

Diversity Matters

The newsletter of the Illinois State Bar Association's Diversity Leadership Council

From the president: Diversity matters

BY JAMES F. MCCLUSKEY

In the beginning of my presidential year at my installation, I quipped that Vince Cornelius was the first African-American president of the Illinois State Bar Association, Umberto Davi was the first immigrant president of the Illinois State Bar Association, and I had the pleasure of being installed as the 102nd Irish American president.

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President James F. McCluskey

Editor's note

BY SANDRA BLAKE

This past year has seen tremendous, perhaps even unforeseen, strides in many diversity-related matters. In others, there is still much work to be done. Key to all progress is open and respectful dialogue and education.

The ISBA's definition of diversity is as all-encompassing as the committees and section councils that comprise the Diversity Leadership Council. These working groups address issues and concerns related to women, racial and ethnic minorities, LGBT individuals,

disability matters, human rights, international law, and immigration. While efforts were made to include articles representative of each of these groups, as well as a variety of viewpoints, the content of this newsletter is limited by the contributions received. Please contact the editor with story ideas and contributions for future issues.

Readers may learn more about the ISBA's diversity initiatives on the website at www.isba.org. ■



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Although this was stated in jest, it sent a definite message that the Illinois State Bar Association needed diversity in order to endure and survive.

This year for the first time, the process for the president's selection of a diversity board member changed. Based upon a newly adopted policy by the Board of Governors, we worked in collaboration with the Diversity Leadership Council to select a well-qualified diversity candidate for the Board of Governors. We were able to accomplish this positive step towards a more inclusive ISBA this year. The Board now consists of a majority who are women and members of color.

The ISBA, which has talked the talk for years, is actually walking the walk.

Diversity, in my mind, is not only based

upon gender and ethnic background, but also age, religion, and sexual identity. However, the most important factor of diversity is that there must be diversity of thought, no matter the ethnic, gender, or sexual identity of a person. Only with diversity of experience, skills, and independent thoughts can the ISBA be more successful in the years to come. Every member can contribute to the mission of the ISBA. The mission's focus is to assist Illinois lawyers in the practice of law and to promote improvements in the administration of justice. Unless we embrace the contributions of thoughts and ideas of all members of the ISBA, this mission cannot be fulfilled.

I hope all future leaders of the ISBA embrace these ideals. ■

Chair's column

BY ATHENA TAITE

The ISBA has long been committed to increasing diversity within the organization and the legal profession. As part of its efforts, the ISBA has supported the initiatives of the Diversity Leadership Council and related sections and committees. In 2016, when the Association reflected on its diversity initiatives, it recognized that the ISBA would benefit from surveying members to gauge the level of diversity and inclusion within the ISBA. To that end, the Diversity Leadership Council has drafted a survey for distribution to ISBA members. The survey will assess gender, age, ethnic background, race, sexual orientation and disability, as well as other characteristics that shape who we are as lawyers and a profession. The survey will be distributed later this year. Your cooperation

in completing the survey will assist the ISBA in creating a more inclusive association and legal community.

This year, the Diversity Leadership Council also sponsored the annual Count Me In reception at the Midyear Meeting. Thank you to the ISBA members and friends who joined the Council to network and celebrate the active participation of all attorneys in the practice of law. We look forward to your joining us for the next Count Me In reception.

Finally, the council encourages ISBA members to take note and participate in the programs of other diversity-related groups, including the ISBA's standing committees and sections. You can read about some of their initiatives in this newsletter and on the ISBA's website. ■

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This is the newsletter of the ISBA Diversity Leadership Council. To subscribe, visit www.isba.org/sections or call 217-525-1760.

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The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Count Me In reception photos



Oscar winner's speech aims to change the face of Hollywood

BY STEPHANIE A. BLACK

During her 2018 Academy Awards acceptance speech for best actress, Frances McDormand displayed her support for the #MeToo movement, asking all female nominees to stand while requesting the men take note and lend support by financing more women and minority projects. McDormand ended her speech with a statement that left the general public widely confused (and perhaps caused excitement for lawyers specializing in employment contracts):

"I have two words to leave with you tonight, ladies and gentlemen: Inclusion rider."¹

While most viewers took to Google and typed, "What is an inclusion rider?," Dr. Stacy Smith, founder and director of the Annenberg Inclusion Initiative at the University of Southern California, has written and presented on the topic for years.

Smith, together with attorney Kalpana Kotagal of Cohen Milstein and producer/actor Fanshen Cox DiGiovanni, developed the idea of a stipulation in Hollywood employment contracts requiring various diversity benchmarks.² The inclusion rider could, for example, require "the cast be 50 percent female, 40 percent underrepresented ethnic groups, 20 percent people with disabilities, and 5 percent LGBT people."³ Top actors and actresses who demand such a rider would effectively compel change in the industry and transform the faces of Hollywood to align with those in the real world. As a means of enforcement, the contract could call for stiff penalties or fines if the inclusion terms fail to be met.

The 2018 Oscars award ceremony was thick with themes of ending racial and sex-based discrimination and squaring-off against the rampant harassment infecting

the industry. But, the entertainment industry is not alone in navigating through these issues. Far too many Americans, from teachers to office workers to lawyers to scientists, have endured harassment and discrimination. We have entered a time of reckoning and reflection and hopefully, justice. ■

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1. https://www.npr.org/sections/thetwo-way/2018/03/05/590https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/03/05/what-is-an-inclusion-rider-explaining-frances-mcdormands-call-to-action-at-the-oscars/?utm_term=.8f86e6a5a627867132/whats-an-inclusion-rider-here-s-the-story-behind-frances-mcdormand-s-closing-wor
2. https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/03/05/what-is-an-inclusion-rider-explaining-frances-mcdormands-call-to-action-at-the-oscars/?utm_term=.8f86e6a5a627
3. <https://www.nytimes.com/2018/03/05/movies/inclusion-rider-frances-mcdormand-oscars.html>

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New Illinois Supreme Court rule promotes diversity of thought and experience

BY WILLIAM J. ANAYA

Lest there be any doubt, the Illinois Supreme Court is actively involved in shaping the practice of law in Illinois. The court recently exercised its authority to regulate the practice of law in Illinois by adopting the recommendation of the Illinois Supreme Court's Commission on Professionalism requiring licensed Illinois attorneys to attend one hour of diversity and inclusion instruction as part of a lawyer's obligation to satisfy the continuing legal education requirements articulated in Supreme Court Rule 794.

Specifically, Supreme Court Rule 794(d) now requires:

(1) Each attorney subject to these Rules shall complete a minimum of six of the total CLE hours for each two-year reporting period in the area of professionalism, civility, legal ethics, diversity and inclusion, or mental health and substance abuse.

(2) Beginning with the two-year reporting period ending June 30, 2019, these minimum six hours shall include either completing the Rule 795(d)(11) yearlong Lawyer-to-Lawyer Mentoring Program or:

(i) At least one hour in the area of diversity and inclusion and

(ii) At least one hour in the area of mental health and substance abuse¹

Like the minimum continuing legal education mandate articulated in Supreme Court Rule 794 in general, the new diversity and inclusion requirement demonstrates the Illinois Supreme Court's continued relevance in monitoring, regulating, developing and maintaining the practice of law in Illinois by requiring lawyers to remain educated, knowledgeable, skilled and connected to relevant issues that benefit lawyers and our clients. By keeping Illinois practitioners educated and relevant, the practice of law remains a viable and useful profession.

Like no other time before, Illinois citizens have access to innumerable options to the

exclusion of sound legal advice from a licensed Illinois lawyer. And, like no time before, Illinois practitioners face enormous pressures, resulting in epidemic dependency, addiction, anxiety and depression. And, it should come as no surprise that in the greatest country ever known, our clients, as well as ourselves—and our future business partners, colleagues and clients—all have become, or are becoming, more and more diverse.

Our supreme court recognizes the trends, monitors the practice, and mandates the changes designed to maintain the highest level of excellence in our profession. Many younger lawyers may not recognize the changes to the practice. While older lawyers, thankfully, continue to practice law, none practice law without continued training and exposure to new laws, trends and practice techniques, all designed to augment—certainly not to supplant—their significant experience.

Today, the Illinois Supreme Court challenges us again, this time with diversity and inclusion. Perhaps in this acrimonious political environment, it may be no surprise that the concept of diversity and inclusion has been greeted with a negative reaction by some. It is critically important to recognize that diversity is not some sophomoric platitude, or worse, tantamount to affirmative action mandated by our supreme court. Rather, diversity and inclusion involve acknowledging broader experiences and broader thoughts regardless of the color of one's skin or one's gender or sexual preference or identity—and where better than in the practice of law. If lawyers are to remain viable and relevant in the changing world we know is here, and position ourselves to take advantage of new business opportunities and experiences, we must embrace diversity of thought and experiences in our communities and amongst our

colleagues, and include that diversity in the practice of law.

For example, no one can dispute that the practice of law has benefited enormously from the inclusion of women not so long ago in recognizable numbers. Yet, even after being admitted to the practice of law, women have had to challenge norms, and even seek reasonable accommodations such as a restroom near the courtroom—normal accommodations otherwise available to their male colleagues. The challenge was not resolved with admission, but continues to require vigilance.

Our profession benefited with the inclusion of women not simply out of farness, although it was certainly unfair to deny access to the profession to women simply based on gender. Rather, the benefit was derived by including those with diverse thought and experience. Perhaps because of our training, the practice of law recognized the unfairness and actively removed access barriers to women seeking a legal education. However, barriers within the practice remain as obstacles in law firms and in the offices of general counsel. Indeed, studies confirm that few women manage law firms or operate as general counsel, and there are still far too few female partners, and retention of women lawyers is abysmally low.

The same can be said of those of our colleagues with shades of skin color. We have all benefited by including those with diverse thoughts and experiences, but it is not sufficient to conclude that all is well now because it is illegal to deny access to law schools based on that difference—even if that deplorable practice was once acceptable. And the same can be said of ethnicity, social status, lack of wealth, sexual preference and identity, and those who embrace Middle Eastern cultures. As with women, barriers to opportunities continue to exist. Those barriers are manifestly

apparent by the absence of significant advancement, opportunity and retention. Those same missed opportunities by those with diverse backgrounds, thoughts and experience are missed too by law firms and offices of general counsel—and those lost opportunities adversely affect the bottom line.

It is not an adequate explanation or an acceptable excuse that folks like to be with their own kind, or that folks are understandably more comfortable with like thinking people who have similar experiences. There is nothing understandable about that at all. The “comfort zone” explanation may be the rationale for private clubs, but not for successful law firms or offices of general counsel. It is a question of missed opportunities and missed business due to close-minded cultural attitudes that can be addressed and changed at the law firm level and in the offices of general counsel—not by magic or by legislative fiat, but by talking honestly and respectfully about changes that need to be addressed within law firms and in the offices of general counsel. And that dialogue does not begin without acknowledging the costs and losses associated with actively maintaining the status quo, and then recognizing the benefits of considered change in attitudes and culture. It’s always a work-in-process, with progress being the goal. Justice is a verb, not a noun, and successful management will accept the challenge and work to direct resources to implement positive change.

Diversity of thought and experience recognizes the very real opportunities found in skin color, gender, ethnicity, social status, wealth, sexual preference and sexual identity. Diversity and inclusion are not pejorative terms and are not some nefarious code for improper affirmative action. The challenge is to properly, soberly, responsibly and respectfully—above all respectfully—acknowledge diversity of thought and experience as a positive, and then to properly, soberly, responsibly and respectfully—above all respectfully—incorporate diversity of thought and experience into the business of the practice of law. The Illinois Supreme Court is

not providing us with the answers, but challenging us to recognize and appreciate that the future of the profession relies on us to meet this latest challenge. Such is the responsibility of a learned profession.

The goal of progress is opportunity, and we all benefit from opportunity. However, opportunity is not satisfied only by admission to the practice, but requires thoughtful incorporation of opportunities in the form of diversity of thought and experience, by management to be sure, but also by those with diverse thinking and experience. The solution will be in creating something that is obviously missing in firms and in the offices of general counsel—an environment of inclusion with realistic expectations and fair metrics to measure success. Encouragement and recruitment for sure, tempered by the reality that this is a tough business for everyone—but that we all want and expect success. What may be missing in law firms, and in the offices of general counsel, is responsibility for failure. Indeed, success has many parents and failure is an orphan. The alternative is continued exclusion with repeated failures. Exclusion is tantamount to extinction in our business, and it always has been.

With prescience, clarity and courage rare for her time, Shirley Chisholm identified the challenge directly: “You don’t make progress by standing on the sidelines, whimpering and complaining. You make progress by implementing ideas.”²² Chisholm’s guidance is not directed only at those with no seat at the table, but her guidance is as direct challenge to management, too. To those excluded, she instructed: “If they do not give you a seat at the table, bring a folding chair.”²³ Chisholm’s wisdom speaks today.

It is also critical to recognize that exclusion is part of everyone’s experience, except, perhaps, a precious few who may enjoy legacy or privilege that is unknown to the vast majority. Regardless, every young lawyer is excluded, albeit some may have an easier time overcoming exclusion. The question is: Where is your folding chair?

Chisholm challenges management, too. To be successful in the 21st century, management must acknowledge the fact of exclusion and create an environment

that celebrates the opposite of exclusion—inclusion. Management has always been faced with this challenge, and the first step is to create a fair environment, with fair metrics implemented fairly to judge productivity, opportunity, growth, professionalism, and business acumen. Every young lawyer recognizes when there is no such plan, but only lip service without any commitment to fairness. It is abundantly clear to those looking to advance and grow that form follows function. If advancement, growth and recognition depend on unspoken privilege, then management’s goal of retention is an abject failure, and management should not expect any different result.

Similarly, nepotism, by itself, is always a failure for the same reason. If a new hire is the daughter or son of a client with the goal of continued ingratiating with that client—a perfectly reasonable reason to hire that person—then acknowledge that fact, and do not hide it behind platitudes. Build safeguards to protect others without that advantage, and also to protect the client’s progeny—perhaps an independent supervisor coupled with an environment of fairness and inclusion, and of course, well-communicated metrics, applied fairly. Again, form follows function, and everyone knows the difference, despite words to the contrary.

However, it does not stop there. Fairness, like justice, should be treated like a verb. Management must take steps to not only recruit and welcome diversity of thought and experience, but to continually foster inclusion and to actively follow through with real measures specifically designed to create an environment of fairness inclusion. Some consider this heavy lifting, but it need not be so. Indeed, as if to prove the point, we have many examples in experience.

With the advent of women in real numbers, many in law management sponsor activities to honor and include women. Firms and companies sponsor awards for women entrepreneurs and female leaders. Some firms recognize sexual preferences by actively recruiting diverse lawyers and promoting causes important to them. Nothing feels better

than being wanted and then recognized, and then supported. Who would ever leave that environment? Jewish, Irish and Italian lawyers were historically excluded for years—some still experience vestiges of exclusion to this day, and some even face unfair reactions and hate. Supporting causes that battle exclusion and hate provides support for those individuals. Also, who does not like a party? Who, but the closed-minded, don't enjoy a celebration of heritage, the recognition of a patron saint, the recognition of the contributions of an explorer or pioneers of thought and those who fight hate and bigotry?

Why stop there? Our predecessors provided further examples of inclusive practices even in the face of prejudice and hate to Irish, women, Italians and Jews.

Why not a recognition of Gandhi and Indian independence, or Gay Pride, or the contributions of Native Americans, or those who practice Islam? Why, after all of these years, do so few Americans fail to acknowledge Black History Month and the contributions of 20 percent of our population? These are opportunities, not burdens. The goals of progress and new business generated by inclusion result in retention of those with those diverse experiences and opportunities. It is not crass to acknowledge that one reason to do so is to enhance a business profile—it is just smart, and the right thing to do.

Supreme Court Rule 794(d) presents the challenge. By nature, lawyers seek out and accept challenges. We recognize that justice is dynamic. One does not simply buy

a cup of justice, but rather, one works for a just result—and keeps working to avoid backsliding. The work is not finished simply because those with diverse backgrounds, thoughts and experiences are admitted. Indeed, the work of making admission to the practice meaningful only just begins at admission. Hence, the challenge provided by Illinois Supreme Court Rule 794(d).

Diversity and inclusion are not pejorative terms, but opportunities in waiting. ■

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1. Ill. S. Ct. R. 794 (eff. July 1, 2017).

2. https://www.brainyquote.com/quotes/shirley_chisolm_2019.

3. *Id.*

Diversity committee updates

Editor's Note: Each year, the ISBA's diversity-related committees and section councils—consisting of the Standing Committees on Women and the Law, Racial and Ethnic Minorities and the Law, Sexual Orientation and Gender Identity, and Disability Law, as well as the Human Rights Section Council and the International Law and Immigration Section Council—are invited to share their group's accomplishments and successes from the past year. Following are this year's contributions.

Human Rights Section Council

By Shannon M. Shepherd

The Human Rights Section Council has had an active year. In September, we conducted a CLE program, "Restorative Practices in Illinois: Civil and Criminal Cases," which is available online on the ISBA's website. At the midyear meeting, we co-sponsored "The Judge," a unique CLE about the documentary film of the same name.

We also have had some amazing guest speakers at our Section Council meetings. Debra Gittler, executive director of ConTextos, came to speak to us in February 2019 about the progressive work her

organization is doing in Chicago to help prisoners, particularly juveniles, reintegrate into society. ConTextos started in 2011 in El Salvador to help students there learn to open up about the struggles they faced with trauma stemming from poverty, gang violence and migration. The program helped improve empathy, self-projection, and literacy skills for affected youth. In 2017, ConTextos came to Chicago, and adapted its program to assist Chicago's violence and trauma-exposed youth in Cook County jails and in Chicago neighborhoods with high levels of violence and recidivism.

In April, Benjamin Wolff, legal director of the ACLU of Illinois, came to speak to us about their ongoing important work in areas that affect human rights here in Illinois, such as worker's rights and immigrant's rights. Wolff discussed the ACLU's history of ground-breaking legal action to protect the right to free speech and assembly, worker's right to unionize and immigrant's rights to due process. The ACLU is currently fighting the administration's attempt to include a question on the census regarding a person's citizenship status, as it is feared this question will deter people in mixed-status households from answering the census. The ACLU has found evidence that this question was

proposed for discriminatory reasons, and it would affect important decisions such as representation in Congress and funding for public projects.

We are currently reviewing the nominees for our 2019 Gertz Award. The Gertz Award was established by the ISBA in 2000, and recognizes long-standing, continual and exceptional commitment by an individual or organization to the protection and advancement of human rights.

We are looking forward to another active year in 2019-2020!

Sexual Orientation and Gender Identity Committee

By Brian E. Fliflet

Addressing transgender legal issues, SOGI updated its brochure, "Rights of Lesbians, Gays, Bisexuals, and Transgendered Persons." This updated brochure provides valuable information about protecting LGBT persons in the areas of discrimination and employment, marriage and family law, estate planning and violence, and is available under the Consumer Legal Guide section of the ISBA website.

SOGI also is planning a live CLE program to take place in the Metro East area in the

fall dealing with the complex issues of youth transitioning. Legal and medical experts will educate lawyers and judges about the many issues to consider in representing a client or handling a case.

Responding to the Trump administration ban on transgendered service members, SOGI voted to recommend that the ISBA Assembly adopt the ABA's Resolution to Oppose the Ban on Transgendered Individuals in the Military. SOGI invited the Military Services Committee to support its

efforts.

SOGI tracked and took positions on various legislation introduced in the General Assembly. Measures ranged from requiring instruction on LGBT history in public schools to extending the statute of limitations for filing certain complaints for violating the Illinois Human Rights Act and prohibiting nondisclosure agreements in instances of sexual harassment or sexual violence in the workplace.

The ISBA offers a number of awards

in various practice areas. SOGI members reviewed the qualifications for nominations of each award and made nominations of deserving candidates that comprise or serve its constituency.

Continuing a proud tradition, SOGI represented the ISBA at the Springfield Pride Fest by sponsoring a booth, answering questions, and handing out legal pamphlets and promotional items.■

Diversity Leadership Award

The Diversity Leadership Award recognizes long-standing, continuing, and exceptional commitment by an individual or an organization to the critical importance of diversity within the Illinois legal community, its judiciary and within the Illinois State Bar Association. Congratulations to the 2019 winner, Mario Sullivan.

His nominators note that Sullivan's legal career, thus far, has spanned a little more than a decade. During this time period, his contributions to the advancement of diversity within the Illinois and nationwide legal community has been exceptional. His commitment to representing and advocating for the rights of the lesbian, gay, bisexual, and transgender community has been the common thread running through Sullivan's dedicated years of service to the bar.

Service has been a hallmark of Sullivan's legal career from the start. He has served on countless committees, councils, and societies that all have diversity at the core of their missions. As a law student, Sullivan organized an LGBT group at his law school and engaged with the broader LGBT community within the legal profession. He also served as a Public Interest Law Initiative (PILI) law student intern at the Chicago Legal Clinic, where he worked closely with staff attorneys to assist low-income clients dealing with landlord/tenant issues, divorces, bankruptcy, and other legal services. He continued his connection

to PILI as a member of the organization's Alumni Network Leadership Council. He regularly serves as an adviser to one of PILI's law student interns each summer, and he has advocated for funding for PILI to support a law student intern focused on legal issues impacting the LGBT community.

After his admission to the Illinois bar, Sullivan went on to serve as a member and as co-chair of the Lesbian and Gay Bar Association of Chicago, an organization dedicated to providing continuing legal education on issues surrounding the LGBT community and to providing a community for LGBT attorneys and judges to discuss the challenges they face in their legal careers. Sullivan is also a current member of the ISBA Standing Committee on Sexual Orientation and Gender Identity (SOGI), which advocates for the LGBT community through continuing legal education and programming, provides consumer information for the LGBT who are seeking to understand their legal rights and advocating for or against legislation that could have a direct or indirect impact on those individuals who identify as LGBT. Sullivan personally drafted a resolution that SOGI approved and submitted to the ISBA Assembly, asking it to take a position opposing President Trump's ban on transgender individuals serving in the military. He is also involved in the Chicago Bar Association.

Sullivan's commitment to diversity extends outside of Illinois, as well. He has held significant leadership roles in the American Bar Association, serving on its Council for Racial & Ethnic Diversity, Section on Civil Rights & Social Justice, and Commission on Sexual Orientation and Gender Identity.

According to PILI Executive Director Michael Bergman, much of Sullivan's work "has focused on mentoring and developing the future generation of lawyers, especially those who are LGBT and from other minority populations, advocating for LGBT lawyers and individuals, and using the organized bar as a vehicle for positive change to improve our profession and justice system. I am very glad to lend my support to his nomination."■



Mario Sullivan