Native Americans are invisible. From media to national policy to our own legal profession, the myth that manifest destiny completely obliterated Natives perpetuates. Yet, with a national population of 5.2 million, a majority of whom are under the age of 35, Native Americans (including American Indians, Alaska Natives, and Native Hawaiians) represent one of the fastest growing populations in the country.²

While diversity studies have attempted to track and better understand the barriers preventing more robust inclusion, the legal profession has never formally studied the experiences of Native attorneys. Other studies have included Native Americans, but often at such small numbers that they are relegated to a footnote, if included at all. Yet, while Native Americans represent just 1.6 percent of the total population, their inclusion within the legal profession is far from proportional. As of 2010, Natives comprised approximately only .2 percent of all attorneys.³

In 2015, in order to raise the visibility of Native American attorneys in the legal profession at large, the National Native American Bar Association (NNABA) conducted the first-of-its-kind study of Native American attorneys. With over 500 respondents, over 20 percent of the Native American attorneys in the United States were represented. The study indicates that Natives represent a unique blend of identity and motivations, and face unique barriers such that traditional pipeline and outreach strategies are not effective. At a disproportionate rate of nearly 20,000 attorneys, there is much work to be done.

At the forefront, the study revealed the complexity of simply identifying as “Indian”. Natives are the only group mentioned by race in the U.S. Constitution, and the only group to have an individual Title in the United States Code (Title 25). In addition to being a racial classification, the U.S. Supreme Court has declared that there is a political status to being Native American.⁴ Identifying as Native can be difficult if one is not formally enrolled as a citizen of the tribe, or if the tribe is not federally recognized. Similarly, “being Indian” is not simply a...
From the Chair

Greetings Colleagues,

Welcome to the second edition of The Innovator. On 7-9 April, the Commission on Racial and Ethnic Diversity in the Profession held its Spring Meeting in San Juan, Puerto Rico in conjunction with the ABA Public Contract Law Section and the ABA Section of State and Local Government Law which were also holding meetings there. Joining with these sections was part of a strategic initiative to re-launch the Commission’s Minority Counsel Program (MCP) by partnering with other ABA entities to reach a larger audience. While in San Juan, we participated in two CLE programs. On April 7th, I moderated a program called “Demystifying Implicit Bias” and on April 9th, the Commission sponsored an ethics program focused on proposed changes to Model Rule of Professional Responsibility 8.4, which deals with Attorney Misconduct.

The ethics CLE (planned and implemented by Commission members Akira Heshiki, Judge William Missouri, Phong Nguyen and Daiquiri Steele) was timely because a proposal now under consideration by the ABA Standing Committee on Ethics and Professional Responsibility explicitly makes it misconduct for a lawyer to “harass or discriminate on the basis of race, sex, religion, national origin, ethnicity, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.” The CLE on implicit bias was also timely because while the terms “implicit bias” and “unconscious bias” are frequently discussed; many lawyers lack an appreciation of how these concepts impact the legal profession.

As Kahlida Lloyd and Jenna Nand point out in their article (featured in this newsletter), Examining Privilege, Stereotypes, and Implicit Bias in the Workplace, “everyone has their own stereotypes and biases of others and that we, as a profession, can only progress when everyone honestly acknowledges their blind spots.” I learned a great deal while preparing to moderate the implicit bias panel. For example, I discovered some of my own biases when one of the panelists suggested that everyone involved in the program take an online implicit bias test. You can find and take one or more implicit bias tests free of charge at the website: https://implicit.harvard.edu/implicit/research/. While preparing, I was surprised to discover research showing that “managers in organizations that explicitly promote themselves as meritocracies have more gender biases.” Kathleen Nalty makes this point on page 25 of her book, Going All In On Diversity and Inclusion: The Law Firm Leader’s Playbook. Ms. Nalty goes on to explain that “[p]eople working in organizations with cultures that are purportedly ‘unbiased’ can only progress when everyone honestly acknowledges their blind spots.”

The Innovator is published twice a year by the Commission on Racial & Ethnic Diversity in the Profession, 321 North Clark Street, 17th Floor, Chicago, IL 60654-7598. The opinions expressed in the articles presented in The Innovator are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Commission on Racial & Ethnic Diversity in the Profession.

The Innovator is accepting, on an ongoing basis, submissions to be considered for publication. Articles should be from 500 to 1500 words and address items of interest to racial and ethnic minority lawyers and/or individuals and organizations seeking to promote racial and ethnic diversity and inclusion in the legal profession. Topics may encompass recent events, case decisions, diversity and inclusion news, emerging trends, or other general topics of interest. Please send submissions or inquiries to Daiquiri J. Steele at DAIQUIRI.STEELE@gmail.com.

Editor’s Note

The Commission’s goal in reviving its publication was to provide a mechanism for communicating information concerning racial & ethnic diversity in the legal profession, including the initiatives of other ABA entities and national bar associations. As the 30th anniversary of the Commission comes to a close, I want to express my sincere appreciation to all of the writers, contributors, and ABA staff members who assisted the Commission with making this possible.

—Daiquiri J. Steele, Editor, The Innovator
The Commission on Racial & Ethnic Diversity in the Profession Hosts Its Annual Minority Counsel Program in San Juan, Puerto Rico

Phong Nguyen

The ABA Commission on Racial and Ethnic Diversity in the Profession presented its signature Minority Counsel Program (MCP) in Puerto Rico on May 9, 2016, in conjunction with the ABA Sections of State & Local Government Law/Public Contract Law 2016 Spring Meeting. The program entitled “Pride and Prejudice in the Practice of Law” featured moderator Akira Heshiki, and panelists Jo Ann Engelhardt, Hon. William D. Missouri (Ret), and Daiquiri Steele, all of whom presented fact patterns to facilitate discussions on issues facing minority attorneys today. MCP was well attended and included ABA President Paulette Brown.

The first fact pattern entitled “Great Expectations” featured a Plaintiff’s attorney, representing a Hispanic woman, who noticed that the defense firm always propounded discovery requests regarding immigration status when the Plaintiff has a Hispanic sounding as name. Even though the client’s immigration status is legal, she does not want to testify at a deposition fearing that opposing counsel will ask about her family’s immigration status. The Plaintiff’s attorney objected to the request and is concerned that this practice is discriminatory and unethical. Potential ethics rules indicated include Rule 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer, Rule 2.1: Advisor, Rule 3.4: Fairness to Opposing Party and Counsel (a) and (d), Rule 1.16 Declining or Terminating Representation and Rule 4.4: Respect for Rights of Third Persons. The audience generally agreed that objections should be raised so that, if need be, the Judge can be made aware of these potentially unethical discovery requests that seems to be a pattern with this defense firm.

The second fact pattern entitled “The Invisible Man” featured in Asian associate working at a prestigious big law firm, who always arrives early and leaves late. The Asian associate is also known to work diligently including working through lunch in order to meet tight deadlines while his peers always go to lunch with partners. At times the Asian associate has overheard his peers and partners make racial jokes, even imitating a “Chinese” accent. This is done in the open and when the Asian associate is present but nobody is ever disciplined and he does not complain. Despite the Asian associate’s work ethic and is a model worker be, he was surprised that he was not promoted to the partnership and requests explanation for the management. The explanation provided include he did not have the proper social skills to go and develop clients because he was so quiet and never expressed a desire to become partners, and finally due to the economy, the number of associates offered partnership was limited due to having so many qualified candidates in the pool. Potential ethics rule implicated include Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers, Rule 8.3 Reporting Professional Misconduct and Rule 8.4 Misconduct. An audience member noted that the associate was not in a position of power so that he could not raise these issues on his own but that because management (partners) was involved that he had a colorable claim of discrimination.

The third fact pattern entitled “Catch 22” describes Appleby Attorney who, after jury selection, but before the trial begins, searches the Facebook pages of all of the selected jurors. Most have pages that are available to the public, and Appleby does not send friend requests to any of them. Appleby sees that one of the pages of Juror Hungry Joe, has several derogatory comments on it about inter-racial couples including rants about how interracial marriage should be outlawed,
and slurs describing bi racial children. Joe has also posted most recently that he lied in response to some questions asked during voir dire. Defendants an inter-racial married couple, and due to Doc’s light complexion it is not obvious that he is African-American. Appleby is aware of Doc’s race and believes that if Hungry Joe learns of Doc’s race, she will have a better chance of winning the case on behalf of her client. Appleby proceeds to ask questions calculated to bring out Doc’s ethnicity to get Hungry Joe on her side. The ethics rules indicated include Rule 3.3: Candor Toward the Tribunal, Rule 3.4: Fairness to Opposing Party and Counsel, and Rule 3.5: Impartiality and Decorum of the Tribunal. The audience generally agreed that Appleby has a duty of candor and should’ve reported Hungry Joe’s admission that he lied during voir dire to the Judge. The fourth fact pattern entitled “Pride and Prejudice” features Partner Bingley who prides himself on being an approachable and fair and is especially known for mentoring many of the young associates at his firm, Bingley Collins and Darcy. Most recently Bingley invited one of his young new associates, Elizabeth Bennet to join him on a trip out of town to assist him in taking depositions for a very high profile case. Bingley and Elizabeth spend many hours together and the deposition is conducted without incident. Bingley invites Elizabeth to join him for dinner to debrief about the case and talk about her career. Even though she is tired, Elizabeth feels that she should not turn down her partner’s request and agrees to join him a few hours later at the hotel restaurant. At dinner, Bingley notes that Elizabeth shows great promise and a person who considers himself to be a feminist she advises her that as a woman she should feel empowered and should consider showing off “her assets” if she wants to get ahead in the male dominated profession. The ethics rule implicated include Rule 8.4: Misconduct. The audience generally agreed that the fact pattern as written did not provide conclusive evidence that misconduct had occurred because Bingley’s words could have been taken out of context. ❗

Phong Nguyen is a partner in the Washington, D.C. office of Baker Hostetler and a Commissioner on the ABA Commission on Racial & Ethnic Diversity in the Profession.

The Pursuit of Inclusion | CONTINUED FROM PAGE 1

matter of race, but comprises tribal and cultural involvement, ranging across 566 differently situated tribal nations. The social stigma and discrimination that may flow from holding oneself out to be Indian can cause some to not identify themselves as Indians in professional settings. Over 60 percent of respondents reported actively thinking about their decision to identify as Native within their personal and professional lives.

Notably, Natives decide to attend law school for significantly different reasons than the general lawyer population. The Law School Survey of Student Engagement generally identifies the desire to have a challenging and rewarding career and financial security as two primary reasons to attend law school. In contrast, Native respondents were more likely to report that they wanted to give back to their tribe, fight for justice for Native Americans, and work for the betterment of Indian people than they were to report wanting a rewarding career or seeking financial security.

Accordingly, a majority of respondents reported focusing their practice on Indian law. However, the research also revealed some unique pressures for Native Americans to practice Indian law, both from within the Native American community and from non-Natives. For respondents practicing in firms with multiple practice areas, several reported that even when they expressed a desire to practice in other non-Indian law areas, their employers would pressure them to contribute to the Indian law practice.

Some of the most disturbing findings of the survey are the significant percentages of Native American attorneys experiencing demeaning comments, harassment, and discrimination. Although the overall satisfaction rate was generally high, 40 percent of respondents reported experiencing demeaning comments or other types of harassment based on their race, ethnicity, and/or tribal affiliation. Similarly, about 34 percent reported experiencing discrimination, and 30 percent reported that they had been treated differently from their peers because of their race, ethnicity, and/or tribal affiliation. These numbers are intolerably high.

Biased perceptions of Native Americans often result in a lack of progress for Native American attorneys, and an overall lack of understanding about Native American issues and Indian law gives way to feelings of isolation and a lack of inclusion. Respondents reported that training and better awareness of Indian issues would have positive impacts on their careers. Special and systemic efforts need to be made to better understand the experiences of Native attorneys and to make the legal profession as open and inclusive as possible. The American Bar Association has made some steps, including recognizing and supporting the development of tribal judiciaries, and encouraging the inclusion of Indian law as a subject on the bar exam.

Overall, the findings of this study shed light on an entire set of attorneys who have systemically been excluded from full participation in the legal profession. The causes stem from barriers in the pipeline to ineffective recruitment and retention efforts. Native Ameri-
cans are behind other underrepresented groups in terms of inclusion, retention, and representation. It is clear that more—and different—steps need to be taken to improve the pipeline and to help Native American attorneys to succeed in the legal profession.

Real changes are needed both from an institutional perspective and on an individualized basis. Our profession must realize that Native American attorneys are an important part of the legal profession and are often at the frontlines of pressing legal issues in their communities from protecting tribal sovereignty, to confronting higher than normal crime rates, and developing innovative economic development projects. The research reveals a young population of Native American attorneys which provides hope for the future. Forty years from now, hopefully, a different picture will emerge with greater numbers of Native American attorneys not only surviving but thriving across all practice settings.

Lauren van Schilfgaarde (Cochiti Pueblo) is the Tribal Law Specialist for the Tribal Law and Policy Institute, a Native American non-profit aimed towards promoting the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples, based in Los Angeles, CA. Lauren currently serves on the board of the National Native American Bar Association, and on the American Bar Association’s Center for Racial and Ethnic Justice and Tribal Court’s Council. Lauren attended UCLA School of Law.

Small in Number, Not in Influence, Diversity and the Bar, Minority Corporate Counsel Ass’n (MCCA) (“the American Bar Association ascertained that of the 1 million lawyers in the United States, only 3.9 percent are African American, 3.3 percent are Latino, 3.9 percent are Asian American, while just 0.3 percent are American Indian”) (citation omitted). See also Am. Bar Ass’n, Lawyer Demographics 2013, available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2013.authcheckdam.pdf.

1 Morton v. Mancari, 417 U.S. 535 (1974) (holding that Native American status was not a purely racial matter, but was derived from membership in a tribe recognized by the federal government).


3 American Bar Association, Recommendation, Report. No. 117 (Feb. 2016) (urging jurisdictions, when considering whether to adopt the Uniform Bar Examination, to consider the impact on minority applicant, and to consider including subjects not included on the exam, particularly Indian law).
Forum on Construction Law Strives to Increase Diversity and Inclusion

DAVID J. THEISING

The ABA Forum on Construction Law is the largest organization of construction lawyers in the world, with well over 6,000 members. However, the Forum ranks only 24th out of 32 in size among all ABA Sections, Forums, and Divisions, with barely a tenth of the members of a large Section like Litigation. Size notwithstanding, the Forum strongly supports the full and equal participation of women and minority construction lawyers, construction lawyers with disabilities, and construction lawyers from the LGBT community in its membership, its leadership, and in all of its programs, publications, and other initiatives.

Last summer, the chair of the ABA Forum on Construction Law, Harper Heckman, appointed an ad hoc committee to study the demographics of Forum membership and meeting attendance in order to evaluate whether the Forum is fulfilling its core missions, among them “rais[ing] awareness and understanding among our members and others of the vital role diversity plays in the construction industry, both nationally and globally, [by] enhancing participation, inclusion and leadership opportunities for attorneys of diverse backgrounds in Forum programs, publications and other initiatives.”

The findings of the ad hoc committee showed that the Forum’s membership is slightly less diverse in terms of gender, race, and ethnicity than the larger ABA. Although 35% of all lawyers are women, only about 20% of Forum members are women. And while 4% of all ABA members are Hispanic, 5% Black/African American, and 3% Asian, over 90% of Forum members are white, with only 3.3% Hispanic, 2.5% Black/African American, 2.3% Asian, 5% Native American, and 1.5% other races or ethnicities.

According to the most recent data from the U.S. Bureau of Labor Statistics, over 40% of all those employed in the construction industry in the U.S. are Hispanic/Latino, Black/African American, or Asian. Yet, if Forum membership is any indication, less that 10% of the lawyers who serve that industry are similarly Black/African American, Asian, or Hispanic/Latino. This realization has spurred the Forum to aggressively explore and pursue initiatives to increase the membership and participation of women and minority construction lawyers, construction lawyers with disabilities, and construction lawyers from the LGBT community in the Forum, and to redouble its efforts in advocating for and advancing diverse lawyers to positions of true leadership in the Forum and the larger ABA.

Diversity in Forum Leadership
The Forum is governed by a membership-elected 15-member Governing Committee, five of whose current members are of diverse backgrounds. The Forum has 14 separate Divisions which focus on different aspects of the construction industry, each of which is chaired by an individual appointed by the Governing Committee. Chairing a Division is widely viewed as a stepping stone for election to the Governing Committee, and this year 9 of the 14 chairs of those Divisions are diverse individuals appointed by the Governing Committee.

The Forum Diversity Committee
Consistent with the core mission of the Forum to promote diversity in the Forum and the profession at large, the Forum has a standing Committee on Diversity. That committee, comprised of approximately 15 at-large members appointed by the chair of the Forum plus liaisons appointed by the chairs of each of the Forum’s 14 Divisions, pursues a number of Diversity initiatives. Many of those initiatives are centered around the three national meetings held by the Forum every year (Fall, Midwinter, and Annual).

Diversity Scholarships to National Meetings of the Forum
One of the staples of the Diversity Committee’s diversity outreach efforts is the Diversity Scholarship Program. The Diversity Committee awards up to six Diversity Scholarships for the cost of registration to each of the three national meetings of the Forum every year to women and minority construction lawyers, construction lawyers with disabilities, and construction lawyers from the LGBT community. The availability of these scholarships is widely announced to state, local, and diverse bar associations in the area of the country where the meeting will be held, with the aim of introducing diverse local construction lawyers to the Forum and its programs. Similar Diversity Scholarships for the cost of registration are also offered to the Forum’s Trial Academy held in Washington, D.C. every other year.

The Diversity Fellowship Program
The Forum’s signature diversity outreach initiative is the Diversity Fellowship Program. The Forum awards up to 6 three-year Diversity Fellowships each Spring to diverse construction lawyers, with the goal of encouraging and facilitating active, long-term participation in the Forum by diverse construction
lawyers, many of whom may be unaware of or unfamiliar with the Forum. Forum Diversity Fellows receive a waiver of all registration fees for the Forum’s three national meetings each year, reimbursement of reasonable travel and accommodation expenses associated with attending the Forum’s Annual meeting each spring, a waiver of Forum membership dues, and payment of ABA membership dues on a graduated basis. Additionally, Fellows are afforded the opportunity to serve on the steering committee of one of the Forum’s 14 Divisions.

The Fellowship has developed into a prestigious award among diverse construction lawyers, and is highly competitive, with only about 1 in 10 applicants being awarded a Fellowship. Fellows are groomed and identified for leadership within the Forum. Since 2010, over 75% of Fellows have remained active in the Forum. Several former Diversity Fellows are currently chairs of Forum Divisions, members of Forum standing committees, program co-chairs, program coordinators, speakers, authors, and otherwise actively involved in the Forum.

The Diversity Breakfast Program
Another responsibility of the Forum Diversity Committee is hosting the Diversity Breakfast held at each of the three national meetings of the Forum. In the past, the Diversity Committee has presented numerous leading national speakers at its Diversity Breakfast, including Kat Cole, President of Cinnabon, Inc. in Atlanta, whose inspiring story charted her journey from retail clerk to Hooters waitress to leader of global brands, Judge Bernice B. Donald of the Sixth Circuit Court of Appeals, past secretary of the ABA and the first African-American woman to serve as an officer in the history of the ABA and the first African-American president of the American Bar Foundation, and Fred Gray, a civil rights lawyer who worked alongside Martin Luther King, Jr. on voting rights and school integration, defended Rosa Parks after her refusal to give up her seat on a Montgomery City bus, sued the federal government on behalf of the men exploited by the Tuskegee, Alabama Syphilis experiment, and was elected the first African-American president of the Alabama Bar Association. During the present bar year, the Diversity Breakfast Speakers have included Kate Bergin, Curator and Speaker Coach for TEDx Manhattan Beach, California at the Fall meeting, who demonstrated how to utilize the principles of a TED-style talk to create more effective presentations in the courtroom and in the boardroom, and Carla Christopherson, former co-owner of the WNBA Los Angeles Sparks and current Executive Vice President and General Counsel of the global design, construction, and management firm AECOM in Los Angeles, who spoke about actively supporting diversity while building teams in a variety of situations. At the recent Annual meeting, the Diversity Committee was most honored to present Paulette Brown, the current President of the ABA and first woman of color to ever be elected President of the ABA, who led a dynamic and thought-provoking interactive discussion on implicit bias in the legal system.

Internal Mentoring of Diverse Lawyers
The Diversity Committee also has three subcommittees devoted to identifying, mentoring, and actively promoting diverse members of the Forum for speaking and writing opportunities in the Forum. Each of those subcommittees is responsible for creating and maintaining a database of diverse construction lawyers within the Forum as a resource for assisting program co-chairs in filling speaker roles at future national meetings of the Forum, identifying potential authors for future Forum publications, including books published by the Forum, the Forum’s periodicals, The Construction Lawyer and Under Construction, and Division newsletters, and producing programing and speakers for long distance learning programs.

External Outreach of Diversity Committee
Finally, the Diversity Committee has a subcommittee responsible for identifying opportunities with other diverse national organizations for membership, programs, and publications opportunities. In an effort to raise the profile of the Forum by making other organizations aware of the Forum’s diversity activities and commitment to diversity, the Forum Diversity Committee has appointed liaisons to several other organizations, both within the larger ABA and outside of the ABA. This year, for the first time, the Forum has appointed liaisons to the ABA Commission on Women in the Profession, the ABA Commission on Racial & Ethnic Diversity in the Profession, the ABA Commission on Hispanic Legal Rights and Responsibilities, the ABA Commission on Sexual Orientation and Gender Identity, the ABA Commission on Disability Rights, and the National LGBT Bar Association. These liaisons participate in the meetings, monthly conference calls, and work of the organizations to which they are liaisons, and report back to the Diversity Committee with ideas and initiatives from those other organizations that can be discussed and implemented in the Forum. The Forum is actively looking for other diverse national organizations and bar associations with which to liaise in advancing the goal of diversity and inclusion in the Forum.

David J. Theising is Chair of the Diversity Committee of the ABA Forum on Construction Law, and practices in the Indianapolis office of the law firm of Harrison & Moberly, LLP.
The Real Property, Trust, and Estate ("RPTE") Law Section has adopted a multi-faceted and pro-active approach to diversity. While racial and ethnic diversity is at the forefront of our efforts, we also focus on promoting diversity with regard to gender, age, LGBT status, (dis)ability, economic background, and practice setting. We have been successful with a three-pronged approach: 1) outreach to diverse communities, 2) creation of a supportive pipeline for new, diverse members entering the Section, and 3) maintenance of concrete pathways to continued involvement and leadership after the critical new-member period.

Diverse Community Outreach
Our Community Outreach and Membership Committees are key in creating points of contact with diverse communities. The overall purpose of the Community Outreach Program is to provide training to diverse attorneys in RPTE law because some law schools do not prepare students adequately to practice RPTE law in the real world. The Community Outreach Program co-sponsors events with affinity bar associations and focuses on their membership demographics. This advances the Section’s ABA Goal III efforts, builds lasting mutually-beneficial relationships with affinity bar associations, and fosters attendance by RPTE’s members at these events.

The members of the Membership Committee go into the field to law schools and affinity bar associations to explain the benefits of membership and the opportunities the RPTE Section creates. Both committees also undertake projects designed to address the needs of our members as identified by the members themselves.

One approach we have found particularly successful is to create a specific deliverable and then focus on disseminating it in localized, diverse communities. The Section’s Community Outreach Committee pioneered an informative series of videos on basic RPTE skills. Our Section also partnered with the ABA Commission on Hispanic Legal Rights & Responsibilities to create a video geared specifically toward Hispanic home buyers. We have used these videos as centerpieces for events within diverse communities, co-sponsored by local affinity bar associations. We hope to roll out more programs using these videos in cities across the nation. Because our members identified free CLE as one of their primary needs, when appropriate, these events have been approved for CLE credit.

In this way, we support not only racial and ethnic diversity, but also economic and practice-setting diversity. Many attorneys, particularly small and solo practitioners, do not have the same budgets for CLE or national travel that large-firm practitioners do. These local programs allow those attorneys ready access to useful, educational content.

Supportive Pipeline: Fellows Program
We use these points of contact established by the Membership and Community Outreach Committees to draw diverse attorneys into participating actively in the Section. One of the most productive means for doing so has been the Section’s Fellows Program. The RPTE Section established this program many years ago to welcome young attorneys into the Section and groom them for future leadership roles. Because of the Section’s commitment to diversity, at least half of each class of fellows selected is from diverse backgrounds. The Fellows Program demystifies the structure and workings of the Section, provides mentorship within the Section to young attorneys, and assigns the Fellows to concrete tasks and projects within the Section to get them involved. It also provides significant financial support by paying travel costs for attending the Section’s meetings, as part of the Section’s commitment to economic diversity. The Fellows Program has been very well received and has produced many of the Section’s current leaders. In the words of one current fellow, Art Steele:

“The Fellows Program has been a great benefit for my practice. As a young lawyer and a recent solo practitioner, the Fellows Program has given me an opportunity get involved with the RPTE Section on a deeper level. It allows me to connect with more experienced attorneys and leaders in the field for guidance and advice. In addition, the Fellows Program allows me to develop leadership skills by involving me in the substantive work of various leadership committees. The
two-year stipend the fellowship provides enables me to attend meetings that would otherwise be cost-prohibitive because of my small practice.”

Concrete Pathways: Substantive Diversity Projects, ACTEC Young Leaders Program & Diverse Speaker Priority

The RPTE Section also empowers its diverse members to chart and build their own course. As a result, a number of past Fellows are working on diversity and inclusion projects with the full support of the Section, including projects undertaken by the Section’s Diversity Committee.

In order to ensure retention and participation of diverse Fellows after the fellowship period, as well as assist their ascension within the profession and the Section, the Section has collaborated with another leading organization in our practice area, The American College of Trusts and Estates Counsel (ACTEC). Together, the Section and ACTEC established the ACTEC Young Leaders Program. This program provides ongoing opportunities to engage in projects undertaken by both the Section and ACTEC, contact/networking with local bar associations, and continued financial support for the participants.

Last but certainly not least, the RPTE Section has a policy of prioritizing proposals for events which feature diverse speakers. Members are aware that their CLE proposals are unlikely to be adopted unless they include diverse speakers. In order to assist those planning events and educational programs in finding diverse speakers on relevant topics, the Section launched a diverse speaker database a number of years ago. Members register themselves in the database and self-report their diversity factors as well as their areas of expertise. The concept was so successful that the greater ABA adopted the Section’s initiative and continues it presently. Please take a moment to register yourself or update your registration here. The database will be more important than ever as the Diversity & Inclusion 360 Initiative, especially the Diversity & Inclusion Guidelines and Implementation Working Group, continues to gain traction. Moreover, in an environment where many sections are having difficulty retaining and attracting members, ensuring that panelists reflect the diversity within the legal profession and resonate with attendees is key to proving any section’s value proposition to current and prospective members.

Conclusion

The RPTE Section has experienced success with a pro-active and multi-faceted diversity strategy which relies on the Section initiating outreach to diverse communities, creating a pipeline of specific opportunities for diverse prospective members to get involved and become section leaders, and maintaining pathways to that involvement, both substantively and financially for a significant time period. The RPTE Section looks forward to continuing and fine-tuning this approach, while being open to other suggestions and approaches. Diversity work is never done.

Laura Joy Lattman is the principal of The Lattman Law Firm, L.L.C. in Manhattan. Her practice focuses on fiduciary litigation and controversy resolution. She is an active member of the RPTE Section, a former RPTE fellow, a current ACTEC Young Leader, Chair of RPTE Solo and Small Firm Support Committee, liaison from the RPTE Section to the GP Solo Division, and Vice-Chair of the RPTE Young Lawyers Network.

Tiffany R. Harper is Associate Counsel - Manager at Grant Thornton LLP in Chicago, specializing in transactional, human resources, and bankruptcy matters. She is also the co-founder of a diversity blog and enterprise, Uncolorblind, LLC, and co-founder of a pipeline program for diverse law students, DAPP (Diverse Attorney Pipeline Program). She is an active member of the RPTE Section, a former RPTE fellow, and a current member of the RPTE Section Diversity and Inclusion Committee.

Arnette (“Art”) Ayelay Steele is the founder of the Law Offices of Arnette Steele, PLLC. She is a seasoned tax lawyer with a diverse background. Ms. Steele founded the firm because she is committed to providing access to affordable, high-quality legal services to individuals, families and small businesses.
Extending Our Reach
Hispanic National Bar Association Initiatives

ROBERT MALDONADO

At no time in our history has the HNBA had such strong influence over institutions within our government, legal system and businesses. As we look ahead, we stand ready to surge to new heights by expanding our reach. The HNBA continues to build on our relationships with allies who support our mission. This past year, the HNBA has extended our reach by incorporating the growing importance of technology into our pipeline initiatives and into our programming. The Latino population is the fastest growing population in the United States, and the HNBA stands in an enviable position to help and guide that growing population to successful lives and careers.

2015-2016 initiatives are exemplary of the HNBA’s commitment to the interest of Hispanic legal professionals in the United States and its territories as well as our commitment to the 54+ million people of Hispanic heritage living in the United States.

Our Corporate Counsel Conference in Las Vegas this past March was themed “Embracing Technology,” where preference was given to CLE proposals with a technology focus, including sessions on the “state of cyber security” or on the most effective smartphone and tablet applications that attorneys can use. We also sounded the alarm on the underrepresentation of Latinos in STEM education and in job industries related to STEM fields. Only 16 percent of Latino students who began college as STEM majors completed a STEM degree. And although STEM jobs are one of the fastest growing sectors, less than 2 percent of the STEM workforce is Hispanic. When we wrote about this very important issue to the largest daily newspaper in Las Vegas, they eagerly published our column, recognizing the importance of STEM education in a city where 44% of the student population is Latino.

The HNBA is actively involved in the federal judicial nomination process. The HNBA regularly conducts a rigorous judicial due diligence process which includes reference interviews, a review of the candidate’s scholarship/legal writings, and a thorough Internet search. Careful consideration is given to each candidate’s background and qualifications in the context of the requirements.
of the position he or she seeks, as well as the requirements of the HNBA’s Policies and Procedures Governing Judicial Endorsements. Current endorsees awaiting confirmation include: D.C. Circuit Court Chief Judge Merrick Garland to the U.S. Supreme Court; Former Florida State Judge Mary Barzee Flores to the Southern District of Florida; U.S. Magistrate Judge Irma Ramirez to the Northern District of Texas; and Denver litigator Regina Rodriguez to the District Court of Colorado.

The HNBA’s commitment to the Latino business community was the focus when launching the Su Negocio Program, in partnership with Mass-Mutual Financial. Through motivation, education and networking, the mission of “Su Negocio” is to help empower Latino business owners in the community by offering resources to ensure a successful future for latino businesses. The nationwide events feature a keynote speaker and educational workshops for both start-up and growth businesses, along with a networking reception.

In January 2016, as a response to the financial and humanitarian crisis in Puerto Rico, affecting its 3.5 million residents and fellow U.S. citizens, I announced the creation of a Task Force on Puerto Rico. The mission of the Task Force is to evaluate and understand the current dire financial situation of Puerto Rico; conduct legal analysis of the potential solutions to address said situation; advise the President of the Association and the Executive Committee or Board of Governors on the status of steps being taken to address Puerto Rico’s financial situation; serve as liaison with other Latino group’s efforts and initiatives on this issue; and prepare and propose recommendations to the President of the Association for presentation to the White House and Congress to address this situation.

Many of the HNBA’s recent successes have been about making the voices of our community heard loud and clear. It means speaking with tech leaders in Silicon Valley, publishing opinion columns in influential newspapers and news sites, and even blogging on the Huffington Post. This past year we’ve issued multiple statements condemning state laws discriminating against LGBT Americans, filed amicus briefs on three of the most important cases before the Supreme Court, and continued to put pressure on the Senate, through direct advocacy and media engagement, so that the remaining vacant seats on our federal judiciary - from the Supreme Court on down - are not only filled, but that they are filled by people who will defend the rights of our community.

Robert T. Maldonado
HNBA National President

Robert T. Maldonado is the National President of the Hispanic National Bar Association, and is an equity partner of Cooper & Dunham LLP, an intellectual property boutique firm in New York City that was founded in 1887. Robert serves as a Commissioner on the ABA Commission of Hispanic Legal Rights and Responsibilities. In 2016, Robert was recognized as one of the 25 most influential Latino lawyers in the United States by Latino Leaders magazine, and is a fellow of American Bar Foundation.

Alexander Award Call for Nominations

The ABA Council for Racial and Ethnic Diversity in the Educational Pipeline is accepting nominations for the Ninth Annual Raymond Pace and Sadie Tanner Mossell Alexander Award for Excellence in Pipeline Diversity.

The Award will be presented at the ABA Midyear Meeting on Friday, February 3, 2017.

The ABA Council for Racial and Ethnic Diversity in the Educational Pipeline presents the Alexander Award to recognize exemplary leadership in pipeline work by an individual or organization. The award honors those demonstrating success working along the educational pipeline in a collaborative approach involving more than one segment of the continuum from preschool to high school to college to law school to the practice.

http://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives/alexander_award.html

THE SUBMISSION DEADLINE IS SEPTEMBER 2, 2016.
Examining Privilege, Stereotypes, and Implicit Bias in the Workplace

KAHLIDA LLOYD AND JENNA NAND

The legal profession is one of a number of prestigious fields in America where good intentions from management are met with persistently dismal statistics on diversity in the workplace. According to the ABA Commission on Women, as recently as 2014, women are still only 34% of active practitioners in the legal profession. The inequities are even starker in private practice, where women were only 17% of equity partners in law firms. (A Current Glance at Women in the Law, July 2014.) For minorities (including women of color), these numbers tell an even more depressing story of attrition: ethnic minorities were 22% of associates in law firms indexed by the NALP directory, and only 7.52% of partners at law firms. (Women and Minorities at Law Firms by Race and Ethnicity, New Findings for 2015, Jan. 2016.) LGBT lawyers fare even worse for representation in law firms, with only 2.34% openly LGBT lawyers identified in private practice by NALP for 2015. (LGBT Representation Among Lawyers in 2015, Dec. 2015.) Attorneys with disabilities are so marginalized that it is difficult to find employment statistics that address their demographic separately.

The leadership in the legal profession acknowledges that there is a gap between the diversity and inclusion rhetoric and the realities of an overwhelmingly straight, white, non-disabled male workforce of attorneys. The national dialogue of diversity and inclusion has identified certain mechanisms of prejudice that persist to create discriminatory work environments. Perpetuating stereotypes in the workplace, asserting privilege, acting on implicit biases, and advocating for “diversity” without a tandem effort for encouraging inclusion can lead to discrimination.

It is a deep irony that lawyers often counsel their clients on how to avoid creating a discriminatory or impermissibly hostile work environment, yet lawyers are unable to ameliorate de facto discriminatory practices in our own profession and the nation at large. Lawyers have a civic duty to model best practices for diversity and inclusion within our own profession and as an example to the rest of the nation.

This article summarizes the discussion that took place at a panel hosted at the ABA Midyear Meeting in San Diego, California on February 5, 2016. Dozens of attorneys from various practice areas and localities were present, including notable champions of the need for diversity. As such, this article seeks to amplify awareness for those who are not yet cognizant of the mechanisms of discrimination in their respective workplaces or who are at a loss for how to remedy these disparities.

How to Undermine Privilege in the Workplace

Most of the participants in both the panel and the audience were sophisticated and well-versed on the issues related to diversity, so the roundtable discussions were quickly focused on the fluidity of privilege and in-group identification versus the “othering” of outliers. To remedy this tendency to subconsciously rely on a privilege granted by a given situation, the discussion participants encouraged each other to “know your differences and others’ differences in the room.”

The default “privilege” in the legal profession seemingly belongs to those who fall into the majority demographic: heterosexual, non-disabled white males. However, the roundtable discussion participants explored scenarios from their everyday lives where they might unknowingly enjoy a privilege (e.g. a Caucasian person may subconsciously assert privilege over a person of color or a heterosexual person may benefit from a privilege over a LGBT person).

Once confronting the challenging and, at times, uncomfortable reality that each person may enjoy a privilege in any given social context, the discussion groups brainstormed various strategies to avoid “othering” someone different from you, who doesn’t share your privilege. The first step identified was acknowledging whether one falls into a privileged category. Once a privileged status has been identified, the groups tried to determine strategies to mitigate or even nullify the impact of a privilege on a non-privileged individual. The groups universally agreed that asserting a privilege, whether deliberately or subconsciously, to gain power is not conductive to a healthy workplace environment. Discussions also led to privilege in educational institutions. In one roundtable discussion, a participant shared that, as a graduate of a Historically Black College and University (HBCU), she knew of difficulties in gaining interviews with employers only hiring from Ivy League and other top tier law schools. In addition, when an employer does hire a graduate from a historically disadvantaged demographic as a “token,” pressure is placed on that one individual to represent their entire affinity group, a phenomenon defined in Supreme Court decisions on affirmative action as “role-modeling.” When legal employers continue the aforementioned recruiting practices, they tend to choose candidates who perpetuate the demographic makeup of their workplaces, thus ensuring a continuation of white, straight non-disabled male privilege. Ultimately, the groups decided that the most effective way to undermine privilege is to put one’s self in a position of power and wield one’s influence to affect change.

Stereotypes and Implicit Bias

According to Webster Dictionary, “stereotype” is a standard concept or image.
with special meaning held in common by members of a group. The roundtable discussions explored what being stereotyped meant to them. One statement that stood out from the various discussions was the assertion that people underestimate their power, and that one should not allow a stereotype to prevent one’s use of power. Implicit bias is a more insidious form of stereotyping that can be difficult to confront and eradicate because the self-examination required to eliminate biases is often an uncomfortable exercise for anyone to engage in.

Although stereotypes and implicit biases are universally held to be negative mechanisms of discrimination, the discussions centered on the reality that everyone has their own stereotypes and biases of others and that we, as a profession, can only progress when everyone honestly acknowledges their blind spots. To combat the pernicious awareness that one is subject to stereotypes and implicit biases, the groups discussed strategies to immunize themselves to stereotypes and biases to which they may be subjected. The participants encouraged young attorneys from historically disadvantaged groups to remember that their employer hired them because they are competent. Young lawyers who were likely to encounter stereotypes in the legal field were encouraged to “know your capacity and speak with authority.”

One of the most commonly identified barriers imposed by implicit bias that was discussed during the panel was the tendencies of employers to dole out preferred work or important based on commonalities in culture, race, gender, or national origin. A tactic discussed to combat stereotypes in the workplace would be to engage in a dialogue with one’s supervisor. The panel offered some examples of effective engagement to prevent stereotypes from adversely affecting one’s career. The panelists encouraged young lawyers to engage their supervisors and ask whether a preconceived notion might be affecting their workplace standing. If the employer admitted it, panelists encouraged young attorneys to request that supervisor or mentor publicize their support and help defeat that stereotype, especially when the stereotyped individual is not in the room or at the table. The panelists advised the audience to engage their supervisors and request additional assignments to combat a stereotype of incompetence by producing superior work product. Unchallenged stereotypes and implicit biases in the workplace are not healthy and can cause workplace tension that ultimately pushes women, minorities, and other historically disadvantaged groups to leave the profession entirely.

**Diversity versus Inclusivity**

A quote shared during the roundtable discussions captured the concepts of diversity versus inclusivity very well, “Diversity is being invited to the party; inclusion is being asked to dance.” Diversity recognizes the differences among people: race, gender, age, sexual orientation, disabilities, marital status, and family responsibilities. Inclusion is the action of welcoming diversity and creating an environment where different/diverse people can succeed. Diversity and inclusivity together prompt employees and decision-makers to embrace all differences in a workplace. The discussion groups concurred that having a diverse workforce is not enough, there must be implementation of inclusion. If one wants change within the workplace, one cannot promote diversity and assume that inclusivity will somehow organically occur.

Not only should an employment roster have a diverse list of individuals, one’s workplace must be intentional in creating a welcoming and supportive environment for diverse individuals to succeed. When a workplace is coupled with diversity and inclusion, employers will begin to attract and retain more diverse employees. Inclusion places the onus on those in power to take action to facilitate diverse mentorships and support.

It is important that the ABA be at the forefront of undermining privilege, stereotypes and implicit bias to create diversity and inclusion in the legal community. The ABA, as a leader in the legal field, must take a hard look at itself and continue to make changes to close the gap between rhetoric and reality.

Kahlida Nicole Lloyd is a board member of the Greater Washington Area Chapter, Women’s Lawyers Division of the National Bar Association, Washington Bar Association and is a Government, Military, and Public Sector ABA YLD Scholar. She can be reached at kablidalloyd@gmail.com.

Jenna Nand is a start up lawyer at Fortuna Law PLLC in Seattle. She counsels start ups, nonprofits, and mid-sized companies on general business matters. In addition to her law practice, Jenna is a ABA Business Law Fellow and an associate editor for “The Young Lawyer” magazine.

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**From the Chair | CONTINUED FROM PAGE 2**

and fair don’t worry about how their actions are perceived and succumb to bias more easily” (p. 25).

Based on my own life experiences, I was less surprised by research documenting the extent to which “people in underrepresented groups themselves make biased judgments and decisions based on stereotypes about their own groups” (Nalty, p. 28). The legal profession can benefit tremendously by focusing attention on the study of implicit bias and how to overcome it. I’m optimistic that this Commission will do more, through The Innovator and through other means, to cast a spotlight on approaches for overcoming unconscious bias in order to promote diversity and inclusion in the profession.

Will A. Gunn
Chairman
The 2017 Spirit of Excellence Awards

will be held in

Miami, FL on Saturday, February 4

during the 2017 ABA Midyear Meeting at the

JW Marriott Marquis
255 Biscayne Blvd Way
Miami, FL 33131

The Spirit of Excellence Awards celebrates the accomplishments of lawyers who have worked to promote a more diverse and inclusive legal profession.
Commissioner Spotlight

Meet the Commissioners! Be sure to check out the “Commissioner Spotlight” section in each issue of The Innovator and read about the ABA members who service as Commissioners on the ABA Commission on Racial and Ethnic Diversity in the Profession.

Hon. Karen Wells Roby

**HOW LONG HAVE YOU BEEN ON THE COMMISSION?**
Two years.

**IN WHAT OTHER ABA ENTITIES ARE YOU INVOLVED?**
I am Co-Chair of the Diversity and Inclusion Committee for the Litigation Section. I am also responsible for the Diverse Leaders Academy. I have also served as Co-Chair of the Litigation Section’s ADR Committee.

**WHAT IS ONE OF YOUR FAVORITE THINGS ABOUT SERVING ON THE COMMISSION?**
I especially enjoy meeting other people who work in the field of diversity.

**WHAT ADVICE WOULD YOU GIVE TO A FIRM/ORGANIZATION LOOKING TO INCREASE DIVERSITY AND INCLUSION AMONG ITS ATTORNEYS?**
My advice to firms/organizations looking to increase diversity is to expand the geographical search for diverse lawyers such as minority bar associations, participate in diversity conferences where diverse attorneys will be and remove the ridged bar of requiring law review as a requirement because many strong diverse students may not meet that artificial bar.

**WHAT IS YOUR DREAM VACATION?**
My dream vacation is a trip to Lana’i in Hawaii—a beautiful island.

**WHAT IS YOUR FAVORITE MIDNIGHT SNACK?**
I don’t eat at midnight.

**WHAT IS ONE OF YOUR HIDDEN TALENTS?**
Actually, I enjoy singing. I am an alto and grew up singing in my churches choir. I also enjoy cooking and preparing raw food meals. I have a love for studying naturopathic health and nutrition.

Palmer Gene Vance

**HOW LONG HAVE YOU BEEN ON THE COMMISSION?**
This is my first year on the Commission.

**IN WHAT OTHER ABA ENTITIES ARE YOU INVOLVED?**
I am very active in the Section of Litigation where I serve as Revenue Officer. I will become Vice-Chair of the Section in August 2016 and will eventually serve as Chair in 2018-19. I am also the Kentucky State Delegate in the House of Delegates. Over my 20 years as a volunteer in the ABA, I have been involved in a number of entities. One of the most rewarding was the opportunity to serve for 3 years as Chair of the Council of the ABA Fund for Justice & Education.

**WHAT IS ONE OF YOUR FAVORITE THINGS ABOUT SERVING ON THE COMMISSION?**
The best part of serving on the Commission is the opportunity to work with highly energetic and creative leaders who are all fiercely dedicated to increasing diversity and inclusion within our profession. The volume of ideas generated in a single Commission meeting is truly inspiring.

**WHAT ADVICE WOULD YOU GIVE TO A FIRM/ORGANIZATION LOOKING TO INCREASE DIVERSITY AND INCLUSION AMONG ITS ATTORNEYS?**
A relentless commitment to diversity and inclusion is essential. Each firm/organization should have an individual serving (with or without such a formal title) as the Chief Diversity Officer. Further, the CEO must be completely supportive of the diversity and inclusion program.

**WHAT IS YOUR DREAM VACATION?**
It depends. For a relaxing vacation where the object is to do nothing— the Northern California coast. For an action packed vacation focused on touring, shopping and eating— London.

**WHAT IS YOUR FAVORITE MIDNIGHT SNACK?**
Pie. Any kind of pie.

**WHAT IS ONE OF YOUR HIDDEN TALENTS?**
Complete retention of a vast amount of useless, trivial knowledge.
June 26–28, 2016
Collaborative Bar Leadership Academy
Hotel Monaco | Seattle, WA

July 16–22, 2016
National Bar Association 91st Annual Convention & Exhibition
Renaissance Grand Hotel | St. Louis, MO

August 4–9, 2016
American Bar Association Annual Meeting
San Francisco, CA

August 6, 2016
The Commission on Racial and Ethnic Diversity in the Profession
Annual Bar Leadership Reception
Marriott Marquis | San Francisco, CA

August 6, 2016
ABA Diversity and Inclusion 360 Commission
Fortune 500 General Counsel Roundtable Discussion
Moscone Center West | San Francisco, CA

August 9–11, 2016
National American Indian/Alaska Native
Behavioral Health Conference
Portland Marriott Downtown Waterfront | Portland, OR

September 7–10, 2016
Hispanic National Bar Association
41st Annual Convention
International Chicago Magnificent Mile Hotel | Chicago, IL

September 23–24, 2016
The Diversity Center Entities Joint Fall Orientation Meeting
Hyatt Regency | Chicago, IL

November 3–6, 2016
2016 National Asian Pacific American Bar Association Convention
Hilton San Diego Bayfront | San Diego, CA