

Focus on Diversity

For more information on items in this special section, contact Louisiana State Bar Association Director of Member Outreach and Diversity Kelly McNeil Legier, (504)619-0129, (800)421-5722, ext. 129, or email kelly.legier@lsba.org.



Sponsors sought for LSBA 6th Annual Diversity Conclave

Sponsors are being sought for the sixth annual statewide Conclave on Diversity in the Legal Profession on March 8, 2013, in Baton Rouge. Sponsors who commit by Dec. 15 will appear in the Conclave mailer. For more information on sponsorship levels, contact LSBA Program Coordinator/Marketing and Sections Christine A. Richard, (504)619-0105, email crichard@lsba.org or go to: www.lsba.org/lsbadocuments/610.pdf.

LSBA offering free diversity/inclusion presenters for workshops

The legal profession needs venues to safely discuss sensitive and not-politically-correct topics to learn, grow and increase the ability to interact with colleagues appropriately and professionally, regardless of race, ethnicity, religion, age, generation, lifestyle or geography.

To that end, the Louisiana State Bar Association (LSBA) is building its diversity/inclusion resources by equipping attorneys and judges with the skills needed to present diversity/inclusion workshops. The LSBA successfully trained 16 pre-



“From Counting Heads to Cultivating Minds: Why Effective Retention Requires Attention to Our Implicit Biases”

By Vernā Myers

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

Frequently you will hear the term *retention* applied to matters of diversity.

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

To read the full article, go to: http://www.americanbar.org/publications/law_practice_magazine/2012/september-october/from-counting-heads-to-cultivating-minds.html.

Vernā Myers is the principal of VMCG, a diversity and inclusion consulting firm and author of Moving Diversity Forward: How to Go From Well-Meaning to Well-Doing. She will facilitate a two-hour workshop at the March 8, 2013, Conclave on Diversity in the Legal Profession. She can be emailed at vmyers@vernamyersconsulting.com.

senters at its Train the LSBA Diversity Facilitator in May. These trained facilitators are available for presentations to members in law firms and offices and for CLE programs. The diversity/inclusion presentations and workshops qualify for either professionalism or ethics CLE credit (depending on content).

Also, the LSBA is hosting and co-hosting one- and two-hour diversity/inclusion workshops that are free for signa-

tories of the LSBA’s Statement of Diversity Principles, www.lsba.org/diversity/DiversityPrinciples.asp.

To schedule a presenter, contact LSBA Member Outreach and Diversity Director Kelly McNeil Legier, (504)619-0129, email kelly.legier@lsba.org.

ASK & TELL

Is it really so bad for a firm to hire a minority attorney to sit at counsel table for a trial that is pending before a minority judge — even when the minority attorney is given no responsibilities during the trial?

The question describes *Symbolic Diversity* — a situation in which a firm hires minority attorneys to sit at counsel table without allowing those attorneys to participate in the trial. During the Louisiana State Bar Association’s (LSBA) 2008 Diversity Conclave, several judges commented on the effect that symbolic diversity had on them. The judges were insulted by symbolic diversity and indicated that it damaged the credibility of the firm engaging in it.

Chief Judge Ulysses Gene Thibodeaux (Louisiana 3rd Circuit Court of Appeal) explained: “It’s an insult to bring somebody to just sit there as a face, thinking that that can influence a judge. Diversity is more than faces on the bench. It’s more than faces at a counsel table. I’m not interested in symbolic forms of racial diversity.” Judge Thibodeaux discussed guidance on diversity laid out by the U.S. Supreme Court in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) [1]. Judge Thibodeaux said that Justice Powell’s statements in *Bakke* ring true today: “The nation’s future depends upon leaders trained through wide exposures through the ideas and morals of students as diverse as this nation.” The U.S. Supreme Court has previously pronounced that diversity is important.

Judge Fredericka H. (Ricky) Wicker (Louisiana 5th Circuit Court of Appeal)

echoed Judge Thibodeaux’s opinion and added that firms engaging in symbolic diversity offend the jury, offend the court and ultimately offend their clients. She added that it is a bigger disservice than it is a service for a firm to simulate diversity as opposed to really bringing along a diverse group of young lawyers who will grow into partners. The firms that take the latter approach will get the business. What can counsel or the judge do when a firm has the 11th hour addition of a minority attorney by opposing counsel? An attorney could remark during opening statement about how the minority attorney will examine witnesses and present evidence just as he will. The attorney’s comments could compel opposing counsel to give the minority counsel a meaningful role that he or she otherwise would not have had in the trial.

If the firm had a sincere interest in having more diverse attorneys within its ranks, it should take serious steps to increase the diversity in its hiring. Firms must adjust their hiring practices and look beyond their comfort zones when trying to fill vacant positions. Many people are reluctant to exit their comfort zones when seeking new hires, and this reluctance is a hindrance to diversity.

Judge James E. Stewart, Sr. (Louisiana 2nd Circuit Court of Appeal) explained: “I know colleagues who have been on the bench for 30 years, who’ve never interviewed anybody other than a white male from LSU Law School for a clerk position, simply because they became comfortable with them. But once we move to be our best and start interviewing other people — whether it’s male, female, black, white — then we challenge ourselves to hear a different voice and to be better lawyers and better judges.” He noted that firms will continue having problems with diversification if they continue perceiving “qualified” as a person fitting one particular stereotype.

Judge Thibodeaux emphasized the importance of law firms resisting the urge to repeatedly hire from the same pool: “We had a habit of hiring in-house. Well, if you’re going to hire in-house and all of your folks are of the majority race, you’re going to continue to do that. So you have to expand your pool. You have to advertise. You have to go out and recruit. You have to ask friends. You’ve got to call your buddies in these law firms

and say ‘Hey, you got anybody? We’re looking for this type of person with these talents. Do you know anyone with these talents?’ It has worked in our court from a staff perspective.” Judge Thibodeaux also commented on the impact of his diverse clerks. “I learned a lot from my law clerks who don’t look and act like me.” The judge recommended that firms revamp their internal hiring mechanisms to make the legal society, the court, and the firm’s staff look like what it should — the world around us. Firms also should consider recruiting at law schools and venues with large numbers of diverse applicants, such as the LSBA Minority Involvement Section’s Job Fair.

In sum, symbolic diversity potentially harms the credibility of the firm engaging in it and robs us all of the benefit of having diverse trial teams and diverse perspectives contributing to the resolution of a case.

The Ask & Tell column is designed as a discussion-starting vehicle. Bar members are encouraged to pose for discussion tough, even politically incorrect, issues about race/culture, religion, gender, sexual orientation, disability and age. In turn, members can expect smart, direct and disarmingly frank answers. Submit questions or scenarios to Kelly McNeil Legier; (504)619-0129, emailkelly.legier@lsba.org. If selected for publication, topics or scenarios will be presented without names or identifying information.



LSBA DIVERSITY

SAVE THE DATES!

Check the LSBA’s Diversity webpage for more information on the following events:

- ▶ March 8, 2013 - Sixth Annual Conclave on Diversity, Baton Rouge