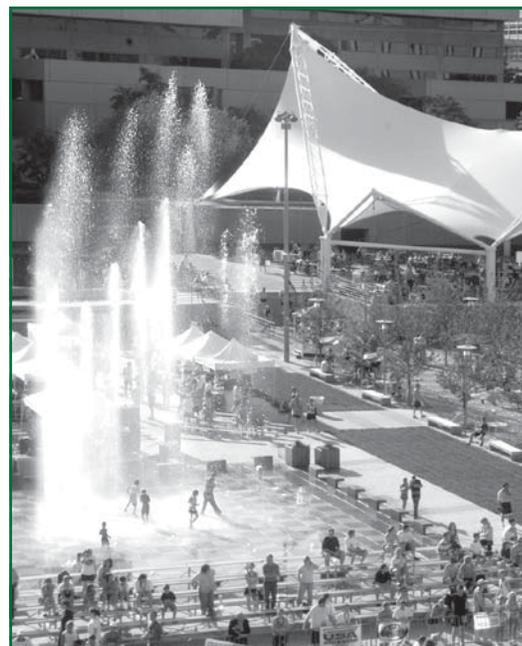
ordinary-Joe client. That said, a lawyer who thinks he can run all the litigation inside and outside a courtroom while also handling the media needs of a celebrity client is either delusional or way too adamant about never letting a client’s dollar pass through somebody else’s hands first.

Lawyers spend years understanding how the wheels of justice turn. Media pros spend years understanding how the sausage factory of today’s media grinds on day after day and just who is consuming the sausage.

Celebrity justice is a slippery slope. If you’re a lawyer playing in that arena and it feels as if you’re getting in over your head with the media, you probably are. Don’t be afraid to admit what you don’t know, and don’t be afraid to let a good media pro do the thing he’s been trained to do while you do what’s most important for your client: getting justice. ■

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Lawyers of Color Accessing Power

 **SECTION of LITIGATION**
AMERICAN BAR ASSOCIATION

Photo Courtesy of the Kansas City Convention & Visitors Association.

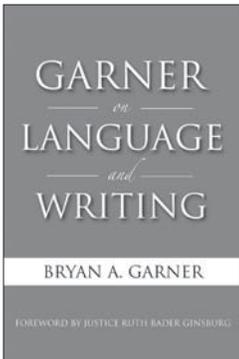
BOOK REVIEW

Tips on Writing Well

BY TIM BERTSCHY

Garner on Language and Writing

By Bryan A. Garner
American Bar Association, 2008
876 pp.



As lawyers, we compose and write every day and week of the year. We pride ourselves on our communicative skills. But, do we truly communicate and persuade

effectively? Or do we instead follow outmoded, prolix forms of composition that hide rather than highlight our arguments and create ambiguity rather than clarity in legal documents?

In his book *Garner on Language and Writing*, Bryan Garner attacks accepted practice in legal writing and provides clear and sensible suggestions for improvement. Garner, a lawyer himself, is one of the country's leading experts in style and usage, especially in the field of legal writing. He is best known recently as the coauthor of *Making Your Case: The Art of Persuading*, with Justice Antonin Scalia.

Garner on Language and Writing is an anthology of Garner's writings, a collection of insightful and, at times, humorous observations on good and bad legal writing; comments on grammatical rules; humorous malapropisms;

tributes; interviews; reading recommendations; and yearly events. The result, states Justice Ruth Bader Ginsburg in the book's foreword, is a "must read" primer for her law clerks.

Garner believes that contemporary legal prose is not of high quality. He cites the comments of leading jurists that only about 5 percent of the briefs they read are well-written. (He later takes aim at poor writing by the judiciary, too.) Rather than dwell on the causes of poor writing, Garner proposes a new writing paradigm that dispenses with the traditional first sentence of a pleading: "Comes now the Plaintiff . . ." Garner discusses at length the importance of getting the attention of the reader immediately, the proper formulation of the "deeper" issue, and how to write a compelling legal argument by dividing tasks into those of a "madman, architect, carpenter, and judge."

One of Garner's more interesting suggestions is to put all citations into footnotes but to refrain from putting anything else in footnotes, such as quotes from the cited case. This approach has gained traction in a number of jurisdictions (e.g., Delaware and Alaska) and leads to more readable—and thus persuasive—legal prose. In one humorous passage, Garner rewrites biographical prose with citations imbedded in the text to demonstrate the density and clumsiness of the currently accepted legal style.

Garner also touches upon grammatical issues. He proposes the creation of a legal "blacklist" of familiar terms,

such as "provided that," "pursuant to," "said," "same," and "whereas." He clarifies that there is nothing wrong with starting a sentence with the words "and" or "but." Garner's overall goal is spareness and simplicity in writing, while he points out that elegance can be the result. The book contains an entertaining analysis of the styles of Supreme Court Justices of the last century and helpful guidance on the practice of "sesquipedality," or "the use of big words." (Garner is not a big fan except in special cases.) For those now in law school—students, teachers, and administrators—Garner emphasizes the need for better writing instruction. For those who graduated years ago when the *Bluebook* was the style bible, Garner explains the growing acceptance of the *ALWD Citation Manual*. He identifies resource materials for self-study in improving one's writing.

Much more could be said of this book, almost all of it positive. One does not have to be a "snoot" to enjoy it; to the contrary, this is a book that, whether taken as a whole or bits at a time, will be enjoyed by anyone who takes any pleasure in writing well. And why should lawyers read it? Well, as Garner points out, even Tiger Woods still takes golf lessons.

Tim Bertschy is a partner at Heyl Royster LLP in Peoria, Illinois. He also serves as cochair of the Minority Trial Lawyer Committee.

Calling All Writers!

Would you like to contribute an article to *Minority Trial Lawyer*? We are always looking for articles that cover the many areas of interest to our readers, including trends that affect lawyers of color; cases and case law affecting the minority community; challenges faced by lawyers of color in the practice; and stories of opportunities and inspiration. Send your article or query to atorres@powersmcnalis.com, or call Anna Torres with your idea at 561/588-3000.

ASK A MENTOR

Advice on Becoming Partner

Dear Ask a Mentor:

I am a senior associate who is one to two years away from consideration for partner. In addition to speaking with partners I work with about how to improve my skills, I would appreciate any additional pearls of wisdom on what I can do to prepare to make the best case for my promotion.

M.A., Seattle, Washington

Dear M.A.,

The short answer to your question is that you must think like a partner. In other words, think like an owner of the firm rather than an employee of the firm. As an associate, you are expected to demonstrate intelligence and work long hours on the matters assigned to you. In return, you are well-compensated, work in a nice office, and probably get a fair number of perks, such as occasional tickets to a ball game and paid CLE. Life is pretty simple. You are not expected to have an appreciation of the economics that govern your firm or drive your firm's clients. After all, those are business matters, and as long as you bill approximately 2,000 hours and don't screw up, you're good, right? Wrong.

Law firms are chock full of intelligent and hardworking associates. First, try and set yourself apart by taking an interest in the firm's management and financial well-being. Don't take what you have as an associate for granted, but convey that you understand that the partners who manage the firm have a huge responsibility in making sure that the firm remains profitable and competitive. Express an interest in how the firm is run, not only with regard to associate compensation, but also with regard to the soft and hard costs that impact the firm's financial well-being. In these times of financial uncertainty, a mature appreciation of the financial aspects of a firm's operations will set you apart as a potential future owner rather than simply another employee.

John S. Delikanakis

Dear M.A.,

At this point in your career, it is important to develop a business plan for client development. Law firms want to have confidence that the candidates they are considering for promotion are not only skilled attorneys, but also have the ability to generate new business to keep themselves and others in the firm busy. One way to start developing a business plan is to think about the existing clients that you already service and how you may be able to expand those relationships if you are promoted to partner. You should also think about other business opportunities that you can capitalize on either through professional organizations you have joined or through friends and other contacts you have established throughout your professional career. I would also encourage you to enhance your profile within the firm. Making contacts with attorneys in diverse practice groups and other offices within your firm increases your opportunity to be brought in on key pitches for new business. If you spend the time to develop (and start implementing) a strong business plan as a senior associate, it should greatly enhance your chances of being promoted to partner.

John B. Webb

Dear M.A.,

You can position yourself to become partner by developing a niche skill or area of practice. Oftentimes, you can develop business from existing clients. Your firm may be unwilling to represent current clients in some matters outside the firm's core practice areas; these cases represent an opportunity for you to develop an additional revenue source for the firm and thus position yourself to become a partner. Moreover, if you make yourself the resident expert on a particular issue or area of practice, you will have positioned yourself to advise partners and clients.

You have to give to get. Many attorneys ignore opportunities for growth

because they can't bill for it. Learn to give away your time. If your firm has a federal practice and you are looking for federal trial experience, there are many plaintiffs seeking representation through U.S. district court pro bono projects. Some pro bono cases can generate dollars for the client; however, many of them will generate great publicity and good will for your firm. Prepare yourself to pick up one of these diamonds in the rough and you might be noticed when your leadership makes everyone shine.

You should be looking for opportunities to develop a book of business. Once you have gained the trust of partners at your firm and have demonstrated your professional competence, you should be attempting to develop business from every angle possible. Attend conferences that provide business development opportunities for lawyers even if you have to pay your own way.

Bradley Harper

John S. Delikanakis is a partner in the Las Vegas office of Snell & Wilmer, where he concentrates his practice in commercial litigation.

John B. Webb is a partner in the New York office of Reed Smith, where he handles matters involving infringement, unfair competition, contract disputes, and other intellectual property claims.

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MINORITY Trial Lawyer

Spring 2009 • Vol. 7 No. 3

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