



AMERICAN
BANKRUPTCY
INSTITUTE

2021 Virtual Annual Spring Meeting

Diversity in Insolvency: Continuing the Conversation for Inclusivity of Insolvency Professionals

Sponsored by FTI Consulting, Inc.
and Jenner & Block

Ricardo A. Anzaldua

Federal Home Loan Mortgage Corporation; McLean, Va.

Hon. Ashely M. Chan

U.S. Bankruptcy Court (E.D. Pa.); Philadelphia

William J. Perlstein

FTI Consulting, Inc.

Grace E. Robson

Markowitz Ringel Trusty & Hartog, P.A.; Fort Lauderdale, Fla.

Diversity in Insolvency: Continuing the Conversation

**Presented by:
American Bankruptcy Institute Diversity and Inclusion Working Group
13 April 2021**

Judge Ashely M. Chan, Moderator

Ricardo A. Anzaldúa, Panelist

William J. Perlstein, Panelist

Grace E. Robson, Panelist

AGENDA

April 13, 2021

3:30 PM-4:30 PM- Plenary Session

- Judge Ashely M. Chan, Moderator
- Ricardo A. Anzaldua, Panelist
- William J. Perlstein, Panelist
- Grace E. Robson, Panelist

April 14, 2021

4:40 PM-5:40 PM- Breakout Session on the Small Firm Perspective

- Led by Jeffrey S. Fraser

April 20, 2021

4:10 PM-5:10 PM- Breakout Session on the Financial Advisor Perspective

- Led by Maureen Greene James

April 21, 2021

3:55 PM-4:55 PM- Breakout Session on the In-House Perspective

- Led by Eunice Rim Hudson and Lauren J. Hofmann

PLENARY SESSION

Judge Ashely M. Chan—Judge Ashely M. Chan sits as a bankruptcy judge for the Eastern District of Pennsylvania. Prior to taking the bench, Judge Chan was a shareholder at Hangley Aronchick Segal Pudlin & Schiller and concentrated her practice in the areas of bankruptcy and corporate restructuring. She is a 1996 graduate of Rutgers School of Law – Camden, where she received Tax Honors with Distinction and received the Rutgers Pro Bono Publico Award. From 1996 to 1997, Judge Chan served as law clerk for the Honorable Gloria M. Burns of the United States Bankruptcy Court for the District of New Jersey. Before joining HASPS, she was an associate at Morgan, Lewis & Bockius LLP in the business and finance section where she focused on bankruptcy, corporate restructuring, and corporate finance. She has received numerous recognitions, including being selected as a Leader in Bankruptcy/Restructuring by Chambers USA, a Best Lawyer in America in Bankruptcy and Creditor-Debtor Rights and a Pennsylvania Lawyer on the Fast Track by The Legal Intelligencer and Pennsylvania Law Weekly. She also served as Chair of the Eastern District of Pennsylvania Bankruptcy Conference and President-Elect and Board Member of the Homeless Advocacy Project before taking the bench.

* * *

Ricardo A. Anzaldua—Ricardo A. Anzaldua is the former Executive Vice President and General Counsel of the Federal Home Loan Mortgage Corporation (“Freddie Mac”). As the principal legal counsel, Anzaldua oversaw all legal and regulatory strategies, services and resources, and managed all corporate governance matters. Anzaldua retired from Freddie Mac on March 31, 2021.

From December 2012 to December 2017, he served as General Counsel of MetLife. In that role he led the 1,000+ person team comprising legal, the corporate secretary’s office, the corporate ethics and compliance group and government affairs. He designed and led the execution of the Company’s one-of-a-kind successful legal challenge of its too-big-to-fail designation under the Dodd-Frank Act. Prior to MetLife, Ricardo was Senior Vice President and Associate General Counsel at The Hartford Financial Services Group from 2007–2012 and was a partner with Cleary, Gottlieb, Steen & Hamilton LLP. He began his legal career with the firm upon graduation from Harvard Law School in 1990.

Anzaldua served as Chair of Diversity Committees at both the Hartford and MetLife and has been a leader of initiatives to promote diversity in the legal profession. Those roles include launching ground-breaking initiatives at MetLife and at Freddie Mac to promote sponsorship of high potential diverse professionals into positions of leadership within in-house departments and law firms. From 2015–2017, he served in a leadership position in the Diversity Pipeline Taskforce of the New York City Bar. Anzaldua currently serves as Chairman of the Board of Trustees of the International Institute of Rural Reconstruction, an international nonprofit focused on economic and

community development and empowerment in the developing world. He also serves on the Boards of Latino Justice, MCCA and the New York City Bar Fund. From 2007–2018, he served on the Board of the Greater Hartford Legal Aid foundation (and as its President from 2015–2018). He has also led the Latino Alumni Associations of Brown University and Harvard Law School. He launched the first Latino-led scholarship fund at HLS and is the sponsor of a Latino-focused scholarship at Brown University.

* * *

William J. Perlstein—Bill has enjoyed a varied career during his 45 years in the legal profession as a practice leader, law firm managing partner, senior in-house counsel, and outside consultant. After graduating from Yale Law School in 1974 and clerking for Judge Marvin Frankel in New York, he joined Wilmer, Cutler & Pickering in Washington where he was first exposed to the insolvency world working on the Penn Central valuation case. After starting WCP’s national bankruptcy practice in 1981, Bill had major roles as Debtor’s counsel or Committee counsel in numerous Chapter 11 cases. Bill’s professional service included two terms as a director of ABI, several leadership positions on the ABA Business Bankruptcy Committee, and a major role in drafting several sections of the 1984 Bankruptcy Code revisions. He is a Fellow of the American College of Bankruptcy, where he served as General Counsel to the Board for more than 15 years and which awarded him its Distinguished Service Award in 2020.

Bill moved into law firm management in 1995 and became WCP’s Managing Partner in 1998, helping to grow the firm from 260 lawyers to more than 500 in six years. He led the firm’s 2004 merger with Hale and Dorr and served as WilmerHale’s co-managing partner until 2012. The American Lawyer recognized Bill’s management contributions with its Distinguished Law Firm Leader Award in 2014.

Bill retired from WilmerHale in 2015 and joined BNY Mellon as Senior Deputy General Counsel, leading the legal teams supporting regulatory relations, government affairs, corporate lending, cybersecurity, and corporate services. After helping lead the preparation of the Bank’s resolution plan (“Living Will”), he interacted with regulators in the US, UK, Europe and Asia on bank resolution issues. Most recently Bill joined FTI Consulting, where he is a Senior Managing Director and Vice Chair, Client Services, interfacing with law firm and financial institution clients. Bill is currently a Trustee and Counsel to the Board at Union College; a Life Member of the American Law Institute; and a Member of the Council on Foreign Relations and the Economic Club of New York. He has been a frequent speaker on law firm management issues and pro bono matters, and served as a director of the Neighborhood Legal Services Program in Washington, D.C. for more than 10 years.

Grace E. Robson—Ms. Robson is a partner of the Fort Lauderdale office of Markowitz Ringel Trusty & Hartog, P.A.

Ms. Robson is an expert in bankruptcy law. She is a Board-Certified Bankruptcy attorney with 20 years of experience representing corporate debtors, trade and institutional creditors, trustees, receivers, and creditors' committees. She focuses her practice on corporate reorganization and bankruptcy, debtor-creditor relations and litigation. Grace has been involved in all facets of reorganization-related representations, including pre-filing consultation, filing complex corporate bankruptcy cases, post-bankruptcy financing, asset purchase agreements as well as "routine" matters.

Ms. Robson is an active member of ABA, currently serving as the co-chair of the *Secured Creditors Subcommittee* of the Business Law Section, Business Bankruptcy Committee. She also serves on the board of directors of the Bankruptcy Bar Association for the Southern District of Florida and is the Broward Chair of the *Pro Bono* Committee as well as the Broward Chair of the CARE Program Committee.

* * *

BREAKOUT SESSION FACILITATORS

Jeffrey S. Fraser—Jeffrey is a partner at Albertelli Law and focuses his representation on secured creditors and ensuring that their interests are protected in chapters 7, 11 and 13. He handles contested litigation, including valuation hearings, adversary proceedings, sanction hearings, and any and all other disputed matters in bankruptcy court. As partner over his firm’s national bankruptcy department, he works closely with each state’s managing attorneys as it relates to training, legal strategy, and all facets of the firm’s bankruptcy practice.

Jeffrey is an active participant in the Southern District of Florida’s bankruptcy bar and was the 2019 Chair of the Local Rule Committee and an inaugural member the district’s Lawyer Advisory Committee (LAC), serving as the committee’s Chair in 2020 and 2021. Through these roles, he has worked closely with South Florida bankruptcy judges and lawyers in reviewing local practices and rules; participating as a panelist for various district programs; assisting with drafting of the district’s Model Chapter 13 Plan and Mortgage Modification Mediation procedures and guidelines; and addressing other matters or concerns for the South Florida bankruptcy community.

Jeffrey was born in Jamaica and feels compelled to be a voice for the South Florida community, even though he represents creditors. Jeffrey is a past president of the Jamaican-American Bar Association and has helped the organization create mentorship relationships with local law students. He also served as a panelist at a commercial law seminar in Kingston, Jamaica, discussing the 2014 Jamaican Insolvency Act. He has also organized foreclosure and bankruptcy workshops, spoken on numerous CLE panels, and guest-appeared on South Florida radio.

In recognition for his efforts, he was selected by Super Lawyers as one of its “Florida Rising Stars” for 2019, 2020 and 2021. In addition, he was named a 2017 Blackshear Fellow by the National Conference of Bankruptcy Judges (NCBJ), a 2020 ABI 40 Under 40 honoree, and has published articles on consumer bankruptcy issues in the American Legal & Finance Network (ALFN) and Default Servicing (DS) News. Jeffrey has achieved the highest rating in both legal and ethical ability by Martindale-Hubbell and prides himself on practicing with humility, integrity and appreciation.

* * *

Eunice Rim Hudson—Eunice Rim Hudson is an Assistant General Counsel with Freddie Mac. Eunice represents and appears on behalf of Freddie Mac in seller-servicer and other complex bankruptcy proceedings and adversary proceedings and advises Freddie Mac on legal risks relating to bankruptcies, insolvencies, securitizations and other concerns. Eunice also oversees litigation on behalf of

Freddie Mac and provides advice in cases of suspected fraud against Freddie Mac. At Freddie Mac, she is a member of the Legal Division's Diversity & Inclusion Council. Prior to Freddie Mac, Eunice was a Trial Attorney for the Civil Division of the U.S. Department of Justice where she served as lead counsel for the United States in the most significant offshore oil and case bankruptcy cases filed between 2015 and 2020 (where the United States was a lessor, regulator and, often, the largest creditor). The Assistant Attorney General of the Civil Division named her "Rookie of the Year" in December 2017 in recognition of her work. Prior to the DOJ, Eunice was a restructuring and bankruptcy attorney at a large international law firm.

In 2020, Eunice was named to ABI's 40 Under 40. She has since enjoyed working with ABI's Diversity Working Group and is eager to help raise the profile of up-and-coming diverse attorneys. She enjoys participating in *pro bono* work for the Capital Area Immigrant Rights Coalition and spends her spare time chasing her two young, overly energetic, multiracial boys.

* * *

Lauren J. Hofmann—Executive Director and Assistant General Counsel at JPMorgan Chase Bank, N.A. Lauren leads the Bankruptcy Legal Team at JPMorgan Chase Bank, where she supports Credit Card, Auto Finance, Home Lending, the Consumer/Retail Bank, Business Banking, and other businesses on a myriad of bankruptcy legal issues, risks and recovery strategies. Mrs. Hofmann also provides guidance to the other internal control functions, including Audit, Risk, Controls and Compliance, and participates on the Firmwide Bankruptcy Council. Lauren graduated *magna cum laude* from Villanova University's Charles Widger School of Law and clerked for the Honorable Mary L. Cooper in New Jersey District Court. Before joining JPMorgan Chase, Lauren served as senior commercial and consumer default legal counsel at a regional bank, and practiced at Morgan, Lewis & Bockius handling various restructuring, bankruptcy and regulatory matters. Lauren is deeply engaged in a number of diversity, equity and inclusion efforts both at JPMC, including pro bono engagements, the Legal Diversity Council and working groups focused on diverse legal spend, and chairs the Pipeline Programs Workstream of the American Bankruptcy Institute's (ABI) Diversity and Inclusion subcommittee.

* * *

Maureen Greene James—Maureen Greene James serves as FTI Consulting's Vice President of Global Diversity, Inclusion and Belonging. Maureen leads the firm's efforts to attract, retain and develop diverse talent and maintain an inclusive culture. She plays a pivotal role in creating and leading the diversity, inclusion and belonging strategy in partnership with the firm's Executive Committee and segment leadership globally.

2021 VIRTUAL ANNUAL SPRING MEETING

Maureen joined FTI Consulting from Cognizant, where she was North America Leader of Inclusion and Leadership Development. She was responsible for creating the company's diversity and inclusion vision and strategy while strengthening its commitment to attract, hire and retain diverse talent. Maureen partnered with business leaders globally on the design, delivery and implementation of development experiences for senior-level employees, with a key focus on gender diversity. During her tenure at Cognizant, the company earned recognition on Forbes lists of "Best Employers for Women" and "America's Best Employers for Diversity".

Prior to Cognizant, Maureen spent her career in various people leadership roles with American International Group, Washington Mutual (now JPMorganChase) and PwC. At PwC, Maureen held several people leadership roles, to include U.S. Talent Strategy Leader, Market Human Resources Leader, and National Human Capital Leader for the firm's finance business unit. As National Talent Management Director within PwC's Office of Diversity, Maureen was directly responsible for driving efforts around the talent identification, career development and advancement of high-performing diverse professionals in the Tax and Advisory service lines.

* * *

**MEETING AND MAINTAINING THE DIVERSITY REQUIREMENTS
SET BY IN-HOUSE COUNSEL FOR OUTSIDE COUNSEL**

By: Ricardo Anzaldua, Eunice Rim Hudson & Lauren J. Hofmann¹

The advancement of diversity, equity and inclusion (“DEI”) in the legal profession is an undertaking that attorneys have been working to improve for many years. Although there has been some improvement, progress has been very slow to date. Women of color, in particular, still remain significantly underrepresented in the legal profession at large, and, specifically, within the practice. This panel will focus on recent developments and policies that are being implemented within in-house legal departments that show promise in moving the needle, many of them very recent and very impactful. The expectation of many in-house legal departments is that their external counsel will follow suit in prioritizing DEI.

(1) WHAT DOES THE EVOLUTION OF DIVERSITY IN THE IN-HOUSE COUNSEL WORLD LOOK LIKE?

- A. Corporate clients are increasingly aware of the business case for diversity as a key enabler of growth/value creation and not just as a social justice imperative.²
 - McKinsey & Co. recently found in *Diversity Wins* (May 2020) that there is a positive, statistically significant correlation between a company’s performance and the diversity of its staff.³
 - Clients are increasingly recognizing that diversity in both their in-house and external legal teams increases the quality of legal work by: (i) providing for differing experiences and opinions to identify, address and resolve legal issues and helping to avoid “groupthink”; (ii) enhancing innovation, collaboration and creativity; and (iii) reducing costs.⁴
- B. Corporate clients should first seek to get their own house in order. Clients should then offer constructive solutions as part of requiring their outside counsel to institute similar changes in DEI practices and performance.⁵
 - The emphasis on DEI must come from the top down, but building an inclusive corporate culture must become everyone’s shared responsibility.⁶
 - Consistent and comprehensive training on privilege, explicit/implicit/unconscious biases, microaggressions, historical discrimination in the industry and other DEI issues is critical to obtain buy-in from non-diverse lawyers.⁷
 - Instill these values early on in each attorney’s career to help them be more aware of DEI-related actions they can implement at all stages of their career and involvement in a case.
 - Make use of diverse employee resource/affinity groups.⁸

2021 VIRTUAL ANNUAL SPRING MEETING

ABI Spring Meeting 2021

- Developing the Pipeline: In-house legal departments may provide a diverse talent pipeline for law students and law school graduates through internship opportunities or fellowship positions that may include partnering with law firms for reverse secondment or other training opportunities. In-house attorneys should also consider volunteering with programs to get high school and college students interested in becoming attorneys to help them realize that people who look like them or that have similar backgrounds can succeed and have a positive impact on society as attorneys.
- Invest in developing diverse attorneys through sponsorship and mentoring programs.⁹
 - Ricardo instituted a talent stewardship program at MetLife. At Freddie Mac, he has instituted a new talent stewardship program focused on developing a diverse leadership pipeline for different roles in the organization, beginning with individual contributor lawyers.
 - Each protégé is assigned to an officer at the VP level or above, who will act as a sponsor.
 - Each sponsor and each protégé are responsible for designing a plan to develop the protégé's leadership competencies, focusing on gaps in the proteges' experience and competencies that can impede their ability to be credible candidates for leadership in the future.
 - Selection of protégés as candidates for future leadership is based on a system designed to minimize and control for possible bias; in MetLife's program, about 60 to 75% of each class of protégés was diverse (women, people of color and LGBTQ); at Freddie Mac, 100% of the inaugural class is diverse.
- Require in-house lawyers get to know diverse firms, their capabilities and areas of practice.¹⁰
- Reevaluate "Preferred Counsel" lists as they generally tend to strengthen and repeat commitments to majority-owned firms. Include certified diverse law firms on "Preferred Counsel" lists.¹¹
 - Lack of previous experience should be overcome by requiring partnerships between majority-owned law firms and diverse (women-, minority- or disabled-owned) law firms so that diverse law firms can learn the business and be better positioned for future opportunities.¹²
- Support the business development efforts of diverse attorneys. Require in-house attorneys to identify and consider diverse-owned law firms and diverse attorneys at majority-owned law firms before making hiring decisions.

ABI Spring Meeting 2021

- Pledge a significant percentage of legal spend with certified diverse law firms and suppliers and ensure such pledge commitments are being met.¹³
- Set clear standards for majority-owned outside counsel in terms of recruiting and retaining diverse talent and staffing matters with diverse talent and enforce them.¹⁴
 - Evaluate firms on these standards. Recognize the best firms with awards (similarly to Mastercard, Bank of America, Freddie Mac and others.)
 - Ensure that outside firms understand that there will be consequences if they do not demonstrate a commitment to DEI and enforce those consequences.
 - Consider financial incentives for firms that do the right thing by, for example, paying premiums for firms that meet diversity targets. Conversely, consider taking away work from firms that do not meet diversity targets or taking a percentage reduction in fees for firms that do not meet diversity targets.
- In-house legal departments should also hold themselves accountable to their goals of hiring diverse-owned law firms.¹⁵
- Consider unbundling/segmenting legal services from a “full-service / winner takes all” model to make room for minority and women-owned firms to bid on matters within their specialties.¹⁶
- C. Clients should be willing to partner with firms on education/training on DEI and provide concrete solutions (e.g., Freddie Mac’s “Engage Excellence” Program).¹⁷

(2) HOW DO IN-HOUSE COUNSEL DEI POLICIES PROMOTE DIVERSITY IN FIRM ENVIRONMENTS?

- A. The typical law firm partnership model, where each equity partner is his/her own profit center, does not incentivize the undertaking of DEI initiatives, which tend to be viewed as extraneous to the goal of maximizing profits per partner.¹⁸
- B. Clients (and their spending) are probably one of the largest drivers of change.¹⁹
- C. Clients are evaluating: (1) a firm’s systemic approach to DEI; and (2) significant efforts made to move the needle.²⁰
 - Many clients are no longer satisfied with “check the box” approaches to staffing matters and are increasingly turning to data-driven methods to hold law firms accountable on diversity.²¹
 - Simply hiring diverse talent (by luring them away from other firms) will not effectively move the needle on DEI because it merely moves people from one place to another rather than expands the pool of available talent-- the firms must improve the experiences of diverse

2021 VIRTUAL ANNUAL SPRING MEETING

ABI Spring Meeting 2021

attorneys in the workplace so that the environment is one in which they can remain, thrive and be promoted.²²

D. Some Things Firms Should Do to Improve DEI Efforts:

- (1) Support minority organizations and organizations committed to DEI.²³
- (2) Broaden recruitment efforts, identify diverse recruitment sources and include more diverse attorneys on law firm hiring committees and other firm leadership positions (such as heads of offices or practice groups).²⁴
- (3) Provide consistent training on historical discrimination and how that still plays a role in the legal profession, as well as explicit/implicit/unconscious biases and microaggressions.²⁵
- (4) Foster a sense of inclusion and belonging through vocally supporting diversity.
- (5) Promote a safe environment for diverse attorneys to speak up when biases and microaggressions come into play.
- (6) Make use of anonymous surveys and platforms (such as Kanarys²⁶) to measure the firm's true DEI performance and be transparent with results in order to enhance the firm's performance in the future.
- (7) Promote inclusive leadership by holding partners accountable for equity and fairness of opportunity (i.e., how they have made efforts at recruiting, training, investing in, retaining and promoting diverse attorneys). Allow evaluations of partners by non-partner attorneys with diversity competence as a component of evaluation. Tie these metrics to compensation.²⁷
- (8) Create a level playing field on advancement and pursue a true meritocracy where promotion and pay processes are transparent and fair.
- (9) Provide origination and matter responsibility credit, as well as other leadership opportunities to diverse attorneys. Move away from the majority "relationship partner" construct.

(3) HOW HAVE THESE POLICIES IMPACTED THE INSOLVENCY PRACTICE IN THE LAST 5 YEARS?

- A. The legal profession has been dubbed the least diverse profession. Within the legal profession, the bankruptcy practice has one of the least diverse bars and federal benches.²⁸
- B. ABI's support of diversity through its Diversity Working Group, coupled with the recent focus on diversifying the federal bankruptcy bench are promising signs that much-needed improvement may have begun.

ABI Spring Meeting 2021

- C. The more that clients use their “legal spend” to demand change, the more likely change will occur.
- D. There is no quick and easy solution. Progress will require a systemic approach from the top down, developing the pipeline of diverse talent, focused recruiting of diverse attorneys, consistent DEI training, promotion of an open and inclusive culture, holding management and firms accountable for their DEI commitments, developing and retaining diverse attorneys and promoting qualified diverse attorneys. Clients, however, are less willing to accept “time” as an excuse; firms have known about these problems for decades and need to implement effective changes.

(4) HOW DO IN-HOUSE COUNSEL POLICIES ON DEI IMPACT PITCHES? (Breakout Topic)

- A. Clients should require, and firms will frequently bring, diverse attorneys to participate in pitches, but it is often unclear what meaningful role the diverse attorney will play in the bankruptcy case going forward.
 - 1. Firms should affirmatively demonstrate what roles the diverse attorneys will play in the bankruptcy case and highlight any leadership opportunities to be provided to the diverse attorneys.
 - a. Will the diverse lawyer be given any origination credit and/or matter responsibility credit? How much?
 - Clients should request that the division of origination and/or matter responsibility credit be spelled out in the retention agreement for accountability.
 - b. Will the diverse lawyer be the lead on any significant issues expected to arise and/or be the main drafter of any significant pleadings/motions in the case?
 - c. Will the diverse lawyer be given opportunities to argue such motions/responses in court?
 - d. Will the diverse lawyer be given opportunities to interface directly with the client?
 - Consider making the diverse lawyer the “relationship lawyer.”

(5) ARE THERE UNIQUE IN-HOUSE POLICIES THAT ENCOURAGE THE RECEIPT OF ORIGINATION CREDIT BY DIVERSE ATTORNEYS AT LAW FIRMS? (Breakout Topic)

- A. At Freddie Mac -- if we are not hiring a diverse-owned law firm and instead hiring a diverse attorney from a majority-owned law firm, one of the most significant factors we evaluate is whether the diverse attorney will be receiving origination credit and meaningful leadership opportunities. In some cases, we will insist that the diverse attorney receive origination credit and will put that requirement in our retention letter.

2021 VIRTUAL ANNUAL SPRING MEETING

ABI Spring Meeting 2021

- B. Several companies, including DuPont, General Mills, Verizon and Walmart, have announced minority attorney inclusion programs designed to promote diversity by requiring: (i) diverse attorneys to be lead counsel on significant matters; (ii) law firms to assign a diverse team to such matters; and (3) law firms to certify that the diverse lead attorneys will receive origination credit.²⁹

1. Note that this is not a complete strategy. Like the idea of improving diversity performance by “poaching” diverse talent from other firms, this approach, if not accompanied by a commitment to developing new diverse talent, runs the risk of simply diverting scarce diverse talent to work for clients that demand it. (Other, less demanding clients could be serviced by non-diverse teams, resulting in little or no improvement in the diversity of the firm overall.)

- C. Firms need to move away from the majority “relationship partner” construct.

(6) **DO CLIENTS’ DEI POLICIES ALSO APPLY TO VENDORS AND SUPPORT STAFF?** (Breakout Topic)

- A. Many clients have supplier diversity requirements that also apply to vendors and support staff of outside counsel.

¹ Ricardo Anzaldúa is the Former Executive Vice President and General Counsel of Federal Home Loan Mortgage Corporation (d/b/a “Freddie Mac”). Eunice Rim Hudson is an Assistant General Counsel of Freddie Mac. Lauren J. Hofmann is an Assistant General Counsel of JPMorgan Chase Bank, N.A.

² Sundiatu Dixon-Fyle, Vivian Hunt, DBE, Kevin Dolan & Sara Prince, *Diversity Wins: How Inclusion Matters*, McKinsey & Co., p. 13, (May 19, 2020), <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Diversity%20and%20Inclusion/Diversity%20wins%20How%20inclusion%20matters/Diversity-wins-How-inclusion-matters-vF.pdf>

³ *Id.* at pp. 3-17 (In 2019, companies in the top quartile of gender diversity on executive teams were 25 percent more likely to experience above-average profitability than peer companies in the fourth quartile. The higher the representation, the higher the likelihood of outperformance. There is a substantial performance differential – 48 percent – between the most and least gender-diverse companies. Likewise, in 2019, companies in the top quartile for ethnic and cultural diversity also outperformed those in the fourth quartile by 36% in terms of profitability.)

⁴ See e.g., Melissa Maleske, *Microsoft Spends \$100M With Women-, Minority-Owned Firms*, Law 360.com (Nov. 1, 2016, 8:50 p.m.), <https://www.law360.com/articles/858147/microsoft-spends-100m-with-firms-led-by-women-minorities>; David O’Connor, *Increasing Law Firm Diversity*, ABA Diversity & Inclusion Committee Newsletter (Winter 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/committee-newsletters/increasing_law_firm_diversity/; Stephanie A. Scharf, N. Nate Saint Victor and Antonio C. Castro, *The Power of Partnering, Guidelines for Diverse Collaborations Among NAMWOLF Law Firms and Majority Law Firms*, pp. 2-3, (Feb. 22, 2017), <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/articles/2017/power-partnering-guidelines-diverse-collaborations-namwolf-majority-law-firms/>;

A. Patricia Diulus-Myers & LeRoy J. Watkins, *Why Corporate Initiatives to Promote Inclusion Through Selection of Outside Counsel Can Co-exist with Title VII, Another Look at Corporate Counsel Requests for Law Firm Diversity*, pp.

ABI Spring Meeting 2021

10-11 (Sept. 2007), <https://www.mcca.com/wp-content/uploads/2018/01/Jackson-Lewis-White-Paper-2007-September.pdf>.

⁵ Ruiqi Chen, *Freddie Mac's Legal Boss to Demand Firms Sponsor Diverse Talent*, Bloomberg Law (Nov. 16, 2020, 5:40 a.m.), <https://news.bloomberglaw.com/business-and-practice/freddie-macs-legal-boss-to-demand-firms-sponsor-diverse-talent>.

⁶ See e.g., David O'Connor, *Increasing Law Firm Diversity*, ABA Diversity & Inclusion Committee Newsletter (Winter 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/committee-newsletters/increasing_law_firm_diversity/ (the General Counsel's commitment to DEI is the first step to increasing the diversity of a law department and DEI initiatives will not succeed if the General Counsel does not encourage diversity and take steps to achieve them); Shiva S. Hamidinia, *Best Practices for Diversity Initiatives Among Corporate Counsel*, Under Construction, Vol. 18, No. 1, Summer 2016, <https://www.mcca.com/wp-content/uploads/2018/10/Hiring-Firing-and-Inspiring-Outside-Counsel-Materials.pdf>; Denise Lee Yohn, *Company Culture is Everyone's Responsibility*, Harv. Bus. Rev., Feb. 8, 2021, <https://hbr.org/2021/02/company-culture-is-everyones-responsibility#:~:text=To%20achieve%20the%20desired%20culture,for%20achieving%20the%20desired%20culture>

⁷ See, e.g., Dr. Arin N. Reeves, *Written in Black & White, Exploring Confirmation Bias in Racialized Perceptions of Writing Skills*, Nextions Consulting Yellow Paper Series, p. 7, (2014); Allison E. Laffey and Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives* (May 2, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/>; David O'Connor, *Increasing Law Firm Diversity*, ABA Diversity & Inclusion Committee Newsletter (Winter 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/committee-newsletters/increasing_law_firm_diversity/.

⁸ Mary Beth Ferrante, *5 Ways to Elevate Employee Resource Groups as Company Culture Champions*, Forbes (Jan. 19, 2021, 10:20 a.m.), <https://www.forbes.com/sites/marybethferrante/2021/01/19/4-ways-to-elevate-employee-resource-groups-as-company-culture-champions/?sh=6fd4235d626b>

⁹ Mark A. Cohen, *Corporate Legal Departments Are Taking the Lead in Creating a More Diverse Legal Industry*, Forbes (Mar. 27, 2017, 9:36 a.m.), <https://www.forbes.com/sites/markcohen1/2017/03/27/corporate-departments-are-taking-the-lead-in-creating-a-more-diverse-legal-industry/?sh=79c943f49f9>; Ruiqi Chen, *Freddie Mac's Legal Boss to Demand Firms Sponsor Diverse Talent*, Bloomberg Law (Nov. 16, 2020, 5:40 a.m.), <https://news.bloomberglaw.com/business-and-practice/freddie-macs-legal-boss-to-demand-firms-sponsor-diverse-talent>; A. Patricia Diulus-Myers & LeRoy J. Watkins, *Why Corporate Initiatives to Promote Inclusion Through Selection of Outside Counsel Can Co-exist with Title VII, Another Look at Corporate Counsel Requests for Law Firm Diversity*, MCCA, p. 18 (Sept. 2007), <https://www.mcca.com/wp-content/uploads/2018/01/Jackson-Lewis-White-Paper-2007-September.pdf>

¹⁰ David O'Connor, *Increasing Law Firm Diversity*, ABA Diversity & Inclusion Committee Newsletter (Winter 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/committee-newsletters/increasing_law_firm_diversity/; Malvina Longoria & Vanessa Watson, *Driving Diversity and Inclusion from the Inside Out*, ACC Docket, Mar. 17, 2017, <https://author.acc.com/docket/articles/driving-diversity-and-inclusion-from-inside-out.cfm>; Jessica R. Vartanian, Heather Renee Adams, Antonio Castro, & Vijay Toke, *Uninvited: Counsel Lists and How They Limit Minority and Women Owned Law Firms' Access to Legal Work*, NAMWOLF, pp. 6-7, <https://namwolf.org/wp-content/uploads/2018/12/1.-Uninvited-Counsel-Lists-and-How-They-Limit-Minority-and-Women-Owned-Law-Firms%E2%80%99-Access-to-Legal-Work.pdf>

2021 VIRTUAL ANNUAL SPRING MEETING

ABI Spring Meeting 2021

¹¹ Jessica R. Vartanian, Heather Renee Adams, Antonio Castro, & Vijay Toke, *Uninvited: Counsel Lists and How They Limit Minority and Women Owned Law Firms' Access to Legal Work*, NAMWOLF, pp. 1-4, <https://namwolf.org/wp-content/uploads/2018/12/1.-Uninvited-Counsel-Lists-and-How-They-Limit-Minority-and-Women-Owned-Law-Firms%E2%80%99-Access-to-Legal-Work.pdf>; David O'Connor, *Increasing Law Firm Diversity*, ABA Diversity & Inclusion Committee Newsletter (Winter 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/committee-newsletters/increasing_law_firm_diversity/.

¹² Stephanie A. Scharf, N. Nate Saint Victor and Antonio C. Castro, *The Power of Partnering, Guidelines for Diverse Collaborations Among NAMWOLF Law Firms and Majority Law Firms*, (Feb. 22, 2017), <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/articles/2017/power-partnering-guidelines-diverse-collaborations-namwolf-majority-law-firms/>

¹³ See *id.*; see also, Jessica R. Vartanian, Heather Renee Adams, Antonio Castro, & Vijay Toke, *Uninvited: Counsel Lists and How They Limit Minority and Women Owned Law Firms' Access to Legal Work*, NAMWOLF, p. 6, <https://namwolf.org/wp-content/uploads/2018/12/1.-Uninvited-Counsel-Lists-and-How-They-Limit-Minority-and-Women-Owned-Law-Firms%E2%80%99-Access-to-Legal-Work.pdf>

¹⁴ See Jessica R. Vartanian, Heather Renee Adams, Antonio Castro, & Vijay Toke, *Uninvited: Counsel Lists and How They Limit Minority and Women Owned Law Firms' Access to Legal Work*, NAMWOLF, p. 7, <https://namwolf.org/wp-content/uploads/2018/12/1.-Uninvited-Counsel-Lists-and-How-They-Limit-Minority-and-Women-Owned-Law-Firms%E2%80%99-Access-to-Legal-Work.pdf>; Mark A. Cohen, *Corporate Legal Departments Are Taking the Lead in Creating a More Diverse Legal Industry*, *Forbes* (Mar. 27, 2017, 9:36 a.m.), <https://www.forbes.com/sites/markcohen1/2017/03/27/corporate-departments-a5re-taking-the-lead-in-creating-a-more-diverse-legal-industry/?sh=79c943f49f9>; Malvina Longoria & Vanessa Watson, *Driving Diversity and Inclusion from the Inside Out* (Mar. 17, 2017), <https://author.acc.com/docket/articles/driving-diversity-and-inclusion-from-inside-out.cfm>; Stephanie Russell-Kraft, *Companies Use Diversity Data to Hold Law Firms Accountable*, *Bloomberg Law* (April 3, 2017, 4:31 a.m.), <http://news.bloomberglaw.com/business-and-practice/companies-use-diversity-data-to-hold-law-firms-accountable/>; Sheree Atcheson, *Inclusion Without Clear Lines of Accountability is Pointless. Here's Why*. (Mar. 22, 2021, 5:41 a.m.), <https://www.forbes.com/sites/shereeatcheson/2021/03/22/inclusion-without-clear-lines-of-accountability-is-pointless-heres-why/?sh=6a76e1031a33>

¹⁵ Jessica R. Vartanian, Heather Renee Adams, Antonio Castro, & Vijay Toke, *Uninvited: Counsel Lists and How They Limit Minority and Women Owned Law Firms' Access to Legal Work*, NAMWOLF, p.6, <https://namwolf.org/wp-content/uploads/2018/12/1.-Uninvited-Counsel-Lists-and-How-They-Limit-Minority-and-Women-Owned-Law-Firms%E2%80%99-Access-to-Legal-Work.pdf>.

¹⁶ See *id.*

¹⁷ See e.g., Ruiqi Chen, *Freddie Mac's Legal Boss to Demand Firms Sponsor Diverse Talent*, (Nov. 16, 2020, 5:40 a.m.), <https://news.bloomberglaw.com/business-and-practice/freddie-macs-legal-boss-to-demand-firms-sponsor-diverse-talent>

¹⁸ Mark A. Cohen, *Corporate Legal Departments Are Taking the Lead in Creating a More Diverse Legal Industry*, *Forbes* (Mar. 27, 2017, 9:36 a.m.), <https://www.forbes.com/sites/markcohen1/2017/03/27/corporate-departments-a5re-taking-the-lead-in-creating-a-more-diverse-legal-industry/?sh=79c943f49f9>.

¹⁹ See *id.*; see also, Malvina Longoria & Vanessa Watson, *Driving Diversity and Inclusion from the Inside Out* (Mar. 17, 2017), <https://author.acc.com/docket/articles/driving-diversity-and-inclusion-from-inside-out.cfm>; see also, *Beyond Microsoft: Working With Law Firm Partners*, <https://www.microsoft.com/en->

ABI Spring Meeting 2021

[us/legal/diversity/lawfirmdiversityprogram](#); Melissa Maleske, *Microsoft Spends \$100M With Women-, Minority-Owned Firms*, Law 360.com (Nov. 1, 2016, 8:50 p.m.), <https://www.law360.com/articles/858147/microsoft-spends-100m-with-firms-led-by-women-minorities>; Ruiqi Chen, *Freddie Mac's Legal Boss to Demand Firms Sponsor Diverse Talent*, (Nov. 16, 2020, 5:40 a.m.), <https://news.bloomberglaw.com/business-and-practice/freddie-macs-legal-boss-to-demand-firms-sponsor-diverse-talent>.

²⁰ See *id.*

²¹ See Stephanie Russell-Kraft, *Companies Use Diversity Data to Hold Law Firms Accountable*, Bloomberg Law (April 3, 2017, 4:31 a.m.), <http://news.bloomberglaw.com/business-and-practice/companies-use-diversity-data-to-hold-law-firms-accountable/>.

²² See Ruiqi Chen, *Freddie Mac's Legal Boss to Demand Firms Sponsor Diverse Talent*, (Nov. 16, 2020, 5:40 a.m.), <https://news.bloomberglaw.com/business-and-practice/freddie-macs-legal-boss-to-demand-firms-sponsor-diverse-talent>; see also, 2020 Firm Diversity Survey Report by the Diversity Survey Committee, Firm Demographics, compiled by Kanarys, Charts 5-8 (Regardless of gender, white attorneys comprise the majority of all leadership positions and committees at law firms. Of the highest compensated partners in the U.S., 88.17% are men 11.83% are women, 2.96% are men of color and 1.18% are women of color. There is a higher attrition rate for attorneys of color compared to white attorneys at associate levels, showing a gap in retention efforts to keep diverse talent.)

²³ See, e.g., David O'Connor, *Increasing Law Firm Diversity*, ABA Diversity & Inclusion Committee Newsletter (Winter 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/committee-newsletters/increasing-law-firm-diversity/; A. Patricia Diulus-Myers & LeRoy J. Watkins, *Why Corporate Initiatives to Promote Inclusion Through Selection of Outside Counsel Can Co-exist with Title VII, Another Look at Corporate Counsel Requests for Law Firm Diversity*, 17 (Sept. 2007), <https://www.mcca.com/wp-content/uploads/2018/01/Jackson-Lewis-White-Paper-2007-September.pdf>

²⁴ See *id.*; cf. 2020 Firm Diversity Survey Report by the Diversity Survey Committee, Overview of DEI Initiatives, Chart 17, compiled by Kanarys (hiring committees of top 50 law firms with largest footprints in Dallas are primarily comprised of White attorneys) .

²⁵ Allison E. Laffey and Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives* (May 2, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/>.

²⁶ Kanarys is a minority-owned, Dallas-based SaaS company that helps organizations diagnose, measure and optimize DEI in the workplace using data and research-based methods and allows for employees to anonymously review their workplaces. <http://kanarys.com>.

²⁷ A. Patricia Diulus-Myers & LeRoy J. Watkins, *Why Corporate Initiatives to Promote Inclusion Through Selection of Outside Counsel Can Co-exist with Title VII, Another Look at Corporate Counsel Requests for Law Firm Diversity*, p. 20, (Sept. 2007), <https://www.mcca.com/wp-content/uploads/2018/01/Jackson-Lewis-White-Paper-2007-September.pdf>; 2020 Firm Diversity Survey Report by the Diversity Survey Committee, Overview of DEI Initiatives, Dallas Allied Bars for Equality, compiled by Kanarys. Sheree Atcheson, *Inclusion Without Clear Lines of Accountability is Pointless. Here's Why*. (Mar. 22, 2021, 5:41 a.m.), <https://www.forbes.com/sites/shereeatcheson/2021/03/22/inclusion-without-clear-lines-of-accountability-is-pointless-heres-why/?sh=6a76e1031a33>; Amber Cabral, *6 Ways Diversity and Inclusion Will Change This Year*, <https://www.fastcompany.com/90599056/6-ways-diversity-and-inclusion-will-change-this-year> (performance on DEI should be tied to compensation).

2021 VIRTUAL ANNUAL SPRING MEETING

ABI Spring Meeting 2021

²⁸ See 2020 NALP Report on Diversity in U.S. Law Firms (Feb. 2021), https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf; see also, Allison E. Laffey and Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives* (May 2, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/>

²⁹ See Minority Corporate Counsel Association Press Release: *Dupont, General Mills, Verizon and Walmart Launch “Engage Excellence” Minority Lawyer Inclusion Incentive Program: One Answer to Call to Action*, July 29, 2014, <https://www.mcca.com/mcca-article/engage-excellence/>.

Cognizant

Cognizant Reports

What It Means to Belong @ Work

The feeling of belonging in the workplace is as vital to individuals as it is to organizations – and even more important than pay, according to our recent research. Here’s what matters most to employees when it comes to creating a professional culture of belonging.

Produced in partnership with

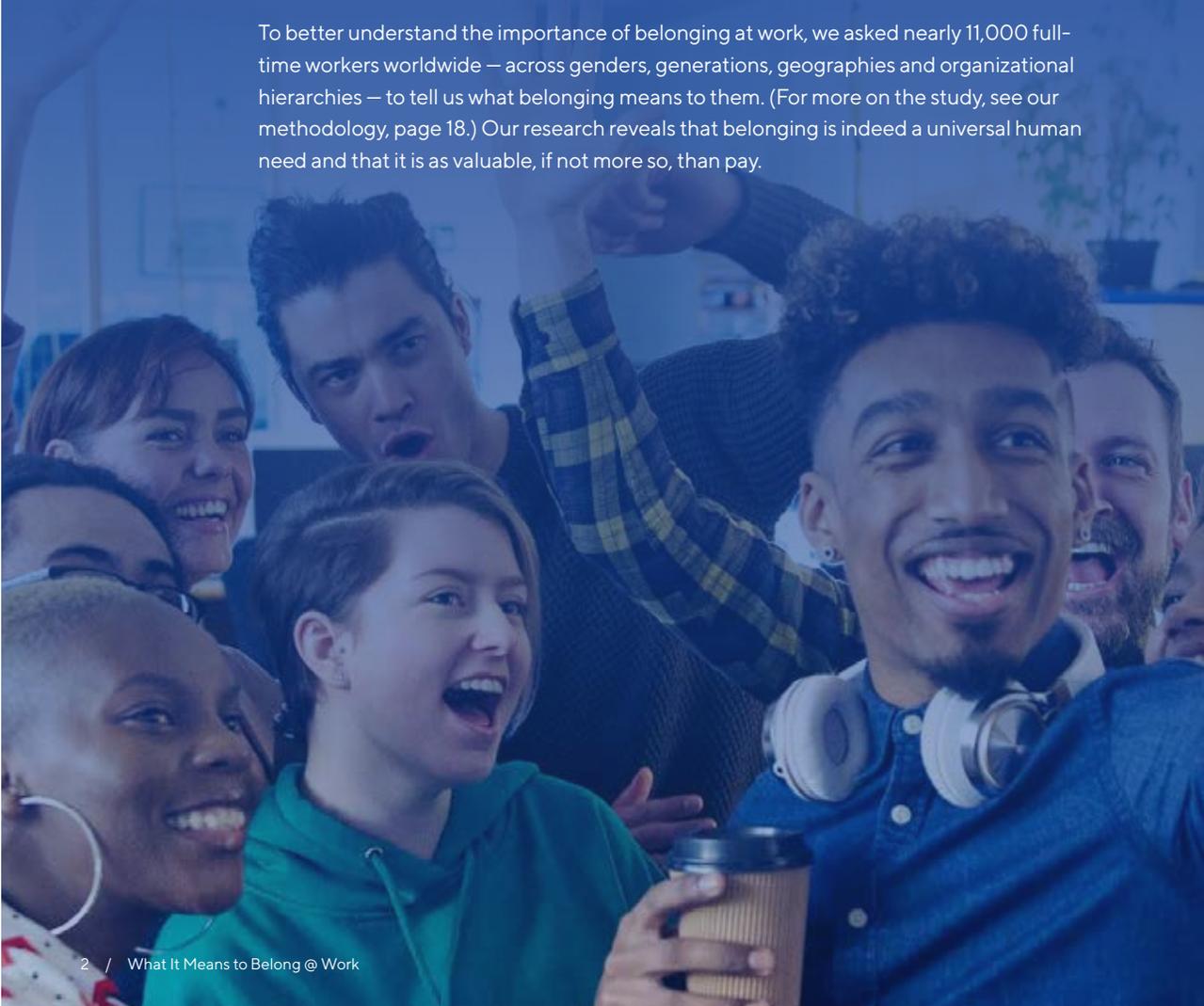


March 2020

Executive Summary

A belonging workplace is one that is sensitive to the needs and desires of all stakeholders, and where all voices are heard and appreciated. What could be more important than this at a time when our differences are often misunderstood and amplified? And what's more important than feeling valued by those with whom we work, up and down the organization?

To better understand the importance of belonging at work, we asked nearly 11,000 full-time workers worldwide — across genders, generations, geographies and organizational hierarchies — to tell us what belonging means to them. (For more on the study, see our methodology, page 18.) Our research reveals that belonging is indeed a universal human need and that it is as valuable, if not more so, than pay.



Moreover, our research indicates that belonging is as vital to the individual as it is to the organization. Our respondents said that a warm and welcoming workplace motivates them to work more productively and innovatively. Belonging, therefore, is as important as having a breakthrough product or service, a differentiated business plan, a modern digital core or a customer-centric sales and marketing approach.

As such, a diverse and inclusive workplace transcends the principle that belonging is a cultural attribute of merely “doing good.” Our research lays out the evidence that organizations can “do well by doing good.”

To solve the grand business and societal challenges of our accelerating digital age, our organizations need people with a variety of skills, educational/cultural backgrounds, and experiences. Making our workplaces warm, welcoming and tolerant of differences will make us attractive to the talent we so desperately need to achieve a cohesive and sustainable world. Getting there will take careful forethought, conscious planning and effective execution — at the organization, team and individual levels.

A diverse and inclusive workplace transcends the principle that belonging is a cultural attribute of merely “doing good.” Our research lays out the evidence that organizations can “do well by doing good.”

Belonging is a universal human need

As social scientist Brene Brown wrote, “... belonging is an irreducible need of all people.”¹ In fact, when asked who we are, we often reply by describing our relationships with the people and places that are important to us: our families, friends, communities, countries — and employers. Belonging, quite simply, is the language of humanity.

Our survey revealed interesting attitudes on what belonging means in a professional sense across genders, generations, geographies and workplace hierarchies. While there is some regional variation, 92% of respondents overall said it was important to “feel like you are appreciated for who you are and what you can contribute” (see Figure 1, next page). Given that most people will spend a substantial portion of their adult lives in a professional work environment, it should come as no surprise that, globally, we have a consuming need to feel a sense of belonging at our place of work.

While it’s clear that belonging is important, just how important is it, particularly in the context of the work environment?

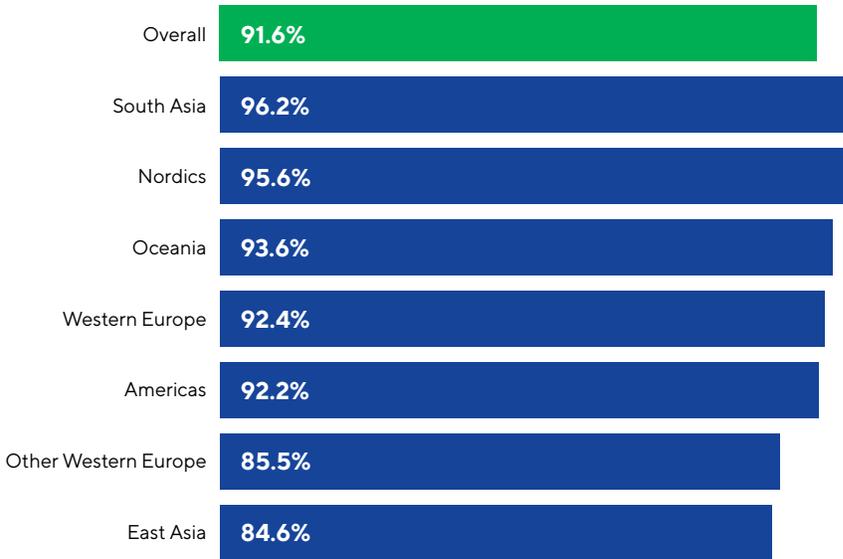
We asked respondents to choose the more important factor in making a job choice: feeling appreciated and that you could contribute, or the specific salary offered. Overall, 62% of respondents said belonging was more important than salary. The issue of belonging is significantly more important for Gen X and Gen Y managers (see Figure 2, next page). For these groups, it’s not enough to have a seat at the table or even to have a voice; it’s about knowing their voice is valued and that they can contribute.



The issue of belonging is significantly more important for Gen X and Gen Y managers. For these groups, it’s not enough to have a seat at the table or even to have a voice; it’s about knowing their voice is valued and that they can contribute.

The importance of belonging

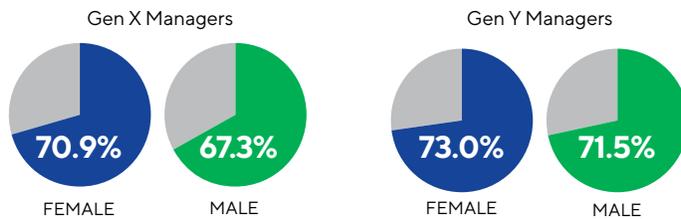
At work, how important is it that you feel like you belong?



Note: Percent of respondents who said "very important," "important" or "somewhat important."
 Response base: 10,822
 Source: Cognizant & Microsoft
 Figure 1

Feeling valued outshines pay

When making a job choice, feeling like I will be appreciated and can contribute is more important than the salary offered to me.



Note: Percent of respondents who said they "agree" or "somewhat agree."
 Response base: 2,721
 Source: Cognizant & Microsoft
 Figure 2



People speak about belonging

"I feel very blessed to work where I do because the environment and community is one of the best I've found."

— Gen Y manager, Americas

"I already feel as though I belong and I'm accepted for who I am."

— Gen X manager, other Western Europe

"I feel connected to my work."

— Gen Y manager, South Asia

"[My workplace] makes me feel like I belong. We are all like family."

— Gen Y individual contributor, Oceania

Workplace belonging is not a fuzzy concept — it's concrete

It's not enough to be employed by an organization that mirrors our own values.

Respondents told us that the feelings generated by being welcomed, included, valued and connected all contribute to their sense of belonging. These feelings are nurtured by work teams and operationalized by the specific behavior patterns of leaders and co-workers.

In our study, we created four scales — feeling welcome, feeling included, feeling valued and feeling connected — to represent the different aspects of belonging. On a global basis, each scale showed strong correlations with the others and with reported feelings of belonging.

I Feeling welcome: The need for social acceptance influences almost everything we do, including our willingness to be connected to our employer. Factors that contribute to an inviting organizational culture include seeing people who are similar to ourselves, sensing we could be successful based on what we see and hear, and feeling that the company fits with our “personality.” The act of being welcomed into an inclusive organization signals that we are wanted.

The San Francisco office of global design and innovation business IDEO leaves new employees with no doubt that they are welcome and wanted and that they fit in the culture. IDEO recognizes that the first months on a new job can create as much anxiety as anticipation for many people. The company's unique “Interview Process” (enter + interview) is designed to create a sense of belonging — on day one. All IDEO employees who interview the new hire are asked to fill out a written comment card that says, “Dear (employee name), we think you are kind of a big deal, and here's why.”²

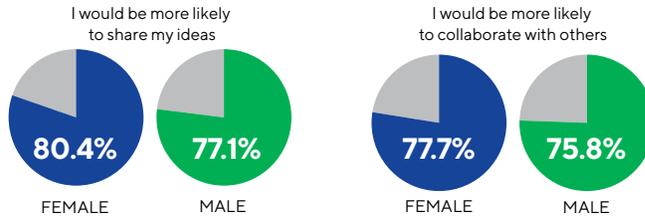
I Feeling included: Our self-confidence and motivation are heavily influenced by whether we are included in the processes and decision-making that directly affect our work. Feeling included is about having the resources we need to do our work, as well as having our ideas and opinions actively solicited and acted upon. The act of being included signals that we are important — that our work matters.

Over the years, USAA, a large financial services group of companies, has developed a set of formal and informal mechanisms for engaging employees in an ongoing dialog about their work. An online platform serves as a forum for the company to pose questions to its employees about various business challenges and innovation opportunities. In turn, employees are encouraged to initiate discussions on their own and vote on differing ideas.

Complementing this process are regular pulse surveys designed to capture feedback on specific initiatives occurring in the company, as well as an annual engagement survey. Finally, “Pride Teams” offer a rotating set of USAA employees nominated to represent their area of the business with a face-to-face, grassroots feedback process with the leadership team. By leveraging multiple communication and feedback channels, USAA can draw upon a diverse set of backgrounds, skills and perspectives to help increase individual and organizational performance.³

Business benefits of belonging

In what ways do you think your employer would benefit most by fostering a sense of belonging for employees?



Note: Percent of respondents who said they “agree” or “somewhat agree.”

Response base: 10,822

Source: Cognizant & Microsoft

Figure 3

I Feeling valued: How do we know we’re valued for who we are at work? We know it when we can authentically be ourselves; when we think it’s safe to take risks; when our co-workers and managers respect and care about us as individuals; and when there is an environment of trust. If we can bring our differences to work, and those differences are valued – that’s when we can contribute our personal best.

A growing body of social psychology research reveals that we as human beings are highly attuned to the social signals others give us regarding our value in the workplace.⁴ We monitor and track the quality of our relationships, and when we sense disapproval, rejection or invisibility, we experience negative emotions and a loss of self-esteem. The question of whether to reveal and bring our “authentic self” into the workplace is particularly salient for the LGBT+ community.

Despite the growing awareness of the inclusion struggles faced by this diverse community in the workplace, many employers are ill-equipped to respond. As a result, LGBT+ associates and their allies look for inclusive policies and practices – such as dress codes, pronoun and name usage, gender-neutral bathrooms, gender literacy training, employee resource or affinity groups, and benefits for same-sex partners – as important early signals about their value as employees in the workplace.

If we can bring our differences to work, and those differences are valued – that’s when we can contribute our personal best.

Creating a shared language around gender is a small but important step toward inclusion. In 2018, human resource management software vendor Workday made it possible for users to update their personal profiles with their proper pronouns and gender identity. Employees can now choose from 20 options, including cis gender, non-binary and gender-fluid.⁵ For organizations with large global or remote workforces, where staffers might not be familiar with their colleagues' names and associated genders, pronoun sharing can make collaboration easier.

While this may seem like a long overdue move, it's important to remember that publicizing preferred pronouns needs to be voluntary. Not only do we need to respect where people are in their personal journey, but gender norms also vary dramatically across organizations, geographies and cultures. The overriding reason to address this issue is simple: It's the right thing to do.

- I Feeling connected:** Our personal connections with colleagues and managers are an important part of feeling like we belong. It's about forming a unique human bond that signals we're part of a community – a place where we fit in, in a job we enjoy, with people we want to be around.

We asked respondents to rate the effectiveness of various communication techniques when it comes to developing and maintaining connections with members of their work group. Globally, all generations pointed to the importance of face-to-face communication, underscoring that our feelings of connectedness begin with a human face.

While nothing is quite as effective as an in-person interaction, 73% of respondents said that technology – broadly – can also help facilitate a feeling of connection with co-workers. Sociologist Keith Hampton, an expert on the impact of technology on social networks, agrees that being wired can help people connect more deeply by creating more points of contact. Hampton found that technology users tend to have closer relationships, not just online but in-person as well.⁶



For organizations with large global or remote workforces, where staffers might not be familiar with their colleagues' names and associated genders, pronoun sharing can make collaboration easier.

Our research supports these insights. We found a correlation between use of technology to build connections and strength of relationships at work. Furthermore, respondents told us that a wide range of technologies can be effective channels for connecting with colleagues. Gen Y and Gen Z workers, in particular, are enthusiastic advocates for work-based technologies — with each channel offering unique and varied insight into different communities.

As organizations continue to develop flexible work practices, technology can be an important tool for managers as they try to create a sense of connectedness for remote employees. Because remote workers rarely connect with colleagues, companies like social media management software company Buffer create technology-enabled gatherings designed to bring individuals and teams together socially. The weekly “30-minute teatime for all employees,” virtual lunches or “pair calls” with colleagues are all designed to help remote workers connect with each other.

These virtual watercooler encounters are augmented with Instagram stories designed to give peeks into what people are doing and thinking. In this way, little snapshots of work and even personal lives become more visible to others — exposing the value of diverse capabilities and increasing connectedness.⁷



People speak about belonging

“Active affinity groups at Cognizant publicly validate our commitment to diversity and instill a sense of belonging that is increasingly critical as more of our roles become remote.”

— **Fred Bachhuber, Associate Director, FP&A, and member of the leadership team for Embrace, the affinity group for LGBT+ associates and allies at Cognizant**

“I believe that with the right use of technology, we can increase the points of contact with colleagues inside an organization — it makes us more human, not less. Also, the use of AI has the potential of making the engagement more meaningful; when we do engage human-to-human, it’s based on more insights and makes for better interaction.”

— **Tanuj Kapilashrami, Group Head of Human Resources, Standard Chartered**

In a digital world, technology may be one of the most effective ways to increase feelings of belonging and inspire individual and team performance. Certain technologies (see Figure 4) create a place for community members to comfortably voice their opinions, share their knowledge and ideas, collaborate, recognize and acknowledge contributions, and socialize. Done well, social collaboration through technology can create connections that break through organizational silos and inspire unexpected business opportunities.

Using technology to build bonds

How effective is each of the following ways of communicating when it comes to building relationships with members of your work groups?

	Boomer	Gen X	Gen Y	Gen Z
 Face-to-face	91.6%	94.0%	93.8%	92.6%
 Phone	65.3%	75.6%	75.7%	70.0%
 Email	64.4%	69.5%	68.6%	57.7%
 Text message	—	53.1%	54.0%	58.0%
 Videoconference	—	52.2%	56.2%	50.5%
 Work-based group chat	—	—	52.9%	57.2%
 Social messaging apps	—	—	—	52.8%

Note: Percent of respondents who said “effective” and “somewhat effective.” No percentage is shown when responses were below 50%.

Response base: 10,822

Source: Cognizant & Microsoft

Figure 4

Done well, social collaboration through technology can create connections that break through organizational silos and inspire unexpected business opportunities.

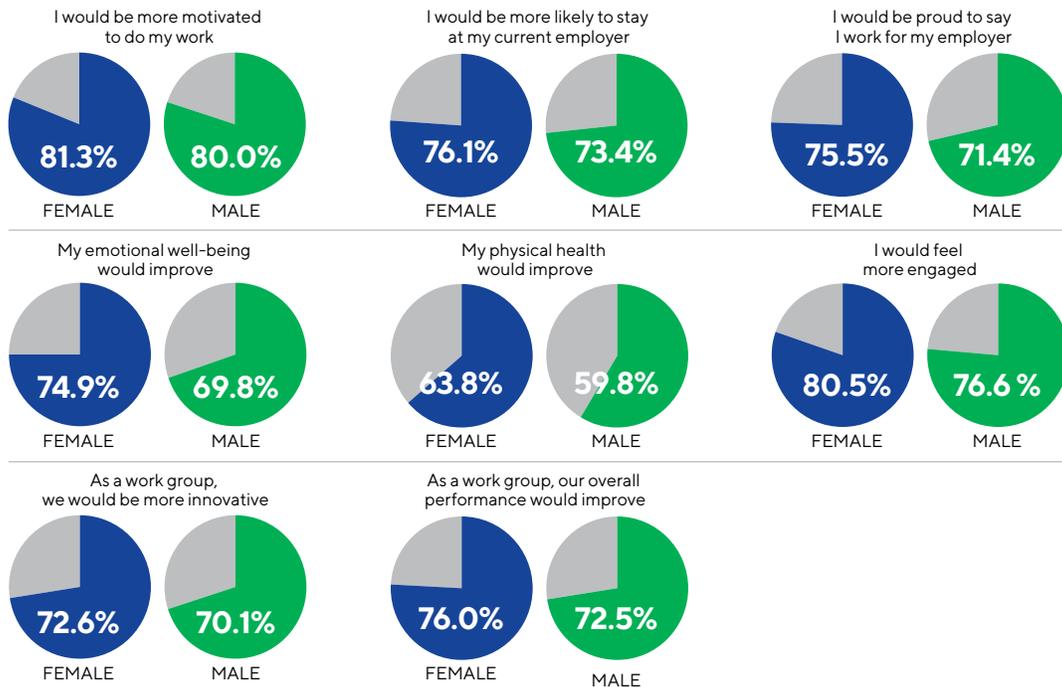
Belonging is tied to performance

Research indicates that simply having a diverse workforce is not enough to feed innovation and heighten performance.⁸ While important, diversity is a passive view of workforce composition; on the other hand, inclusion is a more active view that focuses on creating an empathetic workplace environment. When employees feel welcome, included, valued and connected, they feel a sense of belonging.

In our study, respondents reported that fostering a sense of belonging would significantly increase their motivation, commitment, pride, emotional and physical well-being, and overall engagement. Ultimately, respondents said these feelings of belonging would lead to not just greater innovation but also increased productivity. When organizations create a culture of belonging, the resulting environment can be transformative for employees and the organization as a whole (see Figure 5).

The business advantage of inclusivity

In what ways do you think your employer would benefit most by fostering a sense of belonging for employees?



Note: Percent of respondents who said “agree” and “somewhat agree.”
 Response base: 10,822
 Source: Cognizant & Microsoft
 Figure 5

While our research focused on the performance upside to belonging, other research suggests there's also a quantifiable cost to exclusion on individual and team performance. As Becky Frankiewicz, President of ManpowerGroup North America, points out, "The essence of belonging means that I am able to bring my whole self to work. In financial terms, it's a waste if I have to be someone different at work than I am at home. I am more effective if I can bring my whole self to work. And yes, the organization benefits, but I am also showing up as my whole self and am able to contribute with that."⁹

Experimental studies on the behavior of teams indicate that excluded members are 25% less productive, give up quicker on team tasks and are less likely to work for the greater good of the team.¹⁰ Clearly, belonging matters.

Quick Take

Here for good: driving commerce & prosperity via a unique approach to diversity

Standard Chartered is a leading international banking group with a workforce of over 95,000 in 59 markets, and with deep roots in Asia, Africa and the Middle East. Given its regional mix, the firm is committed to driving and measuring progress in creating a diverse and inclusive culture.

Two years ago, Standard Chartered started an ambitious project to create an Inclusion Index as part of its annual employee survey, with the goal of quantifying the impact of inclusion on organizational performance.

The bank's team-based Inclusion Index measures a variety of variables — access to tools to do work, feelings of safety, expectations around growth and development, and work-life harmony — that reflect belonging at the very heart of it. The company correlated the index with an innovation measure: ideas being generated to proof-of-concept stage.

"We now have completed the index for two full annual cycles and can see there is strong correlation between team inclusion and their views toward innovation," says Tanuj Kapilashrami, Group Head of Human Resources. "Linking these has been quite powerful in helping us develop the bank we want to be for the future."

Building a culture of belonging

Although “belonging” is seen as a universal human need, it is often overlooked by most employers — almost as if they believe it happens automatically, without any effort on their part.

Our research clearly found that belonging needs to be cultivated. Building a workplace that is warm, welcoming and inclusive takes careful forethought, conscious planning and effective execution — at the organization, team and individual levels. To get there, we believe organizational leaders must embrace the following measures:

1. Send a clear organizational signal.

Adapting traditional D&I programming to incorporate belonging can start with a simple but important transition: changing the way organizations articulate their values. As Caroline Casey, Founder of The Valuable 500 (an advocacy group for disabled workers), shared at a Cognizant-sponsored panel discussion held during the World Economic Forum’s (WEF) Annual Meeting in Davos: “I would prefer that we have the Chief Belonging Officer rather than the Chief Diversity and Inclusion Officer because I get more and more concerned about how we are categorizing and segregating our humanity — competing them against each other and creating a hierarchy of inclusion and exclusion. And that’s not helpful for belonging.”¹¹

By shifting frames, organizations can also recast traditional D&I programming into the language of belonging. We asked respondents whether specific D&I practices would increase their feelings of belonging. They told us these people-first initiatives send important messages to potential and current employees about the inclusiveness of an organization’s culture (see Figure 6, next page).

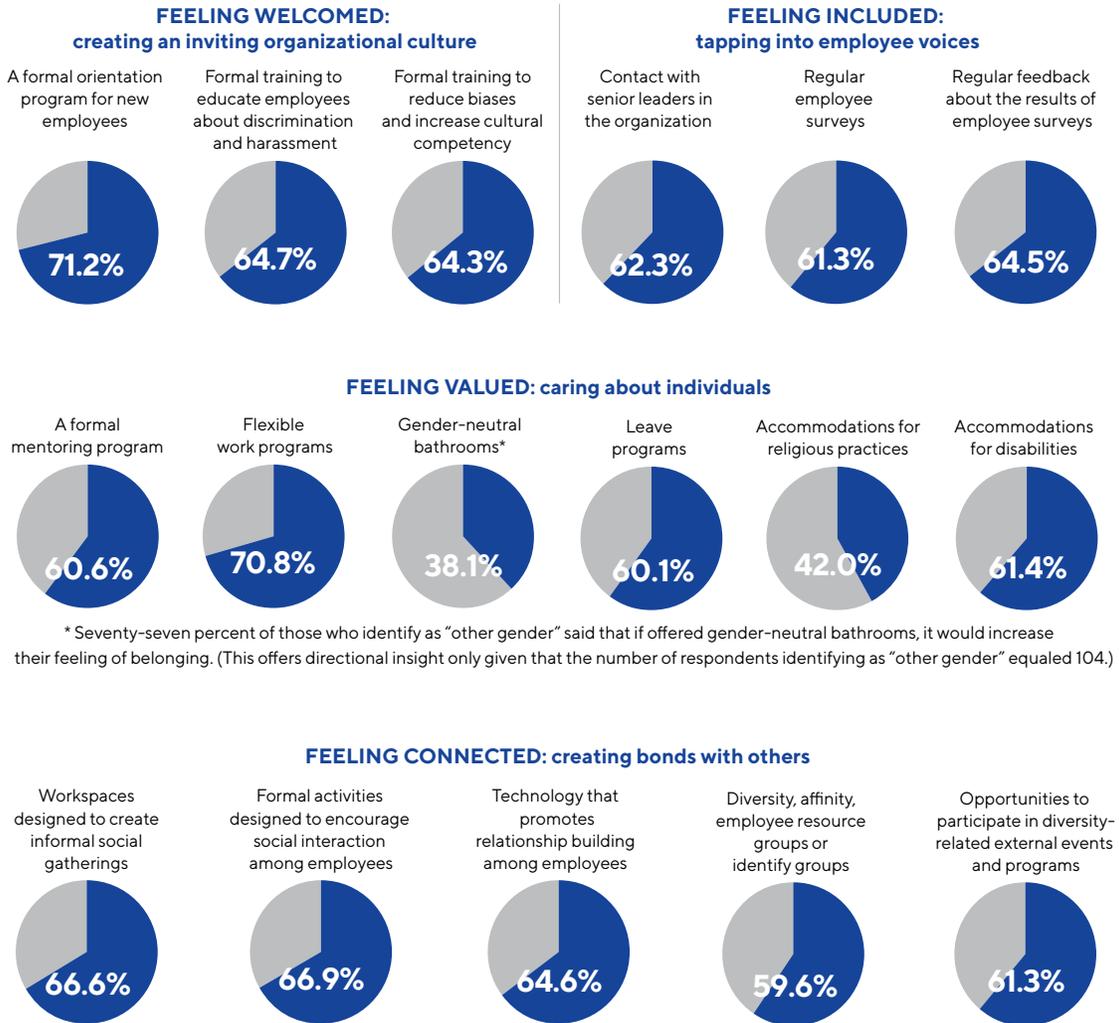
Cloud-based software services provider Salesforce knows there are few things more powerful than the feeling of belonging. But how do you build a culture that ensures everyone feels welcome? Tony Prophet, Chief Equality Officer, pointed to four key components at a Cognizant-sponsored panel discussion held during the WEF’s Annual Meeting in Davos. “For us, it’s about being humble — acknowledging that we have work to do as an organization. It’s also being clear about our values. Equality is one of those values. The third is about data. Management is driven on data. And if you’re interested, you can go to our website and see our data — not because we’re proud of it but because transparency and data are the foundations of making progress. How your stakeholders hold you accountable is through your data. The fourth is how you lead as a manager.”¹²

2. Create an empowered work environment.

There’s a certain intimacy to belonging — it is, in reality, the feelings that we have as a result of our day-to-day work group experiences. Front-line managers play a significant role in creating an empowered work environment in which everyone feels like they belong. To better understand what managers could do, we asked an open-ended question: What could your manager do to increase your feeling of belonging? The results were often emotional, very revealing but clear and consistent — across generations, geographies and roles. We all want to feel welcomed, included, valued and connected (see Figure 7, page 15).

Recasting D&I into the language of belonging

If offered, how likely are the following employment practices to increase your feeling of belonging?



* Seventy-seven percent of those who identify as "other gender" said that if offered gender-neutral bathrooms, it would increase their feeling of belonging. (This offers directional insight only given that the number of respondents identifying as "other gender" equaled 104.)

Note: Percent of respondents who said "likely" or "somewhat likely."

Response base: 10,822

Source: Cognizant & Microsoft

Figure 6

 People speak “the language of belonging” <i>What can your manager do to increase your feeling of belonging?</i>				
	Boomer	Gen X	Gen Y	Gen Z
AMERICAS	“The simple art of caring.” <i>– Individual contributor</i>	“Treat me with respect given my experience.” <i>– Manager</i> “Allow more time for social gatherings.” <i>– Individual contributor</i>	“Let me be myself.” <i>– Individual contributor</i> “Show recognition for the whole team.” <i>– Individual contributor</i> “Show respect and value me.” <i>– Individual contributor</i>	“Help increase our relationships outside of work.” <i>– Individual contributor</i>
WESTERN EUROPE	“Be more inclusive of other age groups.” <i>– Individual contributor</i> “More information sharing.” <i>– Individual contributor</i>	“Simple rewards and recognition, tea and cakes, social activity.” <i>– Manager</i>	“Make time in the workday to foster engagement with each other.” <i>– Manager</i> “Being treated like a person instead of a number.” <i>– Manager</i>	“Asking from time to time to express my feelings about work, and give me feedback.” <i>– Individual contributor</i> “We need better technology.” <i>– Individual contributor</i>
SOUTH ASIA	“Value my dedication.” <i>– Individual contributor</i> “They should give importance to our ideas and suggestions and implement them.” <i>– Individual contributor</i>	“Be more human.” <i>– Manager</i> “There should be equal involvement.” <i>– Manager</i> “Better interaction with team members.” <i>– Individual contributor</i>	“Provide opportunities to showcase our talents.” <i>– Individual contributor</i>	“Recognize every employee has potential, and take their ideas into consideration.” <i>– Individual contributor</i>
EAST ASIA	“A complete explanation of my job and my responsibility.” <i>– Individual contributor</i> “As a minority, I find myself excluded from most social interactions.” <i>– Individual contributor</i>	“Make me feel more valued for my contributions.” <i>– Individual contributor</i> “Value me as a person, not just a professional.” <i>– Individual contributor</i>	“A culture that builds you up with challenges that empower you.” <i>– Individual contributor</i> “Help foster more collaboration and relationship building among colleagues.” <i>– Individual contributor</i>	“A designated person to greet new employees and show them around.” <i>– Individual contributor</i> “Reaching out more with get-togethers as we work at home.” <i>– Individual contributor</i>
OCEANIA	“Treat employees with respect – like human beings.” <i>– Individual contributor</i> “Show more empathy.” <i>– Individual contributor</i>	“Always check on my well-being.” <i>– Individual contributor</i>	“Appreciate me for my personality, and respect my preferences.” <i>– Individual contributor</i> “A simple chat and recognition would increase each one’s belongingness.” <i>– Individual contributor</i>	“Encourage diverse thought.” <i>– Individual contributor</i> “Allow me the freedom to do my job.” <i>– Individual contributor</i>
NORDICS	“Despite the hustle and bustle, time must be set aside for casual encounters once in a while.” <i>– Individual contributor</i> “Include me in decisions.” <i>– Individual contributor</i>	“Respect me as a person.” <i>– Individual contributor</i>	“Care more about employees.” <i>– Individual contributor</i> “Create more team-building exercises within working hours to get to know each other better and become a tighter group.” <i>– Manager</i>	“Show more inclusion when discussing plans and changes within the workplace. Problems cannot always be solved by a person – sometimes they need a team.” <i>– Individual contributor</i>

Note: A sampling of responses to the open-ended question: What can your manager do to increase your feeling of belonging?

Response base: 9,407 open-ended responses

Source: Cognizant & Microsoft

Figure 7

3. Ask yourself these questions.

- I Are you sharing your own story?** Storytelling at all levels of the organization can be a powerful tool for creating an environment in which people feel they belong. Stories serve to illustrate core values and reinforce fit. Shared stories also reinforce the universality of certain experiences and help to build empathy. Because stories are anchored in real experience, they help others navigate the organization. And when individuals share their own stories, everyone can clarify who they are and how they want to be “seen” by others.
- I Are you expanding your personal network?** When you expand your network beyond those who identify with you, it’s an opportunity to expand your thinking and educate yourself on the language of belonging. For example, what words, pronouns and conventions can you use to be inclusive? When we have a personal connection with someone different from ourselves, we can see that person as a human being — someone who has value — and together, we can make a difference.
- I Are you offering grace? Are you open to receiving grace?** We won’t always get it right. We need to be able to say, “I got that wrong, but I want to get it right. Help me understand.” This takes being humble, vulnerable and open to receiving grace. By offering grace to others, we can acknowledge and appreciate the small steps forward — because the biggest problem of all is failing to try.
- I Are you an ally?** An ally is someone who stands up for and supports others who are different from themselves. Melinda Epler, Founder and CEO of Change Catalyst, offers these tips on how to be an effective ally in the workplace.¹³ First, give your colleague your full attention — close the laptop, put down the phone, and listen. When you hear a good idea, echo and attribute it to the originator. Second, work to change the power dynamics. We can use our own personal power to intervene when others are ignored, interrupted or belittled. And finally, encourage and advocate for others — in assignment of opportunities, as a mentor or even as a sponsor. Anyone can be an ally. And when we’re able to build a community of allies, we can create an environment in which everyone feels like they belong.



Anyone can be an ally. And when we’re able to build a community of allies, we can create an environment in which everyone feels like they belong.

The bottom line

Creating a culture of belonging is not just a moral mandate – it’s a business imperative.

What has always moved the world forward is the energy of highly motivated and energized people who believe strongly in who they are and what they are doing.

Just as the full potential of diversity can only be reached with full inclusion, so can the power of inclusion be fulfilled only with true belonging. Now is the time to release our employees’ expansive capacities by doing everything we can to encourage and enable belonging within our organizations.



 **People speak about belonging**

“I think about belonging all the time, from my own personal perspective. I am only one cog in a massive organization, so, when I think about it personally, I want people to know and understand who I am. I want to understand who they are as individuals. I want to know how we can work best together, so that we can add value to the organization.”

“Belonging is not a buzzword that will go away. At the end of the day, it is an intrinsic value for all of us. Wherever we are, we will want to belong and contribute to the greater good ... in the work we do ... at the organization in which we work ... in our communities ... we will always want to belong to something. Organizations need to think long-term about how to create and nurture a sense of belonging for their people. It needs to be both conveyed and felt from the moment a potential employee looks at a job opening to the moment that employee retires.”

— **Maureen Greene**
James, Senior Director,
Diversity & Leadership
Development, North
America

Methodology

Our survey was conducted in cooperation with Tammy Erickson Associates in November and December 2019. Our intent was to develop a better understanding of employee perceptions about belonging at work across geographic regions, genders, job titles and generations. Our 10,822 respondents represent 17 countries across seven regions. Respondents included full-time employees ranging in age from 18 to 72 and both individual contributors and managers. In all but one case, we used a five-point Likert scale ranging from “agree to disagree.”

Region	Countries	# of responses
Americas	U.S., Canada	1,564
Oceania	Australia, New Zealand	1,551
East Asia	Japan, China	1,560
South Asia	India, Singapore	1,521
Western Europe	Germany, Switzerland, Netherlands, UK	1,938
Other Western Europe	Belgium, France	1,165
Nordic	Norway, Sweden, Denmark	1,523
Total		10,822

Acknowledgments

This study would not have been possible without the vast contributions of numerous Cognizant associates dedicated to making our company a diverse, inclusive and belonging place of work. In the spirit of inclusivity, we would like to salute the following individuals for their insights and foresights: Carol Cohen, Senior Vice President, Global Head of Talent Management and Leadership; Maureen Greene James, North American Inclusion Leader; Jennifer Green Godette, Associate Marketing Director; and Jennifer Schelling, Senior Marketing Director. Cognizant would also like to thank Margaret Schweer, Managing Principal at Tammy Erickson Associates, for her tireless pursuit of the facts, figures and formulas that transform belonging from a squishy nice-to-know concept to a must-have ingredient in an organization’s success, and for pushing us to convert breathless idealism into concrete action.

Endnotes

- ¹ Brene Brown, *Braving the Wilderness*, Random House Trade Paperbacks, Aug. 27, 2019, www.penguinrandomhouse.com/books/234254/braving-the-wilderness-by-brene-brown-phd-lmsw/.
- ² Liz Fosslein and Mollie West Duffy, "How to Foster a Culture of Belonging at Work," Quartz at Work, Feb. 8, 2019, <https://qz.com>.
- ³ Aimee Lucas, "Success Is Easier When Employees Believe These Three Things," *American Banker*, Aug. 29, 2016, www.americanbanker.com/opinion/success-is-easier-when-employees-believe-these-three-things.
- ⁴ Christian N. Thoroughgood, Katrina B. Sawyer and Jennica R. Webster, "Creating a Trans-Inclusive Workplace," *Harvard Business Review*, March–April 2020, <https://hbr.org/2020/03/creating-a-trans-inclusive-workplace>.
- ⁵ Lisa MacLellan, "The End of Pronoun Presumption," Quartz at Work, June 24, 2019, <https://qz.com/work/1647596/gender-pronouns-in-the-workplace-are-not-a-passing-trend/>.
- ⁶ Megan Gambino, "How Technology Makes Us Better Social Beings," *The Smithsonian Magazine*, July 10, 2011, www.smithsonianmag.com/science-nature/how-technology-makes-us-better-social-beings-28986845/ and "Social Isolation and New Technology," Pew Research Center, Nov. 4, 2009, www.pewresearch.org/internet/2009/11/04/social-isolation-and-new-technology/.
- ⁷ Liz Fosslein and Mollie West-Duffy, "How to Create Belonging for Remote Workers," *MIT Sloan Management Review*, Feb. 8, 2019, <https://sloanreview.mit.edu/article/how-to-create-belonging-for-remote-workers/>.
- ⁸ Rocio Lorenzo and Martin Reeves, "How and Where Diversity Drives Financial Performance," *Harvard Business Review*, Jan. 30, 2018, <https://hbr.org/2018/01/how-and-where-diversity-drives-financial-performance>.
- ⁹ "Inclusion in the Workplace: A Discussion on Belonging," Cognizant, www.reuters.com/livevideo?id=Pdeb.
- ¹⁰ "Evan W. Carr, Andrew Reece, Gabriella Rosen Kellerman and Alexi Robichaux, "The Value of Belonging at Work," *Harvard Business Review*, Dec. 16, 2019, <https://hbr.org/2019/12/the-value-of-belonging-at-work>.
- ¹¹ "Inclusion in the Workplace: A Discussion on Belonging," Cognizant, www.reuters.com/livevideo?id=Pdeb.
- ¹² Ibid.
- ¹³ Melinda Epler, "Become a Better Ally," TEDxTalk, June 2018, www.advancingwomenengineers.com/become-a-better-ally/.



About Microsoft

Microsoft (Nasdaq "MSFT" @microsoft) enables digital transformation for the era of an intelligent cloud and an intelligent edge. Its mission is to empower every person and every organization on the planet to achieve more.

Microsoft refers to Microsoft Corp. and its affiliates, including Microsoft Mobile Oy, a subsidiary of Microsoft. Microsoft Mobile Oy develops, manufactures and distributes Nokia X mobile phones and other devices.

About Cognizant

Cognizant (Nasdaq-100: CTSH) is one of the world's leading professional services companies, transforming clients' business, operating and technology models for the digital era. Our unique industry-based, consultative approach helps clients envision, build and run more innovative and efficient businesses. Headquartered in the U.S., Cognizant is ranked 194 on the Fortune 500 and is consistently listed among the most admired companies in the world. Learn how Cognizant helps clients lead with digital at www.cognizant.com or follow us @Cognizant.

Cognizant

World Headquarters

500 Frank W. Burr Blvd.
Teaneck, NJ 07666 USA
Phone: +1 201 801 0233
Fax: +1 201 801 0243
Toll Free: +1 888 937 3277

European Headquarters

1 Kingdom Street
Paddington Central
London W2 6BD England
Phone: +44 (0) 20 7297 7600
Fax: +44 (0) 20 7121 0102

India Operations Headquarters

#5/535 Old Mahabalipuram Road
Okkiyam Pettai, Thoraipakkam
Chennai, 600 096 India
Phone: +91 (0) 44 4209 6000
Fax: +91 (0) 44 4209 6060

APAC Headquarters

1 Changi Business Park Crescent,
Plaza 8@CBP # 07-04/05/06,
Tower A, Singapore 486025
Phone: + 65 6812 4051
Fax: + 65 6324 4051

© Cognizant 2020. All rights reserved. Cognizant is a registered trademark of Cognizant or its affiliates. All other trademarks herein are the property of their respective owners.

Codex 5471

Diversity and Inclusion & Belonging in Professional Services

Make diversity, inclusion & belonging a strategic priority. As we engaged with employees, we began to build a strong desire to act, both at the individual and company level, which we translated into our Action Plan.



Pillar #1: Reinvigorate our efforts to support, promote and retain diverse talent

Goal: To better support, promote and retain underrepresented minorities at FTI Consulting.

Actions:

- Enhance expectations of mentors to ensure that underrepresented minorities are paired with strong mentors.
- Support Diversity Ambassador program through increased investments and resources.

Pillar #2: Double-down on efforts to attract diverse talent

Goal: To remain a vibrant, progressive, and well-respected organization for years to come, we must attract diverse talent at a higher proportion.

Actions:

- Bolster internal efforts to surface experienced hire candidates of diverse backgrounds through several channels, such as an in-depth analysis of diverse talent in the professional services industry with support and engagement from segment leaders.
- Pilot memberships and partnerships with at least five professional organizations to build relationships and surface diverse talent who may be interested in a career at FTI Consulting.
- Significantly enhance our pre-ID programs to attract diverse talent on campus.

Pillar #3: See how we might help the world more broadly

Goal: FTI Consulting is committed to being a responsible corporate citizen that leverages the unique skillsets of our experts across the globe to support equality and justice in the communities in which we do business.

Actions:

- Commit to doubling our total employee matching contributions compared to 2019.
- Support skills-based volunteering and pro bono engagements that are important to our people through volunteering hours and segment- and regional-level support.
- Turbocharge our pro bono activities by leveraging our expertise across the firm through the introduction of a Pro Bono Advisory Committee comprised of representatives from different segments, regions, and levels. This committee will select one to two corporate-sponsored pro bono partnerships to shepherd the program forward.

Pillar #4: Keep the internal dialogue and learnings alive

Goal: We are committed to fostering a culture where everyone feels empowered to speak up and supported to engage so they can be themselves.

Actions:

- Introduce platforms for continuous engagement, including the Hearing Our Voices video, the Global Voices, Insights and Perspectives speaker series, and Crucial Conversations internal speaker series
- Enhance learnings through more robust training programs, such as complementing the Managing & Leading Inclusive Teams course offered to employees at the Director level and above; unconscious bias training course curated for those below the Director level. These training courses will be further supplemented with training webinars available to all professionals.



THINK SMARTER | LEAD BETTER

Yellow Paper Series

Written in Black & White

Exploring Confirmation Bias in Racialized
Perceptions of Writing Skills

Lead Researcher
Dr. Arin N. Reeves



2014-0404



RESEARCH QUESTION: *Given our finding in a previous study that supervising lawyers are more likely than not to perceive African American lawyers as having subpar writing skills in comparison to their Caucasian counterparts, we asked if confirmation bias unconsciously causes supervising lawyers to more negatively evaluate legal writing by an African American lawyer.*

CONFIRMATION BIAS:

A mental shortcut – a bias – engaged by the brain that makes one actively seek information, interpretation and memory to only observe and absorb that which affirms established beliefs while missing data that contradicts established beliefs.

We first discovered empirical evidence that supervising lawyers perceived African Americans lawyers to be subpar in their writing skills in comparison to their Caucasian counterparts when we researched unconscious biases in the legal profession over ten years ago. Since our surveys and focus groups at the time were studying unconscious biases generally, we decided to study this specific bias of writing skills in greater detail via the cognitive construct of **confirmation bias**.

This research summary provides a general overview of the methodology, results and key takeaways from the study. Please note that we studied this question only from the unconscious or implicit bias perspective. While the possibility of explicit bias exists, our research has consistently shown that implicit bias is far more prevalent in our workplaces today than explicit bias, thereby guiding us to utilize our resources to study implicit instead of explicit biases.



Methodology

Nextions, along with the assistance of 5 partners from 5 different law firms, drafted a research memo from a hypothetical third year litigation associate that focused on the issue of trade secrets in internet start-ups. We followed a simple Question Presented, Brief Answer, Facts, Discussion and Conclusion format for the memo, and we deliberately inserted 22 different errors, 7 of which were minor spelling/grammar errors, 6 of which were substantive technical writing errors, 5 of which were errors in fact, and 4 of which were errors in the analysis of the facts in the Discussion and Conclusion sections.

This memo was then distributed to 60 different partners (who had previously agreed to participate in a “writing analysis study” from 22 different law firms of whom 23 were women, 37 were men, 21 were racial/ethnic minorities, and 39 were Caucasian. While all of the partners received the same memo, half the partners received a memo that stated the associate was African American while the other half received a memo that stated the associate was Caucasian:

While all of the partners received the same memo, half the partners received a memo that stated the associate was African American while the other half received a memo that stated the associate was Caucasian.

Name: Thomas Meyer	Name: Thomas Meyer
Seniority: 3rd Year Associate	Seniority: 3rd Year Associate
Alma Mater: NYU Law School	Alma Mater: NYU Law School
Race/Ethnicity: African American	Race/Ethnicity: Caucasian

The 60 partners in the study received the memo electronically (an attached pdf) along with the research materials used in the preparation of the memo. The cover email thanked each of them for participating in a study on “writing competencies of young attorneys,” and asked them to edit the memo for all factual, technical and substantive errors. The partners were also asked to rate the overall quality of the memo from a 1 to 5, with “1” indicating the memo was extremely poorly written and “5” extremely well written.

The partners were originally given 4 weeks to complete the editing and rating, but we had to extend deadline to 7 weeks in order to obtain more responses. 53 partners completed the editing and rating of the memo. Of the 53 completed responses, 24 had received the memo by the “African American” Thomas Meyer, and 29 had received the memo by the “Caucasian” Thomas.



The exact same memo, averaged a 3.2/5.0 rating under our hypothetical “African American” Thomas Meyer and a 4.1/5.0 rating under hypothetical “Caucasian” Thomas Meyer.

General Findings

The exact same memo, averaged a 3.2/5.0 rating under our hypothetical “African American” Thomas Meyer and a 4.1/5.0 rating under hypothetical “Caucasian” Thomas Meyer. The qualitative comments on memos, consistently, were also more positive for the “Caucasian” Thomas Meyer than our “African American” Thomas Meyer:

“Caucasian” Thomas Meyer	“African American” Thomas Meyer
<i>“generally good writer but needs to work on...”</i>	<i>“needs lots of work”</i>
<i>“has potential”</i>	<i>“can’t believe he went to NYU”</i>
<i>“good analytical skills”</i>	<i>“average at best”</i>

In regards to the specific errors in the memo:

- An average of 2.9/7.0 spelling grammar errors were found in “Caucasian” Thomas Meyer’s memo in comparison to 5.8/7.0 spelling/grammar errors found in “African American” Thomas Meyer’s memo.
- An average of 4.1/6.0 technical writing errors were found in “Caucasian” Thomas Meyer’s memo in comparison to 4.9/6.0 technical writing errors found in “African American” Thomas Meyer’s memo.
- An average of 3.2/5.0 errors in facts were found in “Caucasian” Thomas Meyer’s memo in comparison to 3.9/5.0 errors in facts were found in “African American” Thomas Meyer’s memo.

The 4 errors in analysis were difficult to parse out quantitatively because of the variances in narrative provided by the partners as to why they were analyzing the writing to contain analytical errors. Overall though, “Caucasian” Thomas Meyer’s memo was evaluated to be better in regards to the analysis of facts and had substantively fewer critical comments.



General Findings Cont.

We did not ask for edits and/or comments on formatting. However, we did receive such edits and/or comments in 41 out of the 53 responses, and all of them regarded changes that the partners would have liked to see on the formatting in the memo. Of the 41 edits and/or comments on formatting, 11 were for “Caucasian” Thomas Meyer’s memo in comparison to 29 for “African American” Thomas Meyer’s memo.

There was no significant correlation between a partner’s race/ethnicity and the differentiated patterns of errors found between the two memos. There was also no significant correlation between a partner’s gender and the differentiated patterns of errors found between the two memos. We did find that female partners generally found more errors and wrote longer narratives than the male partners.

Analysis & Discussion

We undertook this study with the hypothesis that unconscious confirmation bias in a supervising lawyer’s assessment of legal writing would result in a more negative rating if that writing was submitted by an African American lawyer in comparison to the same submission by a Caucasian lawyer. In order to create a study where we could control for enough variables to truly see the impact of confirmation bias, we did not study the potential variances that can be caused due to the intersection of race/ethnicity, gender, generational differences and other such salient identities. Thus, our conclusion is limited to the impact of confirmation bias in the evaluation of African American men in comparison to Caucasian men. We do not know (although we plan to study the issue in the very near future!) how this impact will splinter or strengthen when gender and/or other identities are introduced.

The data findings affirmed our hypothesis, but they also illustrated that the confirmation bias on the part of the evaluators occurred in the data collection phase of their evaluation processes – the identification of the errors – and not the final analysis phase. When expecting to find fewer errors, we find fewer errors. When expecting to find more errors, we find more errors. That is unconscious confirmation bias. Our evaluators unconsciously found more of the errors in the “African American” Thomas Meyer’s memo, but the final rating process was a conscious and unbiased analysis based on the number of errors found. When partners say that they are evaluating assignments without bias, they are probably right in believing that there is no bias in the assessment of the errors found; however, if there is bias in the finding of the errors, even a fair final analysis cannot, and will not, result in a fair result.

Confirmation bias manifests itself most often in the “data gathering” phase of our evaluation – the time during which we seek out errors, and this manifestation is almost always unconscious.



There are commonly held racially-based perceptions about writing ability that unconsciously impact our ability to objectively evaluate a lawyer's writing... These commonly held perceptions translate into confirmation bias in ways that impact what we see as we evaluate legal writing. We see more errors when we expect to see errors, and we see fewer errors when we do not expect to see errors.

Key Takeaways

There are commonly held racially-based perceptions about writing ability that unconsciously impact our ability to objectively evaluate a lawyer's writing. Most of the perceptions uncovered in research thus far indicate that commonly held perceptions are biased against African Americans and in favor of Caucasians.

These commonly held perceptions translate into confirmation bias in ways that impact what we see as we evaluate legal writing. We see more errors when we expect to see errors, and we see fewer errors when we do not expect to see errors.

Recommendations for Next Actions

Infusing the point at which unconscious thought has greatest impact with objective mechanisms that force the conscious brain to add input, decreases unconscious bias greatly. We have worked with many employers to revise their formal and informal evaluation processes to be more infused with objective interrupters that compel unconscious biases to be filtered through conscious analysis, and we have seen many success stories. **So, make the subjective more objective in order to make the unconscious more conscious.**

EXAMPLE: In one law firm where we found that minority summer associates were consistently being evaluated more negatively than their majority counterparts, we created an interruption mechanism to infuse the subjective with objective. We worked with the firm to create an Assignment Committee, comprised of 3 partners through whom certain assignments were distributed to the summer associates and through whom the summer associates submitted work back to the partners who needed the work done. When the work was evaluated, the partners evaluating the work did not know which associate had completed the work. The assignments for this process were chosen judiciously, and there was a lot of work done to ensure buy-in from all partners. At the end of the summer, every associate had at least 2 assignments that had been graded blindly. The firm then examined how the blind evaluations compared with the rest of the associate's evaluations and found that the blind evaluations were generally more positive for minorities and women and less positive for majority men.



Ideas for Inclusion

- Distribute and discuss this study with senior lawyers in your organization to gather their reactions and perspectives. Ask them how they would recommend making the subjective more objective in order to reduce confirmation bias in their evaluation processes.
- If racial/ethnic minorities are deemed to be subpar in writing skills, send out samples of a minority lawyer's writing and a sample of a majority lawyer's writing without any identifying information attached. Ask a few senior lawyers to evaluate both samples. Explore how the samples may be evaluated differently when the lawyer's background is not available.
- Implement training on unconscious bias for everyone who is in an evaluative position. Our unconscious bias trainings have proven effective in reducing bias through raising awareness and insights into how unconscious biases operate and can be interrupted.
- If you offer writing assistance in the form of coaches, workshops and such, offer the assistance to everyone, not just racial/ethnic minorities in order to prevent the reification of the bias.

Distribute and discuss this study with senior lawyers in your organization to gather their reactions and perspectives.

Lead Researcher:

Dr. Arin N. Reeves | 312.922.0226

2021 VIRTUAL ANNUAL SPRING MEETING



THINK SMARTER | LEAD BETTER



? 500 N. Michigan Ave., Suite 600
Chicago, Illinois 60611
S P 312 922.0226

Faculty

Ricardo A. Anzaldua is executive vice president, general counsel and corporate secretary at Freddie Mac in McLean, Va., where he advises on strategy, finance, governance, compliance, process controls and external and internal communications. He has more than 20 years of experience advising on legal, financial and transactional matters, corporate governance, investor relations, external and internal communications, and dispute resolution, with special expertise in insurance and banking. Prior to joining Freddie Mac, Mr. Anzaldua was executive vice president and general counsel of MetLife, Inc., from 2012-17. From 2007-12, he held senior positions in the legal department of the Hartford Financial Services Group. He began his legal career at the law firm of Cleary, Gottlieb, Steen & Hamilton LLP, where he became a partner in 1999. Mr. Anzaldua received a bachelor's degree from Brown University in 1979 and his J.D. from Harvard Law School in 1990.

Hon. Ashely M. Chan is a U.S. Bankruptcy Judge for the Eastern District of Pennsylvania in Philadelphia. Prior to taking the bench, she was a shareholder at Hanglely Aronchick Segal Pudlin & Schiller and concentrated her practice in the areas of bankruptcy and corporate restructuring. From 1996-97, Judge Chan clerked for Hon. Gloria M. Burns of the U.S. Bankruptcy Court for the District of New Jersey. Before joining HASPS, she was an associate at Morgan, Lewis & Bockius LLP in its business and finance section, where she focused on bankruptcy, corporate restructuring and corporate finance. Judge Chan has received numerous recognitions, including being selected as a Leader in Bankruptcy/Restructuring by *Chambers USA*, being listed in *The Best Lawyers in America* for Bankruptcy and Creditor-Debtor Rights, and being listed as a Pennsylvania Lawyer on the Fast Track by *The Legal Intelligencer* and *Pennsylvania Law Weekly*. She also served as chair of the Eastern District of Pennsylvania Bankruptcy Conference and president-elect and board member of the Homeless Advocacy Project. Judge Chan received her J.D. in 1996 from Rutgers School of Law – Camden, where she received Tax Honors with Distinction and the Rutgers Pro Bono Publico Award.

William J. Perlstein is senior managing director and vice chair of Client Services at FTI Consulting, Inc. in Washington, D.C., where he interfaces with and financial institution clients. He has spent 45 years in the legal profession as a practice leader, law firm managing partner, senior in-house counsel, and outside consultant. After graduating from law school, Mr. Perlstein joined Wilmer, Cutler & Pickering in Washington, D.C., where he was first exposed to the insolvency world working on the *Penn Central* valuation case. After starting WCP's national bankruptcy practice in 1981, he had major roles as debtor's counsel or committee counsel in numerous chapter 11 cases. His professional service included two terms as a director of ABI, several leadership positions on ABA's Business Bankruptcy Committee, and a major role in drafting several sections of the 1984 Bankruptcy Code revisions. Mr. Perlstein is a Fellow of the American College of Bankruptcy, where he served as General Counsel to the Board for more than 15 years and which awarded him its Distinguished Service Award in 2020. He moved into law firm management in 1995 and became WCP's managing partner in 1998, helping to grow the firm from 260 lawyers to more than 500 in six years. He led the firm's 2004 merger with Hale and Dorr and served as WilmerHale's co-managing partner until 2012. *The American Lawyer* recognized his management contributions with its Distinguished Law Firm Leader Award in 2014. Mr. Perlstein retired from WilmerHale in 2015 and joined BNY Mellon as senior deputy general counsel, leading the legal teams supporting regulatory relations, government affairs, corporate lending,

cybersecurity and corporate services. After helping lead the preparation of the Bank's resolution plan ("living will"), he interacted with regulators in the U.S., U.K., Europe and Asia on bank-resolution issues. Mr. Perlstein has been a frequent speaker on law firm management issues and *pro bono* matters, and he served as a director of the Neighborhood Legal Services Program in Washington, D.C. for more than 10 years. He received his undergraduate degree *summa cum laude* from Union College in 1971, attended the London School of Economics from 1969-70, and received his J.D. from Yale Law School in 1974, where he was managing editor of the *Yale Law Journal*. Following law school he clerked for Hon. Marvin E. Frankel of the Southern District of New York from 1974-75.

Grace E. Robson is a partner in the Fort Lauderdale, Fla., office of Markowitz Ringel Trusty & Hartog, P.A. She is a Board-Certified bankruptcy attorney with more than 17 years of experience representing corporate debtors, trade and institutional creditors, trustees, receivers and creditors' committees. Ms. Robson focuses her practice on corporate reorganization and bankruptcy, debtor/creditor relations and litigation. She has been involved in all facets of reorganization-related representations, including pre-filing consultation, filing complex corporate bankruptcy cases, post-bankruptcy financing, and asset-purchase agreements. Ms. Robson contributed to ABI's publication *Individual Chapter 11* (2018) and has written articles for the *ABI Journal*. She is a member of the American Bar Association and co-chairs its Pro Bono Services Subcommittee of the Business Bankruptcy Committee for the Business Law Section, and she is a member of The Florida Bar's Business Law Section, the Bankruptcy Bar Association of the Southern District of Florida, ABI, and the Broward County Bar Association and Broward County Women's Law Association, among other affiliations. Ms. Robson is Board Certified in Business Bankruptcy Law by the American Board of Certification and has been listed in *The Best Lawyers in America* annually since 2013. She received her B.A. *cum laude* from the State University of New York at Albany in 1994 and her J.D. from the Benjamin N. Cardozo School of Law in 1997.