Improving Diversity in the Legal Profession Through ABA Resolution 113

ANDREA R. JOHNSON

“The dynamism of any diverse community depends not only on the diversity itself but on promoting a sense of belonging among those who formerly would have been considered and felt themselves outsiders.”

—Justice Sonia Sotomayor

The ABA House of Delegates (House) passed ABA Resolution 113 (ABA 113) in August 2016. The resolution has four fundamental principles and urges its signatories to: (1) support ABA 113; (2) ask any firm they retain as outside counsel to complete the ABA Model Diversity Survey (Model Survey); (3) encourage unretained firms to complete the Model Survey; and, (4) use information acquired from the Model Survey as a factor when evaluating new firms to hire for their legal services.

Additionally, ABA 113 calls for all legal service providers to expand and create opportunities for “diverse attorneys,” as broadly defined by ABA Goal III.

The Model Survey is a tool for corporations to solicit standardized diversity data from outside counsel, leading to more informed decisions about the diversity of a firm and its teams providing legal services. With the onus on firms and their corporate clients to use the Model Survey as their primary tool for assessing diversity, over time the survey will serve as a vehicle for evaluating the profession as it evolves to better reflect diversity. If a firm wishes to maintain confidentiality while using the Model Survey, this may also be done through the “client matter” feature.

Former ABA President Dennis Archer, spoke in favor of the proposal and presented a list of ABA entities and

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From the Chair

Greetings Colleagues,

In February 2003 I was asked to establish an office to defend prisoners at Guantanamo who the government was considering for military commissions. I was given office space on the ground floor of the Pentagon in a section adjacent to the wedge where 125 people had lost their lives on 9/11. Each day I walked past a plaque on the wall of the previously damaged section containing words spoken by President George W. Bush when he addressed the nation on the evening of September 11th. The plaque read: “Terrorists can shake the foundations of our biggest buildings but they cannot touch the foundation of America.”

The rule of law is the foundation of America and as members of the legal profession we have a special role in safeguarding that foundation. Because of our special role, we can’t afford to lessen our efforts to diversify the profession. Social scientists have provided ample evidence that people have less confidence in a legal system in which the people administering that system don’t look like them or share their cultural experiences. This is just one of the reasons why diversity and inclusion is important to our profession. However, the recent election cycle has left many people wondering about the future vibrancy of diversity and inclusion efforts in our profession and in the nation as a whole.

I am convinced that the ABA will continue to serve as a champion for diversity efforts. Resolution 113, which was passed by the ABA Board of Governors last August, calls for all legal service providers to expand and create opportunities for diverse attorneys. A significant feature of the resolution is the implementation of a model diversity survey which we hope will become the most utilized survey of its kind and provide valuable objective data that companies can use to gauge the commitment to diversity of the law firms they are considering to hire.

I invite each of you to join us for the Commission’s Spirit of Excellence Luncheon, which will be held on Saturday, February 4, 2017 in Miami during the ABA Midyear Meeting. During that luncheon we will recognize four individuals who have been courageous crusaders in the battle to diversify the legal profession. Let’s follow their examples and continue to strengthen the foundation of America by promoting diversity and inclusion efforts in the legal profession.

Will A. Gunn
Chairman
Taking Ownership of Diversity

CEDRIC ASHLEY

Many of the diversity and inclusion initiatives within the legal profession focus on efforts to increase representation of diverse attorneys in settings that have historically lacked diversity. These efforts tend to be directed towards change within the institutional setting or securing employment within those environments for diverse lawyers.

Diverse lawyers should proactively prepare themselves to gain entry to and succeed within these non-diverse settings and within the profession in general. There are at least two areas of growth that will greatly benefit the development of your career: expanding your knowledge and expanding your network.

Expanding Your Knowledge
You can never stop learning or discovering what you do not know. Expansion of knowledge is not just limited to law. It also includes learning about underlying industries or the business of your clients. As lawyers, we should not exist in isolation. There is no question that first and foremost you must be super-proficient in your legal work. However, that is not enough to set you apart from your equally super-proficient colleagues.

You can begin to set yourself apart by demonstrating that you have gone the extra distance to understand not just the client’s problem, but how their business operates. If they are in the telecom industry, you need to learn more about that. Knowledge expansion will also benefit you in the long run if you decide to transition from the practice of law into a business operations role with a company.

You should also strive to expand your general knowledge of non-law topics. People want to engage individuals whom they know, like and trust. You should aspire to become the “known, trusted, advisor.” You do not have to become an all-knowing human computer, but you should be willing to stretch yourself to learn more about business, global politics, or cultural topics to name a few.

Does this require a lot of time or effort? Do you need to go back to school? No. It is about broadening the base of information that is top of mind for you. For some this may be involved. You might feel that again you are required to exist in the world of the other. You might also be asking: what about the non-diverse attorney? Shouldn’t they explore my world? Yes, they should, but if they do not shame on them. Take the opportunity to become their subject matter expert, and create opportunities for them to learn. You must be willing to push past your safe zone and demonstrate at every turn that you are ready to succeed when presented with the opportunity.

Expanding Your Network
To succeed in this fiercely competitive legal marketplace, you will need to build a tribe, a bond, a social capital network. As great, talented, and high achieving as you are, you cannot accomplish much without the help of someone else. You should treat your network like a bank account – if you regularly make deposits, you can withdraw from your account. The network can be narrow and deep, or wide and broad. However, the reality is a small active network will be more beneficial. It does not matter if you have 10,000 connections on LinkedIn®. Two hundred persons are about the maximum to adequately maintain significant professional relations.

Your network should consist of people who will serve many different roles. For example, there are mentors, coaches, sponsors, partners, and a personal success board. Here’s a brief explanation of each of these terms.

Mentors are persons you know well. Mentors are individuals who, in your estimation, are at a place professionally where you aspire to be. They will take the time to guide you, counsel you, and provide advice to you. Mentors can play a critical role in the formation of a lawyer’s career. Mentors are not just for young lawyers. Even seasoned lawyers have mentors. A word of caution: when it comes to mentors, allow them to help you become the best version of you, rather than a not so good version of them. You should not model your entire life after them. You are likely to only see their professional success. You do not know what sacrifices or sadness exist
in their private lives. However, it is not enough to have a mentor alone. Sadly, with the vagaries of the legal profession, your workplace mentor of today may be out the door tomorrow.

**Coaches** are professionals who serve as independent, objective neutrals to help you achieve specific goals. They should be someone you engage in a professional relationship. Can a friend be a coach? Yes. However, if they do not have experience in coaching they are more likely just a friend offering advice. Additionally, they probably cannot be objective and neutral as a coach will be.

Rather than have them fill the role of coach, considering making them an **accountability partner**. A person who will hold you accountable to the goals that you have set for yourself. They should keep it real and honest for you.

**Sponsors** are more than mentors; they are persons who will actively shepherd you through the organization to ensure that you advance and succeed. They are the ones who will ensure you will get the appropriate work, skills development, committee appointment, client contact, and exposure that you need. Your and their success should be mutual.

A **personal success board (PSB)** is similar to a board of directors. A PSB can consist of some of the roles mentioned above. You can also add on subject matter experts (SMEs), thought leaders (TLs), and advisors. Your PSB can consist of people you can personally connect with, as well as distant people who with whom you will never interact. For example, you can follow SMEs or TLs on LinkedIn, subscribe to their feed, or sign up for Google Alerts using their name as a keyword. You should strive to fill as many roles as possible on your PSB.

When you expand your knowledge and your network you will change, and things will change. As you grow and develop you may find that you no longer have room for old things. Some friends and colleagues may want to stay stuck in the past – and may try to keep you there as well. It is your life and your choice as to whether you move ahead or stay where you are. However, to reduce the anxiety, you should always be anchored with some foundational personal values, principles, and beliefs that keep you grounded. You should also have a “North Star” vision of what success means to you personally. If you are grounded and know where you want to go, everything else is just a matter of navigating the journey.

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national bar groups supporting the resolution. Prior to receiving unanimous approval by voice vote, there was a discussion of the positive impact diversity has on the success of businesses, irrespective of the moral case for diversity and inclusion. Diversity in ideas, experience, and solutions accompany an increase of diverse attorneys being represented in the legal profession.

On September 7, 2016, hundreds of the Fortune 1000 companies received a letter requesting their support of ABA 113 and use of the Model Survey. As of this month, over 50 of the largest Fortune 1000 companies have committed to uphold ABA 113. This is an increase of over 100% in just over 30 days since the letter was circulated on September 7, 2016. ABA 113 continues to gain momentum among constituents at a rapid pace.

**ABA Spotlight: Advocacy for Resolution 113 and the Model Diversity Survey**

The increase in momentum surrounding ABA 113 is largely a result of the representatives from various ABA entity’s who have presented arguments to the House, consistent with the vision of the ABA’s Diversity and Inclusion 360 Commission (360 Commission). The 360 Commission was created in conjunction with former ABA President Paulette Brown’s appointment in August 2015. It was established to conduct a year-long assessment of ways the ABA can help advance diversity, and its Economic Case working group (Economic Group) sponsored ABA 113 toward that effort.

Among the original 24 corporations pledging to uphold ABA 113 were Walmart Stores, Inc. (Walmart) and MassMutual Financial Group (Mass Mutual). Karen Roberts with Wal-Mart and Mark Roellig with MassMutual both serve as Executive Vice President & General Counsel (GC) of their respective corporations, and were members of the 360 Commission. The two have worked to broaden the impact of ABA 113 since its inception and have led the efforts to gather other GCs to join in support of ABA 113 and the Model Survey. Though the ABA 360 Commission has concluded its year-long research initiative, its findings have led to a continuation of the work on ABA 113.

The important work surrounding ABA 113 and the Model Survey persists with the ABA’s Commission on Racial and Ethnic Diversity in the Profession (CREDP). Alan Bryan, Senior Associate General Counsel & Outside Counsel Management for Wal-Mart, also a former 360 Commissioner and co-chair of its Economic Group, remains actively involved with CREDP as the Chair of its Corporate Counsel Committee (Corporate Committee). The Corporate Committee has set various initiatives into motion to raise awareness of ABA 113 and the Model Survey.

**Next Steps: Initiatives of The ABA’s Commission on Racial and Ethnic Diversity in the Profession**

Multiple ABA entities are working on initiatives to resolve the diversity deficit in the legal profession. In the coming
months, the CREDP’s Corporate Committee will be continuing its outreach efforts to firms and GCs to spread awareness about ABA 113 and the Model Survey. The Corporate Committee plans to use the ABA website, ABA Diversity Portal, news media, and various other methods to reach firms, corporate entities, and practitioners in the legal profession. Further, the Corporate Committee has been working closely with the ABA’s Law Student Division. By engaging law students, the goal has been to keep the future of the legal profession aware of the impact ABA 113 will have on employment opportunities at law firms and within in-house legal departments.

Each year, early January becomes a critical time for a number of law firms. Before the end of 2016, most will have made decisions about partnership and compensation going forward. Through the Model Survey, a third party can take the law firm diversity data collected, have it aggregated, and disseminated publicly to show averages across all participating firms. The Corporate Committee has created a portal for each firm’s diversity data collection and dissemination to begin. While the information will be non-identifying, firm data will still be available to corporations upon an individual firm’s request.

The Corporate Committee’s timeline for data collection is intentionally in sync with the start of the new year with hopes the Model Survey will reduce work on law firms. Rather than complete dozens of client surveys each January, administrative efforts will be substantially reduced through a greater percentage of firms and their corporate clients using the comprehensive Model Survey. The Model Survey will be prepared to capture diversity data from participating firms from the unique perspective of their clients who have chosen to use them as outside counsel. Several other professional organizations have helped amplify the impact of ABA 113 and November 17–18, 2016, the Association of Law Firm Diversity Professionals (ALFDP) will host a discussion on the resolution and Model Survey in Washington, DC. There, panelists will discuss the resolution and provide ideas for expanding opportunities to a wider range of diverse attorneys.

Impact: Response from Firms and General Counsels Regarding ABA 113

A national survey provided evidence that the legal profession has become the least diverse of all comparable professions. The widespread support for ABA 113 and the Model Survey provides evidence that this has not gone unnoticed by firms, their corporate clients, and other legal professionals. ABA 113 and the Model Survey have received praise from many Top 100 law firms and GCs. Some enthusiastically support the resolution for its ability to promote “transparency and accountability” while others highlight possibilities for achieving diversity by “uniting corporations and law firms together.” Firms have continued to issue statements acknowledging their willingness to support the goals of ABA 113 and GCs also remain hopeful given the positive impact working with a more diverse team can have on their corporations. As stated by Charles Hamilton Houston, a lawyer may choose to be “social engineer” and with this great power, great responsibility must follow. To better advocates, problem solvers, and change agents, the legal profession must also reflect the broad range of diversity which is represented in the society it serves.

Andrea R. Johnson is a second-year student at The George Washington University Law School and the 2016–2017 Student Liaison to the ABA’s Commission on Racial and Ethnic Diversity in the Profession. Andrea has an interest in transactional work as it relates to non-profit legal compliance and corporate governance. She is particularly interested in working with mission-driven organizations which leverage their resources to support sustainable social change.

5 Id.
6 Id.
8 Id.
12 Id.
13 History, Howard University School of Law, http://www.law.howard.edu/19 (last visited Oct. 20, 2016) (quoting former dean and civil rights attorney Charles Hamilton Houston who stated ‘A lawyer’s either a social engineer or … a parasite on society … A social engineer [is] a highly skilled, perceptive, sensitive lawyer who [understands] the Constitution of the United States and [knows] how to explore its uses in the solving of problems of local communities and in bettering conditions of the underprivileged citizens.’).
The Benefit of Diverse Lawyers in Trial

FLORENCE JOHNSON

“Race matters in the courtroom. The racial make-up of the jury pool, the comfort level of a minority client in court, the necessity of constructing a good record for appeal, the biases of the judge, and the particular traits of the client’s subculture all must be carefully considered when representing minority clients.”

— D. Michael McBride III
Strategies for Representing Minority Clients at Court
GP Solo Magazine–January/February 2004

Twelve years later, this discussion continues to be relevant. Race still matters in the courtroom, and not only when representing clients of color.

Before proceeding to trial, companies and the firms they hire will work with jury consultants to determine the optimal demographic makeup of the trial table. More often than not, the particulars of the case drive the composition of the trial team. Sexual harassment cases are often led by a woman, for example, and racially sensitive cases feature a person of color in a prominent role. There is no doubt that diversity adds tremendous value to a trial team. Deliberately parading women and people of color to sway a verdict, however, crosses the line.

Consider the following scenario:

In the beginning stages of a case, litigating attorneys size up the other side of a conflict, volleying back and forth through discovery. Through this process, you come to know the team representing your adversary. For the purposes of this discussion, we’ll call your opposing attorney Jim.

As the case progresses, you develop a level of comfort with Jim. You get to know his tone and work style through emails and correspondence. You feel like you can intuit what Jim is going to do with your Requests for Admissions before you serve them, and you can generally predict the Response you will get. In short, you have forged a litigation relationship.

Months—sometimes years—later, you face Jim in the courtroom for the culmination of your dance together. He is seated at the table, flanked by his familiar associate Ken. But wait. Wait a minute, who is that? Since when does the opposing trial team, with whom you’ve corresponded and spoken since the earliest days of this case, include a female person of color?

Though race and color are social constructs that we use to categorize one another, it’s a mistake to use these constructs to infer worth. In a true post-racial society, there would be no need for Jim, Ken and the firm of Whiteshoe and Whiteman to hide their black paralegal until trial. By doing so they are sending a message to the jurors—however false—that they’re the good guys. “Hey, look at us!” they announce. “We aren’t the bad guys. We have [insert here woman or person of color] here at the table for all to see!”

The old trial tactics are no longer acceptable. In fact, attorneys who play these race- and gender-based games could be subject to more scrutiny and potential claims of discriminatory conduct under Model Rule 8.4.(4) if done intentionally and for the purpose of discrimination intimidation or harassment.

This kind of bait-and-switch happens more than it should. But intentionally displaying a lawyer of color or particular gender at trial time is more than backward thinking; it may not influence a jury verdict in the direction you hope for.

In a 2011 study in The Jury Expert by Alexis A. Robinson evaluated the effect on race and gender of attorneys at the trial table. The study results suggest that in criminal matters, black male and female attorneys have worse outcomes than their white counterparts. In the civil arena, however, diverse trial teams achieved better outcomes when bias was addressed upfront with jurors during voir dire.

Furthermore, now risk management professionals are getting wind of this and taking note. Anecdotal information revealed a patent case “in federal court in a large Midwestern city can provide some insight into how a lack of diversity in the trial team can impact the outcome of the case. The trial team for the defendants in the patent case regarding internet browser technology were white males. The plaintiffs had a diverse trial team including women and minorities. The jury ended up being heavily female and also included several minority members. The verdict was for tens of millions of dollars for the plaintiffs. When interviewed after the trial, the jurors explained that the plaintiffs had explained the technology
and how the infringement occurred in ways they could understand, while the defense arguments seemed technical and did not connect with them. The more diverse trial team found ways, both in generating the themes of the case and by having female and minority attorneys examine several key witnesses that resonated with the jurors. This example shows the importance of thinking beyond simple representation and instead realizing that the only way to understand what themes and evidence will be important to a diverse jury is by having diverse trial teams."


Gamesmanship aside, diversity on the trial team can bring a perspective to the courtroom that may otherwise be lacking. Now more than ever, diverse litigators are needed in a trial proper and in the court of public opinion. I am an African American woman and trial lawyer, and these intersecting characteristics do impact my ability to relate to my clients’ life experiences and ultimately, help me represent them better. By the same token, my experience has shown me that my gender or race is not a barrier to representing any client at all. Being a good trial lawyer is more about confidently finding the best way to represent your client and get the result that you were hired to get.

Do not be too shy to step up and step out and show your intrinsic worth. Speaking up for yourself and advising that you want to play a part in the litigation strategy and not just as a tool will make you an invaluable asset to your client and your firm.

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ABA PATHWAYS PROJECT

In FY 2016, the Diversity & Inclusion 360 Commission, Immediate-Past ABA President Paulette Brown’s signature initiative, asked the ABA’s eight core diversity entities to develop and coalesce around transformative initiatives that would significantly move the needle forward with respect to diversity and inclusion in the legal profession.

The result was the “ABA Pathway to the Profession Project” (Project)—the following bold, cohesive compilation of upcoming diversity and inclusion projects that seek to provide underrepresented communities a pipeline to and better success within the legal profession, as well as access to the justice system:

- **The National Online Pre-Law Program:** Free online pre-law curriculum, targeted at diverse students at an earlier stage of their college career, offered through a web-based interactive learning management system accessible online and via mobile devices.
- **Bias interrupters Study:** A national effort to determine what biases LGBT individuals and persons with disabilities face in the legal profession and what can be done to interrupt or fix identified patterns of bias in the workplace.
- **Digital Justice Initiative:** Police & Communities of Color Building Alliances: a national project tasked with bringing together communities of color, persons with disabilities, and the legal, law enforcement, and technology sectors to devise innovative solutions to address conflicts between communities of color, persons with disabilities and law enforcement.

A Goal III Working Group was formed to execute the Project, chaired by Bob Gonzalez (Chair, Commission on Disability Rights), and comprised of volunteer leaders and staff from the Center for Racial and Ethnic Diversity, Commission on Racial and Ethnic Diversity in the Profession; Coalition on Racial and Ethnic Justice; Council for Racial and Ethnic Diversity in the Educational Pipeline; Commission on Hispanic Legal Rights & Responsibilities, Commission on Women in the Profession; Commission on Disability Rights; and Commission Sexual Orientation and Gender Identity.
The National Bar Association

Securing Justice through Unity and Collaboration

KEVIN D. JUDD

The National Bar Association (NBA), founded in 1925, is the oldest and largest national association of African-American attorneys and judges in the United States. It represents the interests of approximately 65,000 lawyers, judges, law professors and law students. The NBA is organized around 23 substantive law sections, 9 divisions, 12 regions and 80 affiliate chapters throughout the United States and around the world.

Historically, the National Bar Association has set precedent in the legal field and beyond. Our mission has always been to serve the needs of our members and the needs of our community. This year’s Bar Association presidential theme is “Securing Justice through Unity and Collaboration.” Our internal initiatives are aimed at advancing the science of jurisprudence, particularly in the African-American community, by strengthening our organization’s infrastructure and by supporting our members in their professional endeavors and with their careers through training, programs and collaboration.

Still as the leading organization for African-American attorneys and judges we are fortunate to be in a position to make a huge difference in our country, by advocating for laws and implementing policies that will economically benefit African Americans and help end social injustices that plague our nation.

Economic Empowerment/Justice. Just about every socio-economic indicator places us at the bottom of the economic ladder. Unemployment, incarceration, wealth accumulation, life expectancy, and child poverty all indicate a desperate situation for African American families. Therefore, one of our primary social justice agenda items will be black economic empowerment. We have the responsibility to provide legal information and services to help increase the economic power and self-sufficiency of the Black community through increasing the number of Black businesses and their prosperity and financially supporting current Black businesses. Therefore, we will reach out to our communities by providing pro bono legal advice to individuals who have or would like to start a business in underserved communities.

Election Protection. Regardless of the results of the November election, Election Protection will remain an issue in our continued quest for justice for all. We are proud of the work we have done in concert with the Lawyers Committee for Civil Rights and our work to enlist NBA members as Poll Watchers and election rights attorneys.

Police Misconduct and Criminal Justice Reform. The recent police killings in Tulsa and North Carolina demonstrate the need for increased legislative advocacy and the creation of legal policy to ensure equal rights and justice for African Americans. We must continue our fight for police body cameras and increased penalties and criminal prosecutions for police misconduct. There will be a continued effort to educate our communities on their rights and how to handle themselves when confronted by police officers. We will continue to collaborate with the Lawyers’ Committee for Civil Rights under Law in conducting the Legal Monitoring Program, where volunteer attorneys will serve as legal observers and provide support to protesters or demonstrators who face arrest.

S.C.O.T.U.S. and Judicial Diversity. We have the opportunity to weigh in and make a significant impact on the composition of the highest court of our land. The Supreme Court needs to be truly diverse. I have sent a mandate to our Judicial Selection committee to put together a plan for an African-American woman to be appointed as the next Supreme Court jurist and to continue its efforts in diversifying our nation’s jurist pool with African Americans.

Wiley Branton Symposium. This fall, we commemorated Barack Obama’s Legacy by highlighting Supreme Court decisions during his terms in office at a joint Wiley Branton symposium at the Howard University School of Law and the Texas Southern University Thurgood Marshall School of Law.

Decreasing Juvenile Offenders. Researchers have established that the juvenile offender population has a disproportionately high rate of mental health problems, with estimates suggesting it is as high as 50% to 70%. Children’s National Health System (“Children’s National”), based in Washington DC, believes that a public health approach is critical in preventing criminal behavior among juveniles and believes that legal and health care communities must work together to develop tools to identify and care for juveniles who may have experienced trauma, or who have behavioral, mental and/or substance use disorders.

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Diversity and inclusion permeate the committees, programs, and publications of the ABA Section of International Law. Having active members around the world allows our section to draw on a deep and diverse pool of talent as large as the planet. We also like to learn from other ABA sections and other bar associations.

**Diversity Officer, Deputy Diversity Officers, and the Section’s Diversity Committee.** Our section was one of the first to appoint a Diversity Officer who serves on the Section’s Administration Committee and who is a member of the Section Council. Assisted by Deputy Diversity Officers and a Diversity Committee, the Diversity Officer reviews Section activities to promote diversity and inclusion in all of activities of the section and its committees.

**Diversity Fellows.** The Section of International Law launched a Diversity Fellows Program to promote the active participation of young diverse lawyers in Section activities. This pilot program is a leadership pipeline for developing future diverse Section leaders. It opens doors for young lawyers of diverse backgrounds and gets them immediately involved in the substantive work of the Section, helping them develop into future leaders. The lawyers were selected from a highly competitive application process to be Section Diversity Fellows. Once picked, each Fellow works with a substantive Committee and a Committee Chair who serves as a mentor. The Fellow is engaged in all aspects of committee membership, helping with substantive projects, publications, policy initiatives, and programs. The Fellows also work very closely with the Diversity Officer, the Diversity Committee, and the Membership Officer. The pilot program has been proven successful and will be continued in future years.

**Committee Vice-Chairs for Diversity.** Each of our substantive law and committees has a Vice Chair for Diversity. These Vice Chairs help recruit and identify new committee members, future committee leaders, speakers for panels, and authors for committee publications. With a global membership, our Committee Vice Chairs for Diversity can involve lawyers and law students from Africa, Asia, South America, and other areas generally underrepresented in bar association activities.

**Diversity Newsletter.** Our section publishes a Diversity Newsletter that dives deeply into diversity issues of interest to the section and its committees. Our next issue will be on the Inclusion and Empowerment of Persons with Disabilities. We welcome announcements from other Diversity Entities of the ABA so that we can help promote your programs and initiatives, as well as the activities of our own section and our committees.

**Global Meetings.** Our Fall 2016 Section Meeting is being held in Tokyo, Japan. Another Fall Section Meeting was held in Buenos Aires, Argentina. We’ve held smaller meetings and programs in Africa, Asia, Western and Eastern Europe, and South America. By making our section accessible to lawyers and law students around the world, our section is able to recruit and retain diverse lawyers and law students. We were even the first ABA Section to have a non-U.S.-lawyer from South America as Section Chair.

**Constituent Committees: SIN, GIN, WIN, and YIN.** The Section welcomes members regardless of color, ethnicity, gender, age, national origin, sexual orientation, gender expression, or disability. In addition to our substantive committees, section members can join constituency-focused committees, including: the Seasoned Lawyers Network (SIN); the Sexual Orientation and Gender Identity Issues Network (GIN); the Women’s Interest Network (WIN); and the Young Lawyers Network (YIN).

**Liaisons.** Our section has an active liaison program with other groups that further enrich our pool of diverse talent for programs, publications, and future leadership, including appointing liaisons to the ABA Commission on Racial and Ethnic Diversity, the Commission on Hispanic Legal Rights and Responsibilities, the Commission on Law and Aging, the Commission on Sexual Orientation and Gender Identity, the Commission on Disability Rights, and others. We also have extensive liaison appointments with outside entities, including the All China Lawyers Association, the Bar Council of India, the Chilean Bar Association, the East Africa Law Society, the Ghana Bar Association, the Istanbul Bar Association, the Mongolian Bar Association, and dozens of other groups.

**Diversity on Panels – The Diverse Moderator Doesn’t Count!** Many of you know that in June 2016 the ABA Board of Governors approved changes to the ABA’s policy for CLE programs. The new rules take effect March 1, 2017 for the entire ABA. Under these new rules, individual programs with faculty of three or four panel participants, including the moderator, will require
Therefore, the NBA will partner with Children’s National to develop a public health advocacy plan to address juvenile justice and a develop a training program for parents/guardians, teachers, coaches, law enforcement, attorneys, judges, and others who come into contact with juveniles who may exhibit trauma, behavioral health or substance abuse disorders.

Preserving HBCUs. Many HBCUs saw dramatic declines in enrollment as a result of changes in the Pell Grant eligibility made in 2012. The Network Journal reported that HBCUs are responsible for 22 percent of current bachelor’s degrees granted to blacks, including 40 percent of black congressmen, 12.5 percent of black CEOs, 40 percent of black engineers, 50 percent of black professors at non-HBCUs, and 50 percent of black lawyers and 80 percent of judges. Through our legislative agenda, the NBA will advocate for the expansion of Pell Grants and for the increase of other grant and loan programs that support all students, particularly those who attend HBCUs. In addition, we will support H.R. 4857, the HBCU Innovation Fund Act sponsored by Representative Alma Adams, which would establish a program to make grants to promote innovation at HBCUs.

**Human Trafficking.** The devastation of human trafficking, both sex and labor trafficking, affects more minority communities in the United States than once thought. Even though slavery has been banned across the globe, more than 29 million people are living in modern day slavery and forced prostitution. Over 100,000 children are at risk for becoming victims of domestic minor sex trafficking in the United States. And, based upon cases where race was known, sex trafficking victims were more likely to be black 40% of the time. In addition, to hosting international symposiums on human trafficking with other civil and human rights organizations, we will support and advocate for:

1. Changes in laws not just here in the United States, but around the world that would increase civil and criminal penalties for the perpetrators and facilitators of human trafficking, especially those who are on the demand side;
2. States to adopt Safe Harbor laws that treat the victims of human trafficking as individuals in need of assistance and not as criminals; and
3. Increased federal funding for state and local governments and their non-profit partners working to eliminate human trafficking and provide a full array of services (mental health, education, and housing) for survivors of sex and labor trafficking.

Pipeline Development. Finally, to further expand our pipeline, we are going ask our Affiliate Chapters throughout the country to participate in our JD Edge Program by visiting area colleges and meeting with college students to discuss opportunities in law and how to get into law school.

Kevin D. Judd, a Washington, D.C. based attorney is the 74th President of the National Bar Association.

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**Diversity Efforts in ABA International Law | CONTINUED FROM PAGE 8**

at least one diverse member; individual programs with faculty of five to eight panel participants, including the moderator, will require at least two diverse members; and individual programs with faculty of nine or more panel participants, including the moderator, will require at least three diverse members. If the minimum number of diverse participants is not satisfied, the ABA will not sponsor, co-sponsor, or seek CLE accreditation for that program, unless there is an approved exception. The new rules will apply to only those programs made after March 1, 2017. If for some rare or extraordinary reason a panel does not comply and not be granted a one-time exception, the entity can pay a fine of $2,500 to the diversity center rather than lose CLE credit for that panel.

Under the rule for the entire ABA, the diversity of the moderator can be taken into account to satisfy the diversity requirement for that panel. In the ABA Section of International Law, we’ve applied a stricter standard that requires that diversity be found in the speakers, not the moderator. The moderator can also be diverse (and often is), but for our own section’s purposes, we require each panel to include diverse speakers. The reason behind this section practice was to ensure full engagement of diverse speakers in section panels.

Our section is intensely proud of its history in promoting diversity and inclusion. We welcome the opportunity to work with other sections to promote diversity and inclusion throughout the ABA.

Mark E. Wojcik is a professor of law at The John Marshall Law School in Chicago and the Diversity Officer for the ABA Section of International Law. He is also the Section of International Law’s Liaison to the ABA Commission on Racial and Ethnic Diversity and a former Commissioner on the ABA Commission on Sexual Orientation and Gender Identity.
The Business Law Section Has Long Focused on Diversity and Inclusion

CHRISTINE W. YOUNG

The Business Law Section is one of the largest Sections in the American Bar Association with nearly 50,000 members. Our mission is to serve our Section’s members, the profession, and the public by furthering the development and improvement of business law. The Section has long recognized that an integral component in advancing the development of the law and business lawyers is by creating a diverse and inclusive environment that increases diverse lawyers’ participation in the Section and the profession.

The Section’s Diversity and Inclusion Plan was adopted in Spring 2014 and provides an excellent framework to survey our diversity and inclusion efforts. The Plan was designed with the overarching objective to engage the widest range of business law practitioners including young lawyers, law students, international lawyers, lawyers of color, lawyers with disabilities, lesbian, gay, bisexual and transgender lawyers, and women lawyers, and it identifies three strategic diversity goals: (i) ensuring full access to the profession; (ii) ensuring full access to the Section; and (iii) shifting from the focus of diversity to a focus on inclusion.

Access to the Profession
A principal way of ensuring access to the profession is to create a pipeline for law students. Our premier program focused on this effort is the Diversity Clerkship Program. This program places up to 9 diverse law students in 8-week judicial clerkships in business courts across the country each summer. The student clerks give the program high marks for providing them the unique opportunity of working closely with a business court judge, which can provide them with a leg up in a competitive job market. The business court judges consistently praise the clerks for their quality work and enthusiastic participation. All clerks are invited to attend the Section Annual Meeting with travel costs covered by the Section which provides valuable opportunities to network with Section members, attend programs and committee meetings, and learn about the significant benefits of Section membership.

We also reach out to law students with visits to local law schools at the Section’s Spring and Section Annual Meetings. Our Section leaders present information to the students on business law, becoming a business lawyer and Section activities and opportunities, and we invite them to attend our programs and receptions.

Other programs include the Mendes Hershman Student Writing Contest, which encourages and rewards outstanding writing on business law topics. Authors of the top three papers win cash awards and are invited to attend the Section Spring Meeting with all travel costs paid by the Section.

The Committee Associate Program also provides a unique opportunity for law students to engage in formal leadership within the Section’s substantive Committees and to participate in substantive Committee projects such as assisting with research and writing on an article. This Program is an opportunity for students to apply for a position and selections are made by Committee chairs on a project specific basis.

Access to the Section
The Section’s second strategic goal is to ensure full access for diverse lawyers to the Section. The effort to ensure access to Section requires communication and involvement with entities outside the Section, including the Commission on Racial and Ethnic Diversity and the other Goal III entities.

Full access and participation to the Section must include leadership. The Section provides leadership opportunities to diverse business lawyers.

The Business Law Fellows Program, created in 1998, is a springboard for diverse lawyer moving into leadership roles within the Section. Diverse lawyers eligible for the Fellows program include young lawyers, lawyers of color, lawyers with disabilities. Up to 20 Fellows are selected each year to participate in two-year terms and receive financial assistance to attend three in-person Section meetings each year. Each Fellow is assigned to a substantive Committee which provides exposure to the workings of our Committees and to allow them to contribute in a meaningful way. The success of the Fellows program is in the numbers: 47% of former Fellows are still active members of the Section and 41% of former Fellows are serving in Section leadership roles.

Focused programming and events at our Section meetings also keeps diversity and inclusion at the forefront. Two of our most well-attended (and fun!) events are the Diversity Networking Reception and the Women’s Business Law Network (WBLN) Sweet Endings Dessert Reception. These receptions provide terrific opportunities for all of us, Section leadership and other long-standing...
members, first time attendees and law
students, to mingle.

Besides WBLN, our Diversity and Inclusion Committee has four other active Subcommittees focusing on lawyers of color, lawyers with disabilities, LGBT lawyers and young lawyers. Recent examples of presentations by the Committee include a video on implicit bias and a documentary on a “day-in-the-life” of a visually impaired law student.

The Section has also recently produced programs focusing on the business case of diversity—which was presented by a panel of general counsel, efforts of companies to diversify their boards, and the diversity and inclusion provisions in the Dodd Frank Act.

For well over 10 years, the Section has mandated that all of our programs have diverse panels. If a proposed program does not have diverse members involved, the Section will not approve it. We commend the ABA for adopting the Diversity and Inclusion 360 Committee recommendations to increase diverse panel participation on an Association-wide basis.

**A Focus on Inclusion**

The third strategic goal of our Plan is to shift the focus from diversity to inclusion to encourage broad involvement of all backgrounds and viewpoints. Our Section officers, our nominating committee and our committee chairs communicate and work together to increase diversity in our leadership. The Section has made significant progress in removing barriers to access to our Section activities by ensuring that interpretive and disabled services can be accessed, and accessibility issues are evaluated as part of our meeting facility selection process.

Most recent statistical information shows that the Section has made great strides in women attaining leadership positions with 36% of our Section officers and 40% of our Council members being women and 12% of our committee chairs 10% of our Council members are lawyers of color.

**Regular Assessment and Improvement**

We recognize that focus and continuous evaluations of our progress with respect to inclusion is required. We must continue to work on increasing diverse representation in our leadership and our Plan requires that we evaluate and continuously assess the success of our activities and programs. Each year the Section focuses on the results of our efforts. We brainstorm and gather feedback regarding our practices and we interact with, and examine the diversity plans and practices of other ABA entities in an effort to improve. Adopting the Plan was not the end of the diversity and inclusion conversation for the Business Law Section. It is a valuable tool to achieve a more diverse and inclusive Association, Section and profession, but one that must be implemented, analyzed and continuously improved. The Section continues to sharpen its tools and to look for more effective ways to achieve our goals.

Christine W. Young is Chair of The Business Law Section’s Diversity and Inclusion Committee and practices law with Kuhn Young Law Firm PLLC, Tucson, Arizona.
2016 Spirit of Excellence Award Winners

ABHAY NADIPURAM

On February 4, 2017, the ABA Commission on Racial and Ethnic Diversity in the Legal Profession will honor four attorneys with the Spirit of Excellence Award. The award is presented to lawyers who excel in their professional settings; who personify excellence on the national, state, or local level; and who have demonstrated a commitment to racial and ethnic diversity in the legal profession.

Thomas W. Fredericks

Tom Fredericks has centered his life on serving the Native American community. Mr. Fredericks was born and raised in the Fort Berthold Indian Reservation in North Dakota. Before becoming a lawyer, Mr. Fredericks created the poverty program at Standing Rock to help his fellow Native Americans climb out of poverty. Mr. Fredericks was dedicated to bringing “Indian rights to the forefront.” The poverty program was the first Native American-managed program independent of the U.S. Department of Interior’s Bureau of Indian Affairs.

While a law student at University of Colorado-Boulder, Mr. Fredericks was a founding member of the Native American Law Student Association. After graduating from law school, Mr. Fredericks joined the Native American Rights Fund (“NARF”). His “goal was to empower tribal institutions.”

Mr. Fredericks helped create the Native American Bar Association, and was its first president. Mr. Fredericks eventually served as Associate Solicitor and Assistant Secretary for Indian Affairs under President Jimmy Carter. He developed a water policy for Native Americans which allowed tribes to utilize their “Winters Doctrine” rights by funding tribes to develop facilities to use the water. Mr. Fredericks is proud of the progress that Native Americans have made during his 50-year career serving Native Americans. “I am proud to say that Native Americans are now engrained in every aspect of the governmental structure of the country.” “Tribal governments are now recognized governments that have the sovereign authority to govern their territory and their citizens.”

Kenneth G. Standard

When Kenneth G. Standard was a student at Harvard College, he was one of 10 black students in his class of 1,200 males. In sister school Radcliffe College’s freshman class of about 300 young women there were no black students. Later at Harvard Law School, he started as one of three black students in his class of about 560. When he graduated in 1962, he was the only one, which may explain the strong sense of duty that he feels to help minority law students navigate their way.

After graduation from law school Ken applied and interviewed for the 12,000 member Harvard Club of New York City (N.Y.C.). He was admitted to the Club, becoming its second black member. After several years of membership he achieved his first invitation to take a leadership role within the Club, becoming a member of the School’s Committee. He later became a member and subsequently an officer of the Admissions Committee. After concluding his service on the Admissions Committee, he was nominated for and elected to the Board of Managers of the Club. He continued to fill a variety of leadership positions within the Club and eventually became its president, its first racial and ethnic minority to serve in that role. In fact, in all of his leadership roles within the Club leading to the presidency he was the “first” to serve in such a role. Ironically, as President, he was able to unite
the Club’s membership and bring to fruition a long deferred plan to renovate and expand the landmark clubhouse, which included the first locker room for the Club’s female members.

Mr. Standard has had a storied career as a litigator and counselor. He began with the Securities and Exchange Commission, where a chance meeting led to an opportunity to serve on a special New York Governor’s temporary commission (Moreland Act). Upon the commission completing its assignment, Ken was hired as the first minority attorney at the then New York Telephone Company and, junior as he was, hard to believe now, he was also the highest ranking minority in the company at the time. From there he went on to Bristol Myers Co., where he, after three years, was made a Vice President of its then Products Division. After a change in control and reorganizing of the company many years later he went on to lead the law department for the N.Y.C. Schools system. Eventually, Ken found his way into the law firm world and became a member of the national firm Epstein Becker & Green, where he also became its first general counsel. He also chaired its Diversity and Inclusion Committee until he stepped down from partner to Of Counsel status.

Mr. Standard also chaired or co-chaired a number of New York State Bar Association (“NYSBA”) committees and served as President of the 77,000 member Association from 2004–2005. While President he was able to initiate an ongoing program that enables inner city high school students to spend a day at one of New York State’s 15 law schools meeting with students and faculty and attending mock classes.

Mr. Standard’s long career has included service in three governmental entities, three corporations and two law firms. Along the way, he has not forgotten the most important service, to help others navigate their way. He also has not forgotten to credit the many people who encouraged and supported him over the years, his parents, older siblings, many teachers, Boy Scout leaders, and most significantly, his late wife, Valerie.

Peggy A. Nagae

Ms. Nagae helps companies and law firms develop its leaders specifically through the lens of diversity and inclusion. She has dedicated her life to diversity and inclusion; her motivation largely stemming from her family’s experience of being incarcerated during World War II as Japanese Americans. She attended Vassar College in New York, which she says taught her that “as a woman you could do anything you wanted and twice as good as a man.” After graduating from Lewis and Clark Law School, she worked as a litigator doing both civil and criminal defense work. However, as a female, Asian American attorney, she did not always fit in. Yet, Ms. Nagae says that she always felt the need to speak-up for justice.

Before starting her consulting firm in 1988, Ms. Nagae served as Assistant Dean of Academic Affairs for the University of Oregon School of Law, where she served under then-Dean Derrick Bell, one of her role models. In 1983, Ms. Nagae became lead counsel for Mr. Yasui when Mr. Yasui filed a coram nobis petition in the federal court to reopen his 1942 case, Yasui v. United States, premised on Mr. Yasui’s intentional violation of the military curfew imposed on American citizens of Japanese descent. The court vacated his conviction in 1984, but dismissed the writ. Yasui appealed the judge’s decision to dismiss the writ, but died during these subsequent proceedings. In 2015, Ms. Nagae attended the White House ceremony with Yasui’s family where he posthumously received the Presidential Medal of Freedom. “We know that there is a path forward” to make our profession more diverse,” she says. “If you have a vision, you need to act, and speak up, so that you can help justice reign.”

Stephen N. Zack

Stephen Zack has broken many barriers as a Hispanic-American attorney and has lived a life of public service. He and his family fled Cuba in 1961 during the Cuban Revolution. After graduating from college and law school from the University of Florida, he became a legislative aide to Congressman Claude Pepper in Washington, D.C. Wanting to practice litigation, Mr. Zack left Washington and joined a law firm. He went on to serve as General Counsel for Florida Governor Bob Graham. After returning to private practice, he served as trial counsel to Vice President Al Gore in the famous 200 case, Bush v. Gore.

In addition to having a thriving private practice, Mr. Zack was the first Hispanic-American to serve as the President of the American Bar Association and Florida Bar. He was also the youngest attorney ever to be elected President of the Florida Bar. In 2013, President Barack Obama nominated Mr. Zack to be an alternate U.S. representative for the United Nations’ 68th General Assembly. Mr. Zack’s passion for diversifying the legal profession comes from his experience as being a young Cuban-American. “I had an American father, so I didn’t have that thick of an accent; but, my friends did. One time I went to court with one of my friends who had a thick accent and the judge told him to ‘come back when you can speak English.’” This experience motivated Mr. Zack to support the creation of the Cuban-American Bar Association to ensure Cuban attorneys were given equal opportunities to practice law. “It’s hard to imagine how we can exist without understanding the multiple communities we have in our society,” he says.

Abhay Nadipuram is an in-house attorney at Principal Financial Group in Des Moines, Iowa. Abhay serves as the Young Lawyers Division Liaison to the ABA Commission on Racial & Ethnic Diversity in the Profession and Chair of the Iowa Young Lawyers Diversity Committee.
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.

Akira Heshiki

**How Long Have You Been on the Commission?**
This will be my third year on the commission, I started my involvement in August of 2014.

**In What Other ABA Entities Are You Involved?**
I am active in TIPS (Tort Trial & Insurance Practice Section) in a variety of committees, but am currently the chair of the TIPS Committee on Diversity and Inclusion. I am a member of the ABA House of Delegates in a representative capacity for the Multnomah Bar Association.

**What Is One of Your Favorite Things About Serving on the Commission?**
The Commission is an opportunity for me to work on issues related to Diversity on a national level. It is also privilege to be able to work with so many accomplished lawyers across the country who share my passion for increasing diversity in the legal profession.

**What Advice Would You Give to a Firm/Organization Looking to Increase Diversity and Inclusion Among Its Attorneys?**
I live in a part of the country where the population of diverse individuals is low. I think firms and organizations here work very hard at attracting diverse talent and are good at it.

So I think the key to success is to focus on building a welcoming environment, and a legal community and profession where all people feel welcome. So while building critical mass is important, I think it is just as valuable to think about what we do with everyone once they arrive. To me that means that that people who identify as part of the majority culture become allies and are able to articulate the “why” of diversity, and show leadership on issues of diversity.

Lack of diversity in the legal profession isn’t a “problem” that needs to be solved by communities of color, but a process that benefits everyone, and we can only achieve that by everyone working toward that goal.

**What Is Your Dream Vacation?**
There are too many places to list but on my short list to visit/revisit is Hawaii, Costa Rica, and Greece and SE Asia.

**What Is Your Favorite Midnight Snack?**
I can barely stay up past 11, but unfortunately and embarrassingly—I enjoy sour patch kids any time of day.

**What Is One of Your Hidden Talents?**
I bake pies that my husband tells me are delicious.

Thomasina Real Bird

**How Long Have You Been on the Commission?**
This is my second year on the Commission.

**In What Other ABA Entities Are You Involved?**
I am on the Center for Professional Responsibility Diversity Committee. I also serve as the National Native American Bar Association (NNABA) Treasurer and Young Lawyers Committee Chair. I have been a delegate to the ABA Young Lawyer Division Assembly on behalf of NNABA for multiple Assemblies.

**What Is One of Your Favorite Things About Serving on the Commission?**
One of my favorite things about serving on the Commission is collaborating with colleagues who are also passionate about diversity in our profession.

**What Advice Would You Give to a Firm/Organization Looking to Increase Diversity and Inclusion Among Its Attorneys?**
I would say to reach out to the ABA and the Commission in particular. We have resources available to firms and organizations that wish to increase diversity.

**What Is Your Dream Vacation?**
My dream vacation is to travel across Mongolia on horseback.

**What Is Your Favorite Midnight Snack?**
Hummus, pretzels, and a diet coke.

**What Is One of Your Hidden Talents?**
I bake pies that my husband tells me are delicious.
DECEMBER 6–8, 2016
National Indian Child Welfare Association Training Institute
Portland, OR

JANUARY 28–FEBRUARY 2, 2017
National Bar Association Judicial Council Retreat and MidWinter Meeting
Trinidad & Tobago

FEBRUARY 1–7, 2017
ABA Midyear Meeting
Miami, FL

FEBRUARY 15–19, 2017
National Bar Association Young Lawyers Division Conference & Retreat
Trinidad & Tobago

FEBRUARY 23–25, 2017
NBA Commercial Law Section 30th Annual Corporate Counsel Conference
Atlanta, GA

MARCH 17–20, 2017
NBA Small Firms/Solo Practitioners’ Division 22nd Annual Conference
On the Royal Caribbean’s Enchantment of the Seas
Miami FL, Cococay and Nassau Bahamas

MARCH 30–APRIL 2, 2017
HNBA 8th Annual Corporate Counsel Conference & Moot Court Competition
Miami Intercontinental
Miami, FL