

one step at a time

How the WSBA and Washington legal profession are moving forward on a path of diversity and inclusion

By Colin Rigley

Recently, Richard Mount had what you might call a “woke” moment.

But before you know how Mount’s perception of himself changed, it helps to know a little more about him. Mount, a labor and employment attorney for Witherspoon Kelley in Spokane, has been handling some human resources functions for the firm, one of the largest in Spokane, for about a year and a half. He’s made intentional efforts to increase diversity at the firm and create a workplace that fosters diverse opinions from people of a multitude of backgrounds. He was a member of the Cheney School District Board of Directors when it hired the district’s first female superintendent, who then focused on hiring a more diverse staff. And he recently asked the WSBA to come in and conduct microaggression and implicit bias training for his firm (more on that later). So it surprised him to realize that the way he used to think about the Black Lives Matter movement could be rightly perceived as racist.

When Mount began hearing the phrase “Black Lives Matter,” he would think ... well, all lives matter. It wasn’t that he thought black lives didn’t matter, or that other lives mattered more, but he hadn’t previously stepped outside of his own head to put his internal reaction in context. Then in May, Mount was talking with Dr. Jonathan Kanter, a research associate professor and director of the Center of the Science of Social Connection at the University of Washington.

“[Kanter] had brought up something about saying ‘black lives matter,’ and if the response to that is that ‘all lives matter,’ is that a racist comment?” Mount recalled. “And I had never thought of it that way. ... For me, I had to stop and think, ‘Can I see that a person of color, especially a black person,

would think that my response or my thought, in and of itself, was racist?’ And I had to conclude that, yeah, they would think that because I’m really not understanding what their point of view is.”

Realizations like this are threaded through conversations about diversity and inclusion, where the biases we all hold affect how we interact with other people, who we hire, who gets promoted, and the workplace environments we create. Although terms like “implicit bias” and “microaggression” might sound trifling, hypersensitive, or even ridiculous to some, the effects they have are well documented, potentially harmful, and capable of influencing who enters the practice of law and whether, once in, they are treated equitably.

Mount and Kanter had their illuminating conversation at the 2018 Legal Executives Diversity Summit, which was put on by the Washington Initiative for Diversity. Kanter, one of the featured speakers with his presentation, “The Science Behind Microaggressions: More Damaging than You Think,” argued that microaggressions—a term first coined by a Harvard psychiatrist in the 1970s—and implicit biases are scientifically substantiated and have negative impacts on the physical and mental health of those who are subjected to them.

For example, a 2014 study published in the *Journal of Personality and Social Psychology* found that white people, when looking at images of other white people, will immediately look at the eyes; however, a white person looking at a non-white person will focus on the racially distinct facial features that are different from their own—what’s referred to

as “othering.” Biases can affect perceptions whether we’re conscious of them or not, right down to the activity in our brains. Researchers with the University of Southern California Department of Psychology found greater activity by the amygdala, the part of the brain most associated with fear, when white people were shown images of black faces as compared to white faces.

Moreover, Kanter argued in his presentation, just the perception of bias takes a toll. The everyday consequences of microaggressive behavior have been linked to higher rates of smoking, obesity, and substance abuse among racial minorities compared to whites, as well as higher rates of mental health issues like anxiety and depression caused by discrimination, along with corresponding health effects like high blood pressure and heart problems.

Recognizing the impact implicit bias can have, this year the Washington Supreme Court adopted General Rule 37, which aims to reduce implicit bias in jury selection (see “GR 37: One Step in the Right Direction” at page 38 for more on this new rule). It was the Supreme Court, too, that charged the Washington State Bar Association with promoting “diversity and equality in the courts and the legal profession,” as stipulated in General Rule 12.2.

This year marks the five-year anniversary of the WSBA’s Diversity and Inclusion Plan. On June 6, the WSBA commemorated the anniversary during

the “WSBA Diversity and Inclusion Celebration, Where We’ve Been, Where We’re Going.”

Throughout the evening—which featured introductory remarks from WSBA staff and stakeholders, followed by a CLE panel featuring representatives from Microsoft, the Washington ACLU, K&L Gates, and the Supreme Court—the common thread was that a diverse legal profession is a better legal profession, and making the legal profession more diverse won’t happen without a concerted, intentional effort aimed at recruiting underrepresented candidates and fostering a more inclusive work environment.

“We’ve changed, but it feels like miniscule change ... we’re getting there, but it has to be better,” Pallavi Wahi, managing partner with K&L Gates and the chair of the firm’s diversity committee, said during her CLE presentation. “We must be intentional. It’s not going to happen just because we’re nice people.”

MOVING FORWARD WITH INTENTION

It was an unseasonably warm afternoon in the town of Lakewood and Joy Williams was standing in front of 600 people with her life on display.

She talked about her husband, about their work as ministers at one of the largest African American churches in Tacoma. She talked about their six children and displayed a photo of her and her family back before the cancer growing in her husband’s pancreas took his life.

“What I’m trying to do is help normalize discussion around microaggressions and implicit bias.”

JOY WILLIAMS,
WSBA Diversity and Public
Service Programs Manager



She talked about the bigotry she’s experienced, both explicit and implicit. She talked about the prejudice her children have experienced, like when police held three of her sons on the ground on suspicion that they were adults wanted for robbery—they were in middle school at the time.

She talked about growing up in Philadelphia, a segregated city where she knew where she was supposed to go and where she wasn’t; what was safe and what wasn’t. And she talked about how her mother used to explain to her that, when it comes to being gay, “we don’t do that.”

The “we” meant her family didn’t do that; African Americans didn’t do that. It’s part of what led her to live much of her life as a heterosexual. But after her husband died, she reexamined her life. She decided she was going to be her true self and come out as gay, even if it

A Brief History of Diversity Efforts by the WSBA

2003

The WSBA formally establishes diversity as one of its nine strategic goals.

2006

The WSBA Board of Governors forms a Diversity Committee to help improve diversity within the elected leadership.

2007

The WSBA adopts five guiding principles, one of which focuses on understanding diversity in the legal community and providing tools to members.

2013

The WSBA Board of Governors approves the Diversity and Inclusion Plan.

2016

The WSBA and the Puget Sound Association of Legal Administrators partner to create a statewide mapping of diversity, equity, and access to justice.

meant losing everything—which, in a lot of ways, it did.

Coming out as gay meant losing almost all of her friends. It meant losing the church. As a black woman, it meant people on the street had new epithets to sling at her for doing nothing more than going for a walk and holding another woman's hand.

But it meant gaining as well. This year, she celebrated her one-year wed-

“People that don't have a global workforce are going to fail.”

FRED RIVERA,
Seattle Mariners
Executive Vice President
and General Counsel

ding anniversary with her wife. They have a daughter together, a six-year-old. It all helped lead her to where she is now—she calls it her “journey” and told the crowd that everyone is on their own journey. Williams' journey led her to help build a more diverse and inclusive world. It led her to that stage, talking to 600 members of the Washington State Attorney General's Office (AGO) who'd gathered for their staff conference. Williams, the WSBA's Diversity and Public Service Programs Manager, was standing there with her soul bared because she wanted people to know that it's safe to do that—to be open. And when it comes to recognizing implicit biases and microaggressions in ourselves and in others, it requires no small amount of courage and willingness to be open. It's challenging work, she said, but the payoff is a more diverse legal profession where justice is more equitable for an increasingly diverse population.

Her presentation that day, “Moving Forward with Intention,” was an introduction to the 19 upcoming half-day CLEs on microaggression and implicit bias she is holding this year with smaller groups of AGO staff across the state. She doesn't expect everyone to share as much as she does, but she wants them to know that they can safely share that much. Williams wants people to come to her trainings with no shame, no guilt, no judgment.

“All of us need courage,” Williams told the crowd. “You're going to need to bring it ... but this work is important. It's only important, though, if you come willing to do that work.”

The 19 half-day CLEs include hands-on training that highlights how to recognize implicit bias and microaggressions in others, as well as yourself; how to interrupt microaggressive behavior and biased language from other people; and how to react when someone else interrupts your microaggressive behavior.

Williams' work through the WSBA caught the attention of Deputy Attorney General Erika Uhl, who asked Williams to provide the CLE training to hundreds of staff members as part of the office's ongoing efforts toward ensuring a more diverse and inclusive workplace.¹

“I think it would be fair to say that, through [Williams], the [Washington State Bar Association] has become a resource on issues of diversity and inclusion,” Uhl said. “And I see Joy as an expert on these types of issues, so I was definitely thrilled when she had a training on microaggressions available and was willing to do it.”

It was much the same reason Mount asked Williams to provide training for Witherspoon Kelley attorneys and staff. For him, the training is part of a broader effort by Witherspoon Kelly to incorporate as many varied perspectives as possible, which ultimately benefits the firm and its clients. He doesn't see diversity as a liberal or a conservative issue as much as an essential strategy to pro-

vide the best possible legal services to clients.

“They [clients] are looking to see if we have a diverse group and they're looking to promote that diversity,” Mount said, adding that “the more minds you have looking at an issue or project, the better discussion you're going to have because different people see things from different perspectives.”

Additionally, the WSBA recently shared survey data showing the state of diversity and inclusion efforts throughout the Washington legal profession. The Statewide Diversity and Inclusion Mapping survey, conducted in partnership with the Puget Sound Association of Legal Administrators (PSALA), found that 39 percent of the 59 respondents have a diversity and inclusion plan. Of the respondents, 71 percent said they supported an Inclusion and Equity Think Tank that would focus on developing equity-centered policy and best practices to be utilized by legal professionals throughout the state.

THE STATE OF THE STATE

For Washington Supreme Court Justice Steven González, the word “diverse” is as much about what it's not as what it is.

“You can define it with whatever's missing,” he said during his presentation at the WSBA Diversity and Inclusion Celebration CLE.

If you look specifically at the Supreme Court, what has been missing are people of color. This dates back to the first and only African American to serve on the Washington Supreme Court, the late Justice Charles. Z. Smith, who was appointed in 1988 and served until 2002.

Of the roughly 20 justices who've been appointed to the Supreme Court since then, González is one of two people of color. In fact, according to data collected by the American Bar Association, in 2010 in Washington there were 11 African American judges, five Asian Pacific Islander judges, and one Hispanic American judge (based

on judgeships in Washington for the general jurisdiction trial courts, appellate level courts, and court of last resort). That was a total of 18 minority judges in the state out of 217, just 8 percent, putting Washington at 25th based on the percentage of minority judges, falling behind such states as Nevada, Utah, Arizona, South Carolina, and Arkansas.

Looking at all legal professionals in the state, not much changes. According to the demographic information voluntarily provided by members as part of their 2018 license renewal,² WSBA membership breaks down as:

- 85.5 percent white
- 5.1 percent Asian
- 2.5 percent Spanish/Hispanic/Latina/o
- 2.3 percent black
- 0.9 percent American Indian

Those numbers represent a marked increase in diversity when compared to 2010, when the WSBA membership was approximately 90 percent white. However, it's still a far cry from reflecting the growing diversity of Washington. Even today, the WSBA membership is less diverse than the state was in 2010, according to the 2010 Census³ (at the time Washington was approximately 79.2 percent white, 7 percent Asian, 3.5 percent black or African American, and 1.5 percent American Indian; as well as 11.2 percent Hispanic/Latino of any race).

Not much is different across gender lines, where 42 percent of WSBA members are women, yet the state was 50.5 percent female according to the 2016 Census data. However, a larger percentage of WSBA members identified as LGBTQ (5.4 percent) when compared to a 2015-16 Gallup survey (4.6 percent).⁴

“We must be intentional. It's not going to happen just because we're nice people.”

PALLAVI WAHI,
K&L Gates
Managing Partner

WSBA CLE

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Angela Ballasiotes is the executive director of the Washington Initiative for Diversity and calls the current demographics of Washington’s legal profession a “pipeline issue.” Diversity isn’t just about law firms hiring underrepresented candidates but, in fact, an issue that starts long before law school, when kids might start thinking about a career in law. Law schools have made strides in attracting more students from underrepresented backgrounds, but there’s room to grow. At the University of Washington School of Law, for example, enrollment of black/African American students remained flat from 2014 to 2017, with the highest being 17 students out of a total enrollment of 501 in 2016, according to the school’s ABA-required disclosures. The Gonzaga School of Law reported that 19 percent “ethnically diverse” (non-white) students enrolled

in 2017, down from 23 percent in 2013 and a five-year low of 13 percent in 2015. The Seattle University School of Law reported the most diverse enrollment in 2017, among Washington law schools, with 34.8 percent of the school identifying as a racial minority.

Large Washington-based companies are also working toward retaining a diverse pool of employees. Lisa Tanzi, VP and general counsel for Microsoft, who was a featured panelist at the Diversity Summit, said in an email that Microsoft is in its 10th year of the Law Firm Diversity Program, which provides a bonus to law firms the company works with “when they make progress against goals designed to advance diversity in leadership at law firms.”

“Microsoft cares deeply about supporting diversity and inclusion because it is critical to our company mission—to empower every person and organization on the planet to achieve more,” Tanzi said. “To achieve this mission and to best serve our customers, our talent and that of our partners must reflect the diversity of our customers and other stakeholders. We also need to compete for the best talent in the world and we have to look for that talent broadly. And after people join Microsoft, we need to have an inclusive environment where everyone can do their best work.”

Increasingly, diversity is being recognized as more than a feel-good term, but rather as something that results in better work and higher profits. In the 2017 study, “Do Pro-Diversity Policies Improve Corporate Innovation?,” researchers at North Carolina State University concluded that “corporate policies that promote more pro-diversity cultures, specifically treatment of women and minorities, enhance future innovative efficiency ... have greater growth options, have higher cash flow, and have stronger governance.” A co-author of the paper, Richard Warr, noted that “to be clear, we found that there is a causative link—it’s not just a correlation.”

If you ask Fred Rivera, executive vice president and general counsel for the Seattle Mariners, why diversity matters in the legal profession, he’d say that, aside from it being the right thing to do, it’s increasingly necessary in a shifting world. Rivera has been practicing law for 25 years, first at the U.S. Justice Department in D.C. before moving back to Washington state, where he’s spoken repeatedly about diversifying the legal profession, and recently gave opening remarks at the Legal Executives Diversity Summit.

“The reality is, particularly in Seattle, we’re a global economy,” he said. “And if you take a look at somebody like Microsoft, which recognized a number of years ago that their clientele is global, and if they were going to succeed in a global economy they needed to have a global workforce.

“People that don’t have a global workforce are going to fail.” **NWL**



COLIN RIGLEY worked as a print news journalist and editor in California, as well as a content strategist in the Puget Sound area, before joining WSBA as the communications specialist earlier this year. He can be reached at colinr@wsba.org.

NOTES

1. Williams was also a featured speaker at the Legal Executives Diversity Summit with her presentation, “The Power of Non-Inclusivity.”
2. Based on 28,010 responding members.
3. WSBA only collects data on one reported race, while the Census collects information on people who report one race, two or more races, and other more nuanced demographics. The Census collects data not only on people who self-identify as Hispanic/Latino, but also additional racial breakdowns within that ethnicity.
4. The Census does not collect data on sexual orientation.

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