Articles »

Lessons Learned at the 2016 Professional Success Summit
By Angel Chiang
A summary of the main takeaways from the inaugural event for litigators of color.

Paulette Brown: The Engineer for Justice
By Andre' B. Caldwell
The first African-American female president of the ABA on "the long arc of history."

Litigation Management: Results-Oriented Leadership
By James Truss
From understanding your client to employing new technology, learn the strategies to get results.

Transcending Law: Rising to Public Figure Status
By Tomas J. Garcia
Learn how to leverage early success to yield bigger opportunities in the future.

Exploring Your Leadership Brand
By Sahmra A. Stevenson
Branding and brand management have become increasingly recognized value creators for anyone seeking to grow in the legal field.
ARTICLES

Lessons Learned at the 2016 Professional Success Summit

By Angel Chiang

The Diversity and Inclusion Committee co-sponsored the ABA Section of Litigation’s inaugural Professional Success Summit in Atlanta, Georgia, in November 2016. The summit offered 18 programs and networking events designed to empower litigators of color with the tools they need to reach their professional goals. Over 300 attorneys attended the summit to gather wisdom from leading in-house executives, partners, trial attorneys, and federal judges to polish their management, coaching, and business skills.

Some of the main takeaways from the two and a half days of programming included the following:

Advice for In-House Counsel

- The right legal answers are not always the right answers to in-house counsel.
- In-house is messy, and mistakes are inevitable. But unlike in law firms, mistakes made in-house do not necessarily amount to malpractice.
- When pitching to in-house counsel, understand what a corporation does before you go in for a pitch: Read the 10-K, learn about the culture of the business, and learn where the company is headed.
- The “sweet spot” for transitioning in-house is about four to eight years out of law school.
- Every day, think about whom you are investing in. Investing in others signals to people that they have value to you, and people get to know you when you invest in them.
- Stay resilient, because failures are inevitable.

Advice for Trying a Case in Court

- The keys to persuasive advocacy in front of a judge are (1) presence, (2) credibility, and (3) reasonableness.
- Whatever you can do to make a judge’s job easier will help make you a better advocate.
- When you’re in front of a difficult judge, be (1) prompt, (2) prepared, (3) professional, and (4) patient.
- The key to effective advocacy before a jury is being a good storyteller and figuring out how to get jurors to listen—and how to get jurors to like you.
- Lawyers have three opportunities to testify during trial: the opening statement, cross-examination, and closing arguments.
- When preparing for trial, bring out the problems in your own expert’s report before the other side does. This gives you an opportunity to frame the issues before the other side has the opportunity to do so.
- When cross-examining an expert, make sure you go in with a purpose and keep the cross as brief as you can. The longer you’re in there with an expert, the more likely the expert will get the better of you.
• You cannot discipline a witness until both the judge and the jury know the purpose for disciplining the witness.
• Before you can sell anything to a judge or a jury, you have to be able to sell yourself. This sometimes means being able to relate to the community, because members of the community will comprise the jury.
• Voir dire is the most important part of trial, because that is when you choose your audience.
• If you are a young lawyer on a trial team, make sure you are the first and last person in the war room every day. Volunteer for everything. Do everything you can to help make the lead attorneys’ lives easier, because trying a case is a team effort.

Advice on Building Intangible Leadership Skills
• Smarts are not good enough, but smarts get you in the door.
• Great leaders do not thrive on constant pressure; they need sleep too. What you do to replenish your soul will directly affect your success.
• If the solution to your problem is expecting someone else to change, you are doomed. Be prepared to change yourself.
• Emotional intelligence is just as important as intellectual intelligence.
• Be aware of your own brand. Be self-aware about how you present to the world; be authentic; have the courage to always learn; and avoid brand-killers (e.g., typos, overuse of email, disrespecting other people’s time, and not getting to the point).

Throughout the summit, there was a palpable enthusiasm around the belief that the advancement of diverse lawyers better the legal profession as a whole, and that justice cannot be truly served unless the people advancing justice—lawyers—represent the communities they serve. Harvard Law School’s Professor Ronald Sullivan best articulated this belief during the keynote luncheon on the second day of the summit. Professor Sullivan described justice as something that does not just fall out of the sky, but as something people do, and that lawyers are “in the business of justice.” He challenged everyone to dedicate one hour a week to “doing” justice and making their community a little bit better. The message could not have been timelier. Set just on one week after the presidential election, the summit was a perfect platform for diverse litigators to unite and share ideas on how to cope with the uncertain political climate and prepare for the next four years. Attendees came away from the summit resolved to take Professor Sullivan’s heed and “do” more justice and work harder to guard against the erosion of civil liberties that most directly threatens minority communities. Given the galvanizing effect of recent political events, it will be interesting to see what justice is done, and what the next Professional Success Summit holds in two years’ time, after the mid-term elections.

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Paulette Brown: The Engineer for Justice

By Andre’ B. Caldwell

In appropriately fitting fashion, the second day of the Professional Success Summit, the Section of Litigation’s first-ever diversity-focused conference, started with opening remarks from Paulette Brown, the first African American female and immediate past president of the American Bar Association. After a warm introduction highlighting her many achievements, Ms. Brown approached the podium exuding that same confidence and focus she summoned to effect the many changes she achieved during her time as president. “You know when they list all of the things that you’ve achieved during your career, that’s just code for old, right?” said Ms. Brown. And just like that, the second day was off to an even better start than the first.

“When we first planned this conference, who knew we would be at this place at this time in our history?” Ms. Brown noted. This simple comment pointedly addressed the cloud that loomed in the minds of many of the conference attendees, let alone society’s. With the historic Presidential election having just concluded a week earlier, issues surrounding diversity, and the accompanying variety of attitudes towards divergent viewpoints, were omnipresent. By comparison, but likely in a completely different tenor, I assume many thought the same thing when Ms. Brown assumed the role as the first African American President of the ABA. Regardless of the circumstances, Ms. Brown emphasized that the key to success and effecting change is the development of a concrete, workable plan. But imagining, developing, or even firmly identifying that plan is simply not enough. She highlighted the need to put that plan down in writing because “if we don’t write it down, then we won’t do it.” Embodying her favorite historical figure, Charles Hamilton Houston, Ms. Brown challenged the attendees of the Summit to do more than make new professional contacts with which to fill their “rolodex.” She encouraged the exchange of ideas and the fulfillment of concrete plans so that together we could be engineers for justice. After all, we were attending a Professional Success Summit—the name speaks for itself.

With her self-professed yet unapologetically acceptable impatience, Ms. Brown made the most of her year as President to push as many diversity initiatives as possible. Demonstrating her message of putting plans in writing, Ms. Brown and the ABA Diversity and Inclusion 360 Commission prepared videos on implicit bias for prosecutors, judges, and public defenders. When confronted with the common question of “Why?” these measures were necessary, the simple answer was that no one is exempt from implicit bias. “Until we see some systemic change in the way we see things, we won’t be able to change those things”, said Ms. Brown. Beyond her efforts to expose and right existing implicit biases, Ms. Brown worked diligently on ABA House Resolution 107, which encourages all state, territorial, and tribal courts, bar associations, and other licensing and regulatory authorities to include in their continuing legal education programs a separate credit program regarding diversity and inclusion in the legal profession. Under Ms. Brown, the ABA demonstrated its commitment to lead the charge when the Board of Governors
passed a new mandatory rule, set to take effect March 1, 2017, requiring all ABA sponsored CLE panels to include at least one diverse speaker or moderator. Further, Principle 6(C) of the ABA Principles for Juries and Jury Trials was amended to require Courts to instruct jurors on implicit bias and how it may affect their deliberations. And, Model Rule of Professional Conduct 8.4 was amended to make it unethical to discriminate against someone based on race, sex, religion, etc. These, of course, are only a few items on a long list of the many programs implemented during Ms. Brown’s presidency, and as she bluntly, yet tastefully noted, she met no shortage of opposition.

Ms. Brown recalled being told by an unnamed person that they “had never seen so many diversity resolutions before the House.” With a charismatic smile that was accepting, yet rebuking, of the comment, Ms. Brown replied, “That’s a good thing, right?” Just as she declined to back down to the opposition posed to her initiatives, which was comprised of attempts to table certain resolutions until after her presidency and included comments suggesting that she was attempting to lower the quality of CLE by requiring the inclusion of diverse panelists, she encouraged the Summit’s attendees to acknowledge that the tasks ahead were not easy. “If you’re getting push back, you’re doing it right,” said Ms. Brown. Providing some insight into her determined mentality, Ms. Brown said, “You must flip challenging times into opportunities because only then can we become builders for eternity.”

Leaving the stage to an appropriate standing ovation, it was abundantly clear that Ms. Brown’s legacy is firmly solidified from her efforts to be a builder for eternity. Moreover, it certainly is not true that having a long list of accomplishments is code for old because there are many people who fail to establish the list of accomplishments (and lasting ones at that) which she has compiled in her lifetime. But, what is ever so apparent is that there is still much work to be done and a demand for those to push the initiatives to ensure its success. As Harvard Law Professor Ronald Sullivan stated during his keynote address, “I believe that the arc of history is long and people bend it toward justice.” Ms. Brown, thank you for being one of those people!

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Litigation Management: Results-Oriented Leadership
By James Truss

The Section of Litigation’s recent Professional Success Summit featured a panel called “Litigation Management: Results-Oriented Leadership,” which was moderated by Twanda Turner-Hawkins from Allstate Insurance Company. The panelists were Jill Dessalines (Strategic Advice for Successful Lawyers), Joan M. Haratani (Morgan Lewis LLP) Charles E. Harris II (Mayer Brown LLP), and Robert R. Simpson (Shipman & Goodwin LLP). This article compiles some of the more noteworthy insights from and advice dispensed at the summit.

In 2017, leading a litigation department, trial team, or client-service group requires some very different skills and a very different tool kit than those utilized by litigators of earlier eras. Rapid advancements in technology and in the amount of and pace of communications and data-flow have forever changed the way in which lawsuits are managed. Likewise, client expectations have changed in ways that potentially give the (often younger) technologically savvy lawyers an advantage in managing complex litigation. Results-oriented leadership remains key, as it always has been, but the means of achieving great results and the manner of leading toward that end have changed significantly. Sophisticated project management—often facilitated by specialized software—is increasingly becoming an indispensable tool for any effective leader. To be an effective litigation leader, first understand your client: Learn the corporate culture and dynamics, particularly with respect to litigation risk and budgeting; understand the hierarchies, reporting relationships, and current initiatives; and understand how corporate counsel is motivated and evaluated. In short, become a partner with in-house counsel in the joint representation of your corporate client.

What does your partner likely need from an effective leader? Excellent technical skills and relevant expertise are given. Principally, and unfortunately not always a given, are timely and thorough communication of any material information. Understand your client’s communication style. Do they hate email? Are they talkers or texters? Do they prefer the formal memo or a call followed by a simple written summary? Do they want to be copied on every communication on the case or only strategic or significant matters? Clients also require realistic, thoughtful, and business-centric legal advice and strategy. Given the expense and risk involved in complex litigation, this requires at a minimum that you are able to provide meaningful budgets based on historical data and experience and that you are able to assess risk with more than a wet finger sensing the wind. Tools such as project-management software and decision-tree analyses should be part of any effective litigation leader’s tool kit.

Broadly, project management is the discipline of planning, organizing, motivating, and controlling resources to achieve specific goals. In the context of managing litigation, this process strives for predictability, efficiency, and consistency to manage costs and resources and meet client expectations. The tech-savvy lawyer using project management software effectively can make themselves an invaluable partner for in-house counsel. The first step is to define the project’s scope by understanding the client’s goals, defining your “deliverables,” clearly.
understanding the desired outcome you are seeking, and developing a communication plan. Next, establish the plan by identifying the various tasks and activities required, selecting the team, and establishing a budget based on data collected from past projects. As project leader, you will then need to manage the team and communications, manage the budget, maintain quality control, continually assess and mitigate risks, and refine the scope as needed. Each step in this process is a collaborative one with the client, and project-management software can help tremendously. Indeed, many clients are demanding that outside counsel use project-management or matter-management software, and some clients even dictate the precise software to be used. Ad hoc litigation project management is no longer sufficient.

Project-management tools use customizable templates that allow you to create a comprehensive map or plan for your litigation project by identifying and designating tasks, timekeepers and billing rates; establishing milestones or inflection points; and generating budgets, tracking features, and alerts. Obviously, someone must take the time to build the project plan, extract the data necessary to predict costs, and prepare a budget. A dedicated project manager may be a good resource with sufficient projects of sufficient size to justify a dedicated person in that role. Although sophisticated project management adds significant time, effort, and expense for the service provider, it is likely to become a necessary cost of doing business for any competitive firm servicing corporate clients.

Another useful tool for the results-oriented leader is decision tree analysis. Although not new in the litigation landscape, thoughtful decision-tree analysis is still underutilized as a client-service tool, particularly considering how often decision-tree analyses and like mechanisms are employed in the business world. In assessing risks of various outcomes, litigators of all experience levels frequently employ something of a “black box” approach by forming a generalized opinion on a given risk or settlement value without reference to anything demonstratively analytical. While a very experienced litigator may have “been there and done that” enough to comfortably form a general opinion on the value of a case, it must surely be somewhat unsettling to many clients paying for this sort of educated guesswork. While decision trees also rely on the subjective judgment and experience of trial counsel, they do so in a more demonstratively analytical way and one that can be more effectively used, adopted, or discounted by the client.

A decision tree is a diagram of possible outcomes in a lawsuit with percentages of likelihood and often monetary values attached to each branch. They are designed to thoughtfully and thoroughly help litigants evaluate risks and benefits of potential outcomes. As for project management, various software products are available to assist in developing and using decision trees. At a minimum, decision trees are useful tools to align you with your client in jointly analyzing potential outcomes since assigning specific percentages of likelihood to each potential outcome removes the ambiguity in such general phrases as “likely to win” or “highly likely to win.” Employing tools like decision-tree analysis and project management will help you be a better results-oriented leader by empowering you with the tools to understand and manage all aspects of the project, fine-tuned to your client’s expectations, throughout the life of the project. A well-
managed and collaborative plan can effectively satisfy the constant client needs of price certainty, transparency, and communication. Clients increasingly include questions about efficiency and project management processes and software in their requests for proposals. It may be time for you to get with the program(s).

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Transcending Law: Rising to Public Figure Status
By Tomas J. Garcia

At the recent Professional Success Summit, distinguished litigators Benjamin L. Crump, Morgan Chu, Brian A. Sun, and Theodore V. Wells shared insights on their experience rising to the highest levels of their practice, reflected on the vital role diverse lawyers’ play in our communities, and contemplated the challenges that lie ahead for diverse lawyers. In a discussion moderated by Section of Litigation Chair Laurence F. Pulgram, common themes that emerged during the discussion included the importance of leveraging early success through hard work and diligence to yield future opportunities, and the importance of being guided in the practice of law by the desire to achieve justice.

Leading criminal defense lawyer Ted Wells began his law practice at a large firm in California after clerking for the U.S. Court of Appeals for the Third Circuit Judge John J. Gibbons. Soon after arriving in California, Mr. Wells realized that he had a passion for criminal law and, at the urging of his former boss and mentor, Judge Gibbons, he returned to New Jersey to work for Judge Gibbons’ former law partner practicing criminal defense law. In this role, Mr. Wells found himself defending a client opposite a prosecution team from the U.S. Attorney’s Office that included his former law clerk colleague at the Third Circuit, and future Supreme Court Justice Samuel Alito. Mr. Wells said that his legal career was significantly enriched by his participation in organizations such as the National Bar Association, the NAACP, and the Legal Defense Fund. Through his involvement with these organizations early in his career, he became involved in political campaigns, bonded with colleagues and learned how to mobilize communities and raise money. Mr. Wells reflected on the importance of living a life “connected to your community” and he cautioned young lawyers to resist the urge to stay locked in their offices.

Intellectual property law expert Morgan Chu had an opportunity to take on a patent law case very early in his career after more senior attorneys at his firm declined to take the case. Mr. Chu represented his client successfully at trial and through appeal. He has since gone on to serve as lead counsel in some of the world’s largest verdicts, judgments, and settlements. Mr. Chu said that his career has been enriched by working on cases he enjoys, including taking on pro bono matters early in his career to gain trial and courtroom experience. Mr. Chu reflected that one of the benefits of pro bono work, besides helping people who need counsel, is meeting more people, which ultimately enhances the probability of getting more clients.

Complex business litigator and white-collar criminal defense lawyer Brian Sun was influenced to pursue white-collar criminal law after an internship at the Securities Exchange Commission. After a judicial clerkship and time in private practice, Mr. Sun went to work for the U.S. Attorney’s Office, prosecuting money launderers, and he was later involved in the enactment of anti-money-laundering statutes. Mr. Sun went on to represent Los Alamos National Laboratories nuclear physicist Dr. Wen Ho Lee in a case involving suspected espionage. Mr. Sun, a former president of the National Asian Pacific American Bar Association (NAPABA), said that when he was a new lawyer, there were no organizations like NAPABA. Reflecting on
cases like Dr. Lee’s, which involve criminal charges based primarily on racial profiling, Mr. Sun noted the importance of national organizations for diverse lawyers. Personal injury and civil rights lawyer Benjamin Crump, whose clients’ cases have captured national attention, such as that of the family of slain Florida teenager Trayvon Martin, said that he’s often criticized for taking only high-profile cases. But in reality, Mr. Crump said that when he takes cases, they’re not high-profile, and they are often cases nobody else wants to take. Mr. Crump said that he’s particularly moved to represent clients who otherwise have no voice, and he reflected that he knew from an early age that he wanted to be a lawyer to make things better for his community. Mr. Crump is involved with the National Bar Association and he noted that one of the important purposes of national organizations such as the National Bar Association is to help bring attention to people and cases that otherwise don’t receive the attention and scrutiny that they should.

In closing their discussion, the panelists reflected on the difficulties that diverse lawyers have in achieving success at the highest levels in the profession and that, unfortunately, our society is still a long way from being “color blind.” Thus, the panelists concluded that it is more important now than ever for diverse young lawyers to be guided by their convictions and their conscience and to work together in collaboration with each other to combat stereotypes that plague our communities and achieve greater professional success.

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Exploring Your Leadership Brand

By Sahmra A. Stevenson

On the morning of Wednesday, November 16, 2016, at the Professional Success Summit a warm and anticipatory buzz was in the air. Conference attendees once again packed themselves into the first-floor ballroom at the Ritz-Carlton, Buckhead, in Atlanta, Georgia, for a third and final day of presentations. Conference schedule materials listed 9 a.m. as slotted for a panel presentation on “The Intangibles: Self-Investment, Branding and Coaching.”

Branding and brand management have become increasingly recognized value creators for any individual, or business, seeking to grow and succeed in the legal field. This makes them a career and business management priority. Aware of this phenomenon, the audience sat at attention ready to absorb what was coming next. As ABA President Linda Klein wrapped up her remarks, the morning’s panelists, Janice P. Brown and George K. Schell, were introduced. What followed was a thoughtful and energetic presentation, exploring the nature of brand, and insightfully intertwining it with an understanding of the concept of leadership responsibility.

Personal Branding and Self-Investment
“Personal branding is how you are talked about when you are not in the room,” Ms. Brown said, as she presented some of the bottom-line truths about personal accountability when it comes to building and maintaining your professional mark, reputation, and credibility. Digging even deeper, Ms. Brown intimated some additional branding principles reminding participants that “you must be consistent to be effective” and that “once people see you being inauthentic, you potentially lose their trust,” adding a new layer to the concept of branding as a conscious daily practice.

Through consistent and deliberate practice, we play an active role in ensuring that we are presenting an authentic self in our daily interactions. To do this, we must begin with intention and vision. “The most critical component of anything we do is how we feel about ourselves,” Janice stated. She went on to provide a list of three important parts of maintaining a clear vision: (1) dispelling negative and limiting beliefs, (2) replacing them with positive affirmations, and (3) changing your beliefs to meet your vision.

When the goal is changing another’s already formed perception of you or your brand, your success will be largely determined by your willingness to make the first move, be authentic, and remain consistent. A perfectly timed PowerPoint slide drove Ms. Brown’s point home. It read, “If your solution to the problem is that somebody else needs to change, then you’re doomed.”

Leadership of Self
The concept of personal branding as a responsibility to exercise awareness of how others view us, our business, and ultimately our work-product, flowed seamlessly with Mr. George Schell’s discussion on leadership of self.
“We all have an obligation to our organizations to conduct ourselves as leaders every day,” said Schell. A statement that rang true to all listeners whether government, private, large firm or small. “Employees have to live up to the leaders they are watching represent them.”

Schell explored the importance of flexibility, growth, and modeling accountable behavior by encouraging attendees to start taking a self-awareness approach to managing failure. Schell instructed the audience to “look in the mirror.” He encouraged listeners to begin with looking at their own actions (and inactions) while making note of what they bring to the table, both positive and negative. Schell explained that admitting our mistakes, and communicating failure, while keeping a keen eye and open mind out for the “good” in a situation is empowering. It gives us the ability to turn any tragedy in to a triumphant victory, known to some as a “teachable moment.”

“It’s all about the humans,” he joked with the crowd on several occasions throughout the morning presentation. He left the audience with three points to consider for modeling accountable behavior: (1) empower and inspire by demonstrating a willingness to be (i) adaptable (ii) accountable and (iii) real; (2) listen more and talk less; and (3) have fun.

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