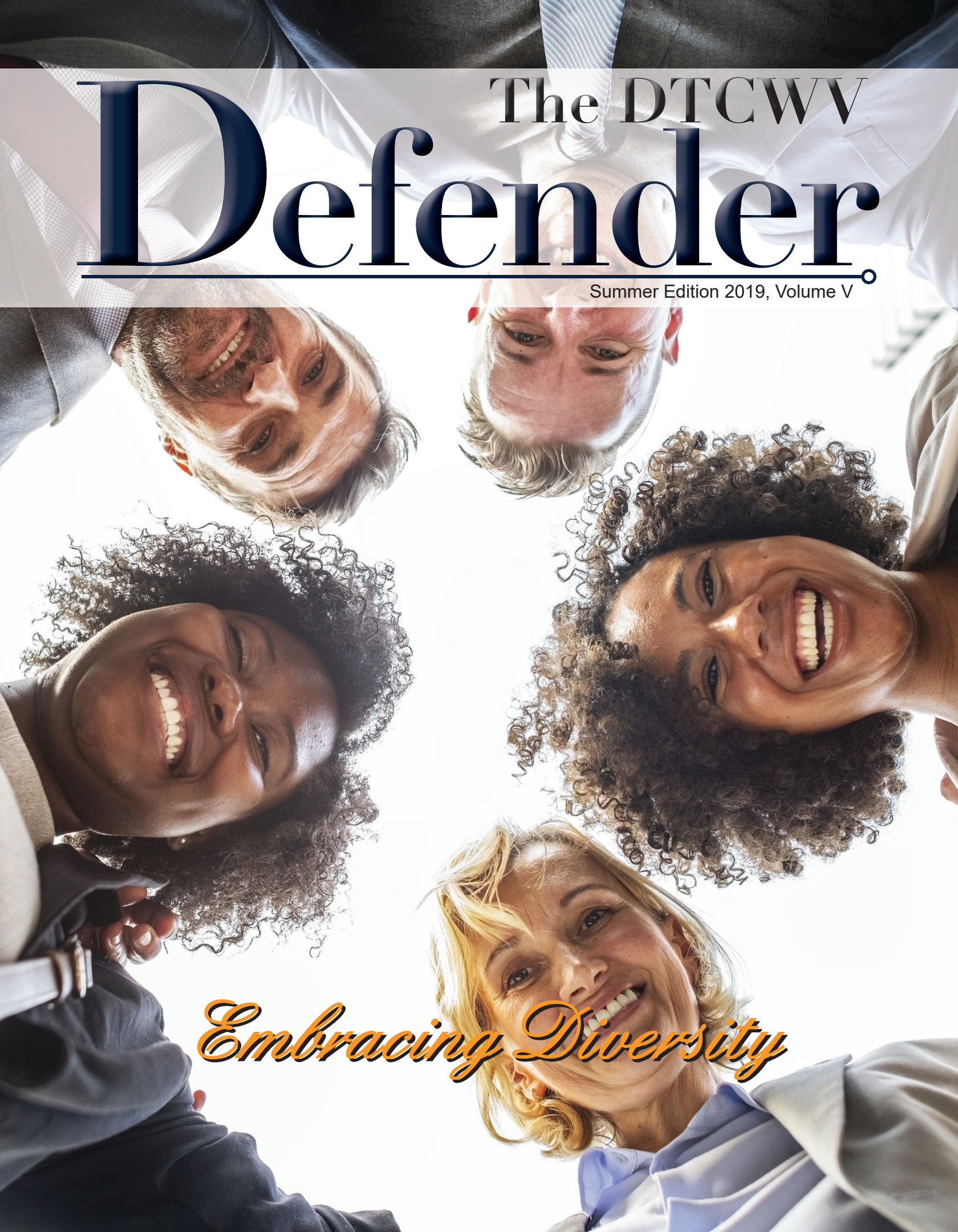




The DTCWV Defender

Summer Edition 2019, Volume V

Embracing Diversity



President's Page

Mark Hayes, Robinson & McElwee, PLLC

This edition of *The DTCWV Defender* newsletter is focused on promoting diversity in the West Virginia legal community. Many thanks to Newsletter Committee Chair and Editor Chuck Bailey and Executive Editor Todd Mount for compiling the excellent articles in this edition, and I hope that they will serve as motivation for continued efforts by us West Virginia lawyers to embrace diversity in our ranks and to fight for equality and fairness for the diverse communities of our state.

The West Virginia State Bar reports statistics on the diversity of our state's attorneys – of the 7000+ active and inactive lawyers registered with the State Bar, 98 self-reported as African-American (1.37%) and 16 self-reported as Latino (0.22%)¹. No efforts have been made to quantify the number of LGBTQ attorneys licensed in West Virginia. These statistics – or lack of them – clearly show that we in the legal community have a lot of work ahead of us to open doors to people of color or other members of traditionally under represented populations. I hope that this edition of *The DTCWV Defender* continues to further discussion and efforts to welcome diverse lawyers into West Virginia courtrooms, conference rooms and boardrooms because our firms, our state's bar and, indeed, West Virginia herself are all enriched by inclusion of diverse members of our communities.

This past June, during the 37th Annual Meeting of the Defense Trial Counsel of West Virginia, I was overwhelmed and

¹ As of August 12, 2019, the West Virginia State Bar reported 7161 active and inactive attorneys with 98 self-reporting as African-American/Black, 16 as Hispanic/Latino, and 50 as "other". Interestingly, 2949 (41.18%) self-reported as female.

honored to be elected as president of this organization. I recently reviewed the list of past presidents of DTCWV and its difficult to fathom being included in that group that includes some that I consider mentors (Fred Adkins; John Palmer), a few that are long-time friends (Marc Williams; Bob Massie; Jim Lamp; Tom Scarr) and many that I did not know before my involvement with DTCWV, but whom I have come to respect for their immense legal abilities and leadership. I especially appreciate the path paved by my immediate predecessors – Erik Legg, Jill McIntyre and Jill Rice – all of whom make my new job easier because of their efforts, and also much more difficult because I have to live up to their examples. They all have become great friends, and I hope the membership of DTCWV understands how much the organization has benefited from their leadership.

This year, your Board of Governors and I have an ambitious agenda for the DTCWV. I have asked Jill Rice to organize a "Women in the Law" initiative to support women entering and advancing in our profession. The Young Lawyers Committee will be busy this year, including sponsoring its upcoming "Deposition Bootcamp" for what is expected to be a packed house at the WVU College of Law. The YLs will also help with the initiation of the DTCWV's "Emerging Leader Certification" program, which will recognize young lawyers who exhibit extraordinary abilities and accomplishments in leadership opportunities that DTCWV will offer. The lineup for the 2020 Annual Meeting, to be held at the Grande Dunes Marriott Resort in Myrtle Beach on June 8-10, is almost complete. The presenters include popular speakers that are national or state-wide experts and leaders. Save the date! You won't be disappointed!

The DTCWV's Substantive Law Committees continue to offer free education and networking opportunities specific to particular practice groups, and I would encourage every

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member of DTCWV to take advantage of our SLCs - there is no better way to learn from and to get to know other defense attorneys with similar practices than to be an active and involved member of a SLC. In the past several years, DTCWV has increased its visibility by working with the legislature and the state's executive branch, and we have provided our collective expertise to our state's Supreme Court when asked

to offer our opinion on potential changes to court rules or other issues.

The coming year promises to be full of content, but will also have plenty of fun and fellowship for which our organization has become well known. The DTCWV will continue to be "The Voice of the Defense Bar" in the coming year - get involved, and let us know how we can better serve *you*!



Introduction

Charles Bailey, *Bailey and Wyant, PLLC*

From time to time, the DTCWV Defender detours from its typical analysis of specific areas of the law that are of interest to our members. In the past, we asked for comments on how the legal landscape might change when the Republican party took control of both the Senate and the House. As predicted, many statutory changes were made that we are still writing about. We have dedicated editions on the judiciary. We have interviewed circuit court judges. We sought out new judges, asking them to comment on the transition to a judge and to get their perceptions of the judiciary. We learned that abuse and neglect cases were dominating the court's time and the drug court (that was just beginning) was getting good reviews. We interviewed the business court judges, and other experienced judges, to give our readers better insight into what the judiciary expects from us and the challenges they face. We also focused on the fact that Kanawha County had three women judges, a significant milestone when reflecting on diversity. Since then, a fourth female judge was elected in Kanawha County, marking the first time there have been more female than male judges in that jurisdiction.

Of particular pride, we dedicated an issue to Justice/Professor Cleckley. We not only published articles by esteemed members of the Bar regarding Professor Cleckley's legacy, but to honor his legacy we requested that articles about the Rules of Evidence be submitted. I trust that Justice Cleckley would applaud our efforts to promote diversity in this issue. His leadership in civil rights and diversity, including the success they bring, provided the ground work for us.

When the Board began discussing the diversity edition, I do not believe that any of us knew where it might lead. We are confident that you will find the articles insightful, thought provoking, and perhaps controversial. We address in this edition a topic that has been the subject of many conversations by members of the DTCWV, the West Virginia College of Law, and the Leadership Counsel for Legal Diversity (LCLD).

The article bringing this issue to fore is "Reaching New Heights - LCLD and West Virginia Climb Together" authored by Marilyn McClure Demers, Vice President and Associate General Counsel for Nationwide Mutual Insurance Company, and Ashley Pack, Partner with Dinsmore & Shohl, LLP. Marilyn and Ashley explain in detail the efforts undertaken by LCLD, the West Virginia State Bar, the WVU College of Law, and law firms to advance diversity and to mentor diverse students and lawyers. One of the more significant things that the LCLD provides is leadership development for lawyers. Many attorneys have gone through the LCLD development training programs. This is an ongoing program that is relatively new to the state. Once you read the article, and if you are not a member of the LCLD, I encourage you to reach out to Marilyn or Ashley.

Mark Hayes, your newly elected DTCWV President, provides sobering statistics regarding diversity of our state attorneys. For example, only 1.3% attorneys in the state identified as African American and 0.2% identified as Latino. There is a lack of statistics on other diverse groups, so the LGBTQIA is not accounted for. Mark is on the forefront of our organization to promote diversity. He has requested that Jill Rice organize a "Women in the Law" initiative.

Tom Scarr, past President of the DTCWV, reminds us that diversity is a core value, not just a slogan and that "our differences are important and valuable". Tom's views on diversity resonate throughout the articles in this edition of the Defender.

Gregory Bowman, Dean of the WVU College of Law, gives us an excellent overview of the steps WVU is undertaking to create a more diverse school and to open conversations about diversity and biases that must be addressed to achieve inclusion. Members of the Defense Trial Counsel and the LCLD work closely with Dean Bowman on several diversity initiatives, such as mentoring law students.

Jill Upson, Executive Director of the Herbert Henderson Office of Minority Affairs, also authored an article. In her article, she reminds us that diversity "can act as an essential barometer by which we can measure appropriate and productive behavior..." Her comments regarding diversity and its benefits are spot on.

I think all of us will enjoy reading the question and answer session conducted by Marc Williams, Managing Partner of the West Virginia office of Nelson Mullins as he questions J.L. Brydie and Melissa Foster Bird. The article shows us how one size does not fit all when it comes to diversity. Melissa is an equity partner in a national law firm, so I was surprised that, given her myriad of professional accomplishments, she is still not given the same recognition as men in high stakes

litigation. J.L. Brydie, an African American attorney at Nelson Mullins, gives a different perspective on the matter. Quoting directly from his interview, "I am not only responsible for upholding the reputation of myself, my law firm, and the legal profession, but in many instances, I am also responsible for upholding the reputation of the entire demographic." That is a powerful statement and a tremendous burden to rest on the shoulders of a young lawyer. You will enjoy reading this article. Female attorneys represent about 41% of the West Virginia Bar, but Melissa's experiences show we have a long way to go to eliminate gender inequality.

You could have knocked me over with a feather when I read Monte Williams' article "Diversity and Inclusion – It Might Save Your Life". Having served with Monte on the DTCWV Board for many years, I would have thought Monte, as a young student, would be the one sitting in the front seat of class with his hand raised ready to answer any questions. You will find, however, a different story from Monte. He with the aid of his father, came to realize that intelligence and success had nothing to do with one's color, but determination. We are glad that Monte came to that realization because he is a prominent figure in the DTCWV and the LCLD community.

One of my favorite writers is Elliot Hicks. His articles always hit the subject head on and in a way I might not have considered. Elliot speaks from the perspective as a former DTCWV member, a trial lawyer, mediator and an entrepreneur. In this article titled "The Motivation of Diversity", Elliot reminds us that, often times, clients want us to have a more diverse law firm; but as Elliot states, during a meeting with a large international company, "I came from a place where my clients are still trying to figure out whether diversity is a good thing [at the counsel table]." Elliot challenges us to go beyond singing the chorus of diversity, but to put the lyrics in action.

Victoria Wilson, of Kay Casto & Chaney, provides an excellent and thought-provoking article titled "Embracing Diversity at Law Firms". One of my favorite quotes from the article is "Diversity at the ground level puts a course of representative voices in the pipeline. As we know, attorneys also become judges, justices, and politicians who can, indeed, more directly impact the checks and balances of the legal system..." This is consistent with the theme that we need more diverse voices in the legal community because of the impact we do have on law and public policy.

Fazal Shere's article was one of the first received. From reading this, we knew this edition of the Defender was to be different. Fazal's perspective as a Muslim in today's politically charged atmosphere is eye opening, thought provoking and challenging. He reminds us that as "Defenders" we have a duty to defend and fight for diversity and inclusion.

Last, but not least, is the article by Suleiman Oko-ogua of Bailey & Wyant, PLLC, "Overcoming Bias and Perception". Suleiman gives first-hand experience regarding the implicit bias that each of us have and how bias, albeit not always overt, is hurtful. I know Suleiman struggled to write this article. He told me that although he was not uncomfortable talking about how bias affects him (he often laughs about the misperceptions others have regarding Africans) he admitted putting his experiences in an article was challenging. Suleiman, however, advises how we can reduce or eliminate biases and how by recognizing them, we can engage in a learning experience. One of my favorite quotes from his article is "Diversity shouldn't be a simple page in an employment handbook, or a statement we make on our websites".

We did not totally ignore providing an article on a traditional legal subject. Luke Lafferre provides "New West Virginia Statutes of Possible Interest" giving an overview of legislation of the 2019 legislative session. The 2019 session was not as eventful for civil justice matters as past sessions have been. We have dedicated two editions to the Defender on past legislative sessions.

The Defense Trial Counsel is proud that we are leading the effort to make the legal profession more diverse and working hard to eliminate bias that creates barriers to inclusion.

If you found this edition of the Defender helpful, please share it among your colleagues and friends. It may just happen to change how one feels about diversity and inclusion. My colleagues Todd Mount, of Shaffer & Shaffer, and Peggy Schultz, our Executive Director, worked very hard on this issue. None of this gets done without them. We need to thank our contributors as well. Each of them take time from their practice to write these articles.



Reaching New Heights - LCLD and West Virginia Climb Together

Marilyn McClure-Demers, Vice President, Associate General Counsel ,
Nationwide Mutual Insurance Company
Ashley Pack, Partner, *Dinsmore & Shohl LLP*



For the past four years, the Leadership Council for Legal Diversity ("LCLD"), the West Virginia College of Law and the West Virginia State Bar have partnered with law firms and companies to develop the next generation of diverse legal leaders while working to increase inclusivity in the legal profession in the Mountain State. "It's exciting for West Virginia to be part of something at a national level that has such an impact on the legal profession," says Marilyn McClure-Demers, Vice President, Associate General Counsel at Nationwide

Mutual Insurance Company.

Launched in 2009 by a group of law firm managing partners and corporate general counsel from across the country, LCLD was founded around a very simple idea: the United States would be better served by a truly diverse legal profession, inclusive of all talent. To reach that goal, LCLD's founders committed to use their positions of influence to innovate and expand the pool of diverse legal talent in their organizations and society. Since that time, LCLD has grown nationally to include over 320 corporations and law firms and has produced 10,000 new and diverse "role models" across the country. LCLD has created a number of action-oriented programs designed to develop leadership skills and relationship building at every stage of an attorney's career. These range from Mentoring and 1L Scholars programs for law students, a Pathfinder program for associate-level attorneys, and landmark Fellows and Fellows Alumni programs for partner and senior partner-level participants.

"Our programs have been designed to serve diverse law students and attorneys at key stages of their professional development," says Robert Grey, LCLD's president. "Our goal, ultimately, is to build a legal profession as diverse as the country we serve."

In West Virginia, we have actively embraced LCLD's mission and have progress to show for it. Several law firms are LCLD members, including Bailey & Wyant PLLC, Bowles Rice LLP, Dinsmore & Shohl LLP, Frost Brown Todd LLC, Jackson Kelley PLLC, Nelson Mullins, and Steptoe & Johnson PLLC. Nationwide Mutual Insurance Company, Kroger, Macy's and Mylan Pharmaceuticals have joined as corporate members. "I am honored to be a state leader in West Virginia for the LCLD," says Ashley Pack, partner at Dinsmore & Shohl's Charleston office. "As the demographics of the world are changing, it is increasingly important to have people of all backgrounds providing legal services and at the table making decisions.

Varied backgrounds help attorneys and ultimately the clients we serve consider and understand different perspectives and approaches." As Suleiman Oko-ogua, an LCLD Fellow and partner at Bailey & Wyant, aptly reflects, "LCLD is God-sent. I am so glad that I am able to be part of an organization where I can interact and connect with other unique backgrounds and experiences. I have been able to share common ground with others who have faced the same challenges both past and present that I have."

The mentoring 1L program at the West Virginia College of Law has been particularly successful. The mentoring program serves first-year law students from diverse backgrounds, matching them with mentors from local law firms that provide guidance and strategies for success in law school and beyond. One-on-one mentoring is provided. As the LCLD website notes, "Ask any successful attorney: Nothing propels a legal career like having a great mentor. That's especially true when the mentor is at the top of the profession and takes an active, personal interest in the development of the young lawyer he or she is advising." www.lclldnet.org.

To date, 38 students have completed the mentoring program at the West Virginia College of Law. Lawyer mentors from across the State have participated, offering their wisdom and sage advice for soon-to-be lawyers. Training for mentors and mentees is conducted so that both parties truly benefit from the mentoring relationship.

In addition to one-on-one mentoring, group mentoring is also part of the program. Group mentoring includes monthly meetings at the College of Law with outside speakers. These speakers have included in-house attorneys from Google, Mercedes-Benz, and Nationwide Insurance, as well as practitioners from across the state. Additionally, each year the program has included a networking session and a panel presentation of influential lawyers in our community. These presentations have covered a variety of areas including networking and relationship building, interviewing skills, professionalism, and finding mentors and sponsors.

Currently, we are gearing up for the 2019 school year and anticipate up to 20 new mentees in the 1L class. "The personal commitment of a practicing lawyer to a law student can have a hugely positive impact on that student's life and career," Dean Bowman said. "When we commit to providing our diverse students with access to mentors, we make a big step forward in our commitment to their current and future success."

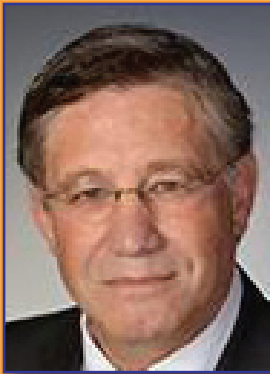
Other LCLD programs include attorney leadership development, such as the Fellows and Pathfinders Programs. The Fellows Program identifies high-potential attorneys from diverse backgrounds and sets them on the path to leadership of their organizations. Jill Hall, a partner with Jackson Kelly, notes, "As an LCLD Fellow, I have been fortunate enough to

be part of an elite training program designed to set me on a path toward leadership roles within my law firm. I have had the opportunity to network and foster relationships with other diverse and talented lawyers in both private law firm and corporate settings across the country, as well as learn from some of the most engaging panels and guest speakers offering instruction on leadership and professional development. I have also had the pleasure of serving as a mentor to diverse students at the WVU College of Law, and I hope I am playing at least a small role in ensuring these students succeed. I am grateful for all Jackson Kelly and other West Virginia LCLD member organizations are doing to create a pathway to leadership for diverse members of the legal profession in West Virginia." West Virginia Fellows and Fellows Alumni who have completed the program include: Jill Hall (Jackson

Kelly); Suleiman Oko-ogua (Bailey & Wyant); Monte Williams (Steptoe & Johnson); Jared Tully (Frost Brown Todd); Sylvia Winston Nichols (Jackson Kelly); and Ashley Hardesty Odell (Bowles Rice).

The Pathfinders Program, designed for lawyers in the earlier stages of their careers, focuses on developing relationship and foundational leadership skills and an understanding of career development strategies. West Virginia Pathfinders and Pathfinder Alumni who have completed the program include: Asad Khan (Nationwide); Kayla Cook (Bowles Rice); Steven Hall (Bowles Rice); and James "J.L." Leon (Nelson Mullens).

To continue LCLD's mission and develop diverse and inclusive leadership in our State, we must all commit to working hard to continue the path forward.



A Change of View on Diversity & Inclusion

Thomas E. Scarr, *Past President DTCWV, 2004-2005, and current Vice President of West Virginia State Bar*

Diversity and inclusion have become the watchwords of our time for education, business and law, among other activities and disciplines. In the legal field, currently and over the last few years, diversity and inclusion are subjects discussed at most every legal program and seminar. They are issues of concern of law schools, Bar associations and law firms, and are now significant criterion by which many clients evaluate, judge and select prospective law firms and counsel.

For many of us and for most of our lives, diversity and inclusion have always been accepted as important and "right" core values; everyone should have an equal opportunity to succeed in whatever activity and field they choose to pursue. Everyone should be treated equally and fairly. Several years ago when I was being interviewed for a legal position, I was caught off guard by the question: Did I feel diversity was important and why? My first reaction was that for me, I did not give much thought to diversity and inclusion because I didn't focus on peoples differences but instead on our common human characteristics and basic similarities. I had grown beyond such issues as our differences. I supported my reaction and response by noting that I am Jewish, a member of an historic and often persecuted minority. I married a German, Lebanese Catholic woman, a lawyer mind you. I have gay, black, ethnically different, and disabled members of my immediate and extended families, and such differences were never really an issue. To me, diversity and inclusion were natural and right because we were all so much alike, essentially the same, and our few differences were not negatives or obstacles, and meant little to nothing. While in my mind, such a perspective is a positive foundational belief and a good way to raise one's children, the current focus and emphasis on the importance of diversity and inclusion have significantly changed my perspective and belief in the positive value and importance of diversity and inclusion.

Diversity and inclusion are not necessary, important or worthy of support and attention because, for the most part we are the same, but because, in fact, fundamental differences---our diversity-- do exist and are real, and it is what makes inclusion so important and valuable. Whether our differences are based on race, religion, ethnic background, national origin, geographic upbringing, age or generation, gender, sexual orientation, disability (among other differences), or a combination of them, we are different in many real and fundamental ways, and that is a good thing. It is not just, "not an obstacle or negative" that might detract from our interactions with others and our joint efforts and activities. Our differences are important and valuable. As a result of them, we perceive, react, evaluate and judge things differently. We experience and see things differently, and ultimately think differently.

The most successful organizations are ones that are diverse and actively work to support inclusion. These organizations, whatever type they might be, are smarter and make better decisions and are more innovative and successful. Diverse groups are smarter than homogeneous ones, in terms of problem solving and decision making. A diverse group of decision makers identifies more relevant facts, constantly reexamines those facts, considers more alternative solutions, makes fewer incorrect assumptions and errors and remains more objective. We become more aware of our own respective biases and assumptions and stale ways of thinking. These positive and valuable benefits of diversity and inclusion have been borne out by multiple, varied scientific reports and studies, and by my own experiences. It is for these reasons that, while at times, possibly uncomfortable for some, and despite the fact that diversity often brings more conflict and decisions more difficult to reach, diversity and inclusion are essential if we (any group, profession, business, judicial panel or court, or law firm) are going to be successful, make the best decisions and reach its and our full potential.

WVU is on the forefront of Diversity and Inclusion

Gregory W. Bowman,
William J. Maier, Jr. Dean & Professor of Law,
WVU College of Law

WVU Law believes that building relationships is essential to creating a place for all to feel respected, included, and empowered. These values are reflected in the Pledge of Professionalism that our incoming first-year students take on their very first day of orientation, which asks students to state as follows: "As I embark on a career in the law, I commit myself to the shared values of the College of Law and the legal profession, including integrity, honesty, respect, diligence, and service. I also pledge to be civil in my interactions with others and to seek justice to promote the common good." We at WVU Law reinforce our dedication to diversity and inclusivity by providing opportunities for our students to build relationships and make connections with their peers and colleagues throughout their law school careers.

There may be no better example of how relationship-building can so directly impact our students and promote diversity than the Leadership Council on Legal Diversity's (LCLD) Success in Law School Mentoring Program at WVU Law. We are entering the fourth year of this partnership with LCLD, and many of our diverse students participate in our 1L mentoring program for minority students. Some of those students identify as racially or ethnically diverse, some as first-generation college graduates, and some as LGBTQ+. I have seen the mentee-mentor relationships in this program be deeply impactful: students in the program receive excellent career and life advice from attorneys across the region who are dedicated to improving diversity and inclusion within the profession. In addition, our LCLD speaker series has allowed our students to make additional connections with attorneys across the state and nation for educational and networking purposes that will serve them well throughout their careers. As Marilyn McClure-Demers stated at a recent LCLD program, "Our accomplished panelists really opened up and connected with the audience by sharing their personal experiences. That kind of vulnerability allows us to relate to each other in ways we never imagined, and build deeper relationships."

This drive to encourage WVU's students to build impactful relationships has led us to collaborate with others on campus who are dedicated to diversity, to host highly-regarded speakers in the areas of diversity and inclusion, and to provide opportunities for members of our community to have civil conversations about tough issues. Professor David A. Harris of the University of Pittsburgh School of Law, the leading national authority on racial profiling, led the WVU Law implicit bias training this past January. We also have partnered with WVU Extension Services to provide cultural competency training to the WVU Law community this academic year.

This fall also makes the fourth year of our successful Coffee Conversations program. All students, faculty, and staff are invited to these monthly gatherings at WVU Law that provide an opportunity for our community to discuss tough issues while remaining respectful and engaged with their colleagues. We provide space for the Coffee Conversations to give our

community a chance to listen, reflect, and find connections while discussing hot topics ranging from the #METOO movement and immigration to broader topics such as microaggressions, dialect discrimination, and addiction.

The opportunities we provide for our students and community to connect with others reinforce WVU Law's values of integrity, honesty, and respect. Our students carry the lessons learned through these opportunities with them not just through their time in law school, but into the larger legal community. Our hope is that by building relationships, encouraging civil discourse, and educating our students about inclusivity, we are preparing legal professionals who will continue to support creating a more diverse profession.

Why Diversity Matters.



Jill Upson, Executive Director,
Herbert Henderson Office
of Minority Affairs

What does it really mean to embrace diversity? I have heard the idea posited that if we are focusing on diversity, then we are placing value on skin color. Allow me to explain why diversity means so much more.

Those of us who are passionate about public service tend to be problem-solvers by nature. Likewise, successful managers of businesses must be able to identify and solve a multitude of problems in their daily operations. Problems can only begin to be solved by first recognizing that they exist. Diversity of experience, background, and thought opens up a broader and more complete breadth of information on which governments and workplaces can more effectively address societal and institutional problems.

In addition to problem-solving, diversity can act as an essential barometer by which we can measure appropriate and productive behavior in both professional and social settings. I recently had a long conversation with a black man who called my office to inquire about an upcoming Listening Tour stop in his city. During our discussion, he recounted an incident at his job in which a co-worker placed chicken bones on his desk. Perhaps this was a misguided attempt at humor. Perhaps it was rooted in prejudice. Either way, I suspect that this individual was lacking meaningful interactions with people who were different from him/her. It is clear to me that the gentleman who contacted my office is still troubled by this event that happened early in his career. It illustrates the deep and long-lasting wounds that can be created when diversity is absent.

Finally, being deliberate about attracting diversity into our sphere only adds perspective, fullness, and richness while taking none of these away. The Herbert Henderson Office of Minority Affairs uses its resources and reach to build bridges and facilitate interpersonal dialog on behalf of all of West Virginia's underrepresented populations. Please join us in experiencing the added value that fully embracing diversity brings.



Q & A Interview

Marc Williams, Managing Partner, West Virginia Office Nelson Mullins Riley & Scarborough, LLP

A recognition of the importance of having lawyers with a variety of perspectives, thinking, and communication skills is not new at Nelson Mullins. As the legal climate changes, so do the challenges and benefits of being a diverse lawyer and recruiting, retaining and progressing those lawyers in the Firm. Marc Williams, the Managing Partner of the West Virginia office, posed the following questions to two of the office's diverse lawyers – J.L. Brydie and Melissa Foster Bird. The difference of race, gender, experience and background of the two lawyers which would fit under the label "diverse" is a perfect example of how diversity and inclusion efforts cannot be one size fits all.

In what way do you consider yourself diverse?

Melissa: These days, 50% or more of law school graduates are women, so gone are the days when being a woman lawyer makes you diverse. However, only about 36% of attorneys at firms are women and only approximately 21% of equity partners in law firms are women. I am diverse as a female equity partner in one of the nation's largest law firms who just happens to also be a mother, a caretaker for my family and a trial lawyer.

J.L.: I am a 'young' African-American male, first generation college graduate and a life-long resident of Huntington, WV. I serve a legal profession that has witnessed a steady decline in African-American male participation over the past decades.

What is the biggest challenge to practicing law as a diverse lawyer?

Melissa: The biggest challenge I have experienced is having an equal voice and managing situations when your voice or opinions are somehow diminished. I was on a call just this week with a large group of male attorneys where the topic was a newly assigned judge in a major piece of litigation. Although I was trying to speak, I was spoken over three times before I was able to share my information and I was the only lawyer that actually knew anything about the judge! That is a literal example of not having an equal voice, but the metaphorical examples are being in the room with male co-counsel when all eyes go to him for guidance, being called by my first name in the courtroom when all other counsel are called "Mister", and being asked if I'm the court reporter when I show up to depositions.

J.L.: As a diverse lawyer, born and raised in a state as homogenous as West Virginia, the biggest challenges to the practice of law are often internal and not external. This is not to say that prejudice and bigotry do not exist within the legal profession. However, the overwhelming amount of challenges that I encountered as a diverse attorney are internal pressures. Given the lack of diversity throughout the State, as a diverse lawyer, I am not only responsible for upholding the reputation of myself, my law firm and the legal profession, but in many instances, I am also responsible for upholding the reputation of an entire demographic. Generally, individuals do not have to worry about how their actions or words affect anyone outside of their immediate familial and societal groups. For many diverse lawyers, however, our actions and words often carry the weight of shaping and influencing the perceptions of our minority communities as a whole. Accordingly, most diverse attorneys often serve as quasi-delegates for the demographic they occupy, whether it be couched in terms of race, ethnicity, gender, religion or sexual orientation. I often think when traveling to rural counties within the State that my interactions with the citizens, attorneys and judiciary of that county may be the only tangible interaction that they have with an African-American. Therefore, it is incumbent upon me, within a matter of minutes or hours, to represent not only myself but my diverse peers in a way that dispels years of preconceived, institutionalized assumptions of African-American men. I'm not afforded the opportunity to contemplate whether or not this is my cross to bear. It is.

This burden of shouldering the reputation of an entire community presents another internal challenge whereby the identity of diverse lawyers is divided into several distinct parts making the accomplishment of a unified, true identity an arduous psychological and social task. This is especially true within those demographics that have been subjugated, marginalized and debased in American society. Many diverse lawyers often view themselves, and therefore their identity, not only from their own perspective, but also from the perceived perspective of the majority demographic. This concept may be one that's hard to embrace for some individuals. However, imagine each time you walk into work, legal conferences, courtrooms or classrooms no one else looks like you. Instinctively, you begin to wonder how your presence is perceived by the people in the room. For many diverse attorneys, including myself, this example presents itself every single day of our lives.

For many diverse lawyers, in order to ease this intimidating experience, we suppress our unique perspectives and life experiences, either because no one can relate, out of mere desire to fit in or based on the belief that conforming our identities to the perceived perspective of the majority group will bring about personal success. As a result, our identities are not that of our own making based on our life experiences and personal perspectives. We convert our identities into what we perceive will be accepted by the majority demographic. Nonetheless, once we leave the presence of the majority demographic, we again clothe ourselves in the perspectives and experiences that initially formed our identities. Many diverse attorneys ultimately conceal these unique perspectives and life experiences, which, ironically, are the fundamental traits that make them valuable as diverse lawyers. For myself and many young diverse attorneys it is a high wire act

to remain true to our identities, in environments where we are unsure if our true identities are considered valuable or acceptable. Many find themselves living their lives through the perceived perspectives and experiences of the majority demographic and not based on their own perspectives and experiences.

What are positive aspects to practicing law as a diverse lawyer?

Melissa: Someone once gave me the advice “be the woman in the room.” This has become my mantra and practice philosophy. At different points in my career it has meant different things to me such as welcome the gender difference, exploit someone’s unconscious negative bias, capitalize on positive unconscious biases, bring different ideas and perspectives or own the room with confidence. Just being myself and embracing rather than shying away from it has worked for me personally. Throughout my career I have had the support of clients that found that diverse lawyers work to their advantage. Some of my clients with the undeserved reputation of being “big bad corporations” have seen the benefit of having a woman as their representative and “mouthpiece”.

I have been lucky to have sponsors (shout-out to Marc Williams!) and clients that intuitively recognized the benefit of diverse voices, but the push is now coming from the Courts, too. An opinion piece in the New York Times offered an outline for increasing diverse courtroom representation. And, in fact, Female Lawyers Can Talk, Too.¹

In my leadership role I counsel the Nelson Mullins diverse lawyers throughout the country that now is their time to shine. Clients, courts and law firms are focusing on the benefits of diverse perspectives and representation. A review of American Bar Association Resolution 113 and the number of General Counsel that signed is an indicator of the renewed focus for diversity in law firms. However, not only is the focus on law firm diversity as a whole, clients are rightfully holding their lawyers accountable for staffing diverse teams for their work.

J.L.: There are many positive aspects of practicing law as a diverse lawyer. For myself and many diverse lawyers one of the most rudimentary positive aspects is the ability to change perceptions and defy expectations utilizing the practice of law. Additionally, the practice of law provides diverse attorneys the ability to provide a tangible example of success to members of their communities, while simultaneously inspiring both past, present and future generations of their communities. Moreover, the practice of law allows diverse attorneys to sit on the front lines of legal issues and policy decisions that directly affect their communities.

What advice would you give to a young diverse lawyer?

Melissa: First, I would advise a young female or diverse lawyer to be the best lawyer that they can be. There is absolutely no substitute for good, hard work. However, as you hone your craft, you will encounter conscious and unconscious biases. It is necessary that you develop effective tools to deal with them. Do you do it subtly or directly? Are their ways to use those biases to your advantage? Is it something that must be confronted at all? With strong mentors both in and out of the legal profession you will develop a tool kit to handle these inevitable situations.

J.L.: Aside from the cliché advice that you have to work extremely hard, because diverse lawyers must fly to where others can walk, the most valuable advice that I could provide a young diverse lawyer is to be “unapologetically you.” Your perspective as a young diverse lawyer offers something completely different, don’t shield that difference of perspective, utilize it to your benefit. Your perspective is an asset and not a liability. It is not a hinderance to your success, but a unique attribute that makes you even more valuable to your firm, the legal profession and society as a whole.

What things is your firm doing to recruit and retain diverse lawyers?

Melissa: Nelson Mullins is committed to the recruitment, retention and progression of diverse and female lawyers. The Firm conducted a two-year study led by the Chairs of the Recruiting, Associates and Diversity Committees and an ad hoc committee of diverse lawyers of various practice areas, locations, experience levels, race, ethnicity and gender. In addition to studying the practices of other peer law firms, other professional firms were reviewed, a survey of all Nelson Mullins alumni was conducted, and all associates completed a survey on D&I issues. The goal was to move the needle on the number of diverse and female lawyers progressing from good associates and laterals to solid productive partners.

Besides strengthening many of the D&I programs already in place, there were enhancements and new ideas coming from the ad hoc committee ranging the gamut from paying for breast milk shipping for new mothers traveling for work to increased recruitment at HBCUs. Growing in significance are upgraded mentorship programs, flexible work arrangements, affinity groups for diverse and LGBTQ+ lawyers, programs for young mothers, transparent compensation, and training that ranges from subject matter to unconscious biases. In addition to systemic efforts Nelson Mullins has started an outreach to all diverse and female partners by one of the firm’s two Chief Diversity Partners, of which I am one. The goal of this position is to focus on recruitment, retention and progression of diverse and female lawyers. My cohort and I have visited each Nelson Mullins office and have met or made ourselves available to each and every diverse and female lawyer. This outreach has been part listening tour to see what the diverse and female population experiences and part follow up actions. Our goal is to allow our diverse and female lawyers the best opportunity to grow in their career. Besides soaking in this information and taking immediate steps when available, we have been regular personal

¹ Scheindlin, Shira A. “Female Lawyers Can Talk, Too.” *New York Times*, 7 Aug. 2017, www.nytimes.com/2017/08/08/opinion/female-lawyers-women-judges.html.

counselors to female and diverse lawyers as they navigate the business of the practice of law.

J.L.: To increase the number of diverse law students interested in summer and long-term employment, Nelson Mullins awards a diversity scholarship each year to one or more diverse Summer Associates. Nelson Mullins also partners with Claflin University, a Historically Black University in Orangeburg, SC, by providing pre-law scholarships. Additionally, the firm is a member of the Legal Council on Legal Diversity and a platform partner for Lean In, a global community committed to offering women the encouragement and support to “lean in” to their ambitions. Nelson Mullins has also established an Affinity Group that encompasses every diverse demographic and ensures that the Firm maintains an inclusive environment where all are valued, included, and empowered to succeed.

What are the challenges that firms face in retaining diverse talent?

Melissa: The same challenges of retaining all valuable talent – compensation, life pulls/stressors, career changes, “poaching” from competitor firms, balancing systemic “perks” with the law firm business...and on and on. We have been assessing our firm challenges at Nelson Mullins and one of our most pressing priorities is the number of diverse lawyers in Firm leadership. With strong diverse and female leadership voices many of the challenges of retaining diverse talent will have new perspectives and solutions. One of the countermeasures to confront the leadership issue has been the institution of a “Rooney Rule” which requires that for every appointed leadership position at least one female or one diverse attorney must be considered. The first steps are in process and progress is being made on the diverse and female makeup of our next generation of leaders which is expected to have a promising effect on the retention of diverse talent.

J.L.: I believe that challenges firms face in West Virginia in retaining diverse talent parallels the same challenges that the State generally faces in retaining talent. The first challenge is simple, there is just a lack of diversity within this State. The second challenge is a lack of qualified diverse talent within the State. Additionally, the societal infirmities (education, health, and quality of life) and economic blight that we’ve historically endured, makes it extremely difficult to recruit diverse talent to this State. Lastly, our geographical location, combined with the aforementioned challenges, makes it extremely difficult for firms in this State to compete with many of the larger markets that surround our State.

What should firms be doing to increase diversity in markets like West Virginia where the pool of diverse talent is so small?

Melissa: Broadening recruiting efforts to law schools not traditionally within the footprint from which you have historically recruited. Making concerted efforts to use diverse recruiters (headhunters) for laterals. Having training programs for all firm leaders, lawyers and staff to acknowledge and bust negative unconscious bias. Open communication about compensation, expectations for success, and advancement within firm ranks. Strong mentoring programs and encouraging sponsorship of female and diverse attorneys by other diverse, and importantly, non-diverse and male leaders. It is a different challenge to recruit in a smaller market like West Virginia but having systems in place to make jobs as attractive as jobs in more diverse markets will further the results.

J.L.: I commend the efforts of general counsels such as, Marilyn McClure-Demers of Nationwide Mutual Insurance Company, and other members of the Leadership Council on Legal Diversity for their efforts in spearheading diversity and inclusion within the State of West Virginia. However, it is ultimately incumbent upon the law firms doing business within the State to carry the mantle forward. The first step is to realize that what we’ve been doing thus far is not working. Mere reliance on West Virginia University College of Law to produce the litany of diverse legal candidates this State so desperately needs is not a sustainable plan. For many diverse students, the choice of which law school to attend is equally an economic decision as it is a decision based upon the prestige of the law school. Accordingly, West Virginia law firms must look outside of the standard West Virginia University, Ohio State University and University of Kentucky markets from which many law school candidates within the State traditionally attend. In order to recruit diverse candidates, firms must go to law schools where these diverse students are located. A vast amount of these law schools are smaller, “less prestigious” universities. However, the students attending these universities are receiving the same education and given the opportunity can produce the same, if not superior work product as those students attending the “more prestigious” universities.

It is further incumbent on law firms within the State to recognize talent and cultivate relationships with diverse students within the cities and markets that they occupy early in the students’ development. This may include the sponsorship of street law programs within the middle school and high school classrooms. This may also involve the sponsorship of mentor/mentee relationships between lawyers and high school students of diverse backgrounds interested in the practice of law, or providing summer internships to quality undergraduate candidates of diverse backgrounds majoring in Pre-law, Political Science, English, etc. The relationships and loyalty that a firm can garner simply by providing a diverse candidate an opportunity to be around the practice of law significantly impacts much more than just the practice of law within the State. It has the ability to transform the lives of the members of the communities that our law firms occupy and serve.

Marc E. Williams is the managing partner of the Nelson Mullins Riley & Scarborough, LLP West Virginia office. Mr. Williams handles complex cases nationally in an array of areas and has tried more than 100 jury trials and appeals in state and federal courts throughout his career.

Melissa Foster Bird is a partner with Nelson Mullins Riley & Scarborough, LLP in Huntington, West Virginia. Ms. Bird has

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Nelson Mullins Riley & Scarborough LLP is a U.S. law firm and lobby group based in Columbia, South Carolina. In 2019, the American Lawyer ranked the firm as the 69th largest law firm in the nation. Nelson Mullins employs over 800 attorneys and professionals across 25 offices. Nelson Mullins provides creative solutions to complex legal and business problems while offering value-added service to firm clients. With more than 35 diversified practice areas, many of Nelson Mullins' clients, from individuals to worldwide organizations, look to the firm for full legal services.



Diversity & Inclusion – It Might Save a Life?

Monté Williams, *Steptoe & Johnson, PLLC*

Diversity and inclusion (D&I) is so much more than an expedient catch phrase frequently uttered and exalted by corporations or individuals. It is more than a goal or objective. It is a destination, of sorts, that we should aspire to reach. Indeed, diversity and inclusion is as important today as it ever has been. Simply stated, diversity in our organizations and inclusion of those diverse individuals who make up our organizations makes us all better.

Notwithstanding this universal truth, it's always a good idea to remind ourselves of this fact. Maybe the story I will share with you in this article can serve as just one reminder. At the risk of sounding overly dramatic, but as a precursor to this article, I should say I believe diversity can change, among other things, a person's mind, beliefs, and misconceptions. Again, not to be overly dramatic, but in some cases, diversity just might save a person's life. In fact, it may have saved mine. The short journey I will attempt to take you on is personal to me. To understand it, I must take you back to my childhood.

To say I hated school as a kid is no exaggeration. I particularly hated elementary and middle school. In my opinion, recess was the only interesting thing about school. I likely felt that way because the only thing I seemed to excel at were sports - the playground was my favorite venue to display the only real talent I thought I had at the time. It is there I escaped and found something that escaped me in the classroom - relevancy. I was important on the playground and sought after by any classmate looking for a teammate. I didn't feel a need to hide on the playground.

What was the genesis of my dislike for school? Frankly, I'm not completely sure, but indulge me while I develop a theory (that may, admittedly, be an oversimplification) using the mind, and retrospect, of an adult. One reason could be the fact that I was the only racial minority in many of the schools I attended (I went to private schools during the early years of my education.) Said another way, most often, there was no one in the school who looked like me.

In addition to the obvious lack of racial diversity in my school, there was also a lack of racial diversity in the educational materials the students were provided. For example, the history books I read were devoid of anything that had direct applicability or similarity to my experience as an African-American kid. Given that, there was a disconnect between what I learned and who I learned about in my classes. Based on the curriculum I recall, no one (other than Dr. Martin Luther King, clearly the exception to the rule) who looked like me made a meaningful contribution to the world. At the time, this fallacy made sense to me. It made sense because I wasn't as smart as my white counterparts (or so I thought.) If we (African-Americans) were smart, we would have contributions worthy of mention in the history books. I would see people who looked like me in the history books. Right? Other than sports, I struggled to find positive images of African-Americans on television. In fact, television helped me justify why I excelled on the playground. At the time, it seemed simple - African-Americans were good at sports and white people were smart.

My irrational conclusions made sense in the mind of a child who learned that his people were enslaved and then freed by individuals who looked like the students in my classroom (who appeared much smarter than me.) This made sense in the mind of a child who foolishly believed that all the great worldly contributions were made by people who looked like my classmates. This made sense in the mind of a child who was attempting to fit in, simplify his surroundings, and process information for himself. As previously indicated, this made sense because the majority of individuals who looked like me, and who were "successful," were athletes.

The only successful non-athletes I had direct and constant contact with were my parents and many in their social circle. They, however, were exceptions to the rule in my mind. They had to be; otherwise I would see more people like them on a

regular basis – right? They were the lucky ones.

Because I did not speak aloud about my self-destructive conclusions they went unchallenged for a long time. My ignorance was not exposed until my father got fed up with my lackadaisical attitude toward academics and prohibited me from playing sports until my grades improved. As an aside, his decision changed my life in a positive way forever. I still remember my father telling me I was no longer able to play sports. I could not believe it. In my own way, but as respectful as I knew how, I challenged my father and questioned why he would stand in the way of my future. My future, as I saw it, was in playing sports. Being a lawyer, or any other professional, was not part of my calculus – you had to be smart or lucky to be a lawyer. “I’m just not good at school,” I told my father. His response was classic, “You better get good at school.”

Eventually I confessed to my father why I did not believe I was “good at school.” He asked, “Who told you that”? When I told him no one, and then went on to make an offer of proof as if an objection was sustained, I am sure he was dumbfounded. Not only had I reached a ridiculous conclusion, but I offered support for it. What transpired after that may be the second best thing my father did for me at that time.

My father took a vested interest in exposing me to as many professionals of color as he could – many of whom were in my family. He made sure these individuals shared their story with me. Turns out most of them were also athletes, so the connection was immediate. Through the exposure I had with these various individuals, I came to realize that I could do almost anything with hard work. More importantly, I realized that being smart had nothing to do with the color of my skin. The individuals my father introduced me to were living proof. I was so excited and filled with new ambition, new drive, and new commitment.

I am happy to report that a few report cards later my father lifted the sports moratorium. Indeed, I continued playing sports into college. I even managed to become “good at school,” and I no longer hated it. My “new attitude” was a direct correlation to the positive interaction and contact I had with diverse professionals.

Even today, the memory of my early educational years is never far from my mind. In fact, if you know me well, you likely have heard this story. Why do I tell it here or at all? Because I believe it’s a perfect case study for why D&I is necessary. I was lucky to have parents that exposed and challenged the false cause-and-effect analysis conducted by my young mind. I hate to think about where I could have ended up but for their intervention. I wonder, however, what conclusions I would have made about myself had there been other racial minorities in the classroom and who were strong academically. I wonder what conclusions I would have reached had I learned about Booker T. Washington, Ida B. Wells, Marcus Garvey, Malcolm X, Langston Hughes, W.E.B. DuBois and other African-Americans who contributed to American history. In other words, I wonder what conclusions I would have made about myself (and my classmates) had I been in a diverse environment?

I challenge you to ask the same question about the individuals in your organization. What contribution can we make to our respective environments to ensure D&I is at the forefront? What potential might you unlock with a more diverse organization? Is there a life for you to save or change through D&I? Even if the D&I impact is not as pronounced as my example or is an example of diversity of a different sort, it is prudent and right to address these questions. I close this with a quote from First Lady Michelle Obama, “Our diversity of faiths and colors and creeds – that is not a threat to who we are. It makes us who we are.”



The Motivation For Diversity

Elliot G. Hicks, *Kay Casto & Chaney PLLC*

Following Jeff Woods, of Jackson & Kelly, I was the second African-American lawyer to join a major law firm in West Virginia when I joined Kay Casto & Chaney in September, 1984. I noted that I frequently worked in West Virginia counties where I was not only the only person of color in the courthouse that day,

but I was frequently the only person of color who had visited certain West Virginia counties that month.

Though a few counties in our southern coalfields have a very progressive history of diversity and racial opportunity, West Virginia has never been known as a hotbed for diversity. As a native and lifelong resident, though, I have loved our state for its “live and let live” attitude. I have never been afraid to try a case in any county in West Virginia. After seeing more

than one hundred juries return verdicts in civil cases, I believe I have gotten a fair shake, certainly from the judges, and generally from the juries before which I have presented cases.

As one who has witnessed diversity efforts in West Virginia’s legal community from many of their earliest stages, I have seen some such efforts launched with great sincerity and effectiveness, and I have seen some that were clearly undertaken for external reasons.

At a meeting in Delaware hosted by a large multinational company, I sat in a room with many lawyers just a bit younger than I. I was basking in their confidence as they described their clients’ demand for diversity both in the firm leadership and at counsel table in the courtroom. Those lawyers were from Atlanta, Houston, Chicago and other cities with large, diverse populations. When the conversation came around to me, I chuckled and said, “I come from a place where my

clients are still trying to figure out whether diversity is a good thing [at the counsel table].”

That is to say, efforts to diversify the profession look a lot different depending on the place from which you see it. In those larger cities the clients thought it was good business to be represented by a law firm that reflected the diversity of the community from which their jury would be drawn. If they came to a courtroom with a trial team that was inconsistent with the diversity they saw on the jury, they feared the worst consequences of trial. From that very special perspective, though, powerful clients began to make nationwide demands for diversity within the law firms they hired.

When that message got to West Virginia, with its five percent non-white population, it applied to many other areas of practice, but not quite so fervently to its trial teams.

Many articles today refer to “the business case for diversity.”

They contend that the quality of the group’s decision-making is enhanced when you bring more diverse experiences to the table. So you make it a point to have the voices of males AND females, and people of various ages, colors and backgrounds, with the point being that the wide range of thought produced by a diverse team would leave fewer intellectual or emotional stones unturned, than a team drawn from the same well as always.

Having witnessed so many initiatives designed to improve diversity, backed by various degrees of motivation, it remains for all of us who appear to sing along with the chorus in favor of diversity to look at ourselves in the mirror. We have to ask whether we encourage diversity primarily to gain favor with clients or jurors, or do we demand diversity, even when it’s tough, because we truly believe that the quality of our group’s thought processes are improved by the contributions of a diverse group of thinkers.



Embracing Diversity in Law Firms

Victoria L. Wilson and Camille E. Wartts, *Kay Casto & Chaney PLLC*

Diversity, at its best, allows us to see one another more clearly. As a value within our law firms, diversity helps us acknowledge that differences exist, while viewing those differences as opportunities to build a broader client base and have more successful outcomes. A law firm that has a diverse team makes it more marketable to a broader client base and puts itself in the position to give its clients the best advice because it is drawing from a richer pool of experiences. We know intuitively that it is an advantage to have different people in the room with different perspectives. There is no doubt that diverse experiences, backgrounds, and perspectives of attorneys are essential to providing clients with excellent legal services.



Working with and getting to know people who are of different genders and/or share different backgrounds helps dispel misconceptions, biases and prejudices. Most human prejudice comes from ignorance in the purest sense—a lack of knowledge and exposure. Whether it is gender, race, religion, sexual orientation, or age, we become better attorneys when we can see each other and our clients for more than just an outside perspective. Moreover, a diverse workplace gives us an opportunity to check our biases. We all have implicit biases that can impact how we apply the law in large and small ways. For example, in criminal law, a judge’s biases can affect how he or she determines whether a defendant should be detained as he or she decides whether the defendant is a flight risk or danger to the community. In civil matters, credibility determinations also may be colored by our biases, misconceptions, and perceptions. In addition, it is not shocking that economic disparity and social disparity can affect legal outcomes.

Embracing diversity at all levels within a law firm, from the summer law clerk to firm leadership, is imperative and means more than hiring a small number of minorities to satisfy appearances. It requires true inclusion of minorities into firm life with opportunities for advancement, leadership roles, and pay equality. It requires awareness, training, and education of all employees of how their own biases impact their thoughts and decisions and how to overcome those challenges. Making our law firms more diverse should not simply be a hiring strategy. More diversity in our law firms can be viewed as one component of a broader set of goals—to take a look at our practices, our communities, and our country, and better acknowledge the importance of understanding and including more than just the traditional, majority perspective.

Recruiting and retaining a diverse workforce in West Virginia is not easy, but it is important and certainly possible. It requires examining methods of recruitment, and perhaps widening the recruitment radius. Ultimately, empowering a diverse group of people within law firms to make decisions and lead recruitment efforts also is an effective tool, because the more diverse a firm’s hiring and recruiting team, the more diverse the firm’s employees will be.

When we understand others better, we understand ourselves better. Diversity is a good defense and a good offense—the awareness that it creates can help an organization both identify and sidestep potential problems as well as zero-in on untapped niches and potential opportunities.

Diversity, at the ground level, puts a chorus of representative voices in the pipeline. Attorneys don’t make laws, but, without question, we play primary roles in shaping how the law is applied. As we know, attorneys also become judges, justices, and politicians who can, indeed, more directly impact the checks and balances on the legal system, public policy, and lawmaking itself.



The Bend In The Road

Fazal Shere, *Bowles Rice, LLC*

As I write this, on the topic of “Diversity” in a publication titled “Defender,” do I toe the line, appear gregarious and grateful, announce myself welcomed? Or do I appear inconsolably grim. Maybe none of the above.

Let us get one thing straight. I am Muslim – whether practicing, or to what degree – is not really the point. I was listening when in 2016 a presidential candidate unabashedly stated that “there should be a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what the hell is going on.” To get the full import of that statement, perhaps, substitute the word “Muslim” with any religion of your choice. Maybe then it is easier to understand the enormity of what was said. And, he won. I live in that country till the foreseeable end of my life and so do my children.

But let’s be careful there. It has also recently been said about four Congresswomen that they should go back to the “broken and crime infested places from which they came” – and only one of the four was born abroad. That one like me. We emigrated and I, and the Congresswoman would probably agree too, feel quite good about it. But do I have the privilege of both loving and sometimes criticizing our country, or do only people who don’t look like me have that privilege?

So, let me get to the point. And here I seek help. From one no less than James Baldwin, who said in a 1970 open letter to activist Angela Davis who had just been imprisoned: “One might have hoped that, by this hour, the very sight of chains, would be so intolerable a sight for the American people,

and so unbearable a memory, that they would themselves spontaneously rise up and strike off the manacles.”

So, let us not readily accept the foibles of this age. This age is not more flawed than any other – in fact, it is statistically quite peaceful and even prosperous to a degree. But we seem poised at some precipice where anything goes, any insult goes, and it is hip to be vulgar and demeaning to certain groups. Things could get a lot worse. Flippancy could become the norm and seriousness a serious liability. Let us fight that together with a passion. Again, to quote Baldwin: “You don’t need numbers you need passion. And this is proven by the history of the world.” We are after all “Defenders” – that word is poignant and represents not just the flipside of the Plaintiff’s bar but should equally be a call for the defense of the maligned; be it a corporation, or a denigrated minority, or any person unfairly accused. And what is “Diversity”; is it good, is it bad, is it our strength as a nation, or is it a wart to be ridiculed?

There are many that are thoughtful amongst us, many with the best intentions. They are not beholden to a political party, or a race, or a profession, or a chronological age, or a quantified level of education. I invite all of them to join the good fight – for it is the best of fights, and the prize is not an open-minded homogeneity or a model village – but simply an enlightened state, where we think deeply and speak freely, and evolve. Death and taxes are not the only two immutable truths – give evolution its due too. Let us evolve and truly prosper and spruce this up: the only tangible realm we will ever know. If we cherish and want our great country to be diverse, let’s defend and fight for it. And overcome this crippling and numbing fear of the other amongst us.



Overcoming Bias and Perception

Suleiman Oko-ogua, *Bailey & Wyant, PLLC*

Diversity is about celebrating differences, which can be difficult if everyone in your office looks and acts exactly like you. A person’s unique set of differences creates their identity, shapes who they become and how they perceive the world – this holds true in any environment, including the legal environment. Over the last few years, research has revealed that the legal profession continues to lag behind in terms of gender diversity, as well as racial and ethnic diversity.

Experts suggest that the lack of progress in diversity is attributable at least in part, to implicit bias. Implicit bias is our brain’s way of taking shortcuts when making routine decisions. It is synonymous with unconscious bias, and is generally associated with racial, ethnic and gender stereotypes. As a minority attorney, I have experienced implicit bias throughout my legal career.

Originally from Nigeria, West Africa, I moved to the United States in 1997 to attend Berea College, a small liberal arts college in Kentucky. The culture shock I experienced during my time in college was eye-opening, but it prepared me for what was yet to come. I attended the University of Kentucky College of Law, and ultimately transitioned into the legal profession as a law clerk, a prosecutor, and currently a civil defense lawyer.

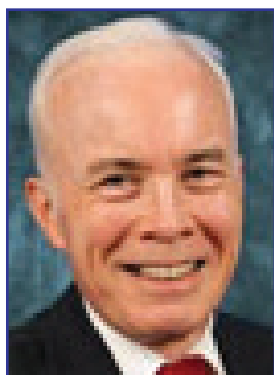
Although I was told stories of implicit bias prior to becoming an attorney, my naivety about the issue led me to believe that the legal environment was largely immune to it. Over the years my practice has taken me to small towns in both Kentucky and West Virginia. It was in these areas that I experienced implicit bias most often. One example of this bias was the time I was mistaken for a summer intern, after having practiced law for over five years. On another occasion, I walked into a courtroom with my legal assistant who was white and there was the presumption that my assistant was in charge and I was the assistant. One of the more notable experiences I can call upon as an example was one hearing I attended where it was customary that attorneys could move around the court room and socialize before the judge came out to the bench. Upon arriving in the courtroom, I walked over to greet my fellow attorneys and I was approached by the bailiff and told to sit

down because only attorneys were allowed to move around the courtroom before the judge came to the bench. I was taken aback by his comment because like my fellow attorneys, who were of a different race, I was dressed in a suit and was in possession of my brief case and other legal documents, which would signify my status as an attorney. I was surprised to be treated differently than my peers and talked down to in such a way.

On each occasion, I have made an effort to correct the bias. My goal is always to make it a learning moment for both sides, for the other person and myself. One of the main reasons I have stayed in West Virginia and continue to travel to small towns to practice, is to help change attitudes simply by being present. When individuals see me, a person who does not fit their deeply held bias, it may help to change their attitude, and ultimately, help reduce or eliminate their bias.

How do we reduce or eliminate these biases? The very term implicit bias recognizes that implicit bias is an unconscious act. The first step is to have the self-awareness to recognize the existence of their own unconscious biases. Beyond awareness, the legal profession must commit to train its employees, from internally within the law firms, to judges, to circuit court clerks, to court utilized security, etc., to recognize the existence of unconscious bias. Some studies have shown that the simple awareness of your unconscious bias helps limit its effect on your decision-making. Which means, by accepting that you have unconscious bias, you are making a more conscious and deliberate effort to improve your actions. Research has shown that implicit bias is malleable; therefore, the associations that we have formed can be gradually unlearned and replaced with new associations. Simply put, changing your personal behavior is the most natural step after recognizing the existence of your unconscious bias. And the final step is tackling unconscious bias through structural changes. This step required leadership to not only buy in but participate in an active way to ensure appropriate commitment to diversity. This includes recruitment, training and mentorship opportunities.

Diversity shouldn't be a simple page in an employee handbook, or a statement we make on our websites. The goal should never be to just check a box off on diversity form. Diversity should be a constant conversation around every conference room table. It needs to start with awareness and end with inclusion. We should all be challenged and inspired to embrace individuals within the legal profession from more diverse backgrounds and support them in our united goal to enhance the legal profession and move it forward together.



New West Virginia Statutes of Possible Interest From The 2019 Legislative Session and Signed By the Governor

Luke Lafferre, *Dinsmore & Shohl LLP*

There were no statutes from the 2019 West Virginia Legislature that were of earth-shaking importance to civil litigants or defense lawyers generally, but several might be of interest to some:

1. **Senate Bill 119**, [Passed January 29, 2019; in effect 90 days from passage]

(Peer-review privilege):

Amends W.Va. Code §30-3C-1 and §30-3C-1 adding a new section relating to discovery in a civil action or administrative proceeding, specifying certain health care peer-review documents are confidential and not subject to discovery, providing that a person who testifies before a review organization or is a member of a review organization shall not be required to testify or be asked about his testimony, providing that peer review proceedings, communications, and documents of a review organization are confidential and privileged and shall not be subject to discovery, and related provisions.

2. **Senate Bill 360**, [Passed March 7, 2019; in effect 90 days from passage] (**Consumer Litigation Financing**)

Provides that a litigation financier has to register as a litigation financier, providing registration requirements for business entities, partnerships, and individuals, requiring that litigation financiers secure a bond or an irrevocable letter of credit, and related provisions. Designated as a new article, §46A-6N-1, *et seq.*

3. **Senate Bill 398**, [Passed March 9, 2019; in effect from passage] (**Senior-Status Judges**)

This relates to compensation paid to Senior-Status Justices, Judges, and Magistrates. Amends and re-enacts W.Va. Code §5-10-48, §50-1-6a, and §51-9-10.

4. **Senate Bill 531**, [Passed March 6, 2019; in effect 90 days from passage] (**Workers' Compensation**)

Affecting compromise and settlement of certain workers' compensation claims, and providing that occupational hearing loss and hearing impairment claims are not non-orthopedic occupational disease claims for the purpose of the requirement that a claimant be represented by counsel in a settlement for medical benefits. Amends and re-enacts W.Va. Code §23-5-7.

5. **House Bill 2954**, [Passed March 7, 2019; in effect 90 days from passage] (**Regulating Insurance Business Practices**)

This amends and re-enacts W.Va. Code §33-45-1 and §33-45-2, all relating to ethics and fairness in insurer business practices, clarifying the definition of "provider," correcting citations, and requiring payment for services of a provider who provides services during the credentialing period.

6. **House Bill 2476**, [Passed March 4, 2019; in effect 90 days from passage] (**Affecting valuation of Total-Loss Motor Vehicles**)

This affects valuation of a motor vehicle involved in an insurance claim and requires that an amount equal to the consumers' sales tax applicable to the sale of motor vehicles be added to a cash settlement arising from a total loss of a motor vehicle. This amends and re-enacts W.Va. Code §33-6-33.

38TH DTCWV ANNUAL MEETING
LEGACY AND LEADERSHIP
SAVE THE DATE
June 7 – 10, 2020



Myrtle Beach Marriott Grande Dunes
Myrtle Beach, South Carolina

MARK YOUR CALENDAR

Meeting Date:

Sunday, June 7 – Wednesday, June 10, 2020

- Plan to join us for fun in the sun and some traditional, exceptional DTCWV CLE.
- Information coming soon by email to book your room.
- Registration Brochure will be delivered after the first of the year.

“All the cool kids will be there!”

– Oliver Wendell Holmes (maybe)