

Inside



A publication of the Corporate Counsel Section
of the New York State Bar Association

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...and more!



Message from the Chair and Editor

“Action is the foundational key to all success.”—Pablo Picasso

During the Annual Meeting in January, I was honored to become Chair of this wonderful Section. As many of you know, I had been Chair-Elect working closely with our Chair Jana Springer Behe until her untimely passing in August. Jana and I shared in the excitement about the future of our Section and we had a very similar vision that included new ideas and initiatives to enhance the value of membership. My goal is to build upon that vision and those ideas during my term.

While serving as interim Chair, I worked with the Executive Committee to honor Jana’s memory and commitment to our Section. First, the public interest fellowship portion of the Kenneth G. Standard Diversity Internship program was renamed the “Jana Springer Behe Corporation Counsel Section Fellowship.” The goal of the Fellowship is to provide: (i) non-profit organizations with diverse candidates; and (ii) diverse students with an opportunity to experience in-house legal practice. Special thanks to the New York Bar Foundation and Ken Standard for supporting the renaming of this Fellowship to honor Jana. We encourage you to make a donation to further support the Fellowship and honor Jana’s memory. Additional information can be found on page 8.

During the House of Delegates meeting in Albany this past November, we memorialized Jana in celebration of her life. Her parents, Ron and Marilyn Behe, were in attendance. My remarks can be found on pages 6-7. There is also a video posted on the Section’s Communities page.

The fall and winter were very busy for the Section. We held another successful Corporate Counsel Institute in November. If you were unable to make it, you can read about the program on pages 32-33. During the Annual Meeting in January, we



collaborated with the Business Law Section for an excellent and timely program on compliance. We also sponsored an event with New York Law School and its First Generational Professionals Group about business dinner etiquette. Several Executive Committee and Section Members were in attendance. You can read more about the event on page 30.

The Section is currently making plans for the spring and the remainder of the year. During my term as Chair, in addition to the great work we will continue to do surrounding the Kenneth G. Standard Diversity Internship program, we will create

an alumni group for interns who completed the program. We will also actively recruit new members to our Executive Committee and continue to work hard to promote our diversity initiatives, including recruitment and collaboration with affinity bar associations.

Our Pro Bono Committee will continue to increase opportunities for in-house counsel to provide pro bono services through a variety of outlets.

Our Membership Committee will continue to work to increase the value of membership through timely and topical webcasts, roundtables and provide other content-driven opportunities. Finally, the Technology and New Media Committee is being revitalized. We hope to be more active on social media and allow for better communication between and among the Section and its leadership.

We want to hear from you and we also encourage you to get involved. Please share your ideas with us and let us know how we can better serve you. You can reach me at Elizabeth@shampnoiadr.com or any of our Executive Committee members whose contact information can be found on pages 37 and 38. Meanwhile, we hope that you enjoy this issue of *Inside*.

Elizabeth Shampnoi

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More Support for Mindfulness: Reduction of Implicit Bias

By Cecilia B. Loving

Most if not all black attorneys share stories of being mistaken as support staff, nannies, or even criminals by white colleagues, neighbors and strangers. One of the most intriguing incidents is when a group of white people attending a black tie event climbed into the back seat of a prominent member of the Bar's automobile and asked to be driven to their destination. To their chagrin, he drove them home and later identified himself as a colleague at the same event they attended. Nothing is offensive about serving as an assistant, nanny or chauffeur, but the assumption that every black person is what is often seen in the media is a result of implicit bias. The presumption that a black law student, lawyer, professor, or jurist cannot be what they were educated and trained to be carries over into the professional environment because of the associations created through biases resulting from historical, societal, cultural, and economical power structures. These biases, which are often subtle, are prevalent throughout our country and the world and often identify black people (including clients, witnesses, jurors, etc.) with being marginal, or less than, as well as dangerous and bad.¹ Fortunately, there is support that the practice of mindfulness reduces implicit bias against race, as well as other biases.

Social psychologists have developed ways to measure implicit biases, such as the Implicit Association Test (the IAT). Harvard University discovered that IAT data revealed that 88 percent of white Americans have implicit bias against black people and that 48 percent of black people hold the same bias towards their own race.² Thus, developing policies and making changes through recruitment, training, education, messaging, mentoring, and accountability in favor of racial equality is important, but if we want to dig even deeper and reduce implicit biases against race, gender and gender identity, sexual preference, age, ability, religion, and other biases, we have to change our perception at the unconscious level.³

Mindfulness is defined as "the practice of bringing awareness to the present,"⁴ which is often achieved through meditation. Over 4,500 scientific studies support the practice of mindfulness, which fortunately is growing in the legal community.⁵ Robert Chender, an attorney and Buddhist meditation teacher who has led mindfulness sessions at the New York City Bar Association for almost 10 years and is also a teacher of "Search Inside Yourself," the mindfulness and emotional intelligence program developed at Google, says that the awareness and sense of presence that comes from practicing mindfulness results in "a willingness to connect with others, and meet them with respect and curiosity, rather than defensiveness and aggression."⁶ Law firms are going on retreats to learn inner peace, which not only reduces anxiety or stress, but also their judgment about others.⁷ Bar associations are hosting Mindfulness Meditations for Lawyers.⁸ Law pro-

fessors like Charles Halpern at the City University of New York, Yale University and University of California, Berkeley, and Rhonda Magee at the University of San Francisco are teaching mindfulness in the law schools.⁹ A "mindful law practice" is also emerging, not only so that lawyers co-create a more diverse and inclusive work environment but also so that the lawyering services provided are holistic and restorative.¹⁰



Cecilia B. Loving

Several studies support the use of mindfulness to reduce implicit bias. Yoona Kang at Yale University did a study randomly assigning volunteers to one of three groups in order to measure their implicit bias against black people and homeless people. One group practiced a loving-kindness meditation for six weeks; one group discussed loving-kindness meditations without really practicing them; and another group did nothing. At the end of the six weeks, the only group whose implicit bias against black people and homeless people was reduced was the group who actually practiced the loving-kindness meditation. Just learning, thinking about and discussing compassion and equality was not enough to change deep-rooted biases.¹¹

Another study was done at the University of Sussex. Half of the participants performed a seven-minute loving-kindness meditation practice with black people as their focal point. The study resulted in a significant diminishment of bias against black people.¹²

Yet another study showed that meditation in reducing bias does not need to be restricted to loving-kindness meditations. Participants engaging in 10 minutes of mindfulness meditation showed significantly less bias.¹³

Although there is no established method yet of achieving long-term reduction of implicit bias, there is substantial proof that a diverse workforce is better than a homogeneous one. Decades of research have shown that socially diverse groups are more innovative at solving complex problems than homogeneous groups. Research also concludes that the work of diverse groups results in a substantial increase in profitability, as compared to homogenous groups.¹⁴ The only way to sustain a diverse workforce is to provide sufficient psychological safety. In Project Aristotle, an initiative studying 180 in-house teams to find out why some failed while others succeeded, Google showed that employees with the encouragement

of a positive and safe workplace are “less likely to leave, more likely to harness the power of diversity, and ultimately more successful.”¹⁵

The question remains, how do we incorporate mindfulness into our daily life in order to enhance a “safe,” productive and inclusive work environment? The answer is that we do it with commitment, intention and dedication. We have to commit to unbiased conduct, speak out against bias and co-create a standard of fairness. Mindfulness provides us with an increased understanding that our biases are not really a part of us. Thus, our awareness is opened to tell a new story. With intention, we can seek out people with interests different from ours and expand our perspective, which allows us to identify commonalities and helps provide respect for differences. But the most important part of our mindfulness practice is dedication. Unless we are disciplined and dedicated to spend at least a few minutes a day in mindfulness, we are not practicing mindfulness. There are ample meditation applications, including but not limited to Stop, Breathe and Think; Headspace; Calm; and Spiritmuv: Church-in-Motion (“Meditate Now”). Just 15-30 minutes can help improve your overall demeanor, cooperation, and creativity, reduce your implicit bias, anxiety, and stress level, and support a more harmonious, appreciative workplace for everyone. Not only do you speak and conduct yourself in a more positive manner when you practice mindfulness, but you also convey an energy of peace and well-being that supports calmness and clarity without judgment.

Steven Keeva, author of *Transforming Practices*, says that mindfulness brings “clarity and mental spaciousness that allows for purposeful action rather than mere reactivity.”¹⁶ Because of the benefits of mindfulness, many corporations and institutions have adopted mindfulness programs for their employees,¹⁷ including Aetna, Ford, General Electric, General Mills, Google, Intel, Stanford, Target, Yale, the U.S. Military, and many public schools.¹⁸ Congressman Tim Ryan is moving beyond the workplace to call for a Mindful Nation.¹⁹ The United Kingdom has already established itself as a Mindful Nation.²⁰ While the United States is not yet a “mindful nation,” lawyers can provide leadership to help us move in the right direction. At minimum, we can establish a mindful workplace for ourselves and our clients—one that welcomes all to a safe space of innovation, appreciation and increased productivity.

Endnotes

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Cecilia B. Loving is an expert in diversity, inclusion and mindfulness, as well as an attorney and minister in New York City. Her free Mindfulness blog can be accessed on her free app, Spiritmuv: Church in Motion or www.spiritmuvmeditation.com. Some of her books include *God Is a Brown Girl Too*, *God Is a Lawyer Too*, *Prayers for Those Standing on the Edge of Greatness*, and *Ten Laws of Unlimited Success*.

LEGACY MESSAGE

Delivered by Elizabeth Champnoi at the November 2017 House of Delegates meeting in honor of Jana Springer Behe

Good morning.

I am honored and privileged to have been asked to honor Jana's legacy today. And, I thank you for the opportunity.

Given Jana's active and passionate commitment to bar service dating back to 2006, many of you probably had the pleasure of getting to know or work with Jana—whether it was through the Young Lawyers, Labor and Employment, Health, Business Law or Corporate Counsel Sections. Maybe it was through her service on the House from 2014-2017 or her dedicated work year after year organizing and implementing the Kenneth G. Standard Diversity internship program for the Corporate Counsel Section. If you were lucky enough to have had the opportunity to meet and work with Jana, I hope to provide some greater insights into who she was. If you did not have that opportunity, I hope to let you in on what you missed.

I met Jana several years ago when I joined the Executive Committee of the Corporate Counsel section. Jana immediately struck me as a natural born leader with a dynamic presence.

Jana was also a successful lawyer serving as the Secretary of the NY State Technology Enterprise Corporation and its Director of Contracts and General Counsel.

In the last two years, I began working more closely with Jana—first supporting her as her Alternate to the House, then in her role as Chair-Elect and ultimately when she became Chair in January of this year. We became fast friends and I quickly learned that in addition to her day job and bar leadership, Jana was also heavily involved in community activities such as the Capital District YMCA—serving on the Board of Advisors and as Board Chair from 2014-2017.

I could go on listing Jana's impressive and admirable professional accomplishments but while those accomplishments were a huge part of Jana's makeup, her legacy is so much more than that. So, I choose to share with you today the Jana I knew and the incredible heart and soul she had that I know will have a lasting impact on so many.

What always struck me most about Jana was how selfless she was in everything that she did. Jana was remarkable and gave endlessly to those around her. She didn't join the bar and become so active to develop a business or to try to advance her career. She didn't join in community activities for credit. She did it simply because it was who she was at her core and what she did. An example of this

that sticks out to me is at the House of Delegates meeting in June when the Constitutional Convention was up for a vote. Jana was no longer on the House but reached out to ask if I was going. I told her I was and she asked that I keep her apprised of the day's events. She had read and analyzed every detail. She told me she was playing in a golf outing but would be checking her phone for updates so I shouldn't hesitate to reach out. I sat in Cooperstown intending to write to her when the debate got underway but before I could she was sending me texts every so often, reminding me not to forget. And when the debate began I was feverishly texting her the play-by-play and she was responding with commentary that was quite frankly hilarious—the details of which maybe I will share after Tuesday's outcome.

A few short days before her untimely passing, I was blessed to have had drinks with her after she served as the Master of Ceremonies at the Corporate Counsel Section's Kenneth G. Standard Diversity Internship program award ceremony. It was a beautiful night and we walked to Bryant Park for drinks. We talked business, of course, but somehow we got on to the subject of what it means to live a meaningful life. We questioned why we were here, what our futures would bring and what this thing called life was all about.

We shared stories of finding true love later in life, questioned why we hadn't focused more on having children early and wondering if it was too late. She commented multiple times on my strength, knowing I had been through significant losses in the last few years. She wondered how I did it all. And I laughed, telling her that I didn't know anything about this thing called life. But she—Jana—knew a lot. In addition to all of her professional and community related obligations, she made time to enjoy life on regular basis whereas I couldn't seem to balance it all. Whether it was on the golf course—and she was an incredible golfer, by the way—or at the track in Saratoga, or on a pub crawl, or at a sporting event, Jana somehow knew how to manage it all and live life to the fullest, putting everything into perspective.

Jana was in the prime of her life. Having turned 40 this year she was celebrating the Year of Jana. As someone who insists on celebrating my birthday month and refuses to work on my birthday, this was something I wholeheartedly supported. And, quite frankly, was a little disappointed that I hadn't come up with the idea first.

Jana was a proud daughter, sister, wife, aunt, and a mom to her beloved dog Bert. She was also a mentor and friend to so many. Attending her celebration of life, I met

so many people who shared stories of what an impact she had on their lives. Stories of how she was always available no matter what she had on her plate and how she went out of her way to make sure she was all that she could be to all who counted on her.

In her last Chair's message for *Inside*—the Corporate Counsel Section publication—she began with a Ralph Waldo Emerson quote: "Nothing great was ever achieved without enthusiasm" and that is exactly how Jana lived her life—with great enthusiasm.

I have tried for weeks to find the right words to make sense of this loss. And I've come to learn that there are no words that will make this better or help us understand why. No words can take the pain we feel away. No words can explain why someone who is loved by so many unexpectedly leaves the world as we know it. The person with the most vibrancy, the best heart, the greatest soul is the one called to a different place and we are left to try to reconcile why.

But here's what I do know. Each day we must do the best we can while being selfless. We must get up and keep going no matter how we feel because the person we mourn would expect nothing less. Many people in our lives come and go but there are few who make a true difference. And Jana is on that short list.

To Jana's parents Rob and Marilyn Behe, who are here today: You should be incredibly proud. You raised an amazing, intelligent and caring woman who will live forever in the hearts of so many.

Jana was a Bruce Springsteen fan and I'd like to end with a quote from his song "Into the Fire..."

May your strength give us strength
May your faith give us faith
May your hope give us hope
May your love give us love

Until we meet again my friend...thank you.

To make a donation in Jana's memory, please consider giving to the Jana Springer Behe Corporate Counsel Section Fellowship (formerly the Corporate Counsel Section Fellowship Fund), which focuses on identifying and supporting in-house internship opportunities for law students from a diverse range of backgrounds.

Please go to www.tnybf.org/donation, click on "Restricted Fund" and choose the Jana Springer Behe Corporate Counsel Section Fellowship, or send in the form on the next page.

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An Invitation from the Corporate Counsel Section

In honor of our friend and colleague, Jana Springer Behe, Esq. please consider making a donation in her memory to The New York Bar Foundation for the Jana Springer Behe Corporate Counsel Section Fellowship Fund.

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Inside Interview

Miya Owens

Assistant General Counsel

Jewelers Vigilance Committee

Conducted by Maverick James

Miya Owens is the Assistant General Counsel of the Jewelers Vigilance Committee (JVC). With a sole focus on legal compliance and ethical guidance, the JVC, a 100-year old non-profit trade association, has a record of keeping jewelry industry members out of court and in tune with the law. From advising well-known manufacturers on federal marketing regulations and guidelines, to liaising with federal and state entities, to mediating disputes between consumers and retailers, in her current role, Miya is an excellent example of how in-house attorneys must often wear many different hats in their everyday practice.

Miya earned her Juris Doctor from the Benjamin N. Cardozo School of Law and graduated, *cum laude*, with a Bachelor of Arts degree in Technology and Communication from Baruch College. She is a recent addition to the New York State Bar Association's Corporate Counsel Executive Committee and participates in initiatives targeted at newly minted attorneys.

Q As Assistant General Counsel in a trade association, what is a typical day like for you?

A My role in JVC is unique because I was hired to work with our small legal team, which handles inquiries from our jewelry business members, and work with our non-lawyer mediator, who handles consumer and designer disputes with jewelry businesses. So, I divide my time between legal research/guidance and mediation matters.

On a typical day, I spend a portion of my time answering phone calls and emails from jewelry retailers, manufacturers and designers on a plethora of topics. Advertising law is my primary focus, so I often review different retailers' advertising—online and in print—and advise businesses on how they can bring their advertising into compliance with federal and state regulations and guidelines.

Additionally, I regularly answer jewelry-related consumer complaint calls and emails. When a consumer calls 311 with a jewelry-related complaint, he/she will be automatically transferred to the JVC. While I do not represent consumers or businesses as an attorney in these complaints, I do act as an impartial mediator. I work with both parties to facilitate a reasonable resolution to common disputes so that everyone can hopefully walk away happy and with more money in their pockets than they

would have if these disputes were litigated.

Finally, I research emerging topics in the industry daily. JVC sends out "Member Alerts" on hot legal topics and conducts quarterly webinars to teach our membership how to comply with laws related to contracts, marketing, employment, consumer fraud and ethics. I also draft and edit jewelry-related press releases and briefs that are submitted to federal agencies for advice.



Miya Owens

Q Why did you decide to go to law school?

A It was my childhood dream. I liked to persuade my siblings and parents to do what I wanted, so my mom encouraged me to become a lawyer. I also participated in my middle school's Mock Court program until budget cuts eliminated the program from my public school. So, my desire to become a lawyer was sparked by the fourth grade and solidified by the seventh grade.

Funny thing is, I majored in accounting for my first three years of college. At the time, law was not offered as a major at Baruch, so I thought it was a good idea to major in another respected profession and perhaps use a Certified Public Accountant license as a lifeline if the law did not work out for me. I interned at two of the "Big Four" accounting firms from freshman year to the summer before my senior year and was extended a post-graduate job offer from one of the firms. I considered working for a few years before applying to law school, but I could not let go of this nagging itch to go straight from college to law school. So, I changed majors, took the LSAT and the rest is history.

Q Does your Technology and Communication degree and experience impact your practice?

A Absolutely. First, in the jewelry industry, concerns about certain topics like cybersecurity, privacy, and fraud are on the rise. Thus, my organization must stay abreast of developments in these areas because our members are looking to us for guidance on a variety of issues. My

background in technology lends itself to understanding seminars on these topics and my ability to explain the topics to others. Second, it goes without saying that an education focused on communication lends itself to my practice as an attorney. My organization publishes articles and books on different areas of law. We also regularly interact with businesses, consumers, and government regulators, so my background has fine-tuned my ability to effectively communicate in all mediums, with people from diverse backgrounds.

Q If you weren't a lawyer, what would you be doing?

A I would likely be writing code and designing software. I did very well in my college coding and design classes and have always been interested in a career in software and web design. Also, I grew up with two hardcore gaming brothers. So, I watched the evolution of gaming consoles and the corresponding improvement of gaming graphics and plots and have always thought about how cool it would be to design my own games.

I used to also write short stories, poems, and screenplays. So, I could see myself working as a staff writer for a cool show about millennials in a large city. When I watch shows like "Insecure" and "Broad City", I wish I could be a part of each show's writing staff.

Q As a new lawyer, what perspectives are you bringing to the In-House Counsel role that someone more senior may not? Are there any obstacles that you have faced and have had to overcome?

A My millennial perspective in my current role is interesting. Many retailers are shifting their marketing and campaigns with the goal of appealing more to my generation. So, within my organization and professional circle, I am often asked my professional and personal opinions on different topics. I can't even count the amount of times I have been asked why millennials "are not buying diamonds" or "are not buying gold," and how to change that. Recently, I have been asked to write a monthly millennial column for one of the jewelry industry's well-known blogs. But, I am not sure what I would write about.

Also, because I have grown up in the age of computers, the internet, and the constant innovation of technology, certain things are second-nature to me and not to my more senior colleagues. For example, when a company wants to join my organization, we perform a check of the company's advertising to verify it is compliant with the relevant rules and regulations. When I was tasked with doing these applicant web reviews, I was instructed to visit each applicant's website and make a determination based on this. However, because of my awareness of ads

on social media and other non-traditional websites where products are often advertised, I made it the norm in my organization to now also check applicants' Instagram, Facebook and Etsy pages and other hidden ads in paid product reviews. In addition, I check applicant's websites on different browsers. For example, a retailer cannot compliantly advertise to the public that it is selling items at "wholesale" price, and thanks to my dual-browser checks, I have weeded out deceptive advertising by checking a website in both Firefox and Google Chrome—where the browser tabs showed up only in the latter browser.

As for obstacles, being a new lawyer is actually the least of my challenges in the legal and jewelry industries. Put bluntly, I am an outsider in every way. I am black and a woman, so I have experienced both overt and microaggressions in many professional environments. From a senior male in a Fortune 500 company that I visited for a conference waving me over to him to ask if his car was ready (despite my wearing a suit and heels and wearing no clothing that resembled the company's concierge staff) to a group of male litigators openly disparaging a federal judge on an elevator in the Southern District during my time as a judicial extern, and then those same attorneys discussing how I am "probably a cafeteria employee or court reporter," i.e., "nothing to worry about" on my way out of the elevator. So, with these unfortunate experiences in mind (and many more) and the high-tension environment we are currently experiencing in the U.S., I have had to (as the cliché goes) develop a tough skin and pick and choose my battles and stressors. I have been trying my hand at meditation and regularly exercising. I also take every opportunity to participate in dialogue about how to combat biases at CLEs, conferences, and other events. I often volunteer my time at different law schools, with the state and city bars, and with non-profit organizations and try to act as a mentor to students from diverse backgrounds. My hope is that these efforts will eventually reduce the amount of negative experiences of attorneys and other professionals, particularly women and those from non-traditional backgrounds.

Q How do you balance your personal life with your work life?

A I make time for myself and my social life. If a work task can wait until Monday, I try my best not to obsess over the task during the weekend. Also, if I know I have a dinner with my mother on Friday night and have a million work tasks to accomplish on Friday, I will simply start working earlier so I can make sure I'm out of the door in time for dinner, rather than stress over not getting everything done during normal business hours. I have family members and friends who give me regular reminders to chill out and with whom I can enjoy the occasional cocktail. And, if my budget permits, I treat myself to the

occasional massage and vacation—both can really break up a hectic week or months of work stressors.

I also try my best to reduce or eliminate unnecessary stressors and irritants and advise others to do the same. If you experience pain from sitting all day, consider asking your job for a standing desk. If your job is causing your hair to fall out, consider finding a new job. If your spouse is not supportive of you, dump him/her! If you are not fitting into your clothes, don't stress over this—instead, buy some new clothes and work on your diet. Simple fixes like these have really allowed me to maintain a decent mood and work/life balance most days.

Q What motivates you to serve the community through your pro-bono initiatives with Volunteer Lawyers of the Arts and Legal Services NYC?

A Altruism. Like many 1Ls, I failed to obtain a firm internship my first summer in law school. So, I summered with Brooklyn Legal Services and assisted indigent people with obtaining Social Security benefits. Despite my initial disdain for working free of charge for a non-profit organization, I very quickly grew to love the organization and the type of work I was doing. So, since graduating, I have made it a point to continue to help people in need with pro bono work.

In addition to my normal litigation work in my first firm, I worked as pro bono counsel to Legal Services NYC on several occasions. I represented a disabled woman in Social Security hearings and successfully obtained a favorable settlement in a federal lawsuit brought by a restaurant worker seeking unpaid wages under state and federal labor laws. I have also worked with Volunteer Lawyers for the Arts to help artists navigate the complexities of licensing agreements, defamation lawsuits and settlement negotiations.

Working on these pro bono cases has provided me with a sense of pride. Helping others is a huge mood booster, and the work has not been thankless. From an award for outstanding service from Legal Services to holiday cards from former clients to a Netflix movie credit, I have been fortunate to receive a ton of unexpected recognition for work I did altruistically.

Q How did you get involved with NYSBA? What are the benefits of doing so?

A Liz Champnoi poached me. In all seriousness, I met Liz during my first year out of law school. We kept in touch and she encouraged me to join the Corporate Counsel section as soon as I went in-house. I was reluctant at first, but after a few enjoyable events I attended with Liz, I was sold!

There are many benefits to joining NYSBA. I have met professionals from every industry at NYSBA events and my interactions have been refreshing and beneficial. At a recent event, a group of professionals and I agreed to attend a comedy show together, as our conversation somehow turned to who we think are the best comedians. I have also become acquainted with judges, run into old coworkers, and been able to introduce law student mentees of mine to professionals I met at NYSBA events.

Q As someone who recently passed the bar, what advice do you have for law graduates who received their results this year?

A Congratulations if you passed! Congratulations again if you are working or have a job lined up. If you are unemployed and have nothing lined up, it is time to use your network. Interested in a job? Look on LinkedIn to see if you have any mutual connections with anyone at any prospective companies. Interested in a particular area of law? Go to the NYSBA and other bar association CLEs on topics in the area of your interest and align yourself with leaders in those areas if you can. There is no shame in asking someone to coffee or lunch and asking that person to provide you with insight on how she has attained success.

If you did not pass, you will live to take the test again! Now is the time for self-reflection. Shift your focus to new, creative ways you can market yourself if you are unemployed or if your results will result in a loss of employment. Stay in touch with old employers. One of your old firms may need you as a law clerk or doc reviewer, for example. I know quite a few people who did not pass on their first or second try but are quite successful in their careers; some are working in the law and some are not.

Also, if you have the luxury of time and sufficient finances, look into volunteer/unpaid experiences. I met a woman at a NYSBA event who did not pass the exam and was unemployed at the time of her results, but she later accepted a volunteer law clerk position with a state judge whose clerk was out on maternity leave. By the time she received her second set of bar results, she had a recommendation from a respected judge and several job offers. If you have bills to pay and cannot afford to work for free, take up doc review and temporary legal placement jobs through a variety of companies you can easily search for online.

This interview was conducted by Maverick James. Maverick is a second-year student attending New York Law School. He is interested in studying the impact of technological developments on contemporary legal practice. He is honing his practice in privacy, internet, and corporate law and is constantly searching for new opportunities to use his skills in a variety of fields. Maverick can be contacted via email at Maverick.James@law.nyls.edu.

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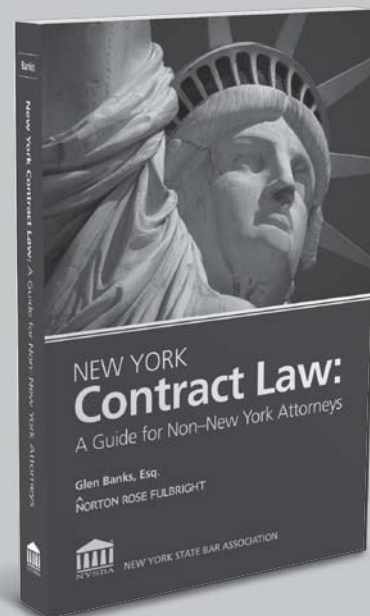
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19 Holes: Questions Regarding the NYC Law on Inquiring About Salary History in Employment Decisions

By Robert Kantowitz

Introduction

Effective on October 31, 2017,¹ it has become unlawful in New York City for –

an employer, employment agency, or employee or agent thereof [t]o inquire about the salary history of an applicant for employment or [t]o rely on the salary history of an applicant in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of a contract.²

There is no question that in a free market an employer should be free to ask about an applicant's salary history, both to understand how others have evaluated the applicant's contributions over time³ and to avoid negotiating against itself. Against that, the stated rationale for this legislation is to help close the alleged disparity in which women have historically earned less than men, which is presumed to be the result of discrimination against women.⁴ The legislation, unfortunately, is broader than

appropriate to address this issue.⁵ It also is fundamentally ill-suited to deal with the middle to upper echelons of employment, where the variations among different individuals' earning power are the greatest, information is the most opaque, direct comparisons among individuals' roles and effectiveness are the most difficult and the distinctions are the most subjective.

This article will not discuss whether this legislation is necessary or is more an exercise in political correctness. Nor will I consider the separate issue of equal pay for equal or equivalent work, other than to note that at the higher levels of employment, legislation on that score is hard to apply, since it is comparatively rare that positions and performances are so directly comparable as to be equivalent. Nor is my purpose to discuss in detail how this legislation works; rather, I intend to demonstrate, through a series of questions and observations, numerous aspects of how it *does not work*.

Similar legislation has been enacted in Philadelphia. Other jurisdictions that have recently passed or have been considering legislation include Massachusetts (law due to take effect in 2018), California, Oregon, Texas and Puerto Rico. I have not scoured the courts for decisions on whether this kind of legislation can withstand challenge, but I note that at least one case has been filed claiming that the Philadelphia law violates the First Amendment and the Commerce Clause, among other federal and state provisions.⁶ The government initially agreed to a stay pending resolution of the challenge. The court dismissed the complaint on standing grounds, for failure to name one or more employers that would be affected because they generally ask for wage history; on June 13, 2017, the plaintiff amended the complaint to add such specific information about a number of employers including itself. As of this writing, no further information is available on the progress of this litigation.

General issues

1. Searching for and using general information.

The legislation says nothing about assembling information that is not specific to the applicant, such as current compensation levels for individuals (i) in particular kinds of positions, (ii) who are working for particular employ-

ers or (iii) in particular cities, and then using the data as a starting point for the general salary range for the position or for discussions with a particular applicant. FAQs published by the New York City Human Rights Commission⁷ state:

"May an employer search for information about the salaries paid to individuals with the applicant's specific title at the applicant's current or former place of employment . . . ?" No. Employers may search for general information about industry compensation standards but may not search for specific information about salary history that is intended to uncover the salary of a specific applicant.

Given the focus on "a specific applicant," I would submit that as long as the inquiry is not too fine-tuned, it is permissible and the employer may use it in deciding on what salary to offer.

2. Oops . . .

If the employer asks a candidate about salary history, does that taint the entire exercise – potentially requiring the employer to hire the individual or to pay damages until the individual finds another job – or can the employer refuse to hire the person and, if challenged, demonstrate that there were other, lawful reasons why the candidate was not hired?⁸ And who has the burden of proof? Caution is advised to make sure that interviewers not go "off script" where that can mean "off a cliff."

3. Waivers?

Suppose that the employer violates the law and asks salary history, but then hires the employee on mutually acceptable terms. May the employee sue a few years down the road if things do not work out well, or can the employer invoke laches or argue that the employee's accepting the job constituted a waiver? Nothing in the law dictates either such result, but the law should not be providing a long-term "free rider option" either. May an employer condition employment on an explicit release of claims under this legislation?

4. Voluntary disclosures.

The legislation provides that

where an applicant voluntarily and without prompting discloses salary history to an employer, employment agency, or employee or agent thereof, such employer, employment agency, or employee or agent thereof may consider salary history.⁹

Moreover, an employer is allowed to tell an applicant the proposed salary range and to ask about the applicant's expectations with respect to compensation.¹⁰ Is asking for a reaction to a proposed range or asking the candidate to explain why his stated compensation expectation is justified permissible, considering that the only relevant benchmarks that a candidate will usually have

ROBERT KANTOWITZ has been a tax lawyer, investment banker and consultant for more than 35 years. He is responsible for the creation of a number of widely used capital markets products, including "Yankee preferred stock" and "trust preferred," as well as numerous customized financial solutions and techniques for clients. He is a longtime member of the New York State Bar Association Committee on Attorney Professionalism and, as such, co-authored the Committee's "Report on Attorney Ratings" dated December 7, 2015 and has contributed to the monthly *Attorney Professionalism Forum* feature in this *Journal*. The author acknowledges helpful comments from Jeffrey Kantowitz and Andrew Oringer. The opinions expressed herein are his own.

to make the best case are his or her own salary history? The FAQs state that:

A disclosure of salary history is “without prompting” if the average job applicant would not think that the employer encouraged the disclosure based on the overall context and the employer’s words or actions.

That standard is so vague as to be nearly meaningless. In light of the legislation’s explicit permission to the employer to have these kinds of discussions, it is hard to see how the FAQ could deem them to be prompting.

5. Favoring internal transfers.

This law does not apply to “internal transfers or promotions within an organization.”¹¹ Many organizations rou-

how could it ever be rebutted conclusively? Under many circumstances it would be impossible for the employer to poll everyone in the organization to corroborate that no one, anywhere in the organization, at any time, looked into such data.

8. Sometimes “you just know.”

Salary information that comes to light unexpectedly in the course of verifying other information cannot be used.¹³ Yet, there are circumstances where it may be fairly clear to the employer, even with no investigation, what the salary history was. For example, the discussion of an applicant’s expectations may permissibly include what to do about any unvested equity or deferred compensation

Under many circumstances it would be impossible for the employer to poll everyone in the organization to corroborate that no one, anywhere in the organization, at any time, looked into such data.

tinely hire and transfer internally whenever possible for quite valid reasons such as efficiency and morale building. May they favor internal candidates over external candidates also based in whole or in part on the consideration that they know and can consider the internal candidates’ compensation history but not that of the external applicants? Apparently, yes.

6. Considering only candidates who volunteer information.

As long as the employer does not ask for the salary history, it appears not to be unlawful *per se* to favor applicants who volunteer salary history. (An employer adopting this approach would be well advised not to announce it, since that would call into question whether any disclosure were voluntary.) In any event, a rejected applicant who was not asked about salary history and did not volunteer it would probably never know whether that made any difference because an assertion that “no one asked and I never volunteered” is plainly nothing more than confirmation that the employer obeyed the law and should not form the basis for a fishing expedition.

7. The difficulty of having to prove a negative.

The employer is prohibited from “conduct[ing] a search of publicly available records or reports for the purpose of obtaining an applicant’s salary history,”¹² but how can anyone ever police this? Can a plaintiff who adduces no evidence obtain discovery as to whether an employer performed a search or surveyed counterparts and headhunters, or as to whether two people spoke on the sidelines at a little league baseball game or on the train ride in from the suburbs? Presumably the employee has the burden of proof but if there is some circumstantial evidence that suggests that the employer had violated the law,

that the applicant would have to forfeit to leave his or her current position,¹⁴ and in certain kinds of organizations and industries, it is easy to connect the dots from those figures to a general sense of what the individual has been making. If the applicant was previously employed by the employer or had applied in the past, the employer will know some of the applicant’s salary history. In these situations, telling an employer not to use information that is already legally in its possession is like telling Dorothy and her companions to “pay no attention to that man behind the curtain.”

Drafting ambiguities and limitations

9. More on internal transfers.

Internal transfers are excluded from the law, as noted above. Does that mean that the employee’s *entire* salary history, including from before having joined the organization, is a fair subject for inquiry regarding an internal transfer? Apparently, yes.

10. The restrictions do not apply after hiring.

As noted above, the law prohibits “inquir[ing] about the salary history . . . during the hiring process, including the negotiation of a contract.” There is no restriction after a person is already employed. So, an employer apparently may call in a new employee and say, “We’d like to know a little bit about you for our files,”¹⁵ or, more pointedly, “Now, see here, New York is an ‘at will employment’ state, and if you do not disclose your salary history, you’re fired.” In many situations compensation may be comprised of a relatively level base salary plus a bonus that is contractually guaranteed only for the first year but not thereafter, and it is not unheard of for one’s bonus to fluctuate considerably from year to year. There would appear to be nothing that would preclude taking pre-

employment compensation history into account once any guarantee has expired.

11. Once the door opens . . .

As noted above

where an applicant voluntarily and without prompting discloses salary history to an employer, employment agency, or employee or agent thereof, such employer, employment agency, or employee or agent thereof may consider salary history in determining salary, benefits and other compensation for such applicant, and may verify such applicant's salary history.¹⁶

The repeated use of the term "salary history" with no definite or indefinite article suggests to me that once the applicant has opened the door, even a crack – for example by saying, "One year I made as much as \$X" – the employer is free to ask or investigate fully. Lest one consider that a trap for the unwary, it is worth pointing out that, as in the case of certain rules of evidence and the Fifth Amendment, the legislation excludes consideration of probative information in the interest of a collateral societal goal, and therefore the protected applicant should not be able to have it both ways, providing selective information and yet precluding discovery of the full picture.

12. A different spin.

Analogously to an employer, a headhunter should not tell a candidate, "I can't ask your salary history, but I won't waste everyone's time if you don't volunteer it," because this would likely be considered prompting. But suppose that a headhunter truthfully advises a candidate, "In many cases, you may have an advantage over others if you volunteer salary history." I hesitate to interpret the law as then deeming a disclosure not to have been fully voluntary.

13. Prevarication.

Suppose that a candidate is asked the question and cleverly creates a misimpression or explicitly lies – either inflating the numbers to get a better offer or deflating them so as not to price himself out of the market – and is hired. If the employer discovers the true salary history, can it fire the employee for dishonesty, or would the employer be barred from doing so on the basis of having "unclean hands"? Nothing in the text or history of the law appears to approve of lying as self-help; that would appear to be a matter of "even dirtier hands," and encouraging or excusing it would certainly be against public policy.¹⁷

Questions of scope and jurisdiction

14. Consultants and independent contractors.

As noted at the outset, the legislation refers to "an employer" and to "an applicant for employment." If a firm is looking to hire a person as an independent contractor, can the firm ask what his or her hourly or month-

ly rate historically has been or what he or she had been earning in a previous position as an actual employee of another employer? Yes, since in using the terms "employee" and "employment" the statute apparently makes no attempt to include independent contractors or business partners.¹⁸ On the other hand, in many situations there is some flexibility for a person performing services to have either status, and having initially discussed engaging him as a contractor, the employer might offer him a position as an employee. Does having asked about compensation while still contemplating hiring him as a contractor taint the entire process? What if one starts working as a contractor and later is offered a similar position as an employee; are such situations retroactively covered or are they considered internal hires? The FAQs indicate, unhelpfully, that a case-by-case analysis is in order.

15. Subject matter jurisdiction.

New York purports to have the right to regulate conduct if and only if it has an impact in New York.¹⁹ Can this legislation apply based on any or all of the following? – (i) the employer is headquartered in New York City, (ii) this employee will, or may, be working in the City some, most or all of the time, (iii) this employee will be directed by someone working in the City and/or (iv) this employee will direct others who work in the City?

16. Personal jurisdiction.

If in connection with a New York City position, the employer conducts the prohibited questioning or research outside New York City, is there *in personam* jurisdiction? Same question regarding a headhunter, and does it matter whether it is a retained search or the much more common "throw it up and see if it sticks" exercise where the headhunter as of yet has no relationship with the employer? Same question for internet job postings. The recent Supreme Court case of *BNSF Railway v. Tyrrell*²⁰ suggests that a search firm that is not a New York resident and is headquartered elsewhere²¹ could *not* be hauled before city authorities with respect to discussions and actions that take place outside the city, even pertaining to a job that will be sited in the city, and good luck to the city in trying to get a jurisdiction where the headhunter actually does business to enforce New York's legislation. If the employer itself is headquartered outside the city and does relatively little business in the city, it may well be subject to *in personam* jurisdiction regarding a job that is primarily in the city but not with respect to jobs elsewhere even if they have collateral effects in the city or if the employees might spend some time in the city.

17. More on personal jurisdiction.

As noted above, the legislation purports to prohibit even the act of gathering the information. It is hard to see how New York City has jurisdiction to regulate activity that takes place outside its municipal boundaries, even if the

city can prohibit use of the information with an impact within New York City. It may require cellphone tower records and the records of internet service providers to establish where a computer was connected to the internet or who made a call to whom, and it may be beyond the city's power to compel disclosure of those records.²²

18. Potential effects on how people do business.

Conversely, are employers and headhunters who are physically located in New York City restricted with respect to jobs outside the city? Under the controlling case

4. But see Joann Lubin, *Rankings Defy Usual Gender Gap*, The Wall Street Journal, June 1, 2017, at B2 ("Women in the corner office of the biggest U.S. firms made more money than men in six of the last seven years").

5. Consider an employer that has narrowed down the pool to a few finalists all of whom are men. There is no reason why the employer should not then be permitted to request their compensation histories.

6. See *Chamber of Commerce for Greater Philadelphia v. City of Philadelphia*, Civ. No. 17-1548 (E.D. Pa., filed Apr. 4, 2017). See generally item 19 below.

7. <http://www1.nyc.gov/site/cchr/media/salary-history-frequently-asked-questions.page>.

8. The remedies include hiring, reinstatement or upgrading of the employee, back pay and future pay and attorney's fees. N.Y. City Admin. Code § 8-120. Civil penalties can run as high as \$250,000. N.Y. City Admin. Code §

The legislation restricts commercial speech. Can it withstand a First Amendment challenge?

law, the impact would need to be in the city, but could the law be interpreted to apply to a position outside the city if an interview took place in the city or if any part of the decision is made in the city? The FAQs might be read to this effect, so look for headhunters to direct applicants not to contact their New York City offices, even though one leading case suggests that where a decision is made is not relevant if the job itself is not in New York City.²³

19. Last but not least: the Constitution.

Is this legislation constitutional?

a. *First Amendment*. The legislation restricts commercial speech. Can it withstand a First Amendment challenge?²⁴

b. *Commerce Clause*. The legislation purports to regulate conduct that may take place entirely outside New York on the basis of an impact in New York. In addition, much of the workforce in the metropolitan area crosses state lines on a daily basis. Can the legislation withstand a Commerce Clause challenge?

Conclusion

Promoting this legislation as a public benefit is like enticing a consumer to buy a wheel of cheese that has a promising appearance but once unwrapped fills the room with a pungent aroma and turns out to consist mostly of holes. This legislation should be scrapped before it ever has a chance to affect anyone, and all the parties should go back to the drawing board to come up with more targeted and effective ways to identify and eliminate discrimination where it exists. ■

8-126. Although the employer can show mitigating factors in connection with the determination of the size of a penalty, there is no explicit provision that demonstrating other good and sufficient reasons for not hiring the individual or for offering the particular salary will carry the day.

9. N.Y. City Admin. Code § 8-107(25)(d).

10. N.Y. City Admin. Code § 8-107(25)(c).

11. N.Y. City Admin. Code § 8-107(25)(e)(2).

12. N.Y. City Admin. Code § 8-107(25)(a).

13. N.Y. City Admin. Code § 8-107(25)(e)(3).

14. N.Y. City Admin. Code § 8-107(25)(c).

15. P. Simon, *Mrs. Robinson* (1968).

16. N.Y. City Admin. Code § 8-107(25)(d).

17. Similar issues litter the legal landscape, from criminal entrapment to the use of "testers" who pose as house-seekers where discrimination is suspected. This question is a bit of a "gotcha." If the individual has proven to be a high performer, the employer might excuse the lie as a negotiating tactic or as puffery because it does not go to the heart of the kind of honesty and fidelity that an employer expects, while if the individual is a poor performer, there will be numerous other reasons to let him or her go.

18. One group that is not covered would be incoming lateral partners of law firms (if they are true partners and not just employees with a loftier title), despite the debate as to whether and why female partners make less than male partners and some of the high-profile litigation that this has spawned.

19. See, e.g., *Hardwick v. Auremma*, 116 A.D.3d 465, 466–67 (1st Dep't 2014), *lv. to appeal denied*, 23 N.Y.3d 908 (2014).

20. ___ U.S. ___, 137 S.Ct. 1549, No. 16-405 (May 30, 2017).

21. The place of incorporation also dictates where a corporation is "at home," but as far as I know there is no such thing as incorporation in New York City (as distinct from incorporation in New York State). The law regarding jurisdiction over individuals, as distinct from corporations, may be more muddled and could even vary within New York City as between the First and Second Departments. See *Daimler "At Home" Standard as Applied to Individuals in New York State L. Dig.* No.682, at 2 (Sept. 2017). Based on *Lebron v. Encarnacion*, No. 16-CV-4666 (ADS) (ARL) (E.D.N.Y. May 31, 2017), a good argument might be made that (i) there is no "general jurisdiction" over a non-domiciliary individual based on a relatively limited amount of business in New York, and (ii) there is no specific jurisdiction because the conduct took place outside New York despite having an effect in New York.

22. Another intersection of technology and law. One of the earliest matters on which I worked, over 35 years ago, involved New York City's assertion of Unincorporated Business Tax liability against a writer who lived in the city but claimed that he wrote his material on weekends while traveling by train outside the city to visit a relative. There was simply no way to confirm or disprove the defense.

1. "Boo!" It is probably coincidental that the effective date was Halloween.

2. N.Y. City Admin. Code § 8-107(25)(b)(1)–(2) (internal numbering omitted and punctuation conformed to standard English usage).

3. In that regard, salary history differs from whether one is currently employed, which often bears little relationship to qualifications for a position, especially in a recession and especially at the upper echelons. In New York City, employers have been prohibited for several years from discriminating in hiring based on current employment status. N.Y. City Admin. Code § 8-107(21).

23. See *Hardwick*, 116 A.D.3d at 467 (“it is the place where the impact of the alleged discriminatory conduct is felt that controls whether the Human Rights Laws apply, not where the decision is made”).

24. At least in a broad sense, this legislation has a rational purpose of regulating communication to tamp down on undesirable conduct:

Regulating commercial speech in order to discourage transactional conduct that could constitutionally be prohibited (instead of regulating the conduct) is neither inconsistent with, nor a manipulation of, the democratic process. That the government does not eliminate the whole evil that it legitimately perceives, but instead proceeds piecemeal or by stages is not itself a valid constitutional objection.

Brudney, *The First Amendment and Commercial Speech*, 53 Boston Coll. L. Rev. 1153, 1197 (2012) (footnote omitted). Although the issue most com-

monly arises with advertising (such as the statutory prohibition on tobacco advertising on television and radio that began in the 1970s), commercial speech generally is entitled to some level of protection, and, self-serving pronouncements of politicians and activists notwithstanding, the legislation is a rather blunt instrument. Moreover, it is often a maddening exercise to decide whether something is a regulation of speech or of conduct. See *Expressions Hair Design v. Schneiderman*, ___ U.S. ___, 137 S.Ct. 1144, No. 15-1391 (Mar. 29, 2017), which held that regulating the manner in which a seller may communicate prices and associated credit card charges was a regulation of speech rather than of conduct (i.e., the prices and charges themselves) and remanded the case for a determination as to whether the regulation survives constitutional scrutiny.

This article previously appeared in the November/December 2017 New York State Bar Association Journal.

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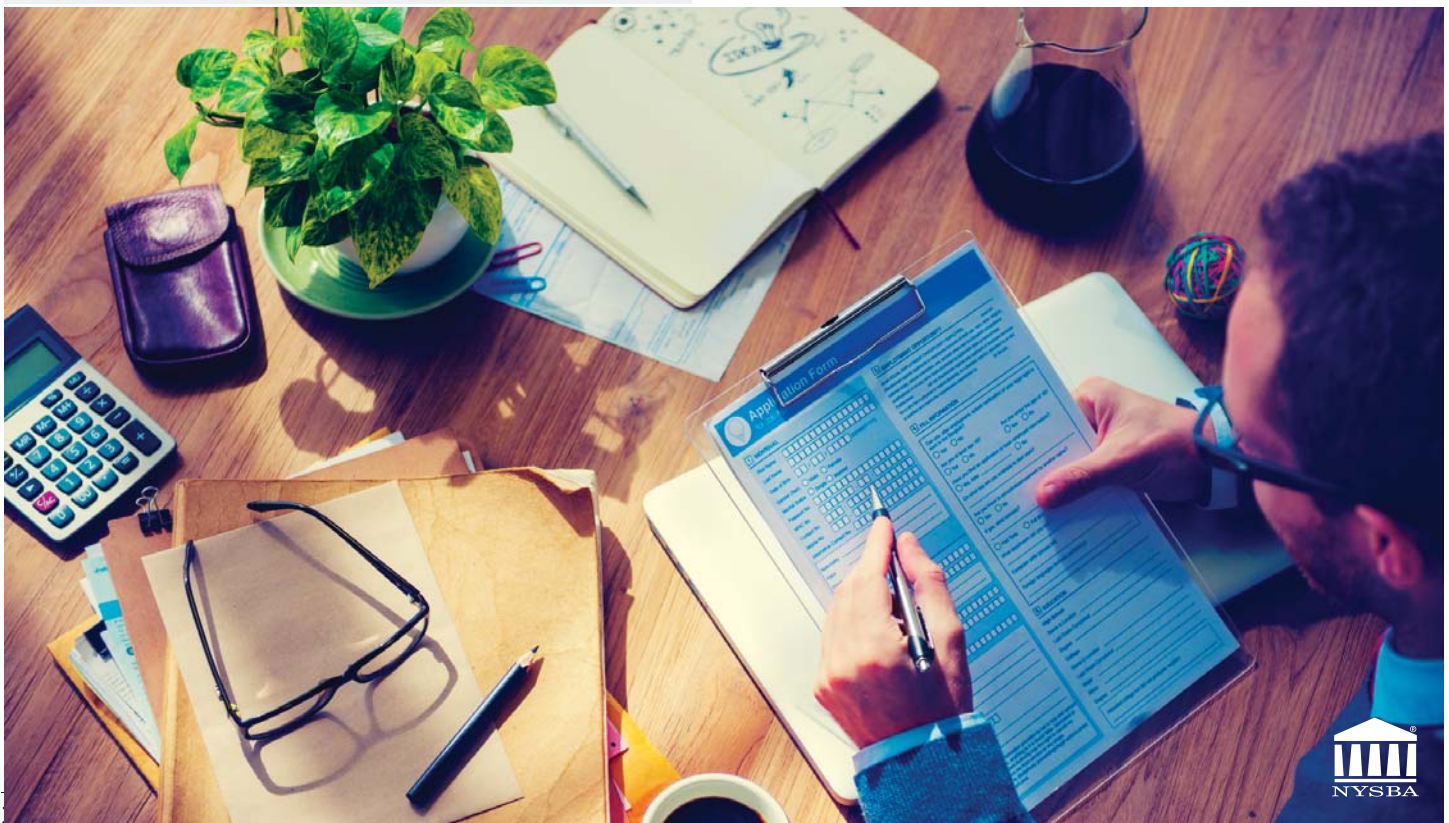
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SECTION COMMITTEE UPDATES

Diversity

By Naomi Hills

The Corporate Counsel Section has done a remarkable job to increase diversity with its yearly programs, events and leadership. As we enter the 2018 year, the Section will continue to promote diversity and inclusion to its membership, support affinity bar associations and other Sections of the New York Bar Association (NYSBA). Recently, the Section received its diversity report card, which measures how each Section within NYSBA is performing to promote diversity and inclusion. The Corporate Counsel Section received high praise for the number of female leaders on its executive committee. This number surpasses many Sections within NYSBA.

Although we have females in leadership, we will work to increase leadership among Asian and African American members. In 2018, we will work to attract younger members as well as members over the age of 66. It is our goal to be inclusive to all within NYSBA. The diversity report card ranked us the second-best Section in terms of diversity.

If you are interested in getting involved with the Section and/or Diversity Committee, please feel free to contact me at naomikhillslaw@gmail.com.

Kenneth G. Standard Diversity Internship Program & the Jana Springer Behe Corporate Counsel Section Fellowship

By David S. Rothenberg

2018 is our 13th year pairing diverse law student interns with paid opportunities inside legal counsel's office at for-profit and not-for-profit entities. Our late Chair, Jana Springer Behe, championed raising the minimum payment to students for summer internships to \$7,000 for this upcoming year. Many hosts provide compensation in excess of the minimum.

The Section met Jana when she spearheaded NYSTEC's application for a not-for-profit internship placement of a diverse student. After that she joined our Executive Committee and became heavily involved with the Section. I happened to be Chair of the Corporate Counsel Section that year and felt that getting Jana involved was probably my best contribution as Chair.

As a small tribute to all that Jana contributed to the world, the fellowship and the Section, sponsors at the New York State Bar Foundation, have renamed the program—the Jana Springer Behe Corporate Counsel Section Fellowship. The Section fully funds a student for the fellowship and we are pleased to announce that Safe Horizon, Inc. was selected as the first Jana Springer

Behe Corporate Counsel Section Fellowship host. Safe Horizon, Inc. is a victim assistance non-profit that has been standing with victims of violence and abuse since 1978. They provide advocacy and support to victims who have experienced domestic violence, child abuse, sexual assault, stalking, human trafficking, youth homelessness and other crimes.

Urban Justice will also host a Kenneth G. Standard Diversity intern in 2018. Urban Justice is a not-for-profit and a former Fellowship host. For 2018 they found the resources to help sponsor 50 percent of the student's salary and the Section will contribute the remaining 50 percent. Despite a budget for two students where the Section shares the student's salary 50/50 with the host company, many generously fully sponsor a student. The Section partners with every law school in New York to find great students. If your organization or law school has an interest in being a part of the program please contact me at 212-357-2368 or email me at David.Rothenberg@gs.com.

Finally, we are always looking for volunteers as this is a yearlong operation. We need people interested in working with the law schools to keep the pipeline of students robust. We also need someone to spearhead our efforts to develop an alumni program to keep the over 80 former interns connected. Many of our former interns are on the Executive Committee and serving as officers of the Section. We encourage you to join the movement in some way.

Membership

By Joy Echer, Thomas A. Reed and Jessica D. Thaler-Parker

Your Section's Membership Committee is pleased to report that as of March 31, 2018 (the latest date available at the time of this report) there were 1,661 lawyers enrolled in the Corporate Counsel Section. This is well over the 1,500 member number required to maintain our second Section Delegate in the NYSBA House of Delegates for the year beginning June 1, 2018. We extend a sincere welcome to each of our new members and hope that as the year goes on we will have occasion to welcome at least some of you in person at one of our events.

As promised in our last report, we held a Member Appreciation and Networking reception last Fall in conjunction with the Section's highly successful Seventh Corporate Counsel Institute held at the Cornell Club in New York City on Thursday and Friday, November 2-3, 2017 (reception on Thursday evening), and we are planning to hold more such events, including events in New York State beyond the New York City metropolitan area, during 2018. As the plans for these events become final-

ized you will be advised of the details via the Section's NYSBA Community page and/or via email.

As mentioned in our prior Reports, we continue to strive to meet the State Bar's Membership Challenge initiative, in which each of the Sections is tasked with increasing both its membership size and its member retention rate by a certain amount each year through 2020. We are pleased to report that for the first year of the Membership Challenge, our Section exceeded the goal of increasing its membership by 2 percent. If you are a

Section member and would like to work with the Membership Committee to help us continue to meet and beat this challenge by offering your ideas and suggestions, please contact our Section Staff Liaison, Adriana Favreau, at afavreau@nysba.org, and she will alert one of us on the Committee to be in touch with you. We very much welcome your suggestions and potential participation, as well as any ideas you may have for Section activities that you would like to see us undertake and any other thoughts you may have relating to our Section.

NYSBA's Immigration Pro Bono Portal

By Yuriy Pereyaslavskiy

A lot has been said about the role of attorneys and their impact on a client's case. In removal proceedings, where immigration judges have compared the process to "doing death penalty cases in a traffic court setting," the role of attorneys is difficult to overstate. Represented detained clients are twice as likely to prevail, and represented non-detained clients are nearly five times as likely to prevail than their unrepresented counterparts. In light of these statistics alone, one would think there would be 100 percent representation in immigration matters; however, nationally only about 37 percent of all immigrants secured legal representation in their removal cases, and only the government's interests are represented by a government attorney every time. Because the removal proceedings are civil in nature, there is no right to an appointed counsel, which means that the only people with attorneys are the ones who can afford representation, or are lucky enough to find a pro bono attorney willing to take their case.

Following several Executive Orders announcing travel bans and a nationwide policy of increased immigration enforcement, the legal community has increased its efforts in delivering vital immigration legal services to our communities, and thousands of attorneys volunteered to donate their time and services on a pro bono basis. The New York State Bar Association has received multiple inquiries from its members about how they can help. In order to best address the rise of attorneys seeking to do pro bono work, while supporting the non-profit and legal service organizations actively serving New York's immigrant communities, NYSBA paired up with the New York Bar Foundation and Legal.io to create a web-based portal through which attorneys can be referred to volunteer opportunities in a tailored and timely fashion. Available online at www.nysbaprobono.org, New York State Bar Association's Immigration Pro Bono Portal provides access to current volunteer opportunities, a calendar of training events, and a library of training resources, all of which are updated daily.

We encourage attorneys who are interested in volunteering their time to serve New York's immigrant

communities to visit www.nysbaprobono.org and register as a volunteer attorney so that we may provide you with a tailored referral to a volunteer opportunity for which you may be well suited. We also encourage organizations across the state that both serve New York's immigrant population, and have a need for pro bono volunteers, to visit the site and create a listing, indicating your volunteer needs, so we may refer suitable volunteers to you. If you have any questions about NYSBA's Pro Bono Immigration Portal, please email me at probonoport@nysba.org, or 518-487-5642.



Yuriy Pereyaslavskiy

Endnotes

1. Judge Dana Leigh Marks, *How a 'dire' immigration court backlog affects lives*, PBS News Hour (2017), <https://www.pbs.org/newshour/show/dire-immigration-court-backlog-affects-lives> (last visited Nov. 16, 2017).
2. *Access to Counsel in Immigration Court*, Ingrid Eagly, Esq. and Steven Shafer, Esq., Special Report (September 2016).
3. *Id.*

Yuriy Pereyaslavskiy is a New York attorney with experience in immigration, consumer protection and bankruptcy law. In his current position as Immigration Pro Bono Fellow for the New York State Bar Association, he works on the Immigration Pro Bono Portal, which refers attorneys to pro bono opportunities. Yuriy regularly works with local, state, and national organizations to develop effective pro bono policies and projects. He received his B.S. in Economics from Trinity College, after which he pursued a law degree at Michigan State University. He can be reached at ypereyaslavskiy@nysba.org.

Blockchain, the Legal World, and Trust

By Mark Belkin

In the world of digital transactions, Blockchain is a technology that will change the concept of trust. It will change the legal profession, banking, trade, supply chain tracking, sales, and almost any industry that has need for recording a transaction. I know a lot of articles claim to be talking about “a technology that is going to change the world!,” but Blockchain most certainly will.

The most popular application utilizing Blockchain, and the reason it may exist, is Bitcoin. Much has been made of Bitcoin and other cryptocurrencies. This article will touch on it, but will not delve into how these new forms of currency will be regulated, traded, and used. Although questions surrounding the SEC, FEC, BitLicense, and banking laws touch on the monetary and securities issues, this article will focus on Blockchain as a technology, and how the concept could revolutionize the legal, as well as many other, industries.

Basically, a Blockchain is a ledger of records organized into blocks that are linked together by cryptographic validation. It is the digital storage of consensus truth, on a virtual ledger, verified by every computer on the Blockchain network. As the technology grows, the amount of computers using Blockchain increases, and the verification qualities encompassed in the process will gain stronger acceptance. Billions of computers will be used to verify every single transaction. Right now, there are many accepted entities that have a centralized form of verification, such as banks or governmental agencies. Blockchain is de-centralizing that control, and creating a universal networked verification system. Trust is no longer needed, because the system doesn’t work unless everyone agrees. Trust becomes a mathematical formula, rather than a malleable entity to be manipulated by interested parties.

Before proceeding forward, I must note that this technology is evolving daily. The landscape is ever-changing and much of the law surrounding the technology lacks precedence. There are issues with transaction speed, scalability, cybersecurity, implantation in industries, and so much more. This article is meant as a layman’s brief introduction into a complicated technology—and should be taken as such.

A Look at What the Technology Really Is

Like a traditional ledger, Blockchain is a record of transactions. While most ledgers are centralized (e.g., a database, a book, or an Excel file), this ledger is de-centralized and exists everywhere that is connected to the



Mark Belkin

Blockchain. It could be open source, but it’s encrypted in a way only a special key will be able to access its information. Every transaction on this ledger can only be executed if it is 100 percent verified by everyone on the chain. These transactions could consist of anything—money, work identification numbers, deeds, your car’s history, coffee bag deliveries, pet vaccines—almost anything, that is.

Anytime the information entered into the Blockchain is changed, added, or removed, there is unique marker of that transaction.

You can’t fly under the radar, you can’t hide it, and it is there for everyone to see. Either “everyone” verifies that the transaction occurred, or no one does. Not the government, not your firm, not a corporation, not a credit card company, not your preferred global payments center, but everyone. Everyone has to agree, or the transaction simply did not occur.

How It Works

I’m now going to try to delve into the mechanizations involved. Even though I come from an IT and programming background, it can all seem esoteric to me as well. If you have any questions, feel free to email me.

1. A transaction occurs on the Blockchain, and this puts data into **blocks**. That data is time stamped. When the block has been created, it is (in theory) forever sequential. This avoids anyone or anything claiming to own a duplicate block. To avoid duplication on the micro computing level, the block looks to the longest **chain**. These usually consist of blocks that solved a mathematical algorithm in the fastest time.
2. Once the data is added to the block, it goes out into the **network** and is added to Blockchain. The data is protected by using asymmetric cryptography (a public and private key). **cryptography** is a process in which data is stored and transmitted in a way where only those for whom it is intended can read and process it. You may be most familiar with the process if you’ve encrypted an e-mail or a form, which many attorneys have done so at least once.
3. Even if multiple transactions are sent at the same time, the time stamp decided by the network ensures that the data will always be in the right order. Everyone on the chain automatically gets updated to the longest (newest) Blockchain.

Mark Belkin, Esq. is currently an Associate Professor at Pratt Institute, and consults with companies on legal and emerging technology matters. He can be reached at markbelkin@gmail.com.

4. The data is turned into a **hash**. The hash is what makes the Blockchain so secure. It is the basis for the cryptography and is the link between blocks. Each hash is unique, and theoretically cannot be duplicated. A hash from one block is a part of the hash of the next block, and this goes on and on and on. A linear chain is created between these blocks, theoretically going into perpetuity, with new ones constantly being created and containing some new information or transaction.
5. If someone changes any of the data in a previous block (cryptocurrency, smart contracts, whatever it might be), the hash alerts the next block that they no longer match. This continues down the block, and since everyone on the chain has the most updated copy, then everyone now sees this change. You can't hide a change. You can't say, "I never did that." It is simply there for the entire chain to see.
6. For particular transactions, like cryptocurrency, the verification process is done through **digital signatures**. When a transaction occurs, every **node** (computer) on the chain checks the digital signature for authenticity. Only when authenticated by every node does the transaction proceed. These digital signatures are mathematical algorithms designed specifically to prevent copying or forgery. The digital signature consists of a private key, which you should not share, and a **public key**, which is what you share to allow a transaction to occur. The public key is the address you use to accept the transaction, and may be referred to as a **Wallet**.

Steps in a Typical Transaction—From the User's Perspective

1. When users execute a transaction/contract/purchase, they are given a string of data called an **address**. Addresses are added to the Blockchain as soon as they are used in a transaction and anyone can see them.
2. For each address, users are given a **private key** which must be used for the transaction associated with that address. Transactions could include payments, private information, or data. The private key is what is used to authenticate the owner of this transaction. **DO NOT LOSE THIS KEY**. Once lost, funds in that address are locked forever. There

are cases where people have lost millions of dollars because of lost or destroyed private keys.

3. A new private key is created after every transaction, and a new address is assigned to the user. The address is what allows others to know that every new transaction is authentic. It is also possible to do the transaction from an existing address using a **signature**. The signature is generated using the private key, and can be used to prove that you are the owner of the key, without having to reveal that private key itself.

Digital Identification

The loss of privacy makes the ability to safely store information as imperative as it has ever been in our modern society. A secure mechanism capable of protecting data—all types of data—could revolutionize industries that require forms of identification. Government-issued IDs are not foolproof against counterfeiting or theft. In an increasingly globalized business and legal environment, people are looking for the evolution of simplified yet verifiable authentication. Blockchain could allow individuals or groups to easily prove their identity. Imagine entering a corporate office in Shanghai, China with the same identification you used in the office of a completely different corporation located in Austin, Texas. However, it would be equally secure, and could potentially store anything necessary for that particular meeting or transaction. As long as they are verified within the parameters of a classification, you can trust that person is who they say they are.

It might seem frightening, but anything that could be digitized—including someone's fingerprints, eye scans, signature, name, blood type, medical history, and security clearance—can be stored in this kind of identification. This Universal ID then might be used anywhere in the world, with absolute trust in verification capabilities of billions of nodes on the Blockchain network.

What Is a Smart Contract?

Smart contracts are a set of code that executes a transaction if certain parameters are met. **If** a certain condition occurs, **then** the smart contract executes. You could use smart contracts to transfer anything of value, like cryptocurrency, real estate, assets, life insurance, medical bills, car purchase history, etc. Smart contracts can connect multiple Blockchains, using encrypted digital signatures from a seller and buyer, thereby verifying the conditions necessary to execute and then executing the transaction. Once again, every node must verify every transaction that is on the Blockchain.

Imagine the implications of 100 percent verifiable transactions verified by billions of "witnesses" (the nodes on the Blockchain), when enforcing judgments, carrying through financial transactions, working with

escrows, sharing judicial orders, and so on. The terms of the contract are encoded on a shared ledger. No one can say, "I lost the contract." They may lose the private key, but the terms of the contract execute no matter what. As the Blockchain grows, the ability for people to back out of their obligations will become increasingly difficult. Like most industries, this will signal a paradigm shift for the legal industry and eventually attorneys will need to adapt to this new technology.

Cybersecurity

Hacking is something that everyone is concerned with these days. This is no different with the Blockchain. No matter what protections are created, there is some innovator in a basement somewhere finding a crack to that code. Already a few cryptocurrency platforms have been hacked, and people have lost insane amounts of money. This is something that is still being worked out, and the growing pains will be substantial.

Further Questions

- How will regulators respond to the newfound transparency?
- How do federal and worldwide securities regulators react to an ever changing new form of currency?
- How will governments respond to the loss of some centralized powers?
- How will liability, breach of contracts, and other legal issues be resolved by legislators and common law?
- How will the technology change the role of lawyers?
- How long before it can be implemented in different industries?
- How can those using the technology be promised they will be protected from hackers and other bad actors?

These are some of the many questions that will keep countless attorneys and industries away from implementing the technology in the short term. However, much like the internet, databases, and digital documents, it is only a matter of time before the underlying concepts and technology of Blockchain will go mainstream and change the world.

I want to acknowledge the website blockgeeks.com for much of my information.

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One Team, One Goal: Unifying the Legal and Sales Teams

Practical Advice for In-House Attorneys Supporting a Sales Force

By Evette Stair

Your inbox pings. It is yet another email from a salesperson asking you to consider accepting all of the potential customer's terms so that the deal can just close already. You roll your eyes and think, not for the first time, that salespeople are the absolute worst type of people. *Does sales really think that you enjoy holding up deals? Why can't sales just see that lawyers are on their team?*

As in-house counsel servicing a sales team, all too often it can feel like your salespeople are fighting against you; however, there are some practical steps you can take to make working with sales less confrontational.

Business Value

At some companies there is a perception that legal and sales are opposing forces because the legal function is to manage risk by policing sales while the sales function is to drive revenue. A company that buys into this flawed perception will have a hard time unifying the legal and sales groups. In-house attorneys can avoid this pitfall by showcasing their business skills to their sales counterparts. In-house attorneys can demonstrate their commitment to business profitability by voicing suggestions and opinions on deal terms. *Can a deal be structured differently to avoid tax liability? Will an upfront discount lead to a long-term relationship gain with a customer? Where are areas that the company is leaving money on the table?* The more proactive an in-house attorney is in pointing out situations that affect the business bottom line, the more likely that the salespeople will recognize the legal function as integral to the financial success of the company. United by the shared goal of improving the financial position of the business, the legal and sales teams can become partners rather than adversaries.

Process

Legal processes that are slow, burdensome, and bureaucratic can frustrate a sales force and create friction between sales and legal. In-house attorneys can alleviate some of the friction with the sales team by creating a contracting and review process that is efficient and transparent.

The legal process should efficiently address all steps from first contact with counsel to final review and signature. A comprehensive process will include company templates for common contracts that are easily accessible to sales; a system for moving a contract through internal review; an escalation process; and a signature process. In order to maintain efficiency, examine and refine the

contracting process often to reduce bottlenecks and eliminate unnecessary steps.

To add transparency to the legal process, in-house attorneys can teach sales about company contractual policies and particular pain points in company contracts so that sales will have a working knowledge of what a customer's request to change a company's contract means in light of the company's tolerance for risk. Educating sales about the company's risk profile can take many forms; some in-house counsel share a legal playbook with the sales team while others train salespeople on contracts during conference sessions. A sales team that is educated about the company's contractual policies is put on notice that in-house counsel is not arbitrarily deciding what client requests to push back on and is certainly not arbitrarily delaying a deal from closing.

An efficient and transparent contracting process will go a long way towards forging good relationships between sales and attorneys by making it easier for sales to follow and understand the company's legal process.

Responsiveness

A legal team that is (or at least perceived to be) unresponsive to sales will struggle with creating and maintaining a good working relationship with sales.

For sales, time is money; therefore, an in-house team that is responsive, as measured by timeliness, is highly valuable to their sales counterparts. Attorneys can establish legal review process lengths so that sales' expectations are managed based on legal input rather than just a vague notion that running things through legal "takes a long time." Once legal has established an average time frame for contract completion, barring unusual circumstances, try not to deviate from the expected time frame. Consistently meeting deadlines will build trust between legal and sales. In-house attorneys can strive to cut down on contract delays even in high volume times by planning ahead. Sales cycles tend to be predictable with high volume work coming near the end of quarters. During those busy times attorneys can create a goodwill reservoir with sales by making an effort to be available and prioritize



Evette Stair

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sales deals over other company legal work as much as possible. The sales force will appreciate the added effort.

In-house counsel can also show responsiveness by creating space for sales feedback and acting on the feedback. For example, rather than blindly implementing contract processes that fail to change as sales needs change, the attorneys can work with sales to create a process that responds to sales needs. If the sales force finds holes in a process or finds that a legal process causes unreasonable delays, the legal team can work with sales to iron out the flaws. Some companies handle the feedback process with team 360 reviews while others use periodic surveys or questionnaires.

Fostering a good relationship between sales and in-house legal

Unifying the sales and legal groups can feel like an impossible task given the legal role of risk management and the sales role of revenue generation. However, while

there are some instances where legal and sales are necessarily on opposing sides, battles do not have to be fought every day. When sales and in-house counsel are working well together, the company functions better. The key to a smoother working relationship between sales and legal lies in:

- **Business Value-Add**

An in-house attorney is not just concerned with avoiding liability. In-house attorneys can communicate to sales (often and clearly) that legal and sales share the same goal of generating profit for the company by working with sales to find areas for revenue growth and business savings.

- **Perfecting Process**

Flip the perception that going through counsel is a time-consuming bureaucratic process and cut down on sales confusion and frustration by creating efficient, transparent legal processes that are easy for the sales team to understand and follow.

- **Reputation for Responsiveness**

In-house attorneys that consistently meet deadlines, plan for sales needs and internalize sales feedback are respected and valued by their sales counterparts.

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Questions?

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NYSBA Corporate Counsel Section Sponsors New York Law School Business Etiquette Dinner for First Generation Professionals — November 9, 2017

By Maverick James and Qualia C. Hendrickson

Members of the NYSBA Corporate Counsel Section participated as sponsors of the First Generation Professionals (FGP) Business Etiquette Dinner at New York Law School (NYLS). FGP, a student organization, created and hosted the event in furtherance of the organization's mission to educate and provide resources to students who are the first in their families to enter the legal profession. The night's events highlighted the specific nuances of proper etiquette in professional dinner environments.



Maverick James

Anthony Crowell, Dean and President of New York Law School, along with Zaniah Maynor, Professional Development Chair of FGP and a second year law student, guided attendees through a model cocktail hour followed by dinner and dessert. Dean Crowell and Zaniah Maynor navigated the guests through a number of potential interactions at the cocktail hour, best practices for social drinking, and dinner etiquette. They also spoke about the technical aspects of formal meals such as placement of the silverware, its intended uses, and how to react when the unexpected happens.

As experienced attorneys, members of the Section attended the event to further guide students at their tables. The Section members assisted students in practicing their networking skills and learning how to interact at their tables. The Section members also shared real examples of mistakes and faux pas they have witnessed or experienced throughout their careers. For example, Section member David Rothenberg spoke to students about the value of each member's unique perspective and gave a helpful etiquette tip: if drinking beer during cocktail hour, ask for it in a glass. Miya Owens imparted life advice suggesting that students remain their authentic selves even in an often conservative profession. She also built upon an earlier suggestion about the importance of being prepared. Where possible, having some background information about those you anticipate meeting is helpful and the timing of introducing such information into the conversation is important to avoid seeming overly eager. The evening ended with a raffle of two Citizen watches won by FGP student members, courtesy of David Perlman of Citizen Watch Company of America, Inc., who imparted the value of a professional watch in this age. In today's technology dependent world, most attorneys are extremely dependent on their hand-held devices and often look to them for the time. However, in a dinner setting that



Qualia C. Hendrickson

can come off as extremely rude. Thus, having a watch that you can quickly glance at for the time will keep you updated subtly and courteously.

There are many FGPs across various NYC campuses and the nation. These students come to their respective professions with the disadvantage of not having learned the social aspect required of becoming a successful professional. This is especially true in the legal profession, which can itself be its own world, difficult for

the unaware to navigate without advice from current attorneys. Notwithstanding, an FGP also comes with a unique background overcoming these obstacles by enlisting help where required of dedicated student organizations and attorneys, while creating the future lawyer who is primed for the most extensive and complex of jurisprudence. Section Member Thomas Reed took a moment to recognize this outlook and encouraged students to apply for diversity internships sponsored by the Corporate Counsel Section—the long-running Kenneth G. Standard Diversity Internship Program and the Jana Springer Behe Bar Foundation Fellowship program for not for profit organizations. Section members in attendance considered the dinner a success and look forward to interacting with and engaging a generation of students from diverse backgrounds and mindsets eager to join the Bar.

Maverick is a second-year student attending New York Law School. He is interested in studying the impact of technological developments on contemporary legal practice. He is honing his practice in privacy, internet, and corporate law and is constantly searching for new opportunities to use his skills in a variety of fields. Maverick can be contacted via email at Maverick.James@law.nyls.edu.

Qualia is a third-year law student at New York Law School. She is interested in working in media, entertainment, and publishing. At NYLS, she is a fellow for the Innovation for Law and Technology, doing research in hot topic areas such as privacy and internet law. With her interest in media and publishing, she also works on and researches issues in copyright and content creators' rights. She can be contacted at qualia.hendrickson@law.nyls.edu.



Corporate Counsel Section Presents Seventh Corporate Counsel Institute

By Steven G. Nachimson

The Corporate Counsel Section hosted the seventh edition of its popular Corporate Counsel Institute on November 2 and 3, 2017 at the Cornell Club in New York City. The Institute offered sessions of particular interest to corporate practitioners. Attendees received 10 CLE credits, including four credits in Ethics and Professionalism. The Section has offered the Institute every two years since 2005 and it has proven to be very popular with Section members, including many members who attend every time the Institute is offered. As stated by Bruce Kopf of Trailways in Hurley, New York, "I wouldn't miss it."

Section members Anne S. Atkinson, Mark Belkin, Mitchell F. Borger, Joseph Deleo, Michael Mendelson, Steven G. Nachimson, Steven R. Schoenfeld, Howard S. Shafer, Elizabeth Shampnoi, Sanoj Stephens, and the Section's late Chair, Jana Springer Behe, served on the planning committee and organized the event, with the dedicated assistance of NYSBA Section Liaison Adriana Favreau.

The Institute featured a keynote address by Carmelyn P. Malalis, Chair and Commissioner of the New York City Commission on Human Rights. Commissioner Malalis highlighted unique features of the New York City Human Rights Law, as well as the growth of the Commission, the Commission's robust effort to educate the business community and the public regarding the New York City law, and efforts to resolve matters in an agency where case filings have increased by 60 percent in just one year.

The first day of the Institute began with the cutting-edge topic, "Predictive Technology in E-Discovery." The panel discussion was planned and moderated by Steven Schoenfeld of Delbello Donnellan Weingarten Wise & Wiederkeher, LLP, and featured Jeanne Somma of RVM Enterprises, U.S. District Court Magistrate Judge Andrew Peck, and Stacey Blaustein of IBM Corporation. The panel addressed the massive amount of electronically stored information involved in many commercial cases, as well as profound advances in the sophistication of technology assisted review to search electronically stored information. Attendees gained insight into the gains made by utilizing artificial intelligence, concerns raised by plaintiffs and defendants, recent case developments, and the growing international acceptance of predictive coding.

The panel Handling Government Investigations and Crisis Management was organized and moderated by Sanoj Stephens of Sotheby's International Realty, and featured Arlo Devlin-Brown of Covington & Burling, Katherine Lemire of Lemire LLC, and Jason Lewis of Greenberg Traurig. Speakers discussed vital steps for counsel to take when managing governmental investigations and associated crises. It is vital for counsel to take control of an internal investigation and make the

investigation a top priority. Similarly, it is wise to limit the number of people who are aware of the situation to protect the integrity of the investigation and minimize reputational damage, including not only the reputation of the corporation but also the reputations of individuals who may be falsely accused of wrongdoing. Counsel should also preserve key evidence, enlist the right outside experts, and manage those experts to assure that the company is well represented and that the matter is handled appropriately and efficiently. Discussion also focused on how and when to communicate with law enforcement, as well as practice tips for working with investigators when they execute search warrants or attempt to interview company employees. Panelists also discussed which types of investigations might be a higher or lower priority for the new federal administration, and that it would be unwise to assume that the new administration will initiate fewer investigations.

Robert L. Haig of Kelley Drye & Warren moderated two separate panels. The first panel session, titled "How to Maximize the Value and Reduce the Cost of Corporate Legal Services" featured Jane E. Booth of Columbia University, Lawrence Burian of The Madison Square Garden Company, Steven M. Cohen of MacAndrews & Forbes, Michael W. Emerson of Signature Bank, Andrew S. Levine of SL Green Realty Corp., Dennis McNamara, Esq. of Oppenheimer & Co., and Bart R. Schwartz of Assurant. Speakers discussed their experiences with convergence, the effort to concentrate outside legal work with a smaller number of firms, as well as potential conflict of interest issues when representing multiple subsidiaries within a single corporate organization. The panel discussed use of outside counsel guidelines and engagement letters. Speakers also addressed successes and challenges when seeking to utilize alternative fee arrangements, and strategies to manage outside counsel and litigation budgets.

The second panel led by Robert L. Haig was "Ethics and Privilege Issues Which Confront Inside and Outside Corporate Counsel." Mr. Haig was joined by Richard V. Carlson of Agricole Corporate and Investment Bank, Sheila K. Davidson of New York Life Insurance Company, Kimberley D. Harris of NBC Universal Media, LLC, Daniel E. Karson of Kroll Associates, Inc., Salvatore J. Russo of New York City Health and Hospitals Corporation, Michael J. Sharp of Leucadia National Corporation, and Joseph F. Wayland of Chubb Limited. The group discussed their experiences with conflict waivers and under what circumstances they would be willing to agree to a conflict waiver. Such a waiver might be more readily granted in a transactional matter than in litigation. Panelists addressed communication between attorneys and represented parties, ethical restrictions upon friending witnesses on Facebook and other social media, participation in undercover

investigations, and privilege issues when an attorney serves in both a legal and business capacity.

Mitchell Borger organized an employment panel, which featured Vicki-Walcott Edim of MasterCard, Gary Glaser of Littler Mendelson, Anjanette Cabrera of Constangy, Brooks, Smith & Prophete, and Philip B. Rosen of Jackson Lewis. The panel discussed pay equity laws, including the patchwork of federal state and local laws, and the substantial growth in lawsuits alleging violation of equal pay laws. The discussion included a very timely analysis of the New York City salary history inquiry law that took effect in October 2017. Similar legislation is now pending in 20 states. Attendees also learned about the New York Paid Family Leave Law, the most generous such law in the country, which takes effect in January 2018. The session also addressed changes in the composition and staffing of the NLRB as well as recent NLRB decisions.

Michael Mendelson organized and led the discussion of Insurance Claims Life Cycle Management. Other panelists were Jesse Dunbar of Barclay Damon, Jonathan Hardin of Perkins Coie, Stephen Stern of Hyatt & Weber, and Linda Van Baars of USI Insurance Services. One key topic was the importance of negotiating terms and conditions of an insurance policy before incurring a claim, as insurance companies may agree to more protective policy provisions at little or no added cost. The panel also included litigation strategy, the use of litigation holds to preserve evidence, pleadings, dispositive motions, managing media and publicity, and working with the insurance carrier's counsel and defense counsel.

Anne Atkinson planned the lively panel, "The Ins and Outs of Trademark Branding", with Dyan Finguerra DuCharme of Pryor Cashman and Lisa Gigliotti of

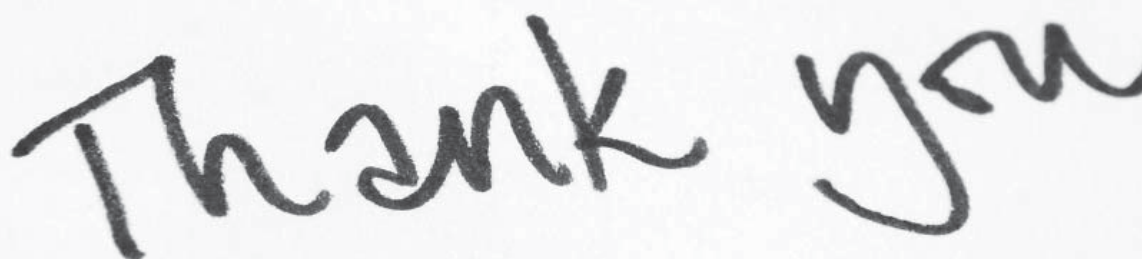
L'Oreal USA. By highlighting well-known brands to illustrate key concepts, the panel offered a primer in basic trademark law and strategies to use trademarks to promote and protect a business. Key points of discussion included the importance of protecting trademarks, the advantages of early legal involvement in the trademark process, and proper use of trademarks.

Friday, November 3 saw the return of the Section's popular "Ethics for In-House Counsel" session, which the Section has offered for more than 15 years, organized by Steven G. Nachimson. Using materials prepared by Michael S. Ross, moderator Ellen Yaroshefsky of Hofstra University engaged panelists Valerie Mitchell Johnson of Lincoln Center for the Performing Arts, Hal R. Lieberman of Emery, Celli, Brinkerhoff & Abady, and Janis M. Meyer of Hinshaw Culbertson in a spirited discussion of privilege issues in an investigation or corporate crisis, conflict waivers and joint defense agreements, inadvertent release of privileged documents, use by an attorney of a company's confidential information, and the common interest privilege when providing a joint defense.

The Section was pleased to receive sponsorship support from Kelley Drye & Warren, Lemire, Inc., Moritt Hock & Hamroff, LLP, and RVM Enterprises, Inc.

Steven G. Nachimson is Assistant General Counsel of Compass Group USA, Inc., the American division of the world's largest foodservice and support services company. Mr. Nachimson manages contractual, regulatory and general corporate matters for Compass' educational dining sectors and for other Compass sectors operating in the business dining industry. Mr. Nachimson is a former Chair of the Corporate Counsel Section.





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Articles should be submitted in electronic document format (pdfs are NOT acceptable), along with biographical information.



Inside

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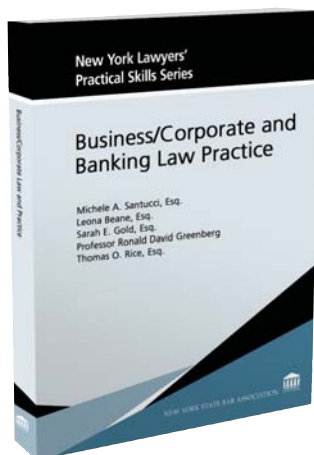
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