

# 'Take That On': Black Patent Attorneys Say It's Time They Are Recognized

As a dialogue springs up around systemic racism, lawyers like Kirkland & Ellis' Ellisen Turner and Foley & Lardner's Jeanne Gills say there's no more excuse for clients not to include black patent lawyers on their Rolodexes.

**By Scott Graham**

Like most of America, Kirkland & Ellis partner Ellisen Turner has followed the horrific killings of Breonna Taylor, Ahmaud Arbery and George Floyd. "The greater horror is that they were nothing new," he said. "We see strings of them every year, well beyond the subset captured on video."

The same goes for "the privilege and willingness to take advantage of systemic racism that we all witnessed in the recent video from Central Park," he said, referring to a viral video of Amy Cooper calling the cops on Christian Cooper, a black man who asked that she leash her dog.

Turner, whose practice covers intellectual property litigation and strategy, is encouraged that a national and international conversation is springing up around systemic racism faced by African Americans. Within the legal profession, clients, firm management and associates have been reaching out to ask about ways they can help.



Courtesy Photo

**Ellisen Turner, Kirkland & Ellis. and Jeanne Gills, Foley & Lardner.**

So Turner would like to put this issue on the industry's radar screen: the failure to recognize and reward the achievements of black patent attorneys.

The systemic challenges were driven home for Turner at a bar event some months ago. After presenting, he was approached by an executive of a large technology company. "I'm surprised I haven't heard of you," the executive said.

The executive explained that he had asked his legal department to

compile a list of the top black attorneys at big law firms, in the interest of diversifying the company's outside teams. The list did not include any patent litigators.

That bothered Turner. One could debate the number of accomplished black patent attorneys. But "there are not zero," he said.

Cooley partner Joseph Drayton, the immediate past president of the National Bar Association, would certainly belong on such a list, Turner said. Likewise Foley

& Lardner partner Jeanne Gills, a member of the firm's management committee. Patrice Jean, a molecular biology Ph.D. and co-chair of Hughes Hubbard & Reed's life sciences group; Sterne, Kessler, Goldstein & Fox partner Eldora Ellison; Finnegan, Henderson, Farabow, Garrett & Dunner partner Mareesa Frederick and others would qualify for such a list, Turner said.

"They're really at the top of the industry," Turner said. "The best, most perfectly qualified lawyer for a matter may be a black lawyer, but if they're not in your network, you're not hearing about them."

Despite many years of promises and pledges, black lawyers remain underrepresented at big law firms. Part of the reason: "The path to advancement at a law firm is to be a lead lawyer on a matter," Turner said. "That can move the needle."

So he's imploring in-house counsel not to turn to "the same old network every time a new matter comes in." Ultimately, there might be valid reasons for choosing another lawyer. "But there should be no reason a black lawyer isn't pitching," Turner said.

Turner's comments resonate with several lawyers on his list, who described the internal and external challenges of building a successful practice. All three credit mentors—some black, some white—with making a difference in their careers. And they all agree there's no good reason black patent attorneys shouldn't be on general counsels' or IP counsels' pitch lists.

#### **Jeanne Gills, Foley & Lardner**

Foley & Lardner's Gills faces the double challenge of practicing

patent law while being black and female. "It's almost hard to know where to start," Gills said.

She recalls a session at a partner retreat last year for introducing members of the management committee. After speaking with a new partner from another office for 15 minutes, he said to her, "Well, it was good chatting with you, but I've really got to meet members of the management committee."

"On what other basis would you think that I couldn't possibly be [on the committee] other than my skin color or gender?" she said. "We're still being judged, feared, devalued because of our race."

To understand what it's like for a black lawyer practicing IP, she said to imagine playing a game of Monopoly where you begin with no money or property and your opponents already have significant amounts of it. For someone like Kirkland's Turner, "it's almost like he has to be not just good, but fantastic, superlative" to succeed. "And yet we still have to prove ourselves," she said.

She too has heard general counsel or IP counsel say they don't know any qualified black patent attorneys. "I say it's largely an excuse, because there are people who do exist," she said. Organizations like the National Bar Association, the largest national network of predominantly African American attorneys and judges, or the Chicago Black Partners Alliance can provide lists.

There are relatively simple steps that firms can take too. A law firm with a large IP department that includes paralegals and patent agents can ensure that those

ranks are diverse. "Maybe some of those individuals will then go to law schools and become lawyers. And you recruit at the law schools they attend. You could start there," she said.

And firms must provide mentors and advocates for young attorneys. Gills, who practices IP litigation and counsels clients on global IP strategy, benefited early in her career from working with pioneering attorney Sharon Barner, who's now the general counsel of Cummins Corp. "I also had white male partners who mentored and advocated for me," she said. "Some of them, I made them be my advocate."

"All of us should feel terrible about black women making up less than 1% of the equity partners in law firms," Gills said. "We should be saying that cannot stand in 2020. Take that on."

#### **Cooley's Joseph Drayton**

It's one of those statistics that's hard to wrap your head around. When Cooley's Drayton took the helm of the National Bar Association in 2018, he became the organization's first leader from an Am Law 50 law firm.

Drayton said he too benefited from a black role model: former Cooley partner Daniel Johnson Jr., now of the Dan Johnson Law Group. "I had the privilege of being a part of a trial team in my first year where Mr. Johnson was the first-chair trial lawyer for a co-defendant," Drayton said. "It was great to see a prominent lawyer who looked like me; it materially contributed to my vision of success."

Today, Drayton is serving as lead counsel for a number of clients at

Cooley, including dating app Bumble in its highly publicized patent litigation with competitor Match Group LLC.

Like Turner, Drayton believes that the COVID-19 pandemic has eliminated many of the distractions of day-to-day life, creating something of a “captive audience” for the injustices that have been unfurling in Minneapolis and elsewhere. “Companies are coming out with statements they probably never would have thought they’d make 30 days ago, saying Black Lives Matter,” Drayton said. “I do hope that it is a catalyst for real change.”

One change he hopes to see in the IP bar is more opportunities for black lawyers to prove themselves in the courtroom. “All lawyers, but black lawyers especially—make sure they’re playing an integral role in a meaningful case from the outset,” he said.

“When clients and law firm rainmakers invest in and bet on black IP attorneys, good things tend to happen,” Drayton said. They benefit “from a diversity of experiences in connection with among other things, witness preparation, formulating a trial story and approaches in relating to jurors.”

Drayton suggests that Milbank partner Errol Taylor, Perkins Coie partner Dennis Hopkins and Latham & Watkins partner Tara Elliott also would be included on any list of accomplished black patent attorneys.

### **Kasowitz’s Jonathan Waldrop**

Kasowitz Benson Torres partner Jonathan Waldrop credits equal parts luck, hard work and good timing for his success as a patent litigator. “I was lucky enough to land in

places where people saw something in me, and I was willing to receive it,” said Waldrop, who is the head of Kasowitz’s Silicon Valley office.

Early in his career, Kilpatrick Stockton & Townsend partner Mitchell Stockwell put Waldrop on a trial team in an important case. That was “pivotal,” Waldrop said. The technical knowledge of handling a trial, and the marketability of that knowledge—“that could never be taken from me.”

But that in itself wasn’t enough. Almost every lawyer goes through a crisis of confidence at some point—often around four to six years out, when demands of the job start ramping up. Waldrop was asking himself, “Do I really want to do this? Do I care? Do I matter?”

Feeling a personal connection to the enterprise was critical. “A lot of what keeps you in it is, I’m part of the team. That’s hugely important to me,” he said. “It doesn’t have to be said—though it’s better if it is said—‘you’re part of the team.’”

Firm chairman Marc Kasowitz has provided Waldrop with that connection. He counts Kasowitz as a friend. “He knows my wife. He knows my kids,” Waldrop said. “He’s supported me. He made me the leader of the Silicon Valley office. I’m on the executive committee of the firm.”

That support is a difference maker as Waldrop is now the one with responsibility for building and integrating trial teams. “It’s hard to do if you’re black, white, brown, green or purple,” he said. “For black lawyers, it’s even harder.”

Waldrop’s clients have included Google and LG Electronics. He said

he wouldn’t be where he is today without having had the opportunity to pitch them. But overall, the tech industry is “uneven” when it comes to openness to minority lawyers. Some companies “tend to go with what they know,” he said. “But if they don’t open the pool to see what’s out there, they don’t know what they’re missing.”

### **Changing the Conversation**

Turner notes that the underrepresentation of black attorneys is far from a new issue. Firms have been pledging to diversify the ranks of equity partners, and general counsel have been pledging to diversity trial teams, for many years.

“That’s why the change in the conversation over the last two weeks has been so significant,” he said. “There’s a willingness to discuss the root causes” of discrimination, “not just the symptoms.”

He believes that, with the pandemic as a backdrop, the message is getting through that “we are all one community that must watch out for each other and take active steps to keep each other safe,” Turner said. “I am now cautiously hopeful that the terrible tragedies of 2020 will bring about real and lasting change.”

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