Session CLE 404 | Portrait Project 2.0 – A Portrait of Asian Americans in the Law

Session Description:
A plenary session at the 2016 NAPABA convention in San Diego featured the debut of A Portrait of Asian Americans in the Law, the first comprehensive account of the progress of Asian Americans in the legal profession. The final report, published in 2017, has provided a crucial resource for advocacy by and on behalf of Asian Americans in law firms, the corporate sector, government, and many other settings where our community continues to be under-represented, especially at the top levels of leadership. The report has been cited extensively in the media and in proceedings before Congress and state courts.

This fall, we are pleased to debut a five-year update of the Portrait Project in a plenary session at the NAPABA convention. The new report will update previous findings on Asian American representation in diverse sectors of the legal profession. It will also have several new components, including data on Asian American lawyers’ experiences and perceptions of their role in light of the pandemic and anti-Asian racism, as well as ethnic subgroup comparisons that shed light on diversity within the Asian American community. The updated report will give concrete representation to the experiences of Asian Americans in the legal profession, and it will provide a comprehensive empirical foundation for continued advocacy to advance the interests and aspirations of Asian American lawyers. As with the original 2017 report, the updated 2022 report will be a critical resource of interest to every member of our community.

Moderator:
Ajay Mehrotra, Research Professor, American Bar Foundation

Speakers:
Goodwin Liu, Associate Justice, California Supreme Court
Shih-Chun (Steven) Chien, Research Social Scientist, American Bar Foundation
Tyler Dang, Yale Law School
Katherine Fang, Yale Law School
Benji Lu, Yale Law School
Michael Tayag, Yale Law School
PORTRAIT PROJECT 2.0:
A PORTRAIT OF ASIAN AMERICANS IN THE LAW
Hon. Goodwin Liu (co-PI) & Ajay K. Mehrotra (co-PI)

EXECUTIVE SUMMARY

Over the last three decades, Asian Americans have been the fastest-growing minority group in the legal profession. Since 2000 alone, the number of Asian American lawyers has increased from 20,000 to approximately 53,000 today. Despite these numbers, there is a conspicuous dearth of accurate and precise descriptive data about how Asian Americans and other minority groups are situated in the profession compared to the overall population.

New research has begun to provide some indication that while the number of Asian Americans in the profession has grown, there is a paucity of Asian American leaders in the legal profession. A 2017 study supported by the National Asian Pacific American Bar Association (NAPABA) and Yale Law School, titled *A Portrait of Asian Americans in the Law (Portrait Project)*, documents this state of affairs. Building on findings from the American Bar Foundation’s *After the JD (AJD)* study, the *Portrait Project* charts the historically dramatic growth of Asian American lawyers over the past three decades, the recent and sharp decline in law school enrollment, and the limited number of Asian Americans in the profession’s highest leadership positions – from judicial clerks to law firm partners, to top prosecutors and judges, to law school deans and non-profit executives.

Together, the initial *Portrait Project* and *AJD* have begun to document and situate Asian Americans in the legal profession. Still, further research needs to be done. The central goal of this ABF-centered research project is to begin the process of creating a more detailed descriptive data set of Asian Americans in the legal profession. Although there is growing interest in diversity in the legal profession, we currently lack a fundamental, baseline understanding of the more detailed demographics of the profession, particularly with regards to Asian Americans. Thus, this first phase of a broader research project (*Portrait Project 2.0*) seeks to provide more descriptive data in two particular ways: (1) by updating the 2017 study situating Asian Americans in the legal profession; and (2) by studying diversity within judicial clerkships. In future research, we plan to investigate other parts of the legal profession from mobility at large law firms to the leadership ranks within the public sector, the legal academy, and non-profit organizations.
BACKGROUND

*Portrait Project 2.0* aims to provide a descriptive account of Asian Americans in the legal profession, with an eye toward illuminating the incentives and choices that influence the career paths of law students and lawyers from underrepresented groups. Our goal is to provide an empirical grounding for broader conversation within and beyond the Asian American community about the unique challenges and opportunities Asian Americans face in the legal profession and possible directions for reform. The original report, published in 2017, offered a landmark overview. In addition to grounding the experiences of our community, the report has been cited in advocacy efforts before Congress and state bars. This second iteration aims to provide a five-year follow-up.

Thus far, *Portrait Project 2.0* is an ongoing research program led by the American Bar Foundation in collaboration with the National Asian Pacific American Bar Association (NAPABA) and its affiliate groups, the South Asian Bar Association of North America (SABA), Yale Law School, Northwestern Pritzker School of Law, Columbia Law School, several leading law firms, and others.
A FIVE-YEAR UPDATE OF THE ORIGINAL PORTRAIT PROJECT

This fall and winter, we plan to complete and release a five-year update of the initial Portrait Project report. The new report will update previous findings on Asian American representation in diverse sectors of the legal profession. It will also have several new components, including data on Asian American lawyers’ experiences and perceptions of their role in light of the pandemic and anti-Asian racism, as well as ethnic subgroup comparisons that shed light on diversity within the Asian American community. The updated report will give concrete representation to the experiences of Asian Americans in the legal profession, and it will provide a comprehensive empirical foundation for continued advocacy to advance the interests and aspirations of Asian American lawyers. The research findings build on ABF’s After the JD study and leverage NAPABA’s formidable outreach capabilities to capture the experiences of Asian American lawyers through surveys and focus groups. As with the original 2017 report, the updated 2022 report will be a critical resource of interest to other scholars, affinity bar organizations, the media, and others interested in diversity within the legal profession.

The updated report will consist of three main components: (1) an empirical survey; (2) a series of focus groups among Asian American lawyers; and (3) external data collection. All research team members have completed the IRB protocol and human subject training.

A. Survey

Since March 2021, the team has updated the survey instrument from the original Portrait Project. New questions address how Asian American lawyers are contending with and combatting the rise in violence against our community. We have also added questions regarding solidarity with other communities of color. We are currently in the process of collecting the survey data with the goal of analyzing and writing up our findings in the fall and winter of 2022.

B. Focus Groups

The team has conducted focus groups over Zoom and at NAPABA’s Annual Convention in the Fall 2021. These one-hour sessions allowed a small group of Asian American attorneys to delve into issues related to career advancement, solidarity with other communities of color, and mental health. We plan to conduct a two more focus groups in partnership with the National Conference of Vietnamese American Attorneys (NCVAA). The responses provided in these focus group sessions have informed our survey questions. In addition, once transcribed, vignettes from these focus groups will be published in our report.

C. External Data Collection

The team has been working to gather external statistics from other relevant studies about the representation of Asian Americans in the law.
DIVERSITY AND JUDICIAL CLERKSHIPS

Fulltime, postgraduate judicial law clerkships are an important segment of the legal profession and frequently a gateway for future leaders of the profession, government, and civil society. Yet the demographic composition of federal appellate clerks has remained highly homogenous by race and gender and thus unreflective of the changing demographics of law school graduates and the broader U.S. population. This phase of our project is the first rigorous and comprehensive empirical study to explore how the clerkship application and selection process may shape the demographics of federal appellate clerkships.

As part of the Portrait Project 2.0, this project seeks to provide an empirical account of the diversity of law clerks in the U.S. Courts of Appeals. This project examines three critical inflection points in the clerkship selection process: (1) law student/clerkship applicant decisions based on perceptions, preferences, and ambient signals; (2) institutional support from law schools through faculty, staff, and administrator engagement with the clerkship process; and (3) criteria and selection processes used by judges.

A. Law Students/Clerkship Applicants

Our goal with this research is to supplement the rather incomplete existing empirical evidence by collecting original data from law students and alumni through surveys, focus groups, and semi-structured interviews. We have forged a partnership with NALP (National Association of Law Placement) Clerkship Committee – a group of clerkship coordinators from the top-14 (T-14) law schools (as ranked by U.S. News & World Report). We plan to work with these law schools in matching self-reported demographic data from students with clerkship interest and application to determine who is applying for these clerkships.

B. Law School Faculty, Staff, and Administrators: Survey of Administrative Support Systems Available to Students

The second portion of our project focuses on how law schools track, advise, and mentor students interested in judicial clerkships. Our analysis is based on a survey of clerkship coordinators at the Top 14 schools represented on the NALP Clerkship Committee. The survey focuses on the resources and processes that law school career service offices dedicate to educating, identifying, and assisting clerkship applicants. We circulated the same survey to an additional 11 schools, which we have identified, based on existing research, as the additional top feeder schools for federal clerkships. We seek to understand what law schools are doing with regards to the clerkship application and selection process.

C. Judges Perspectives: The Real Hiring Narrative

The third portion of our project, conducted in collaboration with Jeremy Fogel, Director of the Berkeley Judicial Institute at UC Berkeley School of Law, examines original data collected through interviews with judges as a means for discussing reasons for the lack of diversity and proposing best practices for judges who seek to achieve greater diversity in their chambers. We seek to bring attention to the hiring process of judicial clerkships and the best practices for ensuring diversity. Accessing data or questioning judges about their decision-making and selection process is always challenging. Although
there is a significant literature on the “market” for federal judicial law clerks, the specific topic of diversity (or lack thereof) among judicial clerks and the selection process used by judges is a more delicate subject, and thus one that is much less studied. The methodology we employ here — semi-structured, confidential interviews with 50 active circuit judges — is novel and well-designed to produce rich qualitative insights.

In sum, this project will contribute to our understanding of how the clerkship application and selection process affects the demographics of federal appellate clerks. A diverse and reflective national cohort of judicial clerks is, in short, fundamental to the legitimacy and credibility of our democracy and the rule of law. Our project will help identify and analyze the factors that may facilitate or frustrate the creation of a more heterogeneous cohort of federal appellate clerks – a cohort that might be more reflective of the changing demographics of American society. Although federal appellate clerkships represent a highly stratified sector of the market for judicial clerkships, even this seemingly limited descriptive dataset will be a significant contribution and first step to expanding our existing theoretical and empirical understanding of the judicial clerkship application and selection process.
Who’s Going To Law School?

New American Bar Foundation-sponsored study examines the changing diversity of JD students by gender, race, and nationality since the Great Recession a decade ago.

By Miranda Li, Phillip Yao, and Goodwin Liu

This study provides a comprehensive analysis of recent U.S. law school enrollment trends. With two sets of JD enrollment data — one from the American Bar Association (ABA), the other from the Law School Admission Council (LSAC) — we discuss how the demographic composition of law students has changed since the Great Recession of the late 2000s, with particular attention to Asian Americans, who too often remain an invisible minority in contemporary discourse on diversity. We also analyze enrollment demographics by law school rank, grouping schools into six tiers based on nine-year average U.S. News & World Report rankings. Our study provides a fresh and thorough empirical foundation for discussions of diversity in law school and the legal profession.

A Closer Look

JD enrollment has declined almost 25% since its peak in 2010. Despite a recent increase, enrollment seems unlikely to rebound to levels a decade ago, especially given the potentially severe recession due to the coronavirus pandemic.

- Although law school enrollment increased significantly during the decade before the Great Recession of the late 2000s, it has decreased even more significantly during the decade since.

- Law school applicants have increased by nearly 11% since 2016, but new matriculants have increased by only 3%. The recent uptick in enrollment that some have called the “Trump bump” has been modest.

- Law school enrollment may decline further over the next decade, depending on the depth and duration of the economic slowdown due to the coronavirus pandemic.

Women have outnumbered men in law school since 2016. The recent increase in JD enrollment is entirely attributable to more women pursuing law.

- Although women outnumber men at schools up and down the rankings, women are disproportionately enrolled in lower-ranked schools with lower rates of bar passage and post-graduation employment. It is
The overall decline in JD enrollment over the past decade is primarily attributable to large decreases in Asian American and White enrollment, especially in lower-ranked schools. Black enrollment has declined modestly during this period, while Hispanic enrollment has increased. Black students and Hispanic students are disproportionately enrolled in lower-ranked schools. Further analysis is needed to determine how many of these students go on to graduate, pass the bar, and practice law. Given the substantial indebtedness and opportunity costs that students incur by attending law school, the changing racial and ethnic makeup of recent enrollments should be interpreted with caution.

Since the Great Recession, Asian Americans and Whites have comprised a smaller share of enrollment, while African Americans and Hispanics have comprised a larger share.

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From 2011 to 2019, the number of Asian American first-year law students declined by 28% according to ABA data (not including multiracial students) and by 16% according to LSAC data (including multiracial students). Under either measure, Asian American enrollment declined the most of any racial or ethnic group.

The observed decline may be because Asian Americans, compared to other groups, have greater concern about financial security in choosing a career or because they disproportionately lack encouragement toward law while facing growing pressure to choose a career path before completing college. Recessionary conditions due to the coronavirus pandemic may exacerbate these trends.

Civic organizations, bar associations, and law student groups, such as the National Asian Pacific American Bar Association and the National Asian Pacific American Law Students Association, may wish to consider collaborating with guidance counselors and faculty at the undergraduate and high school levels to develop outreach strategies that inform students earlier in the educational pipeline about careers in law.

Asian American enrollment has declined more steeply than any other group since the Great Recession. As a result, the number of Asian American lawyers, after rising for four decades, will begin to stagnate in the year 2030.

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Among international students, Asians comprise the largest group, around 40%. Over the past decade, the enrollment of Asian foreign nationals has increased, while the enrollment of Asian Americans has decreased. These trends underscore the importance of distinguishing between Asians and Asian Americans in reporting enrollment data.

In light of the coronavirus pandemic, it is uncertain whether law schools can maintain their current numbers of international students, at least in the short term.

The number of law students who identify as multiracial is increasing. This presents significant challenges for data collection and reporting.

- Neither the ABA nor LSAC reports data on the racial or ethnic composition of multiracial students. Based on intermarriage rates, multiracial Asian Americans likely comprise a significant share of these students.

- The ABA data, which are the most widely cited, report all non-Hispanic students who identify as multiracial in a separate category (“Two or more races”). Thus, the ABA data on Asian, Black, and White students will increasingly provide an undercount of those groups, as the number of students in the “Two or more races” category continues to grow.

This study is an outgrowth of earlier work that provided a systematic account of the experiences of Asian Americans in the legal profession. See Eric Chung et al., National Asian Pacific American Bar Association & Yale Law School, A Portrait of Asian Americans in the Law (2017). The findings here are part of ongoing research in collaboration with the American Bar Foundation (ABF) on diversity in the legal profession. Miranda Li, Phillip Yao, and Goodwin Liu are ABF Collaborating Scholars. The ABF is grateful for the generous financial support of Davis & Polk, Arnold & Porter, Asian American Bar Association of the Greater Bay Area, Asian American Bar Association of New York, Asian Pacific American Bar Association of Silicon Valley, Latham & Watkins, National Asian Pacific American Bar Association, Northwestern Pritzker School of Law, and Yale Law School. Special thanks for additional support from Silvia Chin and the Asian American Law Fund of New York.