



THE CHALLENGE

The newsletter of the Illinois State Bar Association's Standing Committee on Racial and Ethnic Minorities and the Law

The commitment to diversity should be a badge worn every day

By Sonni Choi Williams

As the Peoria County Bar Association celebrated its 6th Annual Diversity Luncheon, I looked at the crowded room filled with more than 300 attendees including judges, ISBA representatives, school board members, students, and lawyers and felt proud that so many came out to support the commitment to diversity. But my celebratory mood dampened when I was also reminded of how easily the call and commitment to diversity can be overshadowed by a five-star event and the all-so-convenient excuse of the current economic downturn.

The challenges of promoting diversity in the legal profession can easily be lost in the excitement of an annual event featuring Anita Alvarez. She is a shining example of a strong woman who disproved all the nay-sayers who said, "an Alvarez can't be a Cook County State's Attorney." She overcame the challenges and became the first female minority attorney elected as the Cook County State's Attorney. We can applaud the success of Anita Alvarez. Once the Luncheon ended and the patting of backs died down, I had

a sinking feeling that the importance of diversifying our legal profession will be forgotten until next year when the commitment to diversity will be dusted off and celebrated again at the 7th Annual Diversity Luncheon.

Please don't get me wrong, the Diversity Luncheon event has been one of the most well-attended and successful events for the Peoria County Bar Association. Indeed, many other bar associations such as the DuPage County Bar Association as well as the Champaign Bar Association have either replicated or are attempting to replicate the Luncheon. The success of the Annual Diversity Luncheon, however, may lead to complacency and a false feeling of accomplishment. If statistics are any indicators, we still have a long way to go.

Although the percentage of female students enrolled in law school has only slightly decreased, 0.1% (not statistically significant), the number of female students leaving law school before

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Interview with Julie Bauer

By Paula H. Holderman

Julie A. Bauer is an equity partner with the international law firm of Winston & Strawn LLP, headquartered in Chicago. The law firm has offices spanning the United States, Europe, and Asia. It is sometimes referred to as an "old line, white shoe" firm with deep roots in Chicago over the firm's 155-year history. Julie has been with the firm for 22 years and is a veteran trial lawyer in its nationally recognized litigation depart-

ment. In May 2009, Julie received the acclaimed Founder's Award from the Chicago Bar Association Alliance for Women. Her forceful remarks as she accepted her award caused me to want to follow up with Julie and share her insights with a broader audience.

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obtaining a J.D. has increased nearly 1.0% from the 2006-2007 academic year to the 2007-2008 academic year.¹ More shockingly, although the number of minorities enrolled in law schools has increased, the number of minorities awarded J.D.s has decreased from 9,820 in the in the 2006-2007 academic year, to 9,631 in the 2007-2008 academic year.²

Once the J.D.s are obtained, women and minorities face even more daunting challenges in the workplace. In the average law firm, women of color account for about 11% of associates, but only 3% of non-equity partners and only about 1.4% of equity partners.³ Even when a woman achieves the level of a partner in a firm, she faces a startling pay gap. A recent survey conducted by the National Association of Women Lawyers (NAWL) and the NAWL Foundation on retention and promotion of women show the disparity in pay for a female equity partner is \$87,000 a year less than a male equity partner.⁴

Despite these statistics, the commitment to diversity falls victim to the all-so-convenient excuse of the economic downturn. For example, the Peoria County Bar Association's Diversity Committee and the ISBA along with the assistance of the Supreme Court Commission on Professionalism, recently presented a seminar: "Professionalism in your Diverse Office: Fostering the Good Start."⁵ The seminar was designed to facilitate discussion on case simulation through role-playing dialogues and follow-up questions. We invited law firms that signed the Diversity and Equal Opportunity Pledge. The law firms pledged to increase recruiting and retaining minority lawyers.⁶ Naturally, we believed they would be interested in learning how to foster a good start. The Diversity Committee members called the managing partners of the signatory law firms to invite them to the seminar. Many law firm partners cleared their throats and responded with the canned response something to do with "economic hard times." Of the 28 law firms that signed the Diversity Pledge, only 10 representatives from the firms attended the seminar.

I thank the firms who not only signed the Pledge, but who actually spent the time to attend the seminar and made a step in the right direction to support diversity: Williams W.P. Atkins (Peoria County State's Attorney's office), Paul Burmeister (Husch Blackwell Sanders), Jami Webster Hall (DCFS), John

Rhee (Hinshaw & Culbertsen), Art Kingery (Kinery, Durree, Wakeman & Ryan), Karl Kuppler (Hasselburg, Rock & Kuppler), Sonya Pasquini (Chicago Title Insurance Company), Randy Ray (City), Daniel Johns (Westervelt, Johnson, Nicoll & Keller), Deb Stegall (Heyl Royster Voelker & Allen), Maria Vertuno (Bradley University Pre-Law Program Director), Jerrod Williams (law clerk for Justice Mary McDade), Lisa Wilson (Prairie State Legal Services), and Jennifer Wolfe (Cassidy & Mueller). These participants were not there for a photo-op, there were there because of their every day commitment to diversity.

To these participants—the Peoria County Bar Association Diversity Committee,⁷ the ISBA Standing Committee on Racial and Ethnic Minorities and the Law, ISBA Standing Committee on Women and the Law, ISBA Standing Committee on Sexual Orientation and Gender Identity, ISBA Committee on Disability, ISBA Human Rights Committee, and the ISBA Diversity Leadership Council—thank you. We still have a long way to go, but for those who have the courage to wear the badge of commitment to diversity every day, that journey becomes a little bit shorter. ■

1. See, <<http://www.abanet.org/legaled/statistics/charts/stats%20-%202006.pdf>> and <<http://www.abanet.org/legaled/statistics/charts/stats%20-%202019.pdf>>.

2. See, <<http://www.abanet.org/legaled/statistics/charts/stats%20-%202010.pdf>> and <<http://www.abanet.org/legaled/statistics/charts/stats%20-%20209.pdf>>.

3. See, *Report of the Third Annual national survey on retention and promotion of women in law firms (November 2008)*, <<http://www.nawl.org/Assets/Documents/2008+Survey.pdf>>.

4. *Id.*

5. Aptly titled by Tom O'Neal, a member of the PCBA's Diversity Committee.

6. To view the Pledge and list of law firms that have signed the Equal Opportunity Pledge, see <<http://www.peoriabar.org/>>.

7. The 2009-2010 PCBA Diversity Committee is chaired by John K. Kim and vice-chaired by Adrian Barr. Members include: Syed E. Ahmad; Keturra Baptiste; Timothy L. Bertchy (2004-05 chair); Thomas P. Higgins; Donald R. Jackson; Robert H. Jenetten (formed the Diversity Committee); Thomas McConnaughay; Justice Mary W. McDade; Michele A. Miller; Clifton Mitchell (2007-08 chair); Thomas W. O'Neal; John S. Rhee; Fadi B. Rustom; Sadiq Shariff; Debra L. Stegall; Maria Vertuno; Sonni Choi Williams (2005-06 and 2006-07 chair); Lisa Y. Wilson.



(From L to R): Anita Alvarez, Sonni Williams, and Paula Holderman attended the Diversity Luncheon, held on September 21, 2009

Interview with Julie Bauer

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PHH: Julie, thank you for meeting with me this afternoon and agreeing to be interviewed for the ISBA. I'd like to talk with you about your career and being a woman in the tough business of litigation.

Let's start with law school—when you entered law school in 1982, that was not yet a common educational choice for women. How did you come to that decision?

JAB: I graduated from college in 1982 with a degree in Liberal Arts. I had no clear direction of what I wanted to do career-wise. But I had uncles who were judges and my father was a lawyer. So I had seen lawyers who were successful and seemed satisfied in their careers. It certainly seemed like a career choice or an educational choice that I would not regret even if I decided ultimately not to practice law full-time.

PHH: You graduated from the University of Illinois College of Law in 1985. Did you have many, if any, women professors?

JAB: I had two, as I recall. When I started at U of I, the only women professors on the faculty were Laurie Reynolds, who I had for my first-year Property class, and Elaine Shoben, who I had for Torts. Even though there were not many women on the faculty at the time, I was exposed to both of them my first year.

PHH: With only two female law professors and only male relatives in the profession, did the dearth of female role models influence your career path at that time?

JAB: I didn't think about it very much at that time. When I was growing up, women were just starting to go into the work force in large numbers and so it didn't strike me as surprising that there weren't a lot of women in the legal profession. I also did my undergraduate work at the University of Virginia, which had only been co-ed since 1970 or about eight years when I started. They still had considerably more men than women, and I was used to classes balanced in favor of men.

PHH: Moving past law school, you entered the practice of law in 1985 as a law clerk for U.S. District Court Judge Charles P. Kocoras and then joined Winston & Strawn in 1987. What changes have you seen generally in the practice of law and specifically with respect to women lawyers?

JAB: Certainly there are many more women not just practicing law, but in particular practicing in large law firms—much more so than back in the mid '80s. Generally, in law firms, at least on a numbers basis, there are many more women and minorities now. When I joined Winston and came to work here, I think there was one woman partner in the entire Litigation department. I don't recall ever working directly for her. Now, anybody starting out at a large firm would expect, over the years, to work for and with both men and women, majority and minority attorneys. Years ago, there was some suspicion about working with women: Could you ask them to stay late? Could you ask them to travel with you? Could you ask them to work on weekends? Those sorts of barriers at least have been broken through, even if others remain.

PHH: Any thoughts or comments on how attorney attire has changed either for men or for women since the '80s?

JAB: Certainly much more for women than for men. I started practicing in the era when women invariably wore skirt suits with floppy bow ties. Women have become more comfortable dressing in their own style, instead of just imitating men. When I started practicing, you rarely saw women wearing pants. I don't remember exactly when that changed, but now you see it not only in the office, but in the courtroom, and no one bats an eye.

PHH: Right, I remember I had two suits, a navy blue and a black one. I remember being so excited when I bought a little silk rosette as opposed to the floppy tie.

JAB: I had one of those too.

PHH: You have been with Winston for 22 years now. How did you work up through the ranks of associate to income partner

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to equity partner in a large litigation department?

JAB: Different people do it different ways, but I had the great fortune to work for a variety of different partners at various points along my career as an associate. They all had very different styles, and I learned different things from each of them. Some sent me to state court all the time, and some sent me to federal court. Some were focused very much on preparation, and with others, it was how to survive in the moment without a lot of preparation. Those were all good experiences for me to have as a young lawyer.

PHH: Is there anything specific that stands out in your experiences as a young lawyer that was perhaps a turning point in your career?

JAB: Early on I did a lot of work with Ed Foote. He sent me to court frequently. I was in court a few times a week when I was a young associate—on status calls, motion calls, various types of things. It was very helpful to get that experience and to see a lot of other lawyers in court early on in my career.

PHH: Of course Ed Foote is a legendary trial lawyer in the Chicago legal community -- do you think associates today have those same opportunities that you had as an associate working for someone like Ed Foote and going to court?

JAB: They can, but they have to look for those opportunities and sometimes make them for themselves. They have to ask for smaller cases, offer to go to court, maybe take on pro bono cases where they can do that kind of stuff. There are still opportunities out there but you really have to look for them.

PHH: You served as Hiring Partner for the firm for several years. What aspects of that position, for instance, did you find surprising? And what aspects, perhaps, did you find rewarding or even helpful to your practice?

JAB: The most rewarding and enjoyable parts for me were meeting law students and sharing with them what I like about and what's kept me practicing at Winston & Strawn. Having a say in who would join and be the future of the firm was also significant. It helped me to get a better understanding of the business side of a law firm.

PHH: You've worked on several matters and at least two major trials with Dan Webb. Most would not dispute his reputation as a top, national litigator. In fact, you were pictured with him in an *American Lawyer* article that described him and his team as "humble, but lethal." What's it like to work with Dan Webb in the trenches? What would you say that you've learned from him?

JAB: What I've learned from him is how important preparation is. He prepares more than anybody I know, and because of that he is never caught off guard. There's always not only a "Plan A" but a "Plan B." He's enjoyable to work with, easy to get along with, and always works harder than you do. Yet he never loses sight of the fact that you have a life outside the office and outside the case you're working on.

PHH: Any examples that you can think of?

JAB: We were on trial this summer in New York for four weeks. The trial lasted over the Fourth of July weekend. Dan was very concerned about everybody's schedule over the holiday weekend. He wanted to make sure that everybody either had some time to get home to see their families, or in my case, my family came out to see me. He wanted to make sure that I spent time with them even though we were going to be back at it and had experts to cross at the beginning of the next week.

PHH: Speaking of that month-long trial, I know you have been involved in other lengthy trials—both in Chicago and out of town. What does that kind of trial practice do to a person in terms of workload, stress, and family issues?

JAB: My family has always been very supportive of my trial obligations. I think that is due, in part, to the fact that I married later in life. That was part of the package my husband agreed to when we got married, so he's been pretty good about it. But the longest trial I ever did was a six-month case – *Gov. Ryan trial* - and I was glad, at that length, that we were in town. It did allow you at least to see your family and sleep in your own bed. It gets hard.

PHH: You received the prestigious Founder's Award from the CBA Alliance for Women in May of this year. That award is given to a senior woman lawyer of great integrity and high excellence

who has contributed to the success of other women lawyers. Do you find it surprising to think of yourself as a senior member of the profession as you look back over the last 20 years and what you've accomplished?

JAB: I do find it surprising, and maybe it's just that no one ever thinks they're as old as they are. But, whether it's at the firm or even when I go to court, I look around now and am struck by the fact that most of the people in the courtroom are younger than I am.

PHH: Keeping with the Founder's Award, one of the major themes in your acceptance remarks was your concern about the continuing lack of opportunities for women lawyers. Can you elaborate on what you said and what you mean?

JAB: We have come a long way in equalizing opportunities at the most junior levels of the profession. We do a much better job in the first few years of making sure that men and women have equal access to work, to clients, to travel opportunities and non-billable opportunities. But as people move up the ranks, the opportunity gap widens. I don't think women have the same introductions to clients and powerful partners. I think people naturally tend to select people that look like them, that they can identify with. That natural selection process puts women behind because there are fewer senior women. In the current economic downturn, I think that difference has had an impact on people, as firms make hard decisions about who they keep and who they ask to leave.

PHH: Statistically, even before the recession, the numbers would tend to support your conclusion. According to numerous surveys, women make up only 17% of law firm partnership ranks. At the same time, almost 50% of the entering classes in law schools are women. To what would you attribute the gap between that 50% and the fall off to 17% -- lack of opportunity?

JAB: There are probably a lot of factors, but lack of opportunity is certainly one of them. I also think that women are more willing to make decisions to do other things with their lives. Maybe that's an advantage that women have that men don't - men feel more pressure to stay in a high paying job and, I think, get more satisfaction from that. Many women are looking for other things.

PHH: One letter nominating you for the Founder's Award cited your consistent and continuing efforts in mentoring women lawyers. What is the significance of mentoring for women lawyers? With respect to your concerns about lack of opportunities for women, can mentoring play a role in improving those opportunities?

JAB: Everybody, men and women, has mentors whether they think of them that way and like or dislike that term. Everybody has somebody who showed them the ropes and answered their questions and introduced them to the right people and steered them to the right opportunities.

PHH: Can mentoring play a role in improving women's opportunities?

JAB: Absolutely. People have opportunities because somebody more senior to them introduced them to a client or brought them along on a pitch or asked them to work on a case or a deal. If the decision-makers would think of women as often as they think of men, then I believe the percentages you noted would become more equalized at senior levels.

PHH: You no doubt have had mentors along the way. Have your mentors been primarily women? Men? A combination of both?

JAB: A combination of both. When I entered the profession, most of the people senior to me were men, so my mentors were men. I relied on them for work and advice and all sorts of other things, but I've certainly always had a number of good friends who are women in the profession. As I've gotten more senior, I rely on their advice and experience as well.

PHH: More as a peer mentor?

JAB: Exactly.

PHH: I know you've mentioned some things that you learned from Dan Webb, are there other points or practices you've learned from your mentors along the way? Good or bad?

JAB: Lots, lots. One thing, and this goes back to Dan again. I remember talking to him at one point about how to conduct a cross-examination in a case we were working on. I laid out the theory of why I thought I should do it. It was somewhat complicated,

and I wasn't sure I was going to be allowed to do it. He spent time with me and worked through it. At the very end, he said to me "but if you're not comfortable doing it, don't do it." And that was great advice, that it didn't really matter whether technically under the rules you could do the cross-examination or not do the cross-examination, if you don't feel up to it, it's not going to work and don't try it.

PHH: You've forced me to ask the ultimate question, did you attempt the cross-examination?

JAB: I started, and the judge shut me down.

PHH: Shifting gears -- your husband, daughter, parents and in-laws all attended the award lunch where you were recognized. You obviously have strong family bonds. What kinds of challenges have you faced in terms of including both strong family bonds and professional success in your life?

JAB: Certainly there are always time constraints, and everybody—married or single, children or none, faces them. Everybody deals with them differently. For me, I married for the first time when I was 40, and we adopted when we were in our mid-40s.

PHH: Let me interrupt you there -- you say everybody is faced with time constraints, but in reality, men for the most part are not faced with the same biological time constraints as women are. Doesn't being female have more of an impact on one's time in terms of a family, than it does on a man?

JAB: It does, it does. But again I think everybody prioritizes and decides what they're willing to do and what's important to them then. People choose to do it all different ways and have different demands on their time and their attention. One myth I don't like and never accepted is the idea that women who are either not married or don't have children don't have work/life balance issues in the way women with families do. That's not true. Most people, whether they've got young kids or elderly parents or other family issues or just other things going on in their life, have many things pulling them all different directions. What works for you doesn't necessarily work for somebody else, and what works for you at one point in your life doesn't always work for you at a different time in your life.

PHH: You mentioned priorities, did you make any decisions on priorities at an early point in your career or did your priorities shift as your career evolved?

JAB: I don't think I made a conscious decision, but I've always enjoyed my career and my career has always been very important to me.

PHH: We've talked about your family -- your husband and six-year old daughter, and you have a very full career. How have you faced the challenges of having a family -- a strong family - and being a litigation partner in a large law firm?

JAB: My husband is very supportive of me, and one of the things that makes it work is that he has a job where he does not travel very much—he's out of town maybe twice a year—and so we're able to plan around it. That helps a huge amount. We have a nanny whom we employ full-time even when my daughter is in school most of the day because we need the flexibility of her being able to be there on days off and in the summer. And we rely on extended family to help us out too. But there is no question that there are other things that you give up, there are trade-offs that you make, there are things that you're not there for.

PHH: And when you say things that you're not there for, do you mean things in your child's life, like a school program?

JAB: Exactly. If you're going to work full time, you're not going to always be at school at 2 o'clock in the afternoon to see the play or whatever.

PHH: I know you also have a very strong interest in architectural preservation. How do you find time to pursue this passion?

JAB: I make time for it. I think it energizes and keeps me interested enough and keeps my life varied enough that it's worth it to make time for it.

PHH: There has been much said and written about how the law has shifted from a profession to a business. What evolution have you seen in this regard and how have you dealt with it? In your view, has that shift impacted women differently than men?

JAB: During the course of my years prac-

“The knowledge of the law is like a deep well, out of which each man draweth according to the strength of his understanding.”

—SIR EDWARD COKE, LORD CHIEF JUSTICE OF ENGLAND (1552-1634)



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ting, the law has shifted dramatically from being a profession to being a business. That has accelerated in the last year or so with the economic downturn. Right now, we seem focused almost exclusively on the business aspects of law. It does impact women greatly. I think women are equally situated with men to contribute to the profession of law. They're as smart, as able and as dedicated to the profession. There is no gender difference there. But many women in their 20s and 30s are not in a position to commit the same kind of hours to the practice that men can because they are having a family, raising a family, spending time with their children. If you look at it from a strictly financial prospective, those women are not going to be as profitable. Right now, profit is everything.

PHH: I recently read an article that described the character trait of "grit" as perhaps a defining difference between those persons who succeed and those who do not. I wondered if this might

be that so-far-unarticulated factor that determines which extremely bright and well-educated associates become successful partners. I also wondered if men are more often considered "gritty" than women—or if "gritty" men are perceived differently than "gritty" women. What do you think?

JAB: Well, I've been described, and by a friend, as "gritty." I see associates start out at the firm, and they're all bright and they're all very talented. They're all capable of doing the work. The question becomes, after a couple years, who really wants it? And who is going to put up with the hours and other sacrifices that you make to achieve partnership. Maybe that's what "grit" is referring to.

PHH: Let me follow up on that and ask, do you think differences in perception play a role in the documented gender pay differential and why fewer than 20% of partners in large law firms are women?

JAB: I do.

PHH: Do you have women role models now? Are there any women that you look up to?

JAB: There are many, many, many women I look up to. But I don't think there's any one person I look at and think "I want that person's life," as opposed to "I like this trait in this person and that trait in that person."

PHH: Good answer. One final question: What advice would you give young women lawyers entering the practice of law in 2009?

JAB: Work hard, but have fun. This practice of law can be very enjoyable, but if you evaluate it on a day to day basis, especially during the first couple years of your career, you probably won't think it can be fun. If you give it a chance, it will be fun.

PHH: Julie, thanks very much for taking the time to do this interview.

JAB: My pleasure. ■

How far have we come in eradicating discrimination in our profession and what is the blueprint for the future?

By Sharon Eiseman

Like any occupation, the legal profession has not been immune from workplace problems like discrimination, hostile environment, harassment and retaliation. Twenty years ago, one small firm associate found herself in the eye of a storm when she tried to stop the gender based harassment within her firm that was damaging her professional growth. When efforts to resolve the problem in-house failed, she took the matter to federal court. After a three week trial, the jury entered a \$1.3 million verdict in her favor, the largest sexual harassment judgment for a single litigant in Illinois history. The case, *RoxAnne L. Rochester v. Gerald L. Fishman and Fishman & Merrick*, Case No. 3896, United States District Court for the Northern District of Illinois, marked the first time that an Illinois lawyer prevailed against other lawyers in a Title VII sexual harassment suit.

From the first offensive act to final judgment, the dispute took 10 years to resolve. Post-judgment efforts by defendants to

avoid payment of the judgment consumed another five years. It was 12 years before the ARDC entered its own disciplinary orders against the offender.

Today, we catch up with plaintiff RoxAnne Rochester to gain insight into resolving such disputes and to reflect on what progress the legal profession has made to respond to discrimination in its own ranks.

Q: In 1990, when you were confronted with sexually harassing conduct by a name partner at your law firm, what options for action were available to you?

A: Like other newly licensed attorneys, I was committed to my career and dependent on my job and salary to meet my financial obligations. When this situation occurred, there was no guidance on what to do, and there were a number of relationships at stake, I struggled to find a resolution that would preserve my professional standing

and my license; restore my perception of the profession; preserve my client relationships; and protect the individuals involved, while also protecting my safety and my integrity. No resolution existed that would accommodate all of those objectives.

In 1990, in-house remedies were rare, and so anyone in my position had three choices. First, one could 'go along' with the perpetrator and perhaps advance a career, but sacrifice self image and personal integrity. Second, one could quietly leave the firm, which would immediately resolve the safety issues but result in job loss and possible exclusion from the profession. Third, one could file a claim and seek redress through the governmental agencies and the court system, but the EEOC and Illinois Human Rights Commission were not apt to pursue a claim involving a small firm employer, which

means personal litigation. This last option may preserve an individual's self esteem and dignity, but it comes at a great price, made manifest in job loss, musings about one's character and motives, and the ever present risk that the case might be lost. Taking such a case to trial requires courage and the ability to 'go it alone', because there were no profession-wide advocacy efforts in place, which is one reason why litigation of this type is so rare.

Q: You chose to bring suit – at what cost?

A: Within a day of filing, I was informed I could not expect to continue at the firm while suing it, yet I had no clients, no source of income, and little savings. I was publicly accused of wrongdoing such as extortion and bringing false claims that adversely affected my personal and professional reputation.

The actual monetary costs were exhausting. The defendants' delays resulted in four years of pretrial discovery and motion practice; by the time we got to trial, I had paid fees in excess of \$100,000. Even though I "won" at trial, post-trial federal court motions, bankruptcy actions and collection efforts added another four years and \$100,000. Altogether, I spent \$250,000 over the course of ten years to remedy the situation. The amount ultimately collected through bankruptcy basically reimbursed my legal fees. During that time, I grew my own firm into a successful practice largely through colleague and client referrals.

Q: How should someone prepare for the monetary and emotional costs associated with fighting discrimination?

A: As a litigator, I had some insight into what I should expect, but it's much different being a plaintiff than an advocate. Many trial tactics took me by surprise. To those unfamiliar with the litigation process or unable or unwilling to make the financial commitment, seeking legal redress in court may not be a viable option.

Be prepared to endure the equally exhausting non-monetary costs. Such situations shake your trust in the profession and our justice system, and affect close relationships. Be realistic about your objective. The courthouse won't undo the emotional 'fallout' from the misconduct,

get your job back, or regain your professional status. The victor can get a judgment (not always collectible) and person and profession may be vindicated, but the process takes a toll.

Q: Have options changed for lawyers who might find themselves in similar situations today?

A: I believe our profession has become much more intolerant of this conduct which makes less onerous resolution possible. Twenty years ago, the organized bar presumed that such misconduct could not and did not exist in our profession. After all, we have rules prohibiting discrimination. The persons involved were expected to resolve the problem quietly. By its denial, the legal profession created a level of tolerance for such misconduct. Today, there is a heightened awareness, and the profession is more willing to acknowledge the existence of discrimination and pursue remedial action.

Since the *Ellerth* and *Faragher* decisions, more firms are formally committed to investigate and resolve misconduct complaints in their offices. That opens the door to an option not previously available – challenging the offender to end the mistreatment while simultaneously preserving the professional status of the complainant.

Similarly, the organized bar, especially bar associations reflective of ethnic and gender minorities, has a more firmly established base and can assist in championing the cause of individuals who choose to challenge discrimination and harassment. The "Call to Action" and similar initiatives require firms to take affirmative steps to diversify their ranks and set a no-discrimination tone within their offices and in their work ethic.

Q: Have we eradicated the problem?

A: No, nor do I expect to overnight. All professions include individuals whose conduct might deviate from what is ethical and respectful of others. The legal profession has made tremendous inroads although there is still progress to be made. For example, even today, the ARDC requires a final judgment in a legal proceeding before it will investigate a complaint of discrimination. In my case, that meant

the perpetrator was not subject to professional discipline for more than ten years after the offending conduct, thus leaving others at risk – a response no more suitable to the self-regulating profession of law than it is for the Catholic Church.

Public sector offices and large law firms have probably made the most progress through adoption and enforcement of anti-discrimination policies. Why? First, large offices have more women at higher levels, and women leaders generally won't stand for this type of conduct. Secondly, *Faragher* and *Ellerth* spell out what is required of employers to avail themselves of recognized defenses. Third, for technological reasons, firms don't want the adverse publicity and negative marketing impact that blogs like *Abovethelaw.com* might bring. And lastly is the economic factor: a large firm can exact compliance with its policies even if the allegation is against a rainmaker, because its other rainmakers can help contain the income loss.

Q: What more needs to be done to educate lawyers to prevent discrimination?

A: Law schools must educate students to understand the problem and to be aware of resources and avenues available to remedy it should the need arise. The organized bar can continue its work to eradicate discrimination and harassment through concerted efforts to not only employ minorities and women, but to provide the same training and opportunity for advancement and professional growth to this population. Twenty years ago, women were more visible in public sector offices such as the U.S. Attorney's Office, the State's Attorney's Office and various government agencies. Women litigators in the private sector, especially in the civil courthouse, were still a novelty. Consequently, the male leaders of the profession did not know how to receive them or their talents. Instead, women were often given ministerial or administrative tasks, or permitted to author briefs but not to argue the cases. Now, women and minorities are a proven and integral component in the private sector, looked to for our intellect, energy and litigation skills, and seen as assets in client development and firm growth.

We are on the right track. Consider that...

- Increased numbers of women and minorities in law school makes their presence a common phenomenon for male and non-minority students.
 - As the men and non-minorities graduate, the seeds of their acceptance of equal skills of women and minority lawyers have already been planted.
 - The sheer numbers, combined with the maturity of thought on topics of discrimination and harassment, moves us towards their eradication.
- Q:** What do you see as the 'Blueprint' for the future?
- A:** For eradication to be possible, we must consider additional measures like the following:
- The practices adopted by public sector offices and large law firms must trickle down to the medium and smaller size firms.
 - The ARDC needs to timely respond to complaints or have an "under investigation" status of licensure rather than having to wait for judgment. Perhaps by statute, rule or motions in limine, prejudicial evidence of an investigation in pending cases can be excluded.
 - If litigation can keep the profession in check, then more attorneys should take these matters on a pro bono basis for the good of the profession and for plaintiffs unable to afford the process.
 - Bar associations must take a more visible role in denouncing discrimination and in teaching the importance of refraining from prohibited misconduct. They should also establish mediation programs to assist individuals and firms in resolving the problems and, where appropriate, address emotional realities. If appropriate, bar associations should file amicus briefs on such issues.
 - Groups like the ISBA Standing Committees on Ethnic and Racial Minorities and the Law and Women and the Law should aid the effort, provide legal research, serve as a source of collegial support, and assist courageous complainants to find re-employment.

Our work will not be complete until articles like this are unnecessary, and until it is no longer noteworthy to see a certain minority or gender rise to higher ranks. Twenty years ago, as Justice Mary Ann McMorrow contemplated a run for the Supreme Court, her presence in the race as a woman was remarkable. Today, women commonly seek and are often successful in achieving higher office. What remains to be done is true integration of all ethnic, religious, racial and gender groups into our profession. That is the true measure and strength of diversity, and it should be a goal to which we all aspire. ■

Reflections on World AIDS Day

By Yolaine M. Dauphin

According to *The Skeptics Guide to the Global AIDS Crisis*, a book authored by Dale Hanson Bourke, approximately 8,500 people die of AIDS every day. The author explains: "AIDS is the biggest public health problem the world has ever faced. It has already surpassed the bubonic plague, which wiped out twenty-five million people—one quarter of Europe's population at the time. An estimated three million people die each year from AIDS, a death toll that has been compared to twenty fully loaded 747s crashing every single day for a year." When even one airplane crashes, our television, newspapers, the internet and other media outlets quickly disseminate the information. Where then are daily or weekly stories on AIDS and the toll this pandemic is taking around the world? Why do so few articles alert us to the relationship between AIDS, poverty, sexual trafficking, and the unavailability of drug cocktails in many countries around the world? Is it of interest that women, at one of the few facilities in India for those suffering and dying of AIDS, must take turns sleeping on the beds and sitting

on the ground? Perhaps the AIDS epidemic kills too many, leaving us too frightened, and too hopeless to act.

Awakening to a Crisis.

For years I was aware of AIDS at a certain level. Here and there I would read an article on AIDS, comment negatively on the failure of certain players, such as drug manufacturers, to take proactive steps to help those in need, and move on to the projects, meetings, relationships in my life. AIDS was an issue, but it was not my issue, perhaps because of the lack of contacts I had with persons suffering of AIDS and the lack of exposure I had to the issues contributing to the toll of AIDS around the world. That changed in 2004 when the senior pastor of my church and his wife traveled to South Africa. The video broadcast of their interviews with individuals impacted by or living with HIV/AIDS moved me deeply. In particular, I remember being told that a child seen in one of the interviews had died shortly after the interview. Suddenly, AIDS had faces, and I wondered how I could have been inactive for so long to the issues, the suffering and the toll in human lives.

A Challenge.

The work of my pastor and his wife challenged me to teach myself about HIV/AIDS in a consistent and meaningful way. I read *The Skeptics Guide to the Global AIDS Crisis*, and attended a series of seminars on issues related to AIDS, not allowing the everyday things of my life to dull the impact of the interviews and the glimpse that I had of the suffering brought by AIDS. I watched an interview with rock star Bono in which he detailed his involvement with issues related to poverty and AIDS, and challenged individuals and the church to get involved and make a difference. I also watched an interview with filmmaker Richard Curtis, the director of *The Girl in the Café*, and the mastermind behind the show *American Idol: Idol Gives Back*. In the interview, an unforgettable moment came from a short film clip by Curtis. It is after 11:00 p.m., in a city in India, and a girl, no more than six or seven years old, wearing a yellow dress, arranges a blanket and a pillow on a sidewalk. Her bed made to her satisfaction, she settles in for the night, as a man veers around, to avoid stepping on her, and

continues on his way. Tears came to my eyes as I wondered what had happened to the girl's mother; why a girl so young was on the streets at night.

Making a Difference.

The faces and the interviews challenged me and changed me. I could not forget, and I could not be content to have "others" find solutions. I renewed a relationship with World Vision, International an organization caring for vulnerable children around the world. Through World Vision's Hope Child Program, I sponsored Mpundu and Theresa from Zambia, Etenesh from Ethiopia, and Caroline from Kenya. These children, my children, live in communities under the shadow of AIDS, in communities where individuals struggle to survive on a dollar a day, in communities in which life expectancy has plummeted to less than 40 years. The funds I contribute help the children by giving them access to education, clean water, and food, while also improving the communities in which the children live by helping adults learn better farming techniques and women start businesses through micro-enterprise loans.

A Walk on World AIDS Day.

One number has particularly made the pandemic real to me. Every day more than **6,000 children** are orphaned by AIDS. It is a frightening toll, and when multiplied by the number of days in a month, mirrors the devastation brought about by the tsunami. Sometimes aging grandparents try to care for the children. Far too often, the children must care for themselves in child-headed households.

For several years, World Vision has sponsored a walk in the Chicago Loop on World AIDS Day to raise awareness about the toll of AIDS on children, and, in particular, children living in Africa and Asia. The walkers take **6,000 steps**, approximately two and one half miles, in solidarity with the children orphaned that very day by AIDS. In 2006, after watching the movie, *A Closer Walk*, friends on the North Shore were moved to respond in some way to the AIDS crisis. We joined World Vision's efforts by planning a walk in Glenview on December 1, 2006. In 2007, my church Willow Creek North Shore, and Rise International, an organization that has raised funds and built more than **110 schools** in post civil war Angola, joined the effort to raise awareness about the toll of AIDS. The walk took place once again in Glenview, but

organizers added a concert with **WATOTO**, a children's choir from Uganda. The free walk and concert attracted approximately 300 hundred participants from North Shore communities.


A Challenge to Readers.

In 2008, I chaired the planning committee for the World AIDS Day Walk & Concert. The walk on December 6, 2008, again **6,000 steps, a step for each child orphaned that day**, took place in Evanston and was intended to continue awareness building on the North Shore about the plight of AIDS orphans. The concert with the **African Children's Choir**, a group that performs around the world and that has been featured on American Idol: Idol Gives Back, was inspirational, reminding us all that we can make a difference. **Princess Kazune Zulu**, a young mother impacted by AIDS, provided opening

remarks for the day's events and led a charge of approximately 500 walkers.

Each participant in this year's World AIDS Day Walk & Concert received an educational packet with information about next steps. The challenge to participants was to become more educated about the issues, and to determine to take a next step, an action step. My challenge to readers of this article is the same: education and action. AIDS is the biggest humanitarian crisis of our times, with an ever increasing toll in human lives and suffering. We can each make a difference, however, whether by raising awareness about the issues, advocating on behalf of those impacted by HIV/AIDS, or more directly helping those suffering or impacted by AIDS. Learn more about the issues, take a step and make a difference in the fight against AIDS. ■

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The City of Chicago renews its commitment to minority and women-owned businesses

By Daniel R. Saeedi

The City of Chicago has recently renewed its Minority and Women Business Enterprise Program (“MWBE Program”), an affirmative action program in construction with goals for awarding 24% of City construction contracts to Minority-owned Business Enterprises (“MBE”) and 4% to Women-owned Business Enterprises (“WBE”). The recent renewal of the MWBE Program came after studies initiated by the City and conducted by experts revealed widespread minority discrimination in the field of construction and business lending.

Construction is a key sector in the nation’s economy, employing over 8 million workers, or 6% of the country’s work force. The vast majority of construction firms are small, with approximately two-thirds of the City’s construction firms comprised of less than five employees. The industry is therefore highly volatile and susceptible to the prevalence (or lack thereof) of continuing contracts. This is especially true given the current economic crisis that is affecting the nation, and more locally, the Chicagoland area.

Minorities have been traditionally underrepresented in the construction industry. The Statistical Abstract of the United States reveals that in 2005, 12.3% of the population was African American, 14.45 Hispanic, 4.3% Asian/Pacific Islander and 0.75% Native American. And yet, according to the 2002 Economic Census Survey of Business Owners, of the 2,770,888 construction firms in the United States, only 2.4% were owned by African Americans, 7.0% by Hispanics, 1.1% by Asian Americans, and 10.5% by women. Also, generally speaking, minority-owned firms have had lower average sales, less employees, lower payrolls, and higher closure rates than white-male-owned firms.

The City’s MWBE Program first began in 1985, through an executive order by then-Mayor Harold Washington. In 1989, the United States Supreme Court’s landmark decision in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), established the constitutional framework for race-based municipal contract programs. In *Croson*,

the Court held that such notice-based municipal procurement programs are constitutionally suspect and must survive strict scrutiny by showing a compelling governmental interest and narrow tailoring. Because of the *Croson* decision, the City established a blue ribbon commission to report on the need for an MWBE program in order to satisfy strict scrutiny. After days of public hearings, the City’s original affirmative action ordinance was adopted in 1990, which legislatively established a set-aside program for City procurement, encompassing construction, goods and services.

In 1996, the Builders Association of Greater Chicago filed a lawsuit challenging the City’s ordinance. In 2003, after a six week trial, Judge James Moran, of the United States District Court for the Northern District of Illinois, found that the City had established a compelling interest for a race-based procurement program in construction, based on statistical and anecdotal evidence of discrimination against minorities and women in the Chicago construction market. However, he struck down the City’s ordinance as unconstitutional in light of *Croson*, since the ordinance was not narrowly tailored, and more expansive than plans sustained by the courts. *Builders Ass’n of Greater Chicago v. City of Chicago*, 298 F. Supp. 2d 725, 739 (N.D. Ill. 2003). Judge Moran noted that the ordinance did not have a termination date, and also was too similar to a rigid numerical quota system, which did not survive strict scrutiny. However, Judge Moran stayed his order enjoining the City’s program for six months, giving the City time to “mend it not end it.”

In May 2004, the City with the assistance of Shefsky & Froelich, Ltd., trial counsel in the *Builders Association* lawsuit, presented a revised ordinance to the City Council. The amended ordinance was adopted, and included a sunset date of December 31, 2009. When creating the current MBWE Program in 2004, and renewing it again in 2009, the City wanted to ensure that it provided sufficient econometric studies to firmly establish a compelling governmental interest. For this purpose, the City sought

the services of Dr. David Blanchflower, of Dartmouth University, a renowned expert in labor market analysis and economics, who prepared a detailed report for the City Council. Dr. Blanchflower’s report included written interview summaries prepared by social science experts who each examined a specific subset of the MWBE Program and discrimination therein: Dr. Ana Aparacio, of Northwestern University (Hispanic and women owned firms), Dr. Cedric Herring, of University of Illinois-Chicago (African American-owned firms), and Dr. Yvonne Lau, of DePaul University (Asian American-owned firms). Together, these reports demonstrated significant and ongoing discrimination in the Chicago construction industry.

Specifically, Dr. Blanchflower found the following: First, considerable disparities remained in the self-employment rates and earnings of white males versus minorities and women in construction. Second, statistically significant differences in industry loans existed for the African American and Hispanic-owned firms, with such firms having increased loan denial probabilities and higher interest rates. Third, these factors were exacerbated by the current economic situation, with lending standards tightening, self employment and small business hiring taking a downward trend, and small business bankruptcy filings rising.

Dr. Blanchflower then made the following recommendations in his report, which the City adopted: (1) The City’s construction goals in the original MWBE plan should remain as they currently exist (total Minority Business Enterprise goal of 24%; total Women Business Enterprise goal of 4%; total MWBE availability 28%); (2) due to the current economic conditions, all groups now included in the ordinance will remain, with the addition of Native Americans, and any revisions to the MWBE Program should be revisited in a more favorable economic climate; and (3) the new ordinance should remain in effect until the end of 2015, with an interim review by the end of 2012 to allow for an examination of the impact of recession. ■

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