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**Initial Despair in Wake of 2023 SCOTUS Ruling Turns into Motivation on DEI Front — Part 1**

This time last year law firms across the country were reeling from the U.S. Supreme Court’s monumental—and some say controversial—decision striking down affirmative action in higher-educational admissions.

Of course, virtually everyone in the legal profession remembers how the High Bench ruling triggered a strong pushback from anti-affirmative action activists against law firms and their diversity, equity, and inclusion programs. Most notably the American Alliance for Equal Rights and the conservative group’s leader Edward Blum sued BigLaw partnerships Morrison Foerster and Perkins Coie, both known as pioneers in law firm policies and programs. Citing

the SCOTUS decision handed down in June of last year, the suits alleged that the partnerships’ diversity fellowship programs discriminated against applicants based on race.

Ultimately, the two law firms changed the DEI programs in question, prompting Blum to drop his suits and turn his attention

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elsewhere, threatening to file claims against several other law firms.

Initially, DEI programs within the legal community clearly took a collective hit from the ramifications of the Court's ruling, slowing progress in this area. But things have changed and, generally speaking, diversity efforts at law firms are rebounding well, according to four highly regarded diversity leaders *Of Counsel* interviewed.

## Fear Lights Fire

In the weeks and months after the decision—which many people considered a devastating blow to diversity and social justice—numerous attorneys and other law firm professionals felt demoralized and deeply concerned.

“Last July, there was a sense of fear that was added to the [DEI] equation,” says Terra Davis, chief diversity & talent development officer at the California-based, national law firm Knobbe Martens “Folks weren’t sure what would happen next and if their labor and progress would be unraveled. We went from feeling deeply moved and empowered to feeling defeated.”

But in the summer of 2024, it seems the mood has lightened, and the DEI commitment is as steadfast as ever. Consider a recent survey. *Seramount's 2024 Best Law Firms for Women & Diversity* finds that law firms are “not only staying the course on diversity, equity, and inclusion but also have embedded DEI more deeply in their firm cultures.”

Professionals at law firms say they’ve adjusted and advanced their diversity initiatives through dedication and diligence. As Davis puts it, “resilience is key.”

And, staying resilient isn’t always easy for those fully involved in driving diversity forward. “This work can be challenging,” Davis says, “because it requires us to have deeper empathy and understanding of other cultures, socioeconomic backgrounds, and philosophies. We always need to remain curious and respectful.”

Davis goes on to say that DEI advocates often need to expand the method to their mission. “This work is also very personal,” she adds, “and it requires you to become a therapist in a sense—nonjudgmental and clear on the end goal. What is the right solution and

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## Diversity Resurgence

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what is the right approach? And, what will get us to a place where everyone feels seen, heard, and more importantly respected?”

### Damn the Torpedoes ....

At Nashville-based Bass, Berry & Sims, lawyers and staff also experienced some trepidation and uncertainty after the Court’s ruling and its aftermath. “I think at first it was just unsettling; it was a scary thing,” recalls Lee Ashby Watts, the firm’s director of diversity, equity & inclusion, adding that it also unified the partnership and served as motivation for her, her team, the firm’s managing partner Todd Rolapp, and the firm as a whole. “Deep in my heart and soul, it was discouraging. However, as a group pulling together, it was more like it sparked our commitment. It lit a fire.”

This initial fear and insecurity seems to be a common sentiment, as does the subsequent sense of incentive and inspiration. “For our firm, at first, every time there was an article about a firm getting sued, I’d get five or 10 emails, like, ‘Hey, are we in compliance with our fellowship program?’” says Ashley Holloway Black, the diversity, equity, inclusion & belonging manager at Houston’s Porter Hedges.

The anxieties about compliance with the Supreme Court-driven change in the regulatory landscape, as well as related concerns, didn’t impede DEI progress at Porter Hedges, Holloway Black adds.

“Last summer we didn’t change how we’ve done anything. We’ve just kept going full speed ahead. We actually increased our

budget,” she says, noting that some firms made funding cuts to diversity programming. “We know that we have a responsibility for our community, for our firm, and for the profession to keep moving forward, keep making progress.”

### “Wind in Their Sails”

Roy Sexton, Clark Hill’s director of marketing and past international president of the Legal Marketing Association, has brought to both of those roles a commitment to DEI. For example, he helped the Detroit-headquartered, national firm gain the Mansfield Certification, a science-based DEI measurement accreditation, so to speak, for law firms and legal departments. Although he credits Clark Hill’s human resources team and “key partner” Linda Watson for doing the heavy lifting to achieve the distinction.

Like other legal industry professionals, Sexton experienced, both within his firm and across the profession, some despair-turned-motivation after the Court’s ruling fueled anti-affirmative action lawsuits and other fallout.

“I think we thought, ‘Oh wow, this is going to turn people away from DEI,’” Sexton says. “But if anything, it feels like firms have more wind in their sails not to back down from the messaging or from saying ‘We’re an inclusive culture.’ I think firms realized that whatever is happening in the zeitgeist is almost irrelevant to recruiting talent, and the talent is diverse. The talent has the expectation that the firms are inclusive. So, firms know that, if they want to survive long term, they can’t lose their way on this.”

### Stay Vigilant to Avoid Erosion

Of course, for years law firms have often been criticized, including in these pages, for being slow both to fully embrace DEI and

actively work to hire, retain, and promote diverse lawyers. Firms have often lagged behind their clients in this regard—and clients at times have been given credit, rightfully so, for pushing their legal service providers to do more to diversify the rank and file and the leadership committees of their partnerships.

There's certainly some truth to the old adage that the reason law firms drag their feet on this is because of their "risk-averse" nature as well as their structure. That is, partnerships have many owners that voice their various perspectives and it's often difficult to keep all those stakeholders happy.

"That's a very challenging position to be in, and I think that's why sometimes law firms are a little bit slower to do things because they are weighing a lot of different opinions and thoughts," says Ashby Watts. "I think it's the structure of the law firm."

That's why diversity advocates say they must stay vigilant. "I think what we've seen in this environment, and I feel this pointedly as a gay man, the progress you think you've made can easily erode," Sexton says. "So, continuing to have the conversation is important.

It has to stay top of mind, because it's easy for people to get cold feet on these issues. But, the more we can make it a part of the bedrock, the harder it is to move away from that."

For DEI efforts to succeed and become deeply ingrained into the foundation of a law firm every member of the partnership must be engaged, according to Holloway Black.

"We need everybody, all parts of the firm, to be involved in making DEI a priority," she says. "So, when you're going into hiring, think of your current team: What pieces and what type of person and what characteristics will help fill in a gap that you might need on your team. DEI must be incorporated into every aspect of the firm."

*In the September issue, Of Counsel will present the second installment of this article, in which these same sources and others will discuss some of the specific diversity policies and programs their firms have in place, their advice to other professionals about how to expand DEI efforts, and other topics on this important subject. ■*

—Steven T. Taylor