



Monday Monday

Connecting the Dots with Karen Kaplowitz



*Helping you create and reinforce the habits of successful career building,
gleaned from my work as a business development strategist, trainer and coach*

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Beware of the Diversity Tax

The work has already begun to sort out the implications of the Supreme Court's ruling in the Harvard/UNC higher education case on affirmative action. It was great to see the New York State Bar Association quickly launch a prominent task force on preserving diversity led by Paul Weiss luminaries Loretta Lynch, Jeh Johnson, and Brad Karp. As an advocate for diversity and a beneficiary of many gender-conscious decisions in my own career, I care deeply about preserving the gains we have made on diversity in the profession. See my recent [article](#). The Supreme Court's ruling is likely to result in full employment for labor and employment lawyers and HR professionals. Firms and clients will closely review DEI programs to insure that they do not violate the letter or spirit of the Supreme Court's ruling. In the meantime, one note of caution: beware the diversity tax. The diversity tax is the extra burden faced by diverse lawyers to meet all the demands firms make to support diversity such as serving on pitch teams, recruiting, firm committees, professional and community organizations, sponsorship, and mentorship programs. In firms where the ranks of diverse partners are thin, the diversity tax can be a heavy burden. Serving on lots of committees is also often unrewarded, especially in firms where rainmakers are the most highly compensated and on track to become firm leaders. To avoid the diversity tax, here are a few suggestions:

- Be mindful of the time demands for new or expanded diversity initiatives and explicit about how the time will be treated.
- Give diverse lawyers permission to decline additional service.
- Look for options to participation by current diverse lawyers. For example, can you obtain relevant information from diverse lawyers who have left the firm about what behaviors led them to feel they belonged and what drove them away?
- Make it worthwhile for diverse lawyers to participate in diversity initiatives by including clients where feasible.

For an excellent discussion of the diversity tax, listen to the [2019 Scott Becker podcast](#), which featured [Julia Lopez](#) of Reed Smith, [Alexis Robertson](#), now of Foley & Lardner and [Subha V. Barry](#) of Seramount.

Example: After the Supreme Court's decision on affirmative action, one firm's Management Committee scheduled a session to consider how to preserve the firm's strong commitment to diversity. The group decided to concentrate initially on retention of diverse lawyers. To assess how the firm could reduce attrition, the firm considered creating a special partner committee to survey diverse firm lawyers. The CDO proposed instead that the firm survey lawyers who had left the firm. The CDO recommended that the firm use an outside organization which would operate under attorney-client privilege who could obtain more candid information and could ensure anonymity to departed lawyers on their reasons for leaving. The CDO also cautioned the firm on piling additional diversity responsibilities on the still thin ranks of diverse partners. The firm also began a thorough legal review of its hiring, promotion, compensation, and DEI practices and materials for risk management purposes based on the Supreme Court's affirmative action ruling.

As you consider how to maintain your firm's commitment to DEI, what new strategies have you adopted? As part of your strategic planning, have you considered how to minimize the burden on your existing diverse talent?