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Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships

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DIFFERENCE BLINDNESS VS. BIAS AWARENESS: WHY LAW FIRMS WITH THE BEST OF INTENTIONS HAVE FAILED TO CREATE DIVERSE PARTNERSHIPS

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This Article uses the example of BigLaw firms to explore the challenges that many elite organizations face in providing equal opportunity to their workers. Despite good intentions and the investment of significant resources, large law firms have been consistently unable to deliver diverse partnership structures—especially in more senior positions of power. Building on implicit and institutional bias scholarship and on successful approaches described in the organizational behavior literature, we argue that a significant barrier to systemic diversity at the law firm partnership level has been, paradoxically, the insistence on difference blindness standards that seek to evaluate each person on their individual merit. While powerful in dismantling intentional discrimination, these standards rely on an assumption that lawyers are, and have the power to act as, atomistic individuals—a dangerous assumption that has been disproven consistently by the literature establishing the continuing and powerful influence of implicit and institutional bias. Accordingly, difference blindness, which holds all lawyers accountable to seemingly neutral standards, disproportionately disadvantages diverse populations and normalizes the dominance of certain actors—here, white men—by creating the illusion that success or failure depends upon individual rather than structural constraints. In contrast, we argue that a bias awareness approach that encourages identity awareness and a relational framework is a more promising way to promote equality, equity, and inclusion.

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> There are little Indian girls out there who look up to me, and I never want to belittle the honor of being an inspiration to them. But while I'm talking about why I'm so different, white male show runners get to talk about their art.[1]

INTRODUCTION

A recent study found that law firm partners gave a significantly higher evaluation to an associate's memorandum when they were told the associate was white than when they were told the associate was black, and similarly described the associate's potential as far more positive when they believed the associate was white.[2] This powerful evidence of bias called into question law firms' strongly stated commitment to equity and inclusion.

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1. Mindy Kaling on standing out in the male-dominated comedy world and being a role model. *See* Shawna Malcom, *Thoroughly Modern Mindy Kaling*, PARADE MAG. (Sept. 26, 2013), http://parade.com/167948/shawnamalcom/thoroughly-modern-mindy-kaling/.

2. *See generally* ARIN N. REEVES, WRITTEN IN BLACK & WHITE: EXPLORING CONFIRMATION BIAS IN RACIALIZED PERCEPTIONS OF WRITING SKILLS (2014), *available at* http://www.nextions.com/wp-content/files_mf/1415194075201404011 4WritteninBlackandWhiteYPS.pdf.

For the past thirty years, elite service organizations, such as law firms, have embraced (to varying degrees) a legal and cultural commitment to equality[3] by being structurally open to hiring and promoting diverse professionals. But it has not just been a rhetorical invitation rife with hand waving—this openness has manifested itself in the form of millions of dollars worth of programs and initiatives, committed to making organizations more inclusive and diversity friendly.[4] And indeed, there are more diverse inhabitants in these spaces now than ever before,[5] especially in BigLaw,[6] where this commitment to equity and inclusion has afforded unprecedented opportunities to women, people of color, sexual minorities, and people with disabilities.[7] Even so, although the population of big firm lawyers has become more diverse in the decades following these interventions, positions of power are still predominantly stratified[8] with an overrepresentation of white men in senior positions, especially compared to their relative rate of entry.[9]

Law firms' resistance to systemic change has put in place organizations that look more diverse overall, but are still rigidly reproducing existing hierarchies of race and gender at the top. These gaps in intra-firm achievement have become even more conspicuous as more women have graduated[10] and entered law firms,[11] and people of color are emerging as

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3. *See infra* Part I.

4. *See* Virginia G. Essandoh, *Tear Up the Old Diversity Plan; Forget Just Doing Something. You Must Do Something Dramatically Different*, NAT'L L.J., Nov. 5, 2007 (stating that 99 percent of the Am Law top 200 firms spend tens of thousands of dollars on programs promoting diversity); *see also* Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. LEGAL PROF. 1, 5 (2009). Examples of diversity initiatives include recruiting efforts designed to help increase diversity within the firm, diversity training initiatives focused on education and awareness, and community outreach related to diversity. *See* Soc'y Human Res. Mgmt., Fortune Survey Says Diversity Keeps Competitive Edge Letter No. 227 (Aug. 31, 2001), 2001 WL 36651531; *see also Member Diversity Initiatives*, NALP, http://www.nalp.org/memberdiversityinitiatives (last visited Mar. 25, 2015) (featuring diversity initiatives at law firms, which are primarily diversity scholarship programs to recruit minority students).

5. Karen Sloan, *U.S. Law Firms Slowly Growing More Diverse, Survey Shows*, NAT'L L.J. (Feb. 17, 2015), *available at* http://www.nationallawjournal.com/id=1202718075884/US-Law-Firms-Slowly-Growing-More-Diverse-Survey-Shows?slreturn=20150205192418.

6. The term "BigLaw" generally refers to the largest law firms in the world. *See* Lawrence Friedman & Louis Schulze, *Not Everyone Works for BigLaw: A Response to Neil J. Dilloff*, 71 MD. L. REV. ENDNOTES 41, 41 n.3 (2012), http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1018&context=endnotes.

7. *See, e.g.*, MINORITY CORPORATE COUNSEL ASS'N, DO GOOD, DO WELL LIST (2015) (showcasing law firms that have successful diversity and inclusion efforts), *available at* http://www.mcca.com/_data/global/downloads/research/reports/2014-Do_Good_Do_Well-v01.pdf.

8. *See infra* Part I.B; Helia Garrido Hull, *Diversity in the Legal Profession: Moving from Rhetoric to Reality*, 4 COLUM. J. RACE & L. 1, 6–9 (2013); Rebecca L. Sandefur, *Staying Power: The Persistence of Social Inequality in Shaping Lawyer Stratification and Lawyers' Persistence in the Profession*, 36 SW. U. L. REV. 539, 545–46 (2007).

9. *See infra* Part I.B; Hull, *supra* note 8, at 6–9; *see also* Theresa M. Beiner, *Not All Lawyers Are Equal: Difficulties That Plague Women and Women of Color*, 58 SYRACUSE L. REV. 317, 327–28 (2008).

10. PAUL TAYLOR ET AL., PEW RESEARCH CTR., WOMEN, MEN, AND THE NEW ECONOMICS OF MARRIAGE 2 (2010), *available at* http://pewsocialtrends.org/files/2010/11/new-

the majority of the U.S. population.[12] For example, during the past generation, while feeder law schools'[13] student bodies comprised about 50 percent women[14] and 33 percent minorities,[15] the number of equity partners has remained disproportionately skewed to white men, with women representing only 16.5 percent[16] and minorities only 5.06 percent.[17] Similarly, although lesbian, gay, bisexual, and transgender (LGBT) lawyers represent 2.29 percent of associates,[18] they were only 1.36 percent of lawyers who made partner in 2009.[19] Worse, lawyers with disabilities are underrepresented at the entry level at 0.14 percent,[20] and at the partnership

economics-of-marriage.pdf; *see also* Katharine K. Baker, *Homogenous Rules for Heterogeneous Families: The Standardization of Family Law When There Is No Standard Family*, 2012 U. ILL. L. REV. 319, 323.

11. NAT'L ASS'N WOMEN LAWYERS, REPORT OF THE THIRD ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 5 (2008), *available at* http://amlawdaily.typepad.com/NAWLSurvey.pdf (surveying the Am Law top 200 law firms and concluding that "[w]omen start out in about equal numbers to men when they enter law firms as first year associates . . . [constituting] 48% of first and second year associates, a percentage that approximates the law school population").

12. Robert Bernstein, *Most Children Younger Than Age 1 Are Minorities, Census Bureau Reports*, U.S. CENSUS BUREAU (May 17, 2012), https://www.census.gov/newsroom/releases/archives/population/cb12-90.html.

13. Feeder law schools are the law schools from which large law firms primarily recruit entry-level associates. Historically, elite Wall Street law firms recruited exclusively from Harvard, Yale, and Columbia law schools. As large law firm grew they gradually began to recruit deeper into the classes of existing feeder schools as well as expand the ranks of feeder schools. *See, e.g.*, Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 996–97 (2014).

14. We acknowledge that we are focusing only on one piece of the legal profession. For example, we are not exploring the lack of equity and inclusion in either the pipeline to law school, *see, e.g.*, Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 283 (2014) (comparing diversity in the legal profession to similar occupations), or in the hiring and promotion of law school faculty, *see, e.g.*, AM. ASS'N LAW SCH., THE RACIAL GAP IN THE PROMOTION TO TENURE OF LAW PROFESSORS: REPORT OF THE COMMITTEE ON THE RECRUITMENT AND RETENTION OF MINORITY LAW TEACHERS 1–2 (2005), http://aalsfar.com/documents/racialgap.pdf. Nonetheless, we suggest that the mythology of the atomist person pervades legal culture and that a relational perspective will be more likely to achieve equity and inclusion in any context.

15. Modupe N. Akinola & David A. Thomas, *Defining the Attributes and Processes That Enhance the Effectiveness of Workforce Diversity Initiatives in Knowledge Intensive Firms* 13 (Harvard Bus. Sch., Working Paper No. 07-019, 2008).

16. LISA D'ANNOLFO LEVEY, N.Y.C. BAR ASSOC., 2009 LAW FIRM DIVERSITY BENCHMARKING REPORT: REPORT TO SIGNATORIES OF THE STATEMENT DIVERSITY PRINCIPLES, app. at 16 (2009), *available at* http://www.nycbar.org/images/stories/pdfs/final_appendices09.pdf.

17. LISA D'ANNOLFO LEVEY, N.Y.C. BAR ASSOC., 2007 DIVERSITY BENCHMARKING STUDY: A REPORT TO SIGNATORY LAW FIRMS 38 (2007), *available at* http://www.nycbar.org/images/stories/pdfs/firmbenchmarking07.pdf.

18. *Although Most Firms Collect GLBT Lawyer Information, Overall Numbers Remain Low*, NALP BULL. (Dec. 2009), http://www.nalp.org/dec09glbt.

19. *Id.*

20. LEVEY, *supra* note 17, at 23; *see also* Alex B. Long, *Reasonable Accommodation As Professional Responsibility, Reasonable Accommodation As Professionalism*, 47 U.C. DAVIS L. REV. 1753, 1755–56 ("The legal profession has been similarly slow to welcome individuals with disabilities into the profession. According to the U.S. Census Bureau, 54 million Americans or 19% of the civilian noninstitutionalized population has a disability of

level with 0.18 percent,[21] although it has been "estimated that at least ten percent of law students have a disability."[22]

This sparse representation demands that we revisit the original paradigms of diversity management and reassess the ways in which firms have shouldered the agenda of inclusion. Particularly, it urges the following introspection about current and future policy: Should organizations continue to employ the methods of diversity inclusion currently in use, what will the future look like? Are we inadvertently continuing to create institutions that privilege white men and their dominance? Or can elite institutions, in line with their ideological agenda of inclusivity, reflect equal participation of all in the future?

This Article examines the case of elite law practice by using the lens of two preliminary frameworks. First is the *difference blindness* approach, which is the predominantly popular paradigm for inclusion that firms currently employ (and think of as diversity-friendly). Second is the *bias awareness* model, which we posit as a more viable alternative for sustainable equity and inclusion.

Difference blindness, the preexisting framework of elite organizations that are committed to equality, is an inclusivity paradigm that is grounded in a myth of the meritocratic journey of the atomistic individual. Originating in the color-blind approach to race discrimination,[23] the difference blind paradigm applies this approach to all identities and rests on an assumption that once at the firm, partners and associates behave as atomistic actors, such that their achievement is a function of individual merit and that discrimination only occurs when individuals in power intentionally engage in it. In turn, seen through this lens of difference blindness, the chronic underrepresentation of people who are not white male heterosexuals appears to be a feature of a system grounded in assumptive—and dangerous—notions of equality. In this light, the organizations and institutions are meritocratic and equal (because they structurally allow for inclusion) and it is the individuals who are at fault for not "making the cut."

On the other hand, we set forth here a paradigm of *bias awareness*, an approach reflecting a relational understanding of achievement, merit and identity. In doing so, we suggest a set of institutional changes that might

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some kind. Yet, in a recent survey of law firms that sought disability information for approximately 110,000 lawyers, only 255, or 0.23%, were identified as having a disability.").

21. LEVEY, *supra* note 17, at 23.

22. Arlene S. Kanter, *The Law: What's Disability Studies Got to Do with It or an Introduction to Disability Legal Studies*, 42 COLUM. HUM. RTS. L. REV. 403, 451–52 (2011).

23. *See, e.g.*, MICHAEL C. DORF & TREVOR W. MORRISON, CONSTITUTIONAL LAW 156–65 (2010); DEVON W. CARBADO & RACHEL F. MORAN, RACE LAW CASES IN THE AMERICAN STORY 29–35 (Austin Sarat ed., 2014); Destiny Peery, *The Colorblind Ideal in a Race-Conscious Reality: The Case for a New Legal Ideal for Race Relations*, 6 NW. J. L. & SOC. POL'Y 473 (2011).

hold the key to alternative notions of relational meritocracy and equality.[24] Seen through the framework of *bias awareness*, we argue that the widely non-diverse institutions in place today are not much of an accident. Bias awareness calls for a reevaluation of the preexisting frameworks that difference blindness takes for granted. While committed to the same umbrella constructs that created the difference blindness approach, i.e., equality, fair treatment, and meritocracy, it sheds light on the fact that sometimes visible formal equality is substantively unequal, and ignoring implicit bias and presumptions in scenarios like this could be harmful for the grander goals that organizations seem committed to in good faith. Specifically, we suggest that a positive answer to the questions above would require leaders of elite institutions to abandon their currently predominant culture of *difference blindness* and adopt instead a paradigm of *bias awareness*.

Challenging difference blindness is a difficult task because it is grounded in the seemingly unassailable ideological presumption that merit embodies inclusiveness by treating everyone equally irrespective of irrelevant differences. Moreover, difference blindness is the very commitment that historically led white men to commit to opening their previously explicitly discriminatory organizations to others, and that provided the ideological context for the career successes of those women and people of color who have achieved leadership positions.[25] Nonetheless, difference blindness is based on a flawed presumption of merit because it is built on conformity to an historical ideal worker who is white, heterosexual, and male. In doing so, difference blindness creates two problematic dynamics. First, it confers a sense of agency on individuals and institutions alike that is inconsistent with true equality in diverse workspaces. Second, it impedes the consideration of persuasive evidence that the normalization of whiteness and blindness to differences makes equal opportunity impossible.

Difference blindness, for example, is what makes firms feel like their commitment to inclusivity is met so long as they do not see difference and hold everyone to the "same standards"; or that they are "doing all they can" by having diversity initiatives that encourage individuals of all backgrounds to fill the same roles and expectations. Thus, so long as the standard of the successful, ideal worker is met—the firm itself is blind to gender, color, or sexuality—everyone *is* equal and treated equally. Yet, this is simply not the

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24. This structural analysis benefits from the work of scholars who have explored the "systems and structures that produce and perpetuate racial disadvantage." R.A. Lenhardt, According to Our Hearts *and Location: Toward a Structuralist Approach to the Study of Interracial Families*, 16 J. GENDER RACE JUSTICE 761, 761–62 (2013); *see also, e.g.*, Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CAL. L. REV. 1 (2006); John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1091 (1997); John A. Powell, *Structural Racism: Building Upon the Insights of John Calmore*, 86 N. C. L. REV. 791 (2008); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458 (2001).

25. *See* Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291, 312 (1995) (noting that rapid expansion of business opportunities for large law firm in the 1970s and 1980s led them to expand hiring pools to include women and minorities).

case because the work of lawyers, like that of all workers, is grounded in relationships. By overemphasizing individual outcomes without paying attention to the surrounding interactional and institutional processes that produce them, we render the evaluation both incomplete and unjust.

We posit that, in particular, two related influences are crucial in ensuring that this problematic framework of blindness persists. *First* is the effect of implicit bias. Lawyers bring to their work their implicit biases that are embedded in the dominant power and prestige of identity groups in society.[26] To the extent that white men are the dominant group in society, leaders of law firms will bring biases in their favor into the workplace.[27] Exacerbating the implicit bias effect is homophily, the *second* relational phenomena, which stands in the way of equity and inclusion in lawyer workspaces. Homophily is the term for the reality that many people feel most comfortable with people who are most like them.[28] As a result, without the effort that bias awareness would require, most white men will tend to find it easier to mentor those like them, as a general matter giving white men superior opportunities to develop the skills and relationships they need to become a partner.

In Part I, this Article describes the good intentions of law firms and explains how their difference blindness approach has failed to provide equity and inclusion. Part II explains how reliance on a mythology of the atomistic individual ensures this failure. Part III offers a way forward grounded in a relational concept of the workplace, including specific recommendations. Together, this Article argues that the dominant legal culture of difference blindness, grounded in a myth of the meritocratic journey of the atomistic individual, prevents remedy of these biases while at the same time—ironically—relying on relational policies to breed and tolerate bias. In contrast, bias awareness, we suggest, reflects a relational understanding of individual achievement, thereby offering the potential for providing greater equity and inclusion through concrete changes in organizational culture. By exploring the challenges confronting large law firms, this Article offers a framework for analyzing and resolving the problems that elite institutions have faced, and will continue to face, in providing equal opportunity to their workers.

Even so, this Article is only a beginning. It draws largely on examples relating to race and gender but does not offer a comprehensive blueprint of all the work that needs to be done with regard to these identities. Although we argue that the integration-and-learning framework applies to all identities, this Article does not explore specific issues relating to

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26. Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1049–50 (2011).

27. Indeed, a recent study confirmed the way this effect favors white people, finding that law firm partners gave white lawyers higher evaluations than black lawyers for the same memorandum. *See generally* REEVES, *supra* note 2.

28. *See infra* notes 133–44 and accompanying text.

intersectionality, or sexual minorities and people with disabilities.[29] Last, this Article does not reach the question of the appropriate legal standard that should apply to organizations.[30]

I. GOOD INTENTIONS, FAILED STRATEGY

In this part, we describe elite law firms as well intentioned on the basis of their stated commitment to equality and inclusion. Over the past thirty years, law firms around the country have backed up their commitment with resources and programs.[31] Applying a meritocratic vision that assumes a world of atomistic individuals who compete and are assessed on merit, law firms police intentional discriminatory acts by individual partners, proactively recruit women and minority lawyers,[32] and provide associates who are not white men with formal support, often from an affinity group and an assigned senior lawyer so that they will be able to demonstrate whether they merit promotion to partnership. Despite these policies, white men have continued to dominate elite law firm culture, even as women and nonwhite lawyers have gained partnership in significant numbers. However, these numbers still remain disproportionate to the percentages of these groups in feeder law schools and at entry levels in law firms.

Although this part describes elite law firms as having good intentions, we acknowledge the possibility that leaders who profess commitment to equality in public may make bigoted statements in private.[33] Absent useful

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29. *See, e.g.*, James G. Leipold, *Stand and Be Recognized: The Emergence of a Visible LGBT Lawyer Demographic*, 42 SW. L. REV. 777 (2013) (discussing LGBT lawyers); Long, *supra* note 20 (discussing lawyers with disabilities); Laura Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 FORDHAM L. REV. 843 (discussing intersectionality by focusing on women of color who are affected by both to racial and gender bias).

30. *See, e.g.*, Tanya Katerí Hernández, *One Path for 'Post-Racial' Employment Discrimination Cases—The Implicit Association Test Research As Social Framework Evidence*, 32 LAW & INEQ. 309 (2014).

31. *See, e.g.*, ELIZABETH CHAMBLISS, N.Y. STATE BAR ASS'N, MILES TO GO IN NEW YORK: MEASURING RACIAL AND ETHNIC DIVERSITY AMONG NEW YORK LAWYERS 23 (2007); *Diversity & Inclusion*, WEIL, GOTSCHAL & MANGES LLP, http://www.weil.com/about-weil/diversity-and-inclusion (last visited Mar. 25, 2015); *Diversity: Morrison & Foerster LLP*, MARTINDALE, http://www.martindale.com/Morrison-Foerster-LLP/law-firm-75374-diversity.htm (last visited Mar. 25, 2015).

32. *See* Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005, 1015 (1997) (describing the theory that affirmative action leads to minority associates being hired that are less qualified than their white peers, a stigma which penalizes qualified minority hires); LeeAnn O'Neill, *Hitting the Legal Diversity Market Home: Minority Women Strike Out*, 3 MOD. AM. 7, 10 (2007) (noting that numbers-based diversity initiatives, such as affirmative action, may result in the abilities and qualifications of women and minority attorneys to be questioned by dominant white male partners); Veronica Root, *Retaining Color*, 47 U. MICH. J.L. REFORM 575, 610–11 (2014) (describing the affirmative action stigma in elite law firms).

33. Recently, for example, the hacking of the Sony Pictures emails revealed that the white chair of Sony Pictures and an influential white producer, both of whom publicly committed to a culture of equality in their businesses and in society, made overtly bigoted comments about President Obama even as they supported his reelection to the presidency. *See* Matthew Zeitlin, *Scott Rudin on Obama's Favorite Movies: "I Bet He Likes Kevin*

data on this phenomena, our analysis proceeds as if the commitment to equality is made in good faith and indeed, even if it is not, the proposals we make in Part III will prove more effective than the dominant strategy described in this part.

A. Good Intentions

In many ways, elite law firms have been model organizations in promoting equity and inclusion for people outside the dominant identity group of white heterosexual men. And as the U.S. Equal Employment Opportunity Commission has noted, within the legal services industry "[l]arge, nationally known law firms generally have a higher proportion of women and minorities than other types of law firms."[34]

Of course, this agenda for inclusion, like most institutional change, has not been a function of intention alone. Large law firms have invested many dollars and hours in the effort to provide their lawyers equity and inclusion,[35] and they have similarly been societal leaders in fighting for civil rights for all.[36] Large firms consistently express a strong commitment to equity and inclusion, declaring their "dedicat[ion] to attracting, retaining and promoting lawyers . . . from diverse backgrounds."[37] They describe a "diverse and inclusive environment"[38] as "a source of strength"[39] and commitment to that goal as a core value.[40] They have backed up this rhetoric with resources and organizational initiatives, including diversity committees, diversity training, affinity groups, parental leave policies, and mentoring programs.

The dominant strategy in these elite large firms to promote diversity has been to recruit diverse entry-level classes of associates and then train and promote these junior lawyers in a seemingly meritocratic partnership tournament.[41] In economics, a tournament describes a strategy employers use to identify and cultivate stars, rather than to develop the careers of all entry-level employees so that each of them achieves their highest level of

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Hart," BUZZFEED (Dec. 10, 2014, 9:20 PM), http://www.buzzfeed.com/matthewzeitlin/scott-rudin-on-obama-i-bet-he-likes-kevin-hart#.paVa2Z43.

34. EEOC, DIVERSITY IN LAW FIRMS 25 (2003), *available at* http://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/lawfirms.pdf.

35. *See supra* notes 3–4 and accompanying text.

36. Rhode, *supra* note 26, at 1042–46.

37. *About Us: Diversity Policy*, DEBEVOISE & PLIMPTON, http://www.debevoise.com/aboutus/diversity (last visited Mar. 25, 2015).

38. *CSR: Diversity*, PAUL HASTINGS, http://www.paulhastings.com/csr/diversity (last visited Mar. 25, 2015).

39. *Diversity*, COVINGTON & BURLING, http://www.cov.com/diversityoverview (last visited Mar. 25, 2015).

40. Karen S. Ali & Marisa H. Lattimore, *Commentary Diversity Still Matters in the Post-Election Era*, LEGAL INTELLIGENCER (Apr. 20, 2009); *CSR: Diversity*, *supra* note 38.

41. The tournament of lawyers has been and is common among a subset of historically elite large law firms, but, importantly, not all of BigLaw. *See* Eli Wald, *Smart Growth: The Large Law Firm in the Twenty-First Century*, 80 FORDHAM L. REV. 2867, 2869–76 (2012); Eli Wald, *The Other Legal Profession and the Orthodox View of the Bar: The Rise of Colorado's Elite Law Firms*, 80 U. COLO. L. REV. 605, 614 (2009).

performance and greatest contribution to the organization. In the tournament, law firms hire large numbers of associates in an entry-level class, ranging from 30 to 100, of whom only a few, perhaps one, two, or three, will become partners after eight to ten years of apprenticeship.[42] The model has, of course, evolved with time. And today, law firms do not use a pure tournament—they hire lateral partners and award non-equity partnerships and counsel positions.[43] Nonetheless, the primary focus of elite BigLaw hiring and promotion remains the partnership tournament.[44]

The tournament model has historically been touted as a quintessential method for providing meritocracy and equal opportunity in law firms.[45] Law firms' diversity policies and programs purport to provide all individual tournament contestants with an equal opportunity to compete, cognizant that the overwhelming majority of partners are white men and that as recently as the 1970s the partnership tournament excluded or provided only limited opportunities to lawyers who were not white men.[46] An assessment of this tournament model as well as the kinds of practices it sets in place in the name of diversity and inclusion are relevant sites for inquiry when we seek to understand the decoupling between intention and practice.

At the outset, as we mention above, it is useful to recall that the tournament model assumes a veil of absolute meritocracy. To the extent that winning on the basis of professional merit and excellence already aligns consistence with a commitment to equality, the tournament is golden. And this is not all false given that these intentions are such a stark shift from the erstwhile closed-door policy that riddled these elite spaces. Even so, the structural commitment to diversity usually is not enough in itself. And upon closer scrutiny, these well-intended policies and the limitations of their potential for success reveal themselves. We focus in particular on five common interventions to unpack the ways in which they lack bite: diversity committees, diversity training, affiliation networks, flexible-time policies, and mentoring programs.

The diversity committee, usually a small group of partners and associates, has nominal responsibility for examining hiring, retention, and promotion practices, as well as the culture of the firm. As we know, with regard to entry-level hiring, firms usually have a strong record of diversity and it is often a function of the strength and initiative of these firm-level

42. *See generally* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 103 (1991) (describing the tournament story as "one in which the firm promotes a constant percentage of each class to partner at the end of a fixed period of time").

43. *See generally* Marc Galanter & William Henderson, *The Elastic Tournament: The Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008).

44. Other types of diversity issues, such as the higher compensation paid to white male partners, are beyond the scope of this Article, although this Article's analytic framework could also apply to those issues.

45. *See generally* GALANTER & PALAY, *supra* note 42.

46. *See* JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 294–95 (1976); ERWIN O. SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? 72–140 (1964); *see also* Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803, 1843–47 (2008).

committees on diversity. However, when it comes to retention, promotion, and the culture of the firm, diversity committees tend to have nonspecific goals and little to no power to effectuate change.

Operating against the powerful presumption that the tournament model is meritocratic and beyond challenge, diversity committees are often reduced to collecting and disseminating diversity materials, hosting diversity events that tend to celebrate rather than scrutinize the firm's commitment to it, and sponsoring diversity trainings that may do more harm than good. Worse, diversity committees often unintentionally validate institutional stereotypes by featuring women and minority lawyers to the relative exclusion of powerful white male partners, thus sending a message across the firm that diversity is a matter for women and minority lawyers that does not warrant the attention and commitment of powerful firm partners.[47] Seen as marginal, these committees then further perpetrate the "othering" of these individuals rather than placing the onus on firms and dominant actors to see their own privilege more consciously.[48]

Similarly, diversity training is generally short term and often limited to teaching partners and associates how to avoid using language or taking actions that lawyers who are not heterosexual white men may find offensive.[49] Both occasional and discretionary, these trainings may in fact be detrimental to progress because they set up the institutional case of minority inhabitants as exceptions to a general rule, thereby undermining individual actors and their respective contributions rather than critically examining the role of dominant institutions in creating these paradigms that exclude minority lawyers. Further, such training risks misrepresenting the challenges of inequity at BigLaw: rather than exposing the complex ways in which bias is embedded in institutional culture and policies, it sends a misleading message that enhancing diversity is simply a matter of minding one's language and avoiding crude jokes.

Another popular intervention, both at large law firms and within the profession, are discretionary affiliation networks for identity groups of lawyers other than white men—including partners and associates who are members of those groups, such as women, people of color, or sexual minorities.[50] Like diversity training, however, such affinity groups risk affirming the status and identity of women and minority lawyers as

47. Root, *supra* note 32, at 620–23; *see also* María Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends*, 19 HASTINGS WOMEN'S L.J. 53, 71 (2008) (stating that male attorneys tend to serve on committees related to the leadership and governance of the firm, while female attorneys serve on committees focused on diversity and associates); Rhode, *supra* note 26, at 1046–47.

48. Root, *supra* note 32, at 620–23.

49. *See* David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 593 (1996); *see also* Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755, 1765–66 (2006) (describing how, for many law firms, initiatives to increase diversity do not require substantive changes within the firm structure).

50. Jane Direnzo Pigott, *Affinity Groups Help in Recruiting and Retention*, TEX. LAW. (Sept. 10, 2007), http://www.texaslawyer.com/id=900005490543/Affinity-Groups-Help-in-Recruiting-and-Retention?slreturn=20150213155834 (subscription required).

outsiders within the firm who are the exception to the rule. It is not just that minority lawyers may be encouraged to join an affinity group, whereas white male lawyers are not similarly encouraged to join an affinity group (which, importantly, does not exist). Rather, it is that white male attorneys in the alternative may join subject-matter bar associations that allow them to enhance their skills and "merit," or simply use the time to bill more hours and get ahead of their counterparts. In this way, non-diverse dominant actors have the privilege—and it *is* a privilege—to engage in interactions and networks without necessarily priming their primary identities of race, gender, sexuality, or disability.

The other intervention that has been popular across elite workspaces over the last decade has been the introduction of flexible work structures and leave policies, especially in the form of part-time work and family leave programs. These are no doubt a welcome intervention for all overworked associates, but the main target pool—for policy makers and receivers alike—are women. Firms see themselves as "women friendly" by offering them because it is disproportionately women—and mothers in particular—who are believed to want them. And while it is indeed women who disproportionately take advantage of these programs, their intention and employment get gendered in ways that make them the exception, deviating from the norm of an "ideal worker."[51] Extensions like these then, to the extent they are seen as exceptions made for nonnormative workers, continue to create deviant, "othering" personas for minority workers while maintaining the institutional sanctity as working for the cause of inclusion.[52]

One more example that sets out a well-intentioned intervention with unintended consequences is the case of mentoring programs which are set up to induct new lawyers into the firm as well as to set up directions for their own development as senior lawyers. Like other diversity initiatives, seen simply from the merit perspective, mentoring programs seem like a step in the right direction or, at most, harmless. Indeed, their creation of institutional exclusion is not obvious, much less a "problem" of diversity of which partners are cognizant. And as we detail later in this Article, homophily and preexisting bias render these decisions of senior lawyers organic and natural rather than dangerous or explicitly exclusionary.

Mentoring in these firms is also rife with structural problems. In most firms, mentors can fulfill their obligations by meeting their mentees two or three times a year and discussing in general terms the partnership track and the firm culture.[53] At their best, mentoring programs "serve two objectives:

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51. *See* Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC'Y 139, 142–43 (1990).

52. Joan C. Williams et al., *Cultural Schemas, Social Class, and the Flexibility Stigma*, 69 J. SOC. ISSUES 209, 211 (2013) (discussing how employees that take advantage of flexible work arrangements, such as part-time schedules, can be viewed in the workplace as being in violation of the traditional work devotion schema and "morally lacking").

53. Rhode, *supra* note 26, at 1071; *see also* Russell G. Pearce & Eli Wald, *The Relational Infrastructure of Law Firm Culture and Regulation: The Exaggerated Death of Big Law*, 42 HOFSTRA L. REV. 109, 136 (2013).

psychosocial support (such as role modeling, friendship, and personal advice) and career support (such as professional advice, contacts, and advocacy)."[54]

But its practice is not always as seamless. For example, while most firms have policies in place at least for notional mentoring strategies, not all partners serve as mentors because serving is often discretionary: mentors can be of the same or different identity group as the mentees and assignment is often random or made by the partner rather than the associate. And since the most effective mentoring relationships are not so much an extension of a policy memo as they are organic relationships built out of mutual affinity and investment, diversity recruits often are at a disadvantage in this system. This is especially the case since there are often not enough partners of color or powerful women to go around to replicate similarly "natural" mentorships that will assure relationship building for a comparable number of nondominant actors. In turn, this has loop-back effects because women and minorities see this as a signal that indicates their own aberration from an ideal type, a deviance which, in this atomistic environment, they code to be a failure at the individual level. Recognizing consciousness about this will help offset the unnecessary pressure the current system places on nondominant actors.

On the whole, these diversity initiatives share a few unintended yet distinctive features. First, they implicitly affirm the status and identity of white male lawyers as the dominant ideal class of lawyers and relegate women and minorities to the status of outsiders who need assistance to conform to the "normal" standards and culture of lawyering. For example, all these initiatives are discretionary, and partners are not evaluated or given incentives based upon their participation.[55] Accordingly, their effectiveness depends upon the associates who are not white men and whether they can gain information or other assistance from networks or mentoring. As a result, they may perceive the problem of diversity as primarily their problem and not that of partners generally or white male partners in particular.[56]

Second, although these initiatives are authorized by the partners or by their powerful management committees, they typically mandate only limited, if any, individual involvement by partners, let alone powerful

54. Rhode, *supra* note 26, at 1071; *see also* Stacy D. Blake-Beard, *Taking a Hard Look at Formal Mentoring Programs: A Consideration of Potential Challenges Facing Women*, 20 J. MGMT. DEV. 331, 333 (2001). For a review on the intersectionality between race and gender in corporate mentoring relationships, see Stacy D. Blake-Beard, *The Costs of Living As an Outsider Within: An Analysis of the Mentoring Relationships and Career Success of Black and White Women in the Corporate Sector*, 26 J. CAREER DEV. 21 (1999).

55. *See* Tiffani N. Darden, *The Law Firm Caste System: Constructing A Bridge Between Workplace Equity Theory & the Institutional Analyses of Bias in Corporate Law Firms*, 30 BERKELEY J. EMP. & LAB. L. 85, 122 (2009) (stating that the accountability systems in the firms studied for the article "were not sufficient to produce firm-wide participation").

56. Rhode, *supra* note 26, at 1049.

partners.[57] Consequently, diversity initiatives provide a false sense of participation or involvement by all partners, while in reality the role of most partners in promoting diversity among the partnership is quite limited. Partnership policies, like governing law, prohibit intentional discrimination.[58] Beyond that, partners have the discretion to participate in, and a minority of partners do participate in, diversity activities.

Third, these policies and initiatives indirectly reinforce the message that success and failure at the firm is a matter of individualized atomistic effort. They foster a misleading sense that individuals control their own fates at the firm: if they only work hard enough, only prove themselves as meritorious, and if the firm only provides them with assistance—through diversity initiatives—to learn to succeed, then inequality will be overcome. Diversity initiatives therefore not only cement the notion that diversity is "their" rather than "our" problem but also reinforce a sense of atomistic individualism as the operating norm for BigLaw.

B. Token Success Combined with Substantial Failure

Despite the good intentions of law firms, the results have been quite disappointing. Lawyers who are not heterosexual white males have gained positions as partners in nontrivial numbers, but those numbers are not equal to their numbers at the entry level and certainly do not indicate reasonably equitable results. Moreover, the numbers often underestimate the true extent of disparity. Law firms' data often combines the number of equity and non-equity partners, although only equity partners share in power and profits. And preliminary data indicates that white males have an even greater representation among equity partners than they do among equity and non-equity combined.[59] Beyond the results themselves, lawyers who are not white men have a separate and unequal experience of the workplace in comparison to that of white men.

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57. Root, *supra* note 32, at 620–21; *see also* MINORITY CORP. COUNSEL ASS'N, CREATING PATHWAYS TO DIVERSITY: A SET OF RECOMMENDED PRACTICES FOR LAW FIRMS, 10, *available at* http://www.mcca.com/_data/n_0001/resources/live/BestPracPathwaysII ExecSummary.pdf (last visited Mar. 25, 2015) (stating that "[l]ack of senior partner commitment and involvement in the planning and execution of diversity initiative" is one of the top barriers to success in diversity initiatives).

58. *See* Mark S. Kende, *Shattering the Glass Ceiling: A Legal Theory for Attacking Discrimination Against Women Partners*, 46 HASTINGS L.J. 17, 22 (1994) (arguing that "an implied covenant of good faith and fair dealing . . . governs all partnership agreements and . . . prohibits partners from discriminating against each other").

59. Rhode, *supra* note 26, at 1043. Rhode notes that "the American Lawyer's 2010 survey of the 100 largest firms [indicated that] women constituted 17% of equity partners; of the firms with multitier tracks, 45% of female partners have equity status, compared with 62% of male partners," and the fact that "thirty firms declined to cooperate or to provide complete data" suggests that these numbers "overstate women's progress." *Id.*

1. The Overrepresentation of White Men in Positions of Power and Influence

The overrepresentation of white men in the partnership tournament is clear. Their advantage begins at the entry level. Although white males are only 37 percent of students at law schools generally[60] (and therefore probably a lower percentage at the feeder schools which have a higher percentage of students of color), they total 46 percent of associates.[61] Once they reach firms, the overrepresentation becomes even greater with the number of white men rising from 46 percent of associates to become 77 percent of partners.[62] Indeed studies have found that men are two to five times more likely to make partner than women.[63]

The numbers for people of color are more complex but tell a similar story of underrepresentation. Today, the percentage of partners who are people of color at large law firms is approximately 9.33 percent[64] and the percentage of associates is approximately 21.25 percent.[65] However, during the past twenty-five years the percentage of people of color at feeder law schools—the pool from which entry-level lawyers are drawn—has been approximately 30 percent at the top ten law schools[66] and approximately 22 to 28 percent at the top twenty-five law schools.[67] This data suggests that representation at the entry level has gotten close to but is still significantly less than representation at the top. At the same time, despite the availability of a deep pool of law students for twenty-five years, the percentage of partners who are people of color is far lower than the percentage of people of color at the entry level or among the pool of potential law student applicants.

The numbers also vary greatly among groups of color. Asian American associates slightly overrepresent their numbers in feeder law schools. Veronica Root notes that "from 2000 to 2013, an average of 10.89 percent of those enrolled in the top twenty-five law schools were of Asian descent, but from 2011 to 2013, an average of over twelve percent of associates and counsel in the top fifty law firms were of Asian descent."[68] Nonetheless, the number of Asian American partners remains relatively low—4.93 percent in 2013[69]—and the percentage of Asian Americans who make

60. As of 2010, white males comprised 37.8 percent of 1L classes at ABA-approved law schools. *Statistics: Section of Legal Education and Admissions to the Bar*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited Mar. 25, 2015) (data used to calculate this statistic is contained in the link entitled "2009–2013 Full-Time/Part-Time Total First-Year Enrollment by Gender and Ethnicity").

61. Rhode, *supra* note 26, at 1045.

62. *Id.*

63. *Id.* at 1043 (citing three other studies examining the likelihood of partnership for males and females).

64. Root, *supra* note 32, at 588.

65. *Id.*

66. Akinola & Thomas, *supra* note 15, at 13.

67. Root, *supra* note 32, at 589; *see also* Rhode, *supra* note 26, at 1045 n.24.

68. Root, *supra* note 32, at 592.

69. *Id.* at 591.

partner—2.7 percent[70]—is significantly lower than their approximately 12 percent representation among associates.[71]

In contrast, blacks and Latinos are slightly underrepresented from the start. Blacks constitute approximately 6 percent of students at the top twenty-five law schools and only 3.31 percent of associates and counsel at elite firms, while Latinos constitute approximately 5.5 percent of students at the top twenty-five law schools and 3.33 percent of associates and counsel at elite firms.[72] At the same time, blacks and Latinos are further underrepresented at the partnership level, with 1.9 percent of partners being black and 2.3 percent being Latino.[73]

The percentage of women equity partners in the largest law firms reveals similar patterns of underrepresentation.[74] Women remain less than 20 percent of partners[75] at the nation's major law firms even though they have constituted approximately half of all law students at the top law schools since the early 1990s[76] and approximately 44 percent of entry-level lawyers at elite law firms in 2006.[77]

Less detailed data is available for sexual minorities and people with disabilities,[78] but they similarly reveal a story of underrepresentation. LGBT lawyers accounted for 2.29 percent of associates in 2009,[79] but only 1.36 percent of lawyers who made partner in 2009.[80] People with disabilities are 12.1 percent of the population as a whole,[81] but in law represent only 0.14 percent of associates[82] and 0.18 percent of partners.[83]

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70. Debra Cassens Weiss, *Only 3 Percent of Lawyers in BigLaw Are Black, and Numbers Are Falling*, ABA J. (May 30, 2014, 12:18 PM), http://www.abajournal.com/news/article/only_3_percent_of_lawyers_in_biglaw_are_black_which_firms_were_most_diverse.

71. Root, *supra* note 32, at 591.

72. *Id.* at 579.

73. *Diversity Scorecard: How the Firms Rate*, AM. LAW. (May 29, 2014), http://www.americanlawyer.com/id=1202657037862?slreturn=20150101022013.

74. *See* NAT'L ASS'N WOMEN LAWYERS, REPORT OF THE SIXTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 3 (2011), *available at* http://www.nawl.org/d/do/62 (stating in a 2011 report that equity partnerships for women have been fixed at approximately 15 percent for the past twenty years); NAT'L ASS'N WOMEN LAWYERS, REPORT OF THE EIGHTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 7 (2014), *available at* http://www.nawl.org/p/bl/et/blogid=10&blogaid=56 (statistics for the Am Law top 200 firms as of 2013).

75. Rhode, *supra* note 26, at 1042.

76. Andrew Bruck & Andrew Cantor, *Supply, Demand, and the Changing Economics of Large Law Firms*, 60 STAN. L. REV. 2087, 2103 (2008).

77. *See id.*

78. *LGBT Representation Up Again in 2013*, NALP BULL. (Jan. 2014), http://www.nalp.org/jan14research.

79. *Although Most Firms Collect GLBT Lawyer Information, Overall Numbers Remain Low*, NALP BULL. (Dec. 2009), http://www.nalp.org/dec09glbt.

80. *Id.*

81. W. LEE ERICKSON & S. VON SCHRADER, CORNELL UNIV., 2008 DISABILITY STATUS REPORT: UNITED STATES 6 (2008), *available at* http://www.disabilitystatistics.org/StatusReports/2008-PDF/2008-StatusReport_US.pdf.

82. LEVEY, *supra* note 17, at 23.

83. *Id.*

2. The Separate but Unequal Law Firm Workplace

Underlying the overrepresentation of white men in the partnership tournament is a workplace that favors them, from implicit biases (that law firms do little to remedy) to organic mentoring systems that help white men far more than formalistic programs help others. In contrast, women and people of color work in a different workplace than white men, both in terms of how they are viewed by others and how they view themselves. Extensive literature documents the impact of stereotypes, unequal training and mentoring, unequal access to networks, professional ideology, and harassment in the workplace for women and minorities in law firms.[84] Here, we add to the understanding of the causes of underrepresentation of women and minority lawyers in positions of power and influence by focusing on implicit biases and homophily. We argue that it is these two base phenomena that breed both (1) a range of dangerous professional ideologies and particular stereotypes as well as (2) a set of hazardous organizational effects like unequal training, mentoring, and networking opportunities.

Implicit biases are unintentional but fundamental biases that are pervasive across a range of institutions and environments.[85] Recent research has shown that most instances of discrimination and stereotypes extend from not so much obvious discrimination or rejection of minorities, but, instead, as a function of these implicit cognitive biases in favor of people from the "in-group."[86] The notion of an implicit bias extends more generally from a psychological theory called schema theory.[87] It holds that we maintain unconscious models of reality to categorize the many bits of

84. *See generally* Justin D. Levinson & Danielle Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 DUKE J. GENDER L. & POL'Y 1 (2010) (determining, through an empirical study, that law students hold implicit gender biases related to women in the legal profession, including associating judges with men and women with home and family); Floyd Weatherspoon, *The Status of African American Males in the Legal Profession: A Pipeline of Institutional Roadblocks and Barriers*, 80 MISS. L.J. 259 (2010) (examining obstacles to the representation of African American males in the legal profession including negative early educational experiences, high incarceration rates for young African American males, low college enrollment and graduation rates, declining enrollment rates at elite law schools, high attrition in law schools, lower bar exam passage rates, and discriminatory law firm hiring and promotional practices).

85. Levinson & Young, *supra* note 84, at 6; *see also* Ian Ayres, Op-Ed., *When Whites Get a Free Pass: Research Shows White Privilege Is Real*, N.Y. TIMES (Feb. 24, 2015), http://www.nytimes.com/2015/02/24/opinion/research-shows-white-privilege-is-real.html?_r=2 (last visited Mar. 25, 2015) (describing studies where whites subjects were given preferential treatment over minorities in a variety of environments, including public accommodations and law firm evaluations, and arguing that white privilege "continues in the form of discretionary benefits, many of them unconscious ones").

86. Anthony G. Greenwald & Thomas F. Pettigrew, *With Malice Toward None and Charity for Some: Ingroup Favoritism Enables Discrimination,* 69 AM. PSYCHOLOGIST 669, 671–72 (2014).

87. Nicole Buonocore Porter & Jessica R. Vartanian, *Debunking the Market Myth in Pay Discrimination Cases*, 12 GEO. J. GENDER & L. 159, 184–85 (2011); *see also* Albert J. Moore, *Trial by Schema: Cognitive Filters in the Courtroom*, 37 UCLA L. REV. 273, 279–81 (1989) (describing the concept of schemas in detail).

information we perceive at any given point in time. These categorical faculties mainly serve to allow us conscious decision and free will in what we do,[88] because otherwise we would be overwhelmed with having to maintain what we wanted to do while actively perceiving everything going on around us.[89] The schemas and biases we develop at early stages of development are used to categorize and simplify all the information we may encounter in our experience, including people. The colloquial term we use to refer to schemas that we attach to people around us is "stereotype." Often, we unconsciously perpetuate stereotypes about ourselves and other people by either agreeing with them or acting in ways that make them true.[90] But stereotypes are not always conscious—most of the time we do not even remember, perceive, or act on the information that counters those beliefs. At these times, we can only consciously counter the implicit biases we have of other people by directly challenging them.[91]

Implicit biases tend to reflect the existing power relations in society and manifest themselves in more micro interactions—and this is nowhere clearer than it is in the workplace. And the pervasiveness of implicit bias does not depend on just white men thinking they are superior. They take shape and become reality when *everyone* begins to believe, however subconsciously, that white men are deserving of this power. For example, given that white men disproportionately hold more powerful positions in elite organizations and in society more generally, people are more likely to perceive white men as being smarter and more competent than they are and therefore worthy of their positions and status atop elite organizations. In doing so, society as a whole perpetrates these dominant scripts by legitimizing the status quo.[92] In turn, these implicit biases result in persistent institutional hurdles. They lead to a universal buy-in from both the dominant actors through the mechanisms of non-consciousness and privilege (here, white male partners) and the nondominant ones through mechanisms of low confidence, lack of self-esteem, and institutional socialization such as diversity initiatives to believe they are less deserving (here, women and minority lawyers).[93]

In one popular test of implicit bias developed by Harvard researchers,[94] test takers are told that the next picture they will see is of a person who is smart, competent, or reliable, and that they should press a button as soon as they see that picture. If the picture is of a white man, test takers press the

88. Moore, *supra* note 87, at 279–80.

89. *Id.* at 280; Whitney Woodington, *The Cognitive Foundations of Formal Equality: Incorporating Gender Schema Theory to Eliminate Sex Discrimination Towards Women in the Legal Profession*, 34 L. & PSYCHOL. REV. 135, 136–37 (2010).

90. Woodington, *supra* note 89, at 138–41.

91. HOWARD ROSS, PROVEN STRATEGIES FOR ADDRESSING UNCONSCIOUS BIAS IN THE WORKPLACE (Aug. 2008), http://cookross.com/wp-content/uploads/2015/02/Unconscious-Bias-White-Paper.pdf; *see also* Woodington, *supra* note 89, at 138 (discussing the difficulty of altering or replacing schemas).

92. Woodington, *supra* note 89, at 144.

93. Rhode, *supra* note 26, at 1046–49.

94. *Take a Test*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/featuredtask.html (last visited Mar. 25, 2015).

button significantly faster than when the picture is of a black person or a woman.[95] One lesson of this test is that most people assume that white men are smarter, more competent, and more reliable, and therefore take a longer time to acknowledge the intelligence, competence, and reliability of women and people of color.[96] An illustration of how this micro phenomenon influences macro experiences is found in the work of David Thomas and John J. Gabarro, who concluded that women and people of color have a significantly longer path to becoming executives than their white male colleagues because it takes women and people of color more time to persuade colleagues of their competence and to gain access to networks of mentoring and sponsorship.[97]

Indeed, implicit bias has been found to be pervasive across a range of workplace settings. In one study, for example, employers received resumes that were substantially identical except for the names of the applicants which were "stereotypically African-American" or "stereotypically white."[98] Although the resumes were essentially identical, whites received 50 percent more job interviews.[99] When applicants had "identical resumes and similar interview training . . . African-American applicants with no criminal record were offered jobs at a rate as low as white applicants who had criminal records."[100]

Similarly, "[e]ven in experimental situations where male and female performance is objectively equal, women are held to higher standards, and their competence is rated lower."[101] In elite institutions, when women speak, men often ignore or interrupt them,[102] and when they offer good

95. *See* Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1512 (2005); *see also* Samuel L. Gaertner & John P. McLaughlin, *Racial Stereotypes: Associations and Ascriptions of Positive and Negative Characteristics*, 46 SOC. PSYCHOL. Q. 23, 23 (1983).

96. *See* Anthony G. Greenwald et al., *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity*, 97 J. PERSONALITY SOC. PSYCH. 17 (2009).

97. DAVID THOMAS & JOHN J. GABARRO, BREAKING THROUGH: THE MAKING OF MINORITY EXECUTIVES IN AMERICA 26–27, 58–59 (1999).

98. *See generally* Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004).

99. *See* Sendhil Mullainathan, *The Measuring Sticks of Racial Bias*, N.Y. TIMES, Jan. 4, 2015, at BU6; *see also* Bertrand & Mullainathan, *supra* note 98. Devah Pager, a sociologist at Harvard, shows in her experimental field work that this kind of stark discrimination is typical in low-wage labor markets, where black applicants (in a live audit study) were half as likely as equally qualified white applicants to receive a job offer for an entry-level position. Devah Pager et al., *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 AM. SOC. REV. 777, 784 (2009). In fact, black and Latino applicants fared no better than their white peers who were released from prison. *Id.* at 785–86. This kind of stark bias is routine shock to researchers of economic inequality. What is striking is that this permeates across all levels of the labor market. *See, e.g.*, *id.* at 777 (low-wage workers); Bertrand & Mullainathan, *supra* note 98, at 14–16 (various levels of sales, administrative support, and clerical and customer services); REEVES, *supra* note 2, at 4 (lawyers).

100. Mullainathan, *supra* note 99; *see also* Bertrand & Mullainathan, *supra* note 98, at 785–86; Pager, *supra* note 99, at 785.

101. Rhode, *supra* note 26, at 1050 n.59 (citing Martha Foschi, *Double Standards in the Evaluation of Men and Women*, 59 SOC. PSYCHOL. Q. 237, 237 (1996)).

102. Sheryl Sandberg & Adam Grant, *Speaking While Female*, N.Y. TIMES, Jan. 11, 2015, at SR3.

ideas, men take credit for their ideas without even acknowledging that a woman actually made the contribution.[103] In turn, this results in settings where women are more tentative overall—and this tentativeness can be expensive, especially because we know that women negotiate differently from men,[104] and all else kept equal, are judged on their social skills in ways that their male peers are not.[105]

But it is not just that men and women are held to different standards. When women *meet* the standards that are created for men, institutions typically reject these women as "bossy" or "bitchy," exhibiting what gender theorists have most recently dubbed the "tightrope" between the competing poles of masculinity and femininity.[106] For instance, in a classic experiment that parsed this difference in reception, male and female leaders were tested against audiences of different genders and their assertiveness was compared to tentative speech (e.g., "I'm no expert," "kind of," "sort of"), men were equally influential in both conditions whereas women were perceived to be more competent and exerted greater influence over female audiences, but were found to be less likeable by the male audiences who found them "too aggressive."[107] In a similar vein, the leadership qualities of women are also evaluated differently, with strong women labeled "strident" and the "[s]elf-promotion that is acceptable in men is viewed as unattractive in women."[108] When women succeed, their achievements are generally "attributed to . . . external factors," while the success of men is generally "attributed to internal capabilities."[109]

Commentators have identified numerous implicit biases in the law firm workplace.[110] Lawyers who are not white men are assumed to be less able

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103. *Id.*

104. Michele Gelfand & Heidi Stayn, *Gender Differences in the Propensity to Initiate Negotiations*, *in* SOCIAL PSYCHOLOLOGY & ECONOMICS 239 (2013). Negotiation researchers also have shown broadly that women suffer different social costs than men in compensation negotiations and are more likely than men to not ask for a raise. *See* Hannah Riley Bowles et al., *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 ORG. BEHAV. HUM. DEC. PROCESSES 84, 84–87 (2007).

105. The broader literature on the backlash against agentic women stems from the concept of a "masterful" woman by Rudman. Laurie A. Rudman, *Self-Promotion As a Risk Factor for Women: The Costs and Benefits of Counterstereotypical Impression Management*, 74 J. PERSONALITY SOC. PSYCHOL. 629, 638 (1998). Research consistently shows that keeping all else equal, women are seen as lacking in social skills when compared to their male peers of equal standard/competence, reflecting that women and men are held to different standards of social desirability. Julie E. Phelan et al., *Competent Yet Out in the Cold: Shifting Criteria for Hiring Reflect Backlash Toward Agentic Women*, 32 PSYCHOL. WOMEN Q. 406, 406 (2008).

106. JOAN C. WILLIAMS & RACHEL DEMPSEY, WHAT WORKS FOR WOMEN AT WORK: FOUR PATTERNS WORKING WOMEN NEED TO KNOW 60–63 (N.Y.U. Press 2014).

107. Linda L. Carli, *Gender, Language, and Influence*, 59 J. PERSONALITY SOC. PSYCHOL. 941, 946–47 (1990).

108. Rhode, *supra* note 26, at 1051.

109. *Id.* at 1050–51.

110. *See* Vernā Myers, *From Counting Heads to Cultivating Minds: Why Effective Retention Requires Attention to Our Implicit Biases*, 38 LAW PRAC. 40, 42–43 (2012); *see also* Levinson & Young, *supra* note 84, at 9–13 (gender bias); REEVES, *supra* note 2, at 4–5 (racial bias in evaluations of a memorandum of law).

"to connect with and generate business from . . . 'clients,' the preponderance of which are led by majority populations . . . . [U]nderrepresented minorities fall victim to the misperception of being less able to bring in business with majority populations."[111] Without regular training and constant vigilance, these implicit biases on the basis of race and gender would permeate the legal workplace just as they permeate other workplaces. And, indeed, law firms do not universally require regular training and evaluations for these purposes, and neither do they have in place specific mechanisms to monitor interpersonal interactions.[112]

Of course, not all groups face the same sorts of biases and the ways in which they differ are worth reflection. As noted above, women face the double bind that their achievements are disregarded and their leadership tends to be discounted.[113] Other widespread biases are that blacks and Latinos "are less intelligent, less industrious, and generally less qualified; even if they graduated from an elite law school, they are assumed to be beneficiaries of affirmative action rather than meritocratic selection."[114] Another common view among law firms is that "[b]lacks, especially women, . . . [are] angry or hostile."[115] Asian Americans face a different constellation of biases—all of which impact their identity within firms differently. For example, they "are thought to be smart and hardworking, but not sufficiently assertive to command the confidence of clients and legal teams."[116] They are "underrepresented at top management levels in [knowledge-intensive firms], despite being the largest minority group represented at junior levels."[117] Modupe N. Akinola and David Thomas observed widespread "[p]ersonality and behavioral stereotypes asserting that Asians are 'submissive,' 'humble,' 'passive,' 'quiet,' 'compliant,' and 'obedient' mak[ing] Asian Americans vulnerable to being viewed as lacking key leadership traits, placing them at a disadvantage when being considered for management positions."[118]

While each of these independent identities play out differently for the minorities in question, the way they collude is complicated too. For instance, although intersectionality of race and gender often disadvantages women of color, Cynthia Epstein's seminal work on women lawyers shows that black women lawyers, who would normally be seen as having "multiple negative" identities, are sometimes able to leverage advantage because they are seen as "doers" whose aggression is expected and whose

111. Akinola & Thomas, *supra* note 15, at 10–11.

112. *See* NAWL FOUND., REPORT OF A NATIONAL SURVEY OF WOMEN'S INITIATIVES: THE STRATEGY, STRUCTURE AND SCOPE OF WOMEN'S INITIATIVES IN LAW FIRMS 19–20 (2012), *available at* http://www.nawl.org/d/do/58.

113. *See* Rhode, *supra* note 26, at 1050–52; *see also supra* notes 106–09 and accompanying text.

114. Rhode, *supra* note 26, at 1050.

115. *Id.*

116. *Id.*

117. Akinola & Thomas, *supra* note 15, at 10.

118. *Id.*

economic independence is tolerated.[119] Seen as simply the success of minority stakeholders would be an unjust way to interpret this research. Instead, it offers evidence to show how even when minority participants in the tournaments are successful, their success is attached to implicit biases that are deeply rooted and damaging for others who do not fit the same archetype of color and gendered identities.[120]

But conflated and combined implicit biases aside, it is not surprising who comes out ahead. In one of the few implicit bias studies that examined law firm conduct, researchers found that the evaluations central to the partnership tournament were biased toward white men. In that study, sixty law firm partners (thirty-nine white, twenty-one racial/ethnic minorities) were asked to evaluate the same memo written by a third year associate.[121] Half of the partners were told that the author was black and half that the author was white.[122] The name and law school background were the same.[123] On a 1-to-5 scale, the partners awarded an average 3.2 rating when they thought the author was black and 4.1 when they thought the author was white.[124] They identified far more spelling and grammar errors when they thought the author was black—an average score of 5.8 versus 2.9.[125] The qualitative evaluations also differed significantly. The white author was described as a "generally good writer" who "has potential" and "good analytic skills," while the black associate received comments such as "needs lots of work," "can't believe he went to NYU," and "average at best."[126]

Not only does this study call into question the accuracy and reliability of the partnership tournament, but it tracks the perceptions associates have of their own evaluations. Women and people of color believe (accurately as it turns out) that they are held to a different and higher standard than white men and that law firms do nothing significant to address implicit bias in the workplace.[127] Specifically, "only 1% of white men, compared with 31% of women of color, 25% of white women, and 21% of men of color, reported unfair evaluations."[128] This disparate perception extends to opportunities to develop business and skills.[129] In one survey, "44% of women of color, 39% of white women, and 25% of minority men reported being passed over for desirable work assignments whereas only 2% of white men noted similar experiences."[130] Similarly, with regard to business development, "women and minorities [report being] often left out of pitches for client

119. Cynthia Fuchs Epstein, *Positive Effects of the Multiple Negative: Explaining the Success of Black Professional Women*, 78 AM. J. SOC. 912, 918–21 (1973).
120. *Id.*
121. REEVES, *supra* note 2, at 2.
122. *Id.*
123. *Id.*
124. *Id.* at 3.
125. *Id.*
126. *Id.*
127. *See* Rhode, *supra* note 26, at 1049–50.
128. *Id.* at 1052.
129. *Id.* at 1055.
130. *Id.*

business." In fact, data on "conventional client development possibilities" shows that "43% of surveyed women of color, 55% of white women, and 24% of men of color report having limited access to such opportunities, compared with only 3% of white men."[131]

Similar perceptions explain why law firm mentoring programs are largely unsuccessful. For instance, the survey above "found that 62% of women of color and 60% of white women, but only 4% of white men, reported being left out of formal and informal networking opportunities."[132] In turn, these results track the social science research on mentoring.

In significant part, the problem with mentoring results from an effect that researchers describe as homophily, the effect that people feel most comfortable with people like them and, absent significant intervention, will gravitate toward assisting those most like them.[133] Akinola and Thomas explain that "[i]t is well-known that the relationships that are the easiest to develop, maintain, and gain comfort from are those in which the members share common identity characteristics and similar backgrounds."[134] In law firms dominated by white male partners, the effect of homophily is to privilege white male associates.

As a result of homophily, the evaluation, mentoring, and networking that matters—the day-to-day business outside of the formal and occasional programs for people who are not white men—favors white men in the partnership tournament. White men who dominate partnerships are not comfortable evaluating, mentoring, or networking with people outside of their white male identity group. Akinola and Thomas explain that "researchers have found that cross-race interactions can engender feelings of anxiety and discomfort."[135] They note that "[a] variety of explanations have been proposed that highlight the sources of anxiety in cross-race relationships, among which include: the desire to avoid appearing prejudiced, . . . the threat of rejection in intergroup encounters . . . , and minimal experience interacting with individuals of different races."[136]

These effects occur in law firms and influence evaluations, networking, and mentoring. In law, white men express difficulty in conversations and relationships across race and gender. They often report discomfort or inadequacy in discussing "'women's issues,' and minorities express reluctance to raise diversity-related concerns with those who lack personal experience or empathy."[137] As a result, "[u]nderrepresented minorities not only have fewer mentoring relationships but also have an increased likelihood of failed cross-race mentoring relationships which can have negative repercussions for career development."[138] As G. Mitu Gulati and

131. *Id.* at 1056.
132. *Id.* at 1054.
133. Miller McPherson et al., *Birds of a Feather: Homophily in Social Networks*, 27 ANN. REV. SOCIOLOGY 415, 416 (2001).
134. Akinola & Thomas, *supra* note 15, at 23.
135. *Id.*
136. *Id.*
137. Rhode, *supra* note 26, at 1072.
138. Akinola & Thomas, *supra* note 15, at 8.

David B. Wilkins observe, "Studies of cross-racial and cross-gender mentoring relationships in the workplace repeatedly demonstrate that white men feel more comfortable in working relationships with white men."[139]

Similarly, "minorities are often excluded from majority informal social networks often impeding their ability to succeed."[140] Root observes that "social relationships leave 'some black lawyers at a distance from their white colleagues' . . . . 'For the most part, they don't go to church together on Sunday enough, they don't have dinner together enough, and they don't play enough golf together to develop sufficiently strong relationships of trust and confidence.'"[141] As Wilkins and Gulati note, "This natural affinity makes it difficult for blacks to form supportive mentoring relationships."[142]

Not surprisingly, the effects of homophily and implicit bias compound each other and make it less likely that the white men who dominate law firm partnerships will devote their resources and those of their firm to the development of associates who are not white men.[143] In turn, minority candidates in the tournament have to mimic the identities of the white male archetype to be seen as "successful" and even when they do try it, assumptions about their base identities can render the attempt powerless and leave them with a backlash. Thus, as Akinola and Thomas note, "[I]t typically takes longer for underrepresented minorities, particularly blacks, to look like stars, which decreases the likelihood that they will be invested in by senior professionals."[144] They are, simply, doomed if they do—and the same if they do not.

II. WHY LAW FIRMS CLING TO AN UNSUCCESSFUL STRATEGY: THE CONTINUING ATTRACTION OF DIFFERENCE BLINDNESS AND ATOMISTIC INDIVIDUALISM

Elite law firms are among the best problem-solving organizations in the world. Why, then, do they continue to persist in strategies that do not do justice to their good faith efforts toward equity and inclusion? We suggest that they rely on an analytic framework of difference blindness that incorrectly assumes people behave atomistically in the workplace because that framework is deeply embedded in their ideology, has historically been the engine of progress on diversity, and is protected from reassessment by the psychological mechanisms of cognitive dissonance, paradigm theory, and preexisting framing. Moreover, difference blindness is consistent with

139. Wilkins & Gulati, *supra* note 49, at 569; *see also* Root, *supra* note 32, at 618.

140. Akinola & Thomas, *supra* note 15, at 8.

141. Root, *supra* note 32, at 618 (quoting Nelson D. Schwartz & Michael Cooper, *Racial Diversity Efforts Ebb for Elite Careers, Analysis Finds*, N.Y. TIMES, May 28, 2013, at A1).

142. Wilkins & Gulati, *supra* note 49, at 569.

143. *See* Scott A. Moss, *Women Choosing Diverse Workplaces: A Rational Preference with Disturbing Implications for Both Occupational Segregation and Economic Analysis of Law*, 27 HARV. WOMEN'S L.J. 1, 31 (2004) (discussing the incentives men have to allocate resources toward their "ingroup" and away from women (the "outgroup") in male-dominated workplaces).

144. Akinola & Thomas, *supra* note 15, at 11 (citing Wilikins & Gulati, *supra* note 49).

the self-interest of BigLaw's dominant control group, white heterosexual men, legitimizing their power and status atop large law firms. In this sense, difference blindness plays a much needed stabilizing force sustaining the status quo in an otherwise unstable era fraught with uncertainty and risk. Consequently, moving away from difference blindness is going to be both hard and costly. In contrast, bias awareness is not only controversial—to some it smacks of overt discrimination—but also threatening to BigLaw's elite who stand to lose power, status, and money in its wake.

A. Difference Blindness: The Strategy That Opened the Door to Diversity but Shut the Door on Equity and Inclusion

This section explains the important liberating influence of difference blindness—a meritocratic theory assuming that lawyers are atomistic actors—in opening the legal profession to those who are not white men. Ironically, having once made formal diversity possible, it is the same construct of difference blindness that has made it impossible to truly dismantle the continuing dominance of the white male prototype of the ideal worker and to provide equity, substantive diversity, and inclusion to all.[145]

As Epstein points out, "despite American society's myth and credo of equality and open mobility, the decision-making elites and elite professions have long remained clublike sanctuaries for those of like kind,"[146] and the legal profession is no exception. Prior to the 1960s, most large elite law firm partners were white Protestant men whose relationships with large elite entity clients were formed around family, socioeconomic and cultural class, and law school connections to business leaders.[147] Notwithstanding their formal commitment to meritocracy, large law firms in practice excluded Jewish and Catholic lawyers, not to mention women, even when these lawyers met their meritocratic recruitment criteria of graduating from an elite law school, at the top of the class, while serving on the law review.[148]

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145. *See* Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1105–09 (2011); *see also* Peery, *supra* note 23, at 492 (discussing the benefits of color-blindness to the majority group, including maintenance of the status quo).

146. Epstein, *supra* note 119, at 912.

147. *See* Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2268 (2010); *see also* Wald, *supra* note 46, at 1822. Class continues to play an important role in determining entry and success of elite lawyers. Although it does not work quite the way it worked in the earlier years, the reproduction of hierarchy remains an important threat to heterogeneous spaces. For an overview, see Lauren Rivera's research on elite firms and the ways in which class and homophily in cultural capital (i.e., similar schools, interests, etc.) are serious determinants of entry into these firms. Lauren A. Rivera, *Hiring As Cultural Matching: The Case of Elite Professional Service Firms*, 77 AM. SOC. REV. 999, 1008–10 (2012).

148. *See* AUERBACH, *supra* note 46, at 294–95; PAUL HOFFMAN, LIONS IN THE STREET: THE INSIDE STORY OF THE GREAT WALL STREET LAW FIRMS (1973); SMIGEL, *supra* note 46, at 37, 44–47; David Wilkins et al., *Urban Law School Graduates in Large Law Firms*, 36 SW. U. L. REV. 433, 459 (2007) (stating that Catholic lawyers were excluded from most elite law firms during the "Golden Age" of the 1960s); Wald, *supra* note 46, at 1812 (stating that

As a result, white Jewish men, sometimes together with other excluded men, created their own law firms, which were much smaller in size and number and which started by catering to businesspeople from their communities or by offering legal services, such as real estate, bankruptcy, mergers, and hostile takeovers, that white Protestant firms did not provide.[149] Within a generation, Jewish, Catholic, and "mixed" firms rose to prominence, competing fiercely with the old elite firms, leading the latter to gradually abandon their discriminatory hiring and promotion practices.[150]

At the same time, beginning in the 1960s, elite law firms, and American culture, began to support the civil rights movement and comply with resulting laws, in dismantling a business system of bigotry and exclusion enmeshed in webs of relationships.[151] The civil rights movement reflected two alternative visions of promoting civil rights. Martin Luther King, Jr., sought to promote civil rights via relationships grounded in equal human dignity, expressly rejecting conceptions grounded in the atomistic individual. His approach recognized that if discrimination was based on webs of relationships then those relationships would have to change in order to provide equality; it rejected individualistic perceptions on the ground that in real life no such reality existed and that all so-called individualistic measures, such as merit, were socially constructed. In contrast, elite culture, which included lawyers, embraced difference blindness, a belief that the harm of discrimination was that it treated atomistic individuals differently on the basis of their identity and not the basis of their individual merit.[152] Since the 1960s, the atomistic perception of difference blindness has grown stronger, with increasing skepticism of

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elite law firms in the 1960s systematically excluded all candidates except "young, white, Anglo-Saxon Protestant men from affluent socioeconomic backgrounds").

149. Eli Wald, *The Rise of the Jewish Law Firm or Is the Jewish Law Firm Generic?*, 76 UMKC L. REV. 885, 914–17 (2008); Wald, *supra* note 46, at 1833–36. People of color and women, as well as out sexual minorities, had almost no place in this world, although in rare circumstances they occasionally were able to obtain short-term positions as associates. *See, e.g.*, Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5, 10–11 (1991) (describing the "chilly reception" women law graduates received from law firms and their difficulty in finding law firms willing to hire them as associates until the mid-1960s); Leonard M. Baynes, *Falling Through the Cracks: Race and Corporate Law Firms*, 77 ST. JOHN'S L. REV. 785, 789 (2003) (stating that as of the late 1960s, there were only three African Americans working in elite law firms in New York); Wilkins et al., *supra* note 148, at 443 (stating that the first wave of women and minority lawyers began to join elite law firms in the late 1960s and came from elite law schools and backgrounds).

150. *See* Wald, *supra* note 46, at 1844–45.

151. Of course, even from the early days of the Civil Rights Movement, individual elite lawyers had supported civil rights under law. *See, e.g.*, Susan D. Carle, *Debunking the Myth of Civil Rights Liberalism: Visions of Racial Justice in the Thought of T. Thomas Fortune*, 77 FORDHAM L. REV. 1479 (2009); Russell G. Pearce & Adam Winer, *From Emancipation to Assimilation: Is Secular Liberalism Still Good for Jewish Lawyers?*, *in* JEWS AND THE LAW 171, 185–86 (Ari Mermelstein et al. eds., 2014).

152. Eli Wald & Russell G. Pearce, *What's Love Got to Do with Lawyers? Thoughts on Relationality, Love, and Lawyers' Work*, 17 LEGAL ETHICS 334, 342 (2014).

relational perspectives, such as affirmative action or disparate impact liability.[153]

What has been stagnant, though, has been the commitment to meritocratic equality and inclusion. And the approach of the large law firms to increased competition and to changing cultural attitudes toward equality has predominantly, although not exclusively, been to embrace the individualistic conception of difference blindness. Beginning in the 1950s, white Protestant male firms began to accept white Jewish and Catholic lawyers, and by the 1980s, Jewish men were receiving equal treatment in firms that had been historically anti-Semitic.[154] This was a stark shift that signaled large law firms' commitment to inclusion. Over the years, top law schools moved from no more than a handful of women and people of color in the 1960s to significant numbers in the 1980s and, at top law schools, close to representative numbers in the 1990s. As they did, elite firms began to hire, and sometimes promote, women and people of color in increasing numbers until the 2000s, reaching the approximate numbers of today.[155]

Law firms' increased inclusion of women and people of color, at least at entry-level positions, rested on their embrace of the theories of difference blindness and individual merit, both of which required the predominant belief that lawyers functioned as atomistic individuals. Sanford Levinson has described the professional ideology underlying this belief.[156] Lawyers were to be "almost purely fungible members of [their] professional community. Such apparent aspects of the self as one's race, gender, religion, or ethnic background would become irrelevant to defining one's capacities as a lawyer."[157] According to this view, all merit was individual and without regard to either facets of personal identity or to relationships.[158]

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153. *See* Russell G. Pearce & Eli Wald, *The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 U. ARK. LITTLE ROCK L. REV. 1, 3 (2011) (describing the increasing dominance of autonomous self-interest among the liberal and libertarian elite); Pearce & Wald, *supra* note 53, at 122. Today, the majority of white Americans assert that they "don't see any color, just people," and denounce minorities for demanding "divisive race-based programs, such as affirmative action." EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES 1 (4th ed. 2013). The Supreme Court has also recently indicated that discrimination is no longer a central problem in our society by reducing protections against discrimination. *See* Shelby Cnty. v. Holder, 133 S. Ct. 2612 (2013) (striking down the coverage formula for section 5 of the Voting Rights Act, which required preclearance for certain states, primarily in the South, before changes were made to voting laws in order to prevent discrimination); *see also* Schuette v. Coal. to Defend Affirmative Action, 134 S. Ct. 1623 (2014) (upholding a state constitutional amendment that bans affirmative action in connection with admission to Michigan's public universities).

154. Wald, *supra* note 46, at 1837. "By the year 2007, Jewish lawyers had become leaders of both Cravath, Swaine & Moore and Sullivan & Cromwell . . . ." Pearce & Winer, *supra* note 151, at 189.

155. *See supra* notes 72–77 and accompanying text.

156. Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1579 (1993).

157. *Id.*

158. *See* Robert L. Hayman, Jr., *Race and Reason: The Assault on Critical Race Theory and the Truth About Inequality*, 16 NAT'L BLACK L.J. 1, 19 (1999) (describing the

Law firms' ideology of difference blindness and individual merit meant that they could not discriminate; indeed, they would want a diverse pool of entering associates so that they could obtain the most meritorious winners in the partnership tournament. Law firms prohibit intentional discrimination on the part of individual partners. They seek a difference blind tournament and provide lawyers who are not white men with minimal assistance, expecting all lawyers to compete on the same terms irrespective of irrelevant identity considerations. Indeed, a large part of the "all are welcome" approach is that it makes it seem fair and just to forget the difference that hindered equality in the first place. And once lawyers are hired, firms and lawyers alike strictly apply the difference blindness theory with few exceptions.

For the most part, the policies described in Part I derive from this framework. Diversity training is only about the etiquette needed for a difference blind environment. The extension of this limited support under the current framework is that law firms do not evaluate partners based on their success in mentoring lawyers who are not white men and do not make changes in the tournament based on input from affiliation networks. As noted above, success in using mentoring and affiliation networks rests primarily on those lawyers who are not white men.

The bottom line remains: law firms believe that given their difference blindness practices, those individuals who win the partnership tournament are meritorious and atomistic. A primary effect of this ideology is to label the existing dominant culture as the meritorious one. If white men dominate partnerships, it is because they are the superior lawyers. Indeed, their whiteness and maleness plays no meaningful role in their success—it is solely a product of individual merit. In such a system, the white male identity becomes normalized as background, as not an identity at all, merely an accidental descriptor of the identity of the meritorious individuals who have won the partnership tournament. And if women and people of color are underrepresented it is only because people in those groups have failed to demonstrate merit.

But the evidence, also described above, indicates that the difference blind law firm is a fantasy. The effects of implicit bias and homophily give significant advantages to white men. Success in the workplace depends on relationships, not merely on an atomistic conception of individual merit. Associates who can create relationships with the predominantly white male partners obtain better opportunities for skills and business development, as well as more opportunities to get partners to root for their success. And biases grounded in the unequal distribution of respect and prestige in society permeate the legal workplace. Indeed, in the one study described above, when partners graded an identical memo by associates with an identical name and resume, they gave the presumed white associate a 20

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meritocratic ideal (citing DANIEL A. FARBER & SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW 54 (1997))).

percent higher evaluation than that of the black associate.[159] In line with this analysis of bias is other data that displays the lack of diversity in senior positions of power within large law firms.[160] For the past twenty-five years, top law schools have provided a pool of women and people of color that would have totally changed their representation among law firm partners, yet white male domination and underrepresentation of women and people of color persists.[161] We argue not just that the difference blindness paradigm has fallen short of its goal of creating an equal and inclusive workforce, but also that the difference blind law firm workplace is a nonexistent figment of ideological imagination that is wholly inconsistent with the factual evidence.

B. The Staying Power of Difference Blindness

Given the failure of the difference blind workplace to offer all lawyers equal opportunity to succeed, why have elite law firms persisted in this strategy, especially given their reputation for excellence in solving problems? At least three reasons combine to explain the staying power of difference blindness.

First, difference blindness was an effective strategy to combat exclusion and discrimination in the legal profession. Older, powerful white partners at elite law firms gradually came to terms with the reality that increased competition meant they had to agree to hire and promote the most meritorious lawyers to retain their elite status, irrespective of the lawyers' identity considerations. Difference blindness provided these partners with the very framework needed to overcome their explicitly discriminatory mindset. That is, difference blindness was an appropriate and effective remedy to the then-prevalent problem of explicit discrimination.

Explicit discrimination, however, is no longer the primary challenge facing large law firms. Rather, as we have seen, the underrepresentation of women and minority lawyers is grounded in implicit bias, for which difference blindness is not an effective remedy and, indeed, constitutes part of the problem. As we explain below, bias awareness is the appropriate remedy to implicit bias. Importantly, however, exactly because difference blindness has become a symbol of merit and equality, large law firms and their partners refuse to abandon it. Forsaking difference blindness, let alone pursuing what in some ways is its opposite—bias awareness—must feel to some liberal-minded partners as walking out on their commitment to merit and equality, which they resist forcefully and in good faith, the evidence regarding the ineffectiveness of difference blindness as a remedy to implicit bias notwithstanding.

Second, cognitive dissonance, paradigm theory, and preexisting framing—three related theories—help further explain why very intelligent

159. REEVES, *supra* note 2, at 3–4.
160. *See supra* Part I.B.1.
161. *See supra* Part I.B.1.

people would marginalize or ignore facts about difference blindness that are inconsistent with their fundamental beliefs regarding equality.

Cognitive dissonance describes the emotional stress and tension that occurs when any aspect of external reality, including our own actions, counters our deeply held beliefs about ourselves and the world. To reduce this stress we may deny this countering information in order to make our self-perception more consistent with who we believe ourselves to be. A core example of cognitive dissonance is a cult whose leader predicted that the world would end on a particular day. When the world did not end on that day, members did not reject their leader, rather they embraced his teaching even more strongly. Similarly, when presented with evidence that difference blindness grounded in an atomistic conception of individual behavior does not accord with reality, elite lawyers hold to that belief, perhaps even more tightly than before.

Thomas S. Kuhn's book *The Structure of Scientific Revolutions* derives a similar result using paradigm theory.[162] Kuhn describes how professional communities "use paradigms to maintain conformity regarding the legitimacy of questions, methods, and answers."[163] The "authority" of a paradigm "rests not on its truth in any abstract sense, but in its acceptance by the relevant community."[164] A professional community's first response to information and arguments that contradict the paradigm is to dismiss them.[165] If, however, the anomaly persists, it threatens the viability of the paradigm and requires the professional community to "discover a new way to resolve the anomaly using the existing paradigm; it can bracket the anomaly to be resolved in the future; or it can replace the old paradigm with a new one."[166]

Here, the myth of the atomistic lawyer and the corresponding version of meritocracy serve as a paradigm with deep roots in the legal profession. We have described the remarkably persistent paradigm above. Although this understanding has been criticized on the ground that lawyers cannot—or should not—in fact exclude their identity from their work,[167] the very existence of this paradigm demonstrates the power in the legal profession of the belief that lawyers are atomized individuals free of relational connections.

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162. THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970).

163. Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229, 1230 (1995) (applying paradigm theory to the legal profession).

164. *Id.* at 1231.

165. KUHN, *supra* note 162, at 43–51; Pearce, *supra* note 163, at 1232.

166. Pearce, *supra* note 163, at 1232; *see also* KUHN, *supra* note 162.

167. David B. Wilkins, *Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars*, 11 GEO. J. LEGAL ETHICS 855, 865 n.39 (1998); *see also* Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2089–91 (2005) [hereinafter Pearce, *White Lawyering*]; Russell G. Pearce, *Reflections on the American Jewish Lawyer*, 17 J.L. & RELIGION 179, 183 (2002); Russell G. Pearce, *The Jewish Lawyer's Question*, 27 TEX. TECH L. REV. 1259, 1260–61 (1996); Eli Wald, *Resizing the Rules of Professional Conduct*, 27 GEO. J. LEGAL ETHICS 227, 275–78 (2014).

Finally, preexisting framing theory explains just how deeply rooted preexisting frameworks determine ideological and practical workplace policies and images of ideal workers. For example, Cecilia Ridgeway argues that social relational processes of the workplace reflect a preexisting gender framework of the ideal worker molded in male assumptions, a sort of standard background frame that is hard to shake off given how inert organizations are and how deeply rooted these preexisting frameworks are.[168]

A study by Robert Nelson and William Bridges, which analyzed pay systems in private sector organizations, found that dominant organizational actors, largely white males, deny women and other lower status actors a powerful voice in the decision-making contexts in which the pay-setting processes develop.[169] Further, Ridgeway argues that this sets up a historically disadvantaged job framework with gender biased pay structures that persist in the wake of organizational inertia.[170]

Cognitive dissonance, paradigm theory, and preexisting framing suggest that leaders of large law firms will ignore, or attempt to minimize, the divergence between their commitment to equality and inclusion and the poor results. Deborah Rhode explains that "those in charge of hiring, promotion, and compensation decisions are those who have benefitted from the current structure"—as cognitive dissonance, paradigm theory, and preexisting framing predict—and are those "who have the greatest stake in believing in its fairness."[171] Indeed, even though they "are willing to concede the persistence of bias in society in general, they rarely see it in their own firms. Rather, they attribute racial, ethnic, and gender differences in lawyers' career paths to differences in capabilities and commitment."[172] In so doing, they rely on implicit bias as facts, whether attributing lower ability to people of color or lesser commitment to women who have family responsibilities.[173] As discussed in Part III, if law firms were to take equity and inclusion seriously, they would recognize that these biases are not facts but rather obstacles that law firms could readily overcome if they had the will to do so. Indeed, as noted above, the existing partnership tournament systematically provides advantages to white men and handicaps to others.[174] Providing equal treatment beyond homophily and implicit bias would go a long way to remedying the current preferences for white men in BigLaw.

Third, despite being embedded in a good faith historical commitment to equality, BigLaw's adherence to difference blindness, viewed from a bias awareness perspective, is certainly consistent with economic self-interest

168. *See generally* CECILIA L. RIDGEWAY, FRAMED BY GENDER: HOW GENDER INEQUALITY PERSISTS IN THE MODERN WORLD (Oxford University Press 2011).

169. *See generally* ROBERT NELSON & WILLIAM BRIDGES, LEGALIZING GENDER INEQUALITY: COURTS, MARKETS, AND UNEQUAL PAY FOR WOMEN IN AMERICA (1999).

170. RIDGEWAY, *supra* note 168, at 121–22.

171. Rhode, *supra* note 26, at 1046.

172. *Id.* at 1046–47.

173. *Id.* at 1046–53.

174. *See supra* notes 121–26 and accompanying text.

and an ideology of atomism and individualism. These commitments may also explain the staying power of difference blindness.

Powerful BigLaw partners—large law firms' equity partners—are predominantly heterosexual white males. Difference blindness and its constitutive presumption of merit legitimizes and justifies their status, power, and influence. To question difference blindness is to question the very status, power, influence, and compensation, of the current elite. It is therefore an attack that contradicts BigLaw's partners' self-interest in a fundamental way: it is one thing for powerful partners to agree to have their law firms invest modestly in recruiting minorities and approve small budgets to diversity committees and diversity officers. It is altogether a different story to challenge the very presumption that legitimizes the power, status, and compensation of the people atop of BigLaw.

Moreover, it is not just a question of potentially losing compensation that leads the current BigLaw elite to adhere to difference blindness. As we show above in exploring the current diversity policies pursued by BigLaw, difference blindness policies require a minimal investment of time and commitment from individual powerful partners who often concentrate on business development while staying clear of meaningful service on the diversity committee or mentoring minority lawyers. In other words, current diversity policies grounded in difference blindness reflect a deep commitment to the individualism of powerful partners who are left free to pursue their goals. Abandoning difference blindness and adopting bias awareness would require powerful partners to abandon their individualistic conception and invest their time and energy in relational approaches, undermining their core commitment to atomism and individualism. Here, the difference is not merely between the contemporary spending of limited resources on diversity compared with potentially altering the composition of the power structure, which would cost the current elite considerably. Rather, what is at stake is not just money but the organization of large law firms as an embodiment of atomism and individualism. A true commitment to bias awareness would require powerful partners to agree to learn to become more relational, a change and an investment many may not be willing to make.

Thus, the current elite atop BigLaw have a multilayered self-interest in continuing to pursue difference blindness: it sustains and justifies their power, influence, status, and compensation as well as their identity and self-conception as atomistic individualistic professionals. Transitioning to a culture of bias awareness would entail significant investments of money and time, which may result in greater loss of status and compensation down the road.

III. TOWARD EQUITY AND INCLUSION IN THE RELATIONAL WORKPLACE: THE CASE FOR BIAS AWARENESS

Although these challenges are formidable, they are not intractable, especially for a profession that excels in problem-solving. The goal of providing equity and inclusion does not actually require radical change.

Indeed, the beginnings of relational organizational structures already exist. The change required is an evidence-based framework that employs a relational perspective. We argue that with such a framework that is both evolved in its own consciousness as well as proactive in being relational, law firms can become models for elite institutions in providing equity and inclusion in positions of power and influence. We described the preexisting frameworks of bias and their cascading effects above. Here, we turn to the positives of a relational workplace that is committed to recognizing this bias and privilege rather than holding everyone to the same standards using atomistic principles of difference blindness.

A. The Relational Workplace

The law firm, like all workplaces, is not a mere collection of atomistic individuals, as the dominant framework of law firms assumes. People do not just come into these firms and perform as atomistic individuals independent of their relationships with colleagues and clients, or of their preexisting frameworks of class, race, gender, and other social predictors.[175] We theoretically know this to be true, and in actuality, we see how people engage in work through relationships with peers, supervisors, support staff, and clients. However, when it comes to promotion and rewards, law firms typically assume that these relationships are only a small part of assessing performance. But believing that the contribution of a lawyer exists atomistically, even in significant part, misses the many webs of relationships—with teams, colleagues, superiors, peers, and clients—and the ways in which these interactions shape the lawyers' opportunities, craft, legal skills, business development, and reputation.

One organizational behavior approach that helps identify the complexity of workplace relationships is intergroup theory.[176] The experience of people in organizations depends upon "at least three sets of forces: their own unique personalities, the groups with whom they personally identify to a significant degree, and the groups with whom others associate them—

175. In a separate contribution to this colloquium, one of us advances a capital analysis, which refers to these preexisting dynamic frameworks as social capital and identity capital. *See* Eli Wald, *BigLaw Identity Capital: Pink and Blue, Black and White*, 83 FORDHAM L. REV. 2509 (2015).

176. *See, e.g.*, Clayton P. Alderfer & David A. Thomas, *The Significance of Race and Ethnicity for Understanding Organizational Behavior*, *in* INTERNATIONAL REVIEW OF INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGY 1, 6–7 (Cary L. Cooper & Ivan T. Robertson eds., 1988); David A. Thomas & Clayton P. Alderfer, *The Influence of Race on Career Dynamics: Theory and Research on Minority Career Experiences*, *in* HANDBOOK OF CAREER THEORY 133, 145 (Michael B. Arthur et al. eds., 1989); Clayton P. Alderfer & Ken K. Smith, *Studying Intergroup Relations Embedded in Organizations*, 27 ADMIN. SCI. Q. 35, 38 (1982); Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspectives on Work Group Processes and Outcomes*, 46 ADMIN. SCI. Q. 229, 260–65 (2001) [hereinafter Ely & Thomas, *Cultural Diversity*]; Robin J. Ely & David A. Thomas, Learning from Diversity: The Effects of Learning on Performance in Racially Diverse Teams 8 (Harv. Bus. Sch., Working Paper No. 04-017, 2003) [hereinafter Ely & Thomas, Learning from Diversity], *available at* http://web.mit.edu/sloan/osg-seminar/f03_docs/ely.doc.

whether or not they wish such an association."[177] It broadly outlines two major groups in organizations as "identity groups and organization groups."[178] Members of organization groups, "'based on task, function and hierarchy,' . . . share 'similar primary tasks, participate in comparable work experiences and, as a result, tend to develop common organizational views.'"[179] At law firms, primary organizational identities are that of a nonlawyer versus a lawyer (something associates and partners both share). Lawyers are further divided according to the separate identities of their hierarchical positions with the firm (i.e., as associate and partner respectively), as well as by subgroup identities within those positional groups based on seniority and reputation (e.g., junior partner, rainmaking partner, first year associate, senior associate, associate on partnership track, etc.). Each of these identities stick to these individuals and prime interactions in their own ways.

But identities are not just unidimensional. In addition to being situated within particular organizational identities, all these lawyers are also members of their respective identity groups (e.g., their age, race, gender, sexual orientation, nationality, disability, etc.). These groups, then, "derive[] from [salient] identities external to the organization."[180] Identity group membership, which "often begins at birth and continues throughout an individual's life 'or, as in the case of age, changes as the result of natural development,'"[181] results in members of identity groups often sharing "equivalent historical experiences and, as a result, tending to develop similar world views."[182] Researchers find that "[i]dentity group membership is sufficiently powerful that it influences conduct within organizations."[183]

In the relational workplace, "individuals and organizations are constantly attempting, consciously and unconsciously, [on their own and in relationship,] to manage potential conflicts arising from the interface between identity and organization group memberships."[184] Clayton Alderfer has also introduced to this framework the concept of embeddedness, in that "[r]elations among identity groups and among organizational groups are shaped by how these groups and their representatives are embedded in the organization and also by how the organization is embedded in its environment."[185] This means that

177. Alderfer & Smith, *supra* note 176, at 45.
178. Pearce, *White Lawyering*, *supra* note 167, at 2084.
179. *Id.*
180. *Id.*
181. *Id.* at 2085.
182. *Id.* at 2084. Some commentators focus on biological characteristics of identity groups, but we instead view them as socially constructed and including identities such as religion that generally have no biological characteristic. *Id.*; *see also* Ely & Thomas, *Cultural Diversity*, *supra* note 176, at 230.
183. *See, e.g.*, Pearce, *White Lawyering*, *supra* note 167, at 2084.
184. *Id.* at 2085.
185. Clayton P. Alderfer, *Problems of Changing White Males' Behavior and Beliefs Concerning Race Relations*, *in* CHANGE IN ORGANIZATIONS 122, 145 (Paul Goodman & assocs. eds., 1982).

"[e]mbeddedness is congruent 'where power relations at a particular level within an organization are similar to those at other levels of the organization, or in society as a whole,' and incongruent where they are not."[186]

The failure of law firms to provide equity and inclusion, and the influences of homophily and implicit bias, are consistent with intergroup theory, in contrast to the atomistic theory of difference blindness, which cannot explain or account for them.[187] White men are more likely to want to work with and invest in each other, causing—without truly any intent or malafide exclusion—a tension where anyone who is not easily capable of creating the same level of interactional comfort is disadvantaged organically. Similarly, members of various identity groups bring to the workplace an implicit bias that is embedded with the congruent knowledge of the disproportionate power of white men in elite positions in society more generally. The problem with both these scenarios is that they remain couched in a paradigm of equality and therefore are both resilient and perpetuating. In contrast, awareness of bias forces these mechanisms to be dealt with more consciously.

B. How to Construct a Workplace with Equity and Inclusion: Learning and Integration

Our plea for bias awareness stems not just from the failure of the difference blindness approach to substantively introduce sustainable inclusion, but also from the continuous disregard by firms and change agents alike for understanding the danger of its premise. Complaining about the need for change without critically reconsidering the institutions we currently use to effect such change is a troubling strategy. Difference blindness literally blinds us by absolving itself from answering questions like "why are there not enough women or people of color in positions of leadership?" A true agency-filled response to this question demands that we raise consciousness and awareness regarding bias and use it in implementing organizational change. Bias awareness forces an awareness that identity groups, as well as organizational groups, influence the dynamic of relationships in the workplace and result in effects such as homophily and implicit bias. Only with this awareness can leaders of institutions counter the way that these effects prevent equity and inclusion.[188]

Paraphrasing the findings of Akinola and Thomas with regard to race in knowledge-intensive organizations, such as law firms, bias awareness enables organizations "to capitalize on diverse opinions and alternative perspectives presented to them through the cross-[identity] relationships . . . . [They] can better capitalize on cross-cultural learning and enact this learning through [difference] consciousness actions, a critical

186. *Id.* (quoting Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613, 1632 (1993)).

187. Pearce, *White Lawyering*, *supra* note 167, at 2084.

188. David A. Thomas & Robin J. Ely, *Making Differences Matter: A New Paradigm for Managing Diversity*, HARV. BUS. REV., Sept.–Oct. 1996, at 80.

behavioral outcome, which can enhance the effectiveness of the diversity initiative."[189] To encourage partners to promote equity and inclusion, a bias awareness approach would make them accountable, including adjusting their compensation for their successes in promoting diversity. Of course, the simple solution to apply a relational perspective of intergroup theory may seem appealing, but how can law firms actually develop strategies for achieving workplaces of equity and inclusion? How can a workplace characterized by bias awareness, as opposed to difference blindness, achieve integration and learning?

Robin Ely and David Thomas have described the integration-and-learning approach as one where "members of a work force 'are receptive to the notion that racial differences may underlie team members' expectations, norms, and assumptions about work and that these differences are worth exploring as a source of insights into how the group might improve its effectiveness.'"[190] One way to extrapolate this for law firms and for identity differences beyond race would be to see ways in which partners and associates would "openly acknowledge and negotiate their differences in service of their goals."[191] In their study, Ely and Thomas compared hundreds of bank branches using integration-and-learning procedures with those using difference blindness and found that the integration-and-learning branches performed at a significantly higher level in equity and inclusion, as well as in productivity and revenue.[192]

The reason that these businesses have become open to integration-and-learning strategies, and similar bias awareness approaches, is the newly emergent perspective that diverse workforces are not just good for diversity's sake but are actually good for organizational effectiveness because they "lift morale, bring greater access to new segments of the marketplace, and enhance productivity."[193] Even so, the Thomas and Ely paradigm does not simply respond to market logic and forces. It instead expressly demands a cultural transformation, a look at diversity more holistically by calling out firms to be more open and explicit about discussing how differences can be channeled for organizational effectiveness and efficiency. This is different from both the implicit bias–ridden "difference blindness" approach we set out above, but it is also different from the potential exploitation that stems from what Thomas and Ely dub the "access and legitimacy" approach which brands diversity as a useful tool to gain access to narrow markets or the laudable, although only modestly effective, efforts of in-house counsel to encourage law firm

189. Akinola & Thomas, *supra* note 15, at 21.

190. Ely & Thomas, *Cultural Diversity*, *supra* note 176, at 260–65. David Wilkins and Russell Pearce have observed that their findings are relevant to lawyers. *See, e.g.*, Wilkins, *supra* note 167, at 861–67; David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1559 (1998); *see also* Pearce, *White Lawyering*, *supra* note 167, at 2084.

191. Ely & Thomas, Learning from Diversity, *supra* note 176, at 8.

192. *Id.* at 2, 43; *see also* Pearce, *White Lawyering*, *supra* note 167, at 2084 (describing a similar study done by Ely and Thomas one year later with similar findings).

193. Thomas & Ely, *supra* note 188, at 79.

diversity.[194] In turn, the emerging paradigm of integration that these scholars suggest supplants a causal mechanism that existing diversity paradigms take for granted—*assimilation*.[195] Instead of organizing around assimilation "[which] goes too far in pursuing sameness," they urge us to pursue a theme of integration that manages internal differences among employees in ways that make the firm grow and value difference, instead of rejecting it.[196]

Their research proposes that firms, which are invested in this "third paradigm," commit to a two-step process.[197] The *learning* part requires a commitment to the goal of true inclusion. They highlight, for example, the need for openness as a core value and the recognition, firmwide that "there isn't just one way to get positive results."[198] They also caution that this learning can be a long process and that organizational change does not come without explicit commitment to this new paradigm. The *integration* part dovetails with the acceptance and learning of this paradigm—they call for a firm culture where everyone feels valued, and one that is invested in personal development of the individuals. They propose a relatively non-bureaucratic structure with a well-articulated mission for this process but one can imagine this integration in any number of firm-specific ways.[199] .

The value of the two-step process is especially clear in the law firm context where much of the commitment to diversity—where it has been prominent—has stopped with just the learning part of the process. In the last decade, many law firms have reached out in good faith to social scientists and organizational theorists to consult and rethink the ways in which they can reimagine their environs[200] but these efforts have still been limited in their reach because while they expose many senior white male partners to these approaches, law firms tend to follow up with limited actions to integrate these lessons into policy and practice.[201] Firms—especially large, prominent firms—often invest in education and trainings but the impact is often stifled because they do not follow up with strategic plans and cultural changes that would be necessary to capitalize on this

194. *See id.* at 83; David B. Wilkins, *From "Separate Is Inherently Unequal" to "Diversity Is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004); Julie Triedman, *Grinding to a Halt? Law Department Efforts to Diversify Law Firms Have Yielded Little Progress*, CORP. COUNSEL (Aug. 1, 2014), http://www.corpcounsel.com/id=1202663175357/Grinding-to-a-Halt?slreturn=20150206082156 (subscription required).

195. Thomas & Ely, *supra* note 188, at 86.

196. *Id.* Ely and Thomas highlight one firm, Dewey & Levin, which has succeeded in attracting and retaining a diverse staff of professionals through a unique openness to new perspectives and practices provided by their diverse members. *Id.* at 85–86.

197. *See generally id.*

198. *Id.* at 86.

199. *Id.* at 85–86.

200. Wilkins & Gulati, *supra* note 49, at 592; *see also* Elizabeth H. Gorman, *Work Uncertainty and the Promotion of Professional Women: The Case of Law Firm Partnership*, 85 SOC. FORCES 865 (2006).

201. *See* Triedman, *supra* note 194.

learning.[202] Attending a training or being present at a seminar where the pitfalls of bias are laid out may invite you to think differently, but if the training itself is not connected closely to your work and your work environment does not change, the energies for applying the learning are likely to dissipate. So, if episodic, discretionary, individualized bias trainings, done out of the institutional context are not effective as isolated events and a deeper commitment institutionally to the two-step process is what is required, what then *does* Big Law learning and integration look like?

C. BigLaw Learning

The umbrella learning that inclusive organizations demand is a slow but steady distancing from archaic, but entrenched, frameworks of hierarchy and bias. The trouble with preexisting frameworks—and all organizations and institutions are entrenched with these—is that they are sticky.[203] What this means for law firms is that even law firms that seek in good faith to change and to implement substantive diversity measures are stuck with the historical scripts that have shaped their institutional culture. Firms—and we emphasize that this is not about malafide intent—recognize a certain kind of skill set that has been primed over years and for better or for worse, this mimics the prototype of their original inhabitants: white male lawyers.

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202. Sexual harassment education trainings, for example, are ripe for further training, but have little impact because even though they are introduced, people either go through them without interest, or they have an interest but nothing to reinvest it into. See, for example, Harvard sociologist Frank Dobbin's review of the literature in sexual harassment. Frank Dobbin, *Sexual Harassment: The Global and the Local* (2006), *available at* http://scholar.harvard.edu/files/dobbin/files/2006_sf_saguyzippel.pdf (last visited Mar. 25, 2015).

203. *See* RACHEL MARCUS & CAROLINE HARPER, GENDER JUSTICE AND SOCIAL NORMS: PROCESSES OF CHANGE FOR ADOLESCENT GIRLS 12 (2014), *available at* http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8831.pdf ("Sticky gender norms permeate and are reinforced through different social institutions, such as households, markets, polities, the media, religious institutions and education systems." (citations omitted)). Cecilia Ridgeway also discusses the "stickiness" of gender norms. In explaining her primary thesis, Ridgeway offers:

> The persistence of gender inequality in the face of modern legal, economic, political processes that work against it suggests that there must also be on-going social processes that continually recreate gender inequality. I have pulled together evidence from sociology, psychology, and the study of social cognition—how people perceive the social world—to develop an explanation of how gender differences and hierarchies function and end up being recreated again and again.

Cecilia Ridgeway, *How Gender Inequality Persists in the Modern World*, SCHOLARS STRATEGY NETWORK (June 2013), http://www.scholarsstrategynetwork.org/content/how-gender-inequality-persists-modern-world. On the theory behind gender beliefs and the preexisting frameworks that attach to it, see Cecilia L. Ridgeway & Shelley J. Correll, *Unpacking the Gender System: A Theoretical Perspective on Gender Beliefs and Social Relations*, 18 GENDER SOC. 510, 523 (2004) ("Yet as we have seen, social relational contexts evoke preexisting gender beliefs that modestly but persistently bias people's behavior and their evaluations of self and other in gender-typical ways. Although these biasing effects are contextually variable and often subtle, they are widespread across the many social relational contexts through which people enact society and shape the course of their lives.").

New entrants, while welcome, are implicitly matched to these standards and accepted only to the extent they comply with what are regarded as "objective" standards. Thus, the most critical part of this learning is the unearthing of this "objectivity" as a biased, dominant paradigm that is intrinsically unfair to the diverse participants in the tournament. Not only is this so-called objectivity unnecessary to the outstanding lawyering for which large firms are renowned, but the overwhelming evidence suggests that firms which apply integration and learning would be significantly more effective both in terms of their work and the job satisfaction of their lawyers.

Accordingly, the importance of investing in the learning component of the integration-and-learning approach cannot be overstated. Large law firms and their powerful partners, just like American society at large, are culturally committed to difference blindness as the embodiment of merit and equality. Many lawyers may not be able to conceive of, let alone understand, how different identity groups impact, form, and shape workplace policies and procedures that are seemingly meritocratic. Moreover, studying and documenting the complex effects of identity groups on BigLaw's culture and organization will reveal the very necessary reforms needed to ensure equity and inclusion. Without serious exploration and consequent learning, proponents of bias awareness may only sketch a limited blueprint for effective alternative relational policies and procedures. There are many ways of introducing this "learning" within the context of BigLaw. Recognizing that we are not currently in law practice and that the most effective strategies will emerge from BigLaw firms themselves, we offer three preliminary, broad suggestions here to begin exploring this landscape: empirical learning, consciousness raising, and community outreach.[204]

1. Empirical Learning

An integration-and-learning approach would require a data-driven approach to all aspects of a firm's work to measure the effects, if any, on different identity groups, and to ensure equal treatment to all identity groups. It would require all law firm lawyers with managerial responsibility in every department to periodically and regularly review assignments, billable hours, evaluations, training, mentoring, access to clients, and team interactions to compare data for members of identity groups and audit[205] the ways in which the firm is and is not effectively promoting equity and inclusion, including the extent to which lawyers who are not white men receive support from the firm in their professional development. As the National Football League does pursuant to the

204. Elsewhere, one of us develops the concept of identity capital exchanges at BigLaw to explore the impact of identity groups on large law firms' culture, organization, and conception of merit. *See* Wald, *supra* note 175.

205. *Cf.* R.A. Lenhardt, *Race Audits*, 62 HASTINGS L.J. 1527, 1530 (2011) (proposing the use of "race audit[s]," which are "voluntary, evaluative measure[s] designed to identify the sources of persistent racial inequality that can be productively deployed by localities").

Rooney Rule to encourage teams to hire management of color, the law firm should interview partners and associates on their experiences in order to better understand the effects of identity in the workplace and to better promote equality.[206]

2. Consciousness Raising

Of course, data is important to understanding, but data is only useful in as much as it can foster institutional change. The organizational learning of these concepts requires not just initiation and interest in data collection and curation but a deep-rooted commitment to change and transformation. To unpack this commitment, we develop here one example of reunderstanding gender as part of such organizational learning, but one can hopefully see how it applies theoretically in similar ways for other forms of diversity. In critically examining the institutions we operate within, we revalue our ideas of consciousness: we question and relearn assumptions of "good" and "right" and "valuable." And this fine-tuning of priorities is an essential part of consciousness building and an inherent component of BigLaw learning.

One of these base theories that operate in the gendering of the workplace is a cultural assumption that subtly attaches to working women across the globe, that they—not their partners, boyfriends, husbands, brothers, fathers, or other male partners—bear the brunt of managing work *and* family. Egalitarian workforces that set the same difference blindness standards for men and women do not intentionally and explicitly discriminate on the basis of gender, but they do something else that has the same ultimate effect—they set standards not designed for the average female worker.[207] The modern organization as we know it was an environment that was set up for the 1950s male executive who had a wife to take care of the house, and it works for the twenty-first century male law firm partner who continues to share household chores disproportionately with his female, working partner.[208] And while one of these images seems much more intrinsically

206. *See* Bram A. Maravent, *Is the Rooney Rule Affirmative Action? Analyzing the NFL's Mandate to Its Clubs Regarding Coaching and Front Office Hires*, 13 SPORTS LAW. J. 233, 236–45 (2006) (describing the history of the Rooney Rule). The policy, issued by the NFL's Committee on Workplace Diversity in order to "promote diversity in the league's head coaching and front office positions," states that: "[A]ny club seeking to hire a head coach *will* interview one or more minority applicants for the position. The *one exception* occurs when a club has made a prior contractual commitment to promote a member of its own staff and no additional interviewing takes place." *Id.* at 240 (quoting Press Release, NFL, NFL Clubs To Implement Comprehensive Program To Promote Diversity in Hiring (Dec. 20, 2002), http://www.nfl.com/news/story/6046016 (emphasis added)).

207. The argument about reexamining the original kind of contexts that organizations were created for requires a honest confrontation of the social order and identity. Both Robin Ely and Debra Meyerson rely on the framework of the gendered social ordered offered by Joan Acker, *supra* note 51, at 146–47. *See* Robin J. Ely & Debra E. Meyerson, *Theories of Gender in Organizations: A New Approach to Organizational Analysis and Change*, 22 RES. ORG. BEHAV. 105 (2000).

208. *See* Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1772 (1991) ("Women continue to assume about 70% of the domestic responsibilities in an average household and employed wives spend twice as much time on family obligations as employed men.").

gendered than the other, the organization is implicated equally in both. While inclusive institutional reform encourages women to be part of the workforce, it does so by pushing them to make gender irrelevant. Women are given subtle cues that, in an egalitarian, difference blind workforce, expectations are set at the same bar for *everyone*, making women who do not meet these standards feel like it was their fault for not "cutting it" and organizations justified for "doing all they could."[209] This seems like a fair solution because it sets the same bar for everyone—but the problem is no longer different standards for men and women, but instead it is that *equal standards do not take into account subtle background assumptions*. Workforces promote and advance a certain kind of committed worker *without facially discriminating on gender* yet, at the same time, assume that this worker is male and devoid of strong family demands.[210] Raising consciousness about this at the institutional level, instead of placing this inordinate amount of agency on the individual worker can be an important part of building more inclusive workspaces.

Another prime example of this dynamic at large law firms is the billable hour. The billable hour is commonly understood as an equal, neutral standard, which does not differentiate between men and women lawyers based on their gender. High billable hour targets, formal and informal, are thus understood as constituting the same bar for everyone wishing to make partner, often explained by external client demands and increased competition by other large law firms for entity clients. Even under this account, as noted earlier, billable hour practices will generally result in favoritism for white men as a matter of internal firm dynamics and business development, absent a systematic and critical audit of the influence of homophily and implicit bias on the day-to-day work of the firm.

Some have argued, moreover, that the conventional account of billing does not account for the basic insight that clients seek a high quality work product, not high billable targets. The fetish of the so-called equal and neutral billable hour over time forecloses the possibility of imagining alternative measures of lawyers' time, worth, and commitment to the firm and its clients. To be sure, sometimes long hours are a prerequisite of the effective representation of clients. Yet, that large law firms cannot even imagine alternative standards—say ones of output rather than input—drives home the devastating power of difference blindness and the need to raise consciousness about its manifestations at BigLaw.

Even in cultures that are seemingly more gender-egalitarian, research confirms that women do more housework, more childcare, and bear the

209. *See* Hilary Sommerlad, *The "Social Magic" of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession*, 83 FORDHAM L. REV. 2325, 2345 (2015).

210. Herminia Ibarra et al., *Women Rising: The Unseen Barriers*, HARV. BUS. REV., Sept. 2013, at 5–6; *see also* Hannah Riley Bowles & Linda Babcock, *How Can Women Escape The Compensation Negotiation Dilemma? Relational Accounts Are One Answer*, 37 PSYCHOL. WOMEN Q. 80, 80–82 (2013).

brunt of parenthood more steeply than their male partners.[211] In turn, women that do well have had to "take gender out of the equation" and become more like their male peers.[212] This has meant choosing professional and personal lifestyles that do not prime other responsibilities and do not prime the "double bind" in the workplace.[213] These unreachable, "nobody can truly have it all" standards have made women adopt different strategies than men and, by extension, have made them leave elite career tracks at rates distinctly disproportional to men. Notably, the bigger problem is not that women leave but, rather, that we attach certain assumptions as to *why* they leave. Persistent explanations include women leave because they are "wired that way" or "they want to" or "can't take it" or "just choose to." In turn, these structural assumptions about men and women continue to absolve organizations from being responsible for this attrition.[214]

3. Community Building

But even as we recommend this unlearning of existing institutions, we stay very aware of how difficult it is to effect real institutional change in any organizations and how these processes are embedded in social context. As John Padgett and Woody Powell warn us about organizational emergence:

> Organizational genesis does not mean virgin birth. All new organizational forms, no matter how radically new, are combinations and permutations of what was there before. Transformations are what make them novel. . . . Invention "in the wild" cannot be understood through

211. Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 8–9 (1996); Coralie Matayoshi, *Equality at Work Begins at Home*, 6 HAW. B.J. 4 (2002).

212. *See* Leslie Bender, *Sex Discrimination or Gender Inequality?*, 57 FORDHAM L. REV. 941, 941–43 (1989); *see also* Ibarra et al., *supra* note 210, at 5–6; Kathleen Davis, *The One Word Men Never See in Their Performance Reviews*, FAST COMPANY (Aug. 27, 2014, 5:07 AM), http://www.fastcompany.com/3034895/strong-female-lead/the-one-word-men-never-see-in-their-performance-reviews (conducting a survey of performance evaluations and finding that women's performance evaluations tend to refer to them as "abrasive," a term never used for men's evaluations).

213. *See* Heather Bennett Stanford, *Do You Want to Be an Attorney or a Mother? Arguing for a Feminist Solution to the Problem of Double Binds in Employment and Family Responsibilities Discrimination*, 17 AM. U.J. GENDER SOC. POL'Y & L. 627, 650–51 (2009).

214. Kathy Kram and Marion Hampton argue in their article about women leadership that women—and other minorities—suffer from a distinct "spiral" of visibility and vulnerability. Kathy E. Kram & Marion M. Hampton, *When Women Lead: The Visibility-Vulnerability Spiral*, *in* READER IN GENDER, WORK AND ORGANIZATION 213 (Robin J. Ely et al. eds., 2003). Using an object relations theory, they argue that projective identification leads to vulnerability that holds most women back from taking visible leadership roles. *Id.* But those who *do* become visible suffer from even more vulnerability because the visibility exasperates their vulnerabilities. *Id.* Organizations that are committed to learning and integrating should be open to embracing these "vulnerabilities" as part of a broader leadership style instead of dismissing them a priori.

> abstracting away from concrete social context, because inventions are permutations of that context.[215]

While there is some research that shows that new firms are the best sites of radical institutional change,[216] the American legal profession in general, and BigLaw in particular, are not the ideal environment in which to expect new institutional prototypes, and suggesting change by way of new firms and kinds of practice is not exactly feasible.[217]

Rather than reinventing BigLaw, a more scalable intervention is inclusive community consciousness building. Building communities of consciousness requires a commitment to revisiting existing institutions—even those that prima facie do not look like they are unequal and threatening to new inhabitants. Instead of just looking at inclusion methods that bring new people in, we need to revisit these structures for their potential to nurture new members as equally valuable as the dominant worker. By engaging a critique of the institutions they take for granted, actors are forced to appreciate the unequal premise of their own privilege—rather than the lack of "merit" of those who are situationally incapable of taking for granted considerations like merit and achievement.[218]

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215. JOHN F. PADGETT & WALTER W. POWELL, THE EMERGENCE OF ORGANIZATIONS AND MARKETS 2 (Princeton Univ. Press 2012), *available at* http://press.princeton.edu/chapters/s9909.pdf.

216. Research shows that the stickiness of old frames or expectations of work and workers get negotiated differently in new spaces with new kinds of work. Ridgeway calls these "sites of change," or new environments with the kind of fertile conditions for reappraisal and growth. RIDGEWAY, *supra* note 168, at 185. New industries or new kinds of organizations, for instance, have less dominant versions of the historical ideal worker and so new entrants are evaluated with flexible norms and inclusion. Ridgeway uses the research example of biotechnology startups to explain her argument of "new frames" devoid of cemented preexisting frameworks. *See id.* at 174–77. But the legal profession has its own examples of such new frame organizations too. One example has been the "non-law-firm" Axiom which claims to "liberate lawyers from the tyranny of the billable hour" and reverse the law firm set-up which is "very unhappy home(s) for attorneys." *See* Sarah Ruby, *New Business Model: Antidote for Law Firm Burnout*, STAN. GRADUATE SCH. OF BUS., http://public-prod-acquia.gsb.stanford.edu/news/bmag/sbsm0711/feature-antidote.html (last visited at Mar. 25, 2015).

217. However, it is worthy of comment that newer firm-models with flexible organization and rewards that are not intrinsically gender or race typed from the get go, are likely to be more open avenues for renegotiated hierarchy and advantage. Joe Nocera, *Silicon Valley's Mirror Effect*, N.Y. TIMES, Dec. 27, 2014, at A17 (demonstrating that in fact, new firms, such as Silicon Valley startups, are oftentimes ridden with bias too).

218. This argument about the "ideal worker" and assumptions of the dominant worker have been made by many gender scholars in the context of the organization. Ely and Meyerson, for instance, assert that the kinds of actions required to reduce gender inequalities in organizations involve challenges to existing power relations and the dismantling of practices that have long been institutionalized as rational. Ely & Meyerson, *supra* note 207. Similarly, in her book *Tempered Radicals*, Meyerson argues that

> [b]y taking on the quality of "uncontestable" truth, dominant narratives in organizations keep existing arrangements in place. Alternative stories can be an important vehicle to jar widely held understandings and open the way for learning and subsequent adaptation . . . . Small wins can be both the result of the new stories and the occasion to create them.

DEBRA MEYERSON, TEMPERED RADICALS: HOW PEOPLE USE DIFFERENCE TO INSPIRE CHANGE AT WORK 115 (Harv. Bus. Press 2001).

There are two parts of this community building. The first is to include the relatively new entrants (women, people of color, etc.) with openness and a spirit of inclusion. The second part of it is to expand the pool of people who feel invested in this project. As it stands, diversity learning is something that is done to or done for women or minority occupants of these elite firms. But this is simply not, and should not be, the case. The project of inclusion requires buy-in that does not marginalize women and minorities. We need to be able to build communities of resistance and support that are not staffed by only women and minority workers. We need, as Anne-Marie Slaughter suggests, see these issues not as "women" issues, but as "family issues"[219] that concern everyone. Similarly, we need to see these institutional changes together as a community, relationally, not as "diversity issues" but important, structural, "firm issues."

For example, on the point of gender diversity and true inclusiveness in large, elite firms, organizational theorists and Harvard researchers Herminia Ibarra, Robin Ely, and Deborah Kolb suggest that deliberate discrimination is no longer the threat that precludes women from positions of power.[220] Instead, organizational structures and cultural assumptions are the threatening "second generation" forms of bias that erect powerful but subtle barriers that hold women back from leadership in the workplace.[221] The solution that Ibarra and her colleagues offer calls for more signposting to *both* men and women to help understand what is going on. If education about second-generation gender assumptions and implications is the real way forward, what does it hold for our case?

Our call is for the recognition that, as they stand, our Western, egalitarian difference blind workplaces are unequal frames of comparison because they compare workers with inherently different expectations. Indeed, past calls for a difference blind worker have come not only at great cost to women but also at considerable cost to men.[222] After all, as Joan Williams suggests, pressures on men have not changed.[223] "Feminism is all about choices—well, choices for whom?"[224] Moreover, "[e]ven feminism is putting pressure on men to live up to the ideal of work devotion. So long as that is

219. Thu-Huong Ha, *How Can We All "Have It All"?: Anne-Marie Slaughter at TEDGlobal*, TEDBLOG (June 11, 2013, 12:55 PM), http://blog.ted.com/2013/06/11/how-can-we-all-have-it-all-anne-marie-slaughter-at-tedglobal-2013.

220. Ibarra et al., *supra* note 210, at 5–6.

221. *Id.*

222. Recent writings on women in the workplace tease out the effect this lack of relationality has on dominant actors as well. Authors like Sheryl Sandberg and Anne-Marie Slaughter, who have considerably different tones about the debate, both concede that the movement invites the dominant actors to be part of the conversation. Sandberg encourages them to "lean in" too as part of the movement, and Slaughter urges both men and women both to normalize family references and make them more routine in professional life so they do not seem like gendered norms. *See* SHERYL SANDBERG, LEAN IN (2013); Anne-Marie Slaughter, *Why Women Still Can't Have It All*, ATLANTIC (June 13, 2012, 10:15 AM), http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020.

223. Williams et al., *supra* note 52, at 220–22.

224. Tara Siegel Bernard, *The Unspoken Stigma of Workplace Flexibility*, N.Y. TIMES, June 15, 2013, at B1.

the state of play, nothing is changing for men. And if nothing is changing for men, nothing is changing for women."[225] At the same time, while bias awareness can make engagement more meaningful, there also remains the potential threat that it can create an environment of political correctness without effective change.[226]

At large law firms, learning must include, and must be visibly understood to include, not only women lawyers but men lawyers as well; not only lawyer-mothers but lawyer-fathers, and childless lawyers as well; not only minority lawyers but white lawyers as well. And, although we have not in this Article expressly addressed the issues confronting sexual minorities and people with disabilities, the same logic would apply. Perhaps most importantly, learning must include not only the marginalized outsiders—partners without power, counsel and associates—but also the most powerful partners as well.

D. BigLaw Integration: Inclusive Community Consciousness Building

BigLaw learning is an important ideological shift necessary to effect long-term inclusive change in organizations. But while a necessary prerequisite, commitment to diversity (not just to "be diverse" or "look diverse") is not complete without concrete action. An integration-and-learning approach meant to foster inclusive community consciousness would utilize many of the tools law firms now employ (e.g., training, mentoring, and affinity networks) under difference blindness but would deploy them in very different ways.

Organizations could introduce required training across a range of actors, white male powerful partners and white male associates included, for example, on how to work collaboratively and conduct evaluations without implicit bias, how to communicate about work across difference, and how to be an effective mentor. In practice, rather than resorting exclusively to continuing legal education–style training sessions divorced from the actual work BigLaw lawyers do, training would take place in the context of actual assignments by senior associates and partners who would train more junior colleagues in a relational team environment. In turn, large law firms would have to track and monitor the training their lawyers receive, as well as more consistently track the assignments handed out, to ensure that all firm lawyers, irrespective of identity group, receive equal training.

Mentoring in such a relational paradigm would be different too. Rather than focusing on things like skill building (without any assignments that test shared work[227]) and "office politics,"[228] one could imagine a prospective mentor-mentee relationship that could develop from a relational work environment. In such a relationship, we see mentors themselves being accountable for both (1) helping their mentee develop "competence,

225. *Id.*
226. *See* Ely & Meyerson, *supra* note 207, at 133.
227. Pearce & Wald, *supra* note 53, at 136.
228. *Id.*

credibility, and confidence" as well as (2) playing the dual role of coach and counselor, giving technical advice as well as talking about their relative life experiences to offer context and emotional support.[229] As part of mentoring,

> [t]he mentor must also help the mentee "establish[] and expand[] a network of relationships," including the development of relationships with sponsors, peers, role models, and additional mentors. In doing so, the mentor would prepare the mentee not only for an expanded role within the firm but also for other employment if partnership is not in the mentee's future.[230]

Here, too, an evidence-based approach requires accountability for the mentor and sponsors. As part of its commitment to ensure equal mentoring opportunities, BigLaw would have to track mentoring and allocate this valuable resource equally among its attorneys, with meaningful financial reward for those who excel at mentoring.

At the same time, the mentee must also take responsibility in a reciprocal relationship. Mentees cannot act as passive actors, waiting unrealistically for powerful partners to sacrifice business development time to mentor them. Just as it is the responsibility of BigLaw to ensure that its powerful partners mentor junior lawyers irrespective of group-based identity, it is the responsibility of mentees to treat the relationship with mentors as a relational reciprocal one, actively invest in it, and demonstrate to the mentor the value for him or her in the mentoring. Mentees would have to actively take advantage of mentorship opportunities, adequately prepare for them, and visibly value them.[231]

Affiliation groups are also quite different in an integration-and-learning approach. In contrast to the existing difference blind model, in which "outsiders," such as minority and women lawyers, are encouraged to participate in affinity group activities that are divorced from their work at the firm, the bias awareness model offers women and minority—and indeed all—lawyers a far more robust inclusive role.[232] On the one hand, all firm lawyers would be encouraged to participate in affinity groups, sending a credible message to all that BigLaw values and respects affinity groups as

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229. *Id.* (quoting THOMAS & GABARRO, *supra* note 97, at 96; David A. Thomas, *The Truth About Mentoring Minorities: Race Matters*, HARV. BUS. REV., Apr. 2011, at 98).

230. *Id.* (quoting Thomas, *supra* note 229, at 104).

231. A point driven home effectively by Sheryl Sandberg in *Lean In. See* SANDBERG, *supra* note 222, at 64–76 (noting this in chapter 5, titled "Are You My Mentor?").

232. In the education context, the Posse Foundation has been a very effective model of such inclusivity. Started in 1989, the goal of the Posse Foundation has been to recruit and retain students in colleges and universities. The idea of sending students in groups meant that they would have each other as a "back-up," helping their retention once in institutions new to them. *See generally The Posse Foundation, Inc.*, POSSE FOUND., http://www.possefoundation.org (last visited Mar. 25, 2015). Their statement defines diversity as a function of being relational: "Posse's definition of diversity is not just about cultural, ethnic or racial diversity, it includes economic, academic, religious, political and geographic diversity. It encompasses all ways that people are different from each other, and all the different ways they can learn from each other." *Quick Facts + FAQ*, POSSE FOUND., http://www.possefoundation.org/quick-facts#howdoesdiversity (last visited Mar. 25, 2015).

sites of changes and as arenas in which firm lawyers are able to develop and grow their identity as firm actors and as public citizens. On the other hand, BigLaw should invest in forming meaningful relationships with affinity groups, significantly above and beyond contributing money to these organizations, to allow firm lawyers to belong to and participate in affinity groups in a manner that is relevant to their day-to-day practice at the firm. Thus, affinity group membership can become not an arena in which one's "otherness" and group identity is unintentionally affirmed, but rather a site for change in which one's differences are acknowledged and built upon to foster equal membership in the firm.

Under a difference blindness paradigm, one might object on the ground that encouraging affinity groups could lead to white male–only groups or to women bar associations being overcrowded with male members. We offer a different vision, one in which men and women lawyers, as well as white and minority attorneys, come together to explore common areas of interest, including but not limited to, gender and race; and at the same time a relational outlook in which new affinity groups emerge to redefine and reimagine group identities that are not constrained by conventional gender and race lines.

Such an integration-and-learning approach may result in innovation regarding the billable hour and business development. The billable hour is certainly a useful tool by which BigLaw can monitor the input of its lawyers. But it ought not dominate large law firms' thinking about its lawyers' value, worth, and loyalty to clients, given its gendered frame and disproportionate impact on the career trajectory of women and minority lawyers. Bias awareness suggests the development of additional assessment tools alongside the billable hour that can more accurately measure the input and output of BigLaw lawyers, such as the quality and timeliness of work product, responsiveness, effective communications with law firm's team members and the client, and client satisfaction.

Finally, BigLaw's difference blindness approach to business development, along the lines of "everybody is in the same black box of not quite knowing what to do," is long overdue for a shake-up, especially given the gendered and racial overlay of networking within law firms and outside of them with clients that very much shape and inform the success of building one's book of business.

An integration-and-learning approach grounded in bias awareness calls upon BigLaw to take stock of the various capabilities and relationships it has, both institutionally and those possessed by its individual lawyers, and extend all of its lawyers equal opportunities to develop and benefit from internal and external networks. Eli Wald, for example, argues that given the role that social (and cultural) capital plays in developing one's book of business and ultimately in one's ability to succeed as a powerful partner, large law firms must invest in allowing all of their lawyers to cultivate "capital infrastructure" after carefully cataloging their respective capital

endowments, a form of learning.[233] Such an approach could entail both systematically training all BigLaw lawyers to develop business and directing additional resources to benefit firm lawyers who initially possess fewer social capital connections and relationships. For example, mentoring can be tied not only to work assignments as explained above but also to meaningful opportunities to develop business for which mentor and mentee would be rewarded.

CONCLUSION

For a generation now, BigLaw has announced a commitment to equity and equality within its ranks and has committed significant resources to back up its rhetoric with little results to show for its efforts: while entry-level hiring is diverse, women and minority lawyers' rates of attrition are disproportionately high, resulting in their underrepresentation in positions of power and influence.

Contemporary diversity policies fail because they are grounded in two powerful paradigms: difference blindness and atomistic individualism. Difference blindness mandates that BigLaw lawyers be treated with formal equality, based on seemingly meritocratic standards that ignore irrelevant identity considerations. Atomistic individualism means lawyers in firms are expected to succeed as individuals and that each firm lawyer is responsible only for herself.

The current paradigm fails because formal equality neglects to recognize that success at BigLaw is not solely a function of individual merit. Rather, as a result of implicit bias and homophily, seemingly meritocratic standards are in fact embedded with group identity content that systematically and disproportionately burdens women and minority lawyers. Yet, notwithstanding its harmful impact on BigLaw's quest for equity and inclusion, difference blindness persists because of a complex mix of considerations, including historical path dependency, cognitive failures, and the self-interest of the powerful BigLaw elite in sustaining the status quo.

Moving forward and achieving greater equity and inclusion in positions of power and influence requires abandoning BigLaw's exclusive reliance on difference blindness and atomistic individualism and incorporating relational bias awareness policies and procedures designed to allow large law firms to become sites of inclusive community consciousness building. Applying the integration-and-learning approach, this Article suggests practical steps BigLaw firms can and should take to promote greater equity and inclusion.

Nonetheless, these steps are only a beginning. The integration-and-learning approach to law firms requires development in at least two more directions. First, our suggestions regarding practical strategies barely scratch the surface and are best explored by those in the trenches. Second, this Article has only started to explore the complexities of issues of difference. It reviews findings regarding race and gender in a significant,

233. *See* Wald, *supra* note 175, at 2539.

but far from complete, way. Moreover, while the integration-and-learning approach provides a framework for examining all identity differences, this Article has not specifically addressed issues relating to sexual minorities and people with disabilities, or suggested more than a cursory consideration of intersectionalities among various identities.

Even acknowledging these complexities, the integration-and-learning approach provides law firms that want to provide equal opportunity to their workers with the tools they need to do so. The challenge of equity and inclusion is substantial but not insurmountable. As FBI Director James Comey has observed with regard to task of countering implicit bias:

> We all have work to do—hard work, challenging work—and it will take time. We all need to talk and we all need to listen, not just about easy things, but about hard things, too. Relationships are hard. Relationships require work. So let's begin that work. It is time to start seeing one another for who and what we really are.[234]

234. James B. Comey, Director, FBI, Hard Truths: Law Enforcement and Race at Georgetown University (Feb. 12, 2015), *available at* http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race (describing the task of overcoming implicit bias in the criminal justice system).

Are Ideal Litigators White?
Measuring the Myth of Colorblindness

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Abstract: This study examined whether explicit and implicit biases in favor of Whites and against Asian Americans would alter evaluation of a litigator's deposition. We found evidence of both explicit bias as measured by self-reports, and implicit bias as measured by two Implicit Association Tests. In particular, explicit stereotypes that the ideal litigator was White predicted worse evaluation of the Asian American litigator (outgroup derogation); by contrast, implicit stereotypes predicted preferential evaluation of the White litigator (ingroup favoritism). In sum, participants were not colorblind, at least implicitly, towards even a "model minority," and these biases produced racial discrimination. This study provides further evidence of the predictive and ecological validity of the Implicit Association Test, in a legal domain.

INTRODUCTION

[1] "Racial discrimination." Today, few terms generate greater anxiety, concern, resentment, and passion in American society. Being a victim of race discrimination is to feel debased, dehumanized, and righteously resentful. Conversely, to be accused of racial discrimination is to be tarred with a great sin, sometimes with legal consequences. But such moral and emotional intensity doesn't shed much light on what "racial discrimination" actually is. There is conceptual complexity, as is evidenced by the recent 5-4 Supreme Court decision *Ricci v. DeStefano* (129 S. Ct. 2658 [2009]).[1] Even if we define racial discrimination narrowly[2]—to cover only *disparate treatment* of a specific individual *because of* that individual's race—there remains substantial empirical complexity about what "because of" actually means.[3]

[2] The empirical complexity arises, in part, from the operation of implicit social cognitions ("ISCs"). Roughly, a *cognition* is a thought or feeling. A *social* cognition is a thought or feeling about a person or social groups, such as a racial group. An *implicit* social cognition is a social cognition that pops into mind quickly and automatically without conscious volition. In addition, we typically are unaware of (or mistaken about) both the source of that cognition and its influence on our judgment and behavior (Greenwald and Banaji 1995). Indeed, it may be a thought or feeling that we would reject as inaccurate or inappropriate upon self-reflection.

[3] In the past decade, scientists working across the boundaries of neuroscience, cognitive psychology, social psychology, and behavioral economics have demonstrated the existence of implicit social cognitions generally, including ISCs about racial groups (for a review, see Lane, Kang, and Banaji 2007). These ISCs turn out not to be randomly oriented; instead, they are biased in predictable directions in favor of groups higher on the social hierarchy. More recently, scientists have been documenting evidence of "predictive validity"—namely, that ISCs predict decisions, choices, and behavior in realistic settings. Such findings convert esoteric mind science into a real-world problem.

[4] If ISCs based on race predict worse treatment in the real world, then we have identified a new stream of "race discrimination" even when defined

[1] *See* Ricci v. DeStefano, 129 S. Ct. 2658 (2009) (holding that discarding a firefighter promotion exam because it might violate Title VII was itself a violation of Title VII).

[2] In this paper, we focus on a narrow disparate treatment definition of race discrimination. The "perceiver" racially discriminates against the "target" if the perceiver treats the target worse because that target was classified as a member of a particular racial group. Counterfactually, if the target had been classified into at least one other racial group—typically although not necessarily White—that target would not have been treated worse.

[3] Title VII of the Civil Rights Act of 1964 states that it is an "unlawful employment practice for an employer . . . to discriminate against any individual . . . because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (2006). Courts have interpreted this statute to prohibit both disparate treatment and disparate impact. *See* Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971) ("Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation.") (explaining "disparate impact" theory).

narrowly.[4] Of course, it is less offensive than the kind of racism embraced by racial supremacists. But the fact that Bull Connor and his dogs are so much worse does not mean that race discrimination caused by ISCs is necessarily *de minimis*. If nothing else, we should be more skeptical about easy assurances that today's racial disparities are caused only by objective differences in "merit" across racial groups.

[5] To respond thoughtfully to the problem of racial discrimination, we need less opinion and more data. In particular, we need more behavioral realism about how and when ISCs about race predict behavior (Kang and Banaji 2006; *Symposium on Behavioral Realism* 2006). As our contribution, we study the link between ISCs and behavior within the legal domain, about an understudied minority group. Specifically, we ask: When individuals imagine the ideal litigator, does a White man (as compared to an Asian American man) come to mind? More important, do such implicit stereotypes influence evaluation of the litigator?

[6] Part I provides a brief introduction to Implicit Social Cognitions, and how they might be measured through reaction time instruments such as the Implicit Association Test (IAT). In addition, we describe Alice Eagly's Role Congruity Theory, which explains how the perceived "lack of fit" between professional roles and social groups can undermine professional success, and extend her theory to race discrimination. Part II describes our study and reports our results.[5] Spoiler alert: we found that both explicit and implicit stereotypes of ideal litigators as more White than Asian predicted more favorable evaluations of the White litigator over the Asian American one. Part III briefly explores policy implications of these findings and responds to various objections..

I. PSYCHOLOGICAL THEORY

A. Implicit Social Cognitions

[7] By now, it is well known that our brains process information through schemas—templates of knowledge that help us organize specific examples into broader categories. For example, when we see something with a seat, back, and legs, we recognize it as a "chair." Without expending valuable mental resources, we simply sit down. We have schemas not only for objects such as chairs, but also procedures such as ordering food at a restaurant or boarding an airplane. Unless something goes wrong, we use these schemas without conscious direction, self-awareness, or intention. In this way, most cognitions are implicit (for descriptions in law reviews, see Kang 2005).

[8] Schemas apply not only to objects and behaviors, but also to human beings. Through simple categorical thinking, we map people into available social groups, such as those demarcated by age, gender, and race. This, in turn,

[4] We hasten to add that not all forms of race discrimination as defined in this paper is legally actionable. Our principal contribution is empirical, not legal-theoretical.

[5] We recognize that we are publishing new experimental findings in a law journal. We do so only because this journal's acceptance process included scientific peer review, which we think is a necessary (although imperfect) procedural requirement for publications that report new empirical findings.

automatically activates the thoughts and feelings associated with those social groups. Some of these cognitions are *stereotypes*, which are traits that we associate with a group. For instance, once we map an individual to the group Asian American, we might associate the traits "quiet," "foreign," or "mathematical" to that person. These cognitions also include *attitudes*, which psychologists distinguish from stereotypes. Attitudes are not traits; instead, they are global evaluative feelings that are positive or negative. The term "implicit bias" includes both implicit stereotypes and implicit attitudes.

[9] Let's return to our narrow definition of "racial discrimination." We are trying to spot those cases in which an individual is treated worse *because of* race. If we have particular stereotypes or a negative attitude about a racial group, decades of research suggest that these social cognitions will influence our evaluation and behavior towards individuals who are categorized into that group. Accordingly, in order to predict whether we will act in a discriminatory manner, we need to discover what our racial stereotypes and attitudes really are.

[10] The easiest and most obvious method is simply to ask people what they think. But we immediately run into the "opacity problem" (Kang 2005, p. 1506). First, sometimes folks may not be "willing" to tell us what they think given widely-celebrated norms of colorblindness. Few people want to come off sounding like a racist.[6] Second, and sometimes more important depending on the context, folks may simply be "unable" to tell us what they think at the implicit level. Indeed, implicit cognitions are by definition those that take place without our awareness or conscious direction, analogous to a computer's operating system running invisibly in the background (implicit thoughts) while other applications are running in the foreground (explicit thoughts). The scientific response to this opacity problem has been to go beyond merely asking and to start measuring without asking.

[11] Among the various techniques, the best studied and most widely accepted instruments use some form of response latencies. These instruments rely on the fact that any two concepts that are closely associated in our minds are easier to group together. For example, as Americans, because we have a more positive attitude toward the United States than, say, Russia, we should be able to group more quickly positive words with the "U.S." than with "Russia." The well-known Implicit Association Test (IAT) is based on this approach (Greenwald et al. 1998).

[12] As performed on a computer, a typical race attitude IAT requires participants to group together categories of pictures and words. For example, in the Black-White race attitude test, participants sort pictures of European American faces and African American faces, Good words and Bad words into two "piles" using two computer keys. Most people respond more quickly when the European American face and Good words are assigned to the same key (and African American face and Bad words are assigned to the other key), as compared to when the European American face and Bad words are assigned to the same key (and African American face and Good words are assigned to the other key). This average time

[6] That said, for certain judgments, some folks may be willing to generalize and say that Group X possesses a particular trait more so than Group Y, but this is likely to depend on how socially acceptable it is to endorse such an opinion.

differential, scaled to appropriate units, is deemed to be the measure of implicit bias.

[13] Data from across the globe using the IAT show that implicit bias (as measured by this time latency) is pervasive, large in magnitude, and non-random in direction. Project Implicit, which has collected the largest dataset of IAT results, reports implicit attitudinal preferences for White over Black, Light-skin over Dark skin, White children over Black children, Young over Old, Straight over Gay, and so on. It also reports implicit stereotypes that associate Men with Work (Women with Family), Men with Math (Women with Humanities), Whites with America (Asians with Foreign), and so on. The data are clear and overwhelming (Greenwald, Nosek & Banaji, 2003; Nosek et al. 2007).[7]

[14] But these measures—essentially scores from playing a computer sorting game—could mean little if they don't predict real-world action. This raises the question of "predictive validity"—that is, do implicit biases predict people's actions? There is increasing evidence that implicit biases, as measured by the IAT, do predict behavior in the real world. Two recent papers summarize the findings. John Jost and colleagues catalog a list of ten predictive validity studies that managers should not ignore (Jost et al. 2009). Working with a higher order of magnitude, Greenwald and colleagues ran a meta-analysis of 122 research reports, encompassing 14,900 participants that found statistically significant correlations between implicit bias scores and people's behaviors and choices. In the sensitive domains of prejudice and stereotyping (across race, ethnicity, and gender), implicit bias scores better predicted behavior than explicit self-reports (Greenwald et al. 2009; Dasgupta 2004, 2008).

[15] Our experiment falls squarely in this predictive validity literature. As just one more study, it could not influence the meta-analytic results (although it is consistent with those findings). But we believe this study makes important new contributions. First, our study focuses on the legal domain, which is important but has been relatively understudied in the predictive validity of implicit bias literature (Rachlinski et al. 2009). Second, this study uses a more realistic procedure, which helps us generalize experimental findings obtained in laboratory settings to more real-world environments (Dasgupta and Hunsinger 2008). For starters, we use a pool of jury eligible adults drawn from the local community as participants instead of college students earning credit for psychology classes. Finally, it looks at Asian Americans, a group that is understudied in the race literature and typically viewed as a "model minority." Some readers may believe that Asians couldn't possibly be victims of racial discrimination since they are seen as inoffensive, hardworking, overachieving, and law-abiding. If so, we are intentionally asking harder questions about the existence of bias directed at this group and its link to behavioral discrimination.

[7] However, some have voiced concerns about the proper interpretation of implicit bias scores (Arkes & Tetlock, 2004; see Banaji, Nosek & Greenwald, 2004 for rebuttal; Blanton & Jaccard, 2006; see Greenwald, Nosek & Sriram, 2006 for rebuttal), while others have also suggested improvements for the IAT (e.g. Olson & Fazio, 2003; 2004). For criticisms in law reviews, see Banks & Ford, 2009; Mitchell & Tetlock, 2006.

B. Role Congruity Theory

[16] If you don't already know this riddle, try to solve it:

> A father and his son are out driving. They are involved in an accident. The father is killed, and the son is in critical condition. The son is rushed to the hospital and prepared for the operation. The doctor comes in, sees the patient, and exclaims, "I can't operate, it's my son!" (Chen and Hanson 2004; Sherman and Gorkin 1980)

Who is the surgeon?

[17] The answer is not a step-father, adoptive father, genetic father, god father, gay marriage father. The answer is *mother*. Kudos if this was obvious to you; for most it isn't.

[18] This riddle lies at the heart of another relevant psychological literature—Alice Eagly's Role Congruity Theory, which examines the relationship between gender stereotypes and stereotypes of successful professionals in leadership roles (e.g., the role of a surgeon; Eagly and Karau 2002). Eagly and her colleagues argue that discrimination against a woman in a high status professional role can arise from the degree to which people perceive a "good fit" between the characteristics assumed to describe women in general and the requirements of specific social roles (e.g., surgeon vs. mother). As applied to the riddle above, characteristics of women are perceived as not at all fitting the role of "surgeon" but beautifully fitting the role of "mother." As such, "surgeon" and "mother" are seen as roles that cannot be occupied by the same person.

[19] Gender stereotypes suppose that women and men possess different psychological qualities that can be classified as communal versus agentic. Women are thought to be more nurturing, kind, affectionate, and interpersonally sensitive (communal) while men are thought to be more assertive, ambitious, independent, and dominant (agentic) (Eagly 1987; Diekman and Eagly 2000; Williams and Best 1990). A comparison between gender stereotypes and stereotypes of ideal professional leaders—who are expected to be assertive, ambitious, independent, competitive, and confident—makes clear that expectations of ideal leaders overlap greatly with masculine stereotypes but not feminine ones (Dasgupta and Asgari 2004; Heilman et al. 1989; Schein 2001; for a review see Eagly and Karau [2002] and Eagly and Carli [2007]). Many empirical studies have found that the disjuncture between gender role stereotypes about women and leader stereotypes elicits substantially worse evaluations of women's potential for leadership compared to that of men's, and more discrimination against existing leaders who are women rather than men (see Eagly and Karau [2002], for a review).

[20] Drawing on Eagly's theory, which focuses on gender, we make two extensions. First, we apply the same logic to race. Second, we switch from a discussion of leaders generally to litigators specifically.

[21] Several studies have found that people share consensual expectations of the ideal successful lawyer's personality. For example, when asked to describe the behavior of a lawyer, students spontaneously generated actions that were assertive, argumentative, verbal, and competitive (Kunda, Sinclair, and Griffin 1997). Similar descriptions were generated by members of the legal community as

illustrated by Elizabeth Gorman's archival study in which she analyzed the content of job advertisements posted by large law firms throughout the United States (2005). She found that 87% of the advertisements described their ideal applicant as someone who was ambitious, assertive, direct, decisive, independent, self-confident, and as having leadership and business skills. Moreover, other studies have found that litigators whose courtroom behavior was aggressive were significantly more effective and successful in getting their clients acquitted compared to others whose behavior was relatively less aggressive (Hahn and Clayton 1996; Sigal et al. 1985). Taken together, these studies suggest that people both inside and outside the legal profession expect ideal lawyers to be assertive, dominant, and argumentative.

[22] Note that stereotypes of lawyers and litigators are not only strongly gendered, which has been the subject of previous studies (e.g., Gorman 2005; Hahn and Clayton 1996; Sigal et al. 1985) but also strongly *racialized*, which to date has not received empirical attention. Specifically, the traits and behaviors used to describe ideal litigators such as ambitious, assertive, competitive, dominant, and argumentative typically bring to mind White professionals, especially White male professionals.

[23] Moreover, such attributes differ starkly from stereotypes of Asian Americans (Fiske et al. 2002; Ho and Jackson 2001; Lin et al. 2005). Common stereotypes of Asian Americans as the "model minority" describe members of this group as strongly oriented toward mathematical and technical academic achievement (Shih, Pittinsky, and Ambady 1999; Taylor and Lee 1994; Maddux et al. 2008), but these stereotypes do not include characteristics associated with the ideal litigator—ambition, assertiveness, competitiveness, dominance, argumentativeness, eloquence, and extraversion.

[24] In fact, Asian Americans are typically thought to possess interpersonal qualities that are antithetical to the ideal litigator. Whereas the ideal litigator is aggressive and assertive, Asian Americans are perceived to be quiet and deferential; whereas the ideal litigator is competitive and dominant, Asian Americans are seen as cooperative and oriented toward interpersonal harmony, not dominance; whereas the ideal litigator is argumentative and verbally eloquent, Asian Americans are perceived as having difficulty with English (Fiske et al. 2002; Ho and Jackson 2001; Lin et al. 2005; Kang 1993). In general, Asian Americans are stereotyped as being deficient in interpersonal and social skills deemed essential for success as litigators.

[25] We propose that the psychological lack of fit, or incongruity, between stereotypes about ideal litigators and stereotypes of Asian Americans is likely to elicit discrimination against Asian American litigators and relative preference for White litigators. Specifically, the more people envision the ideal litigator as White rather than Asian, the less likely they are to evaluate Asian American litigators as competent and likeable compared to their White counterparts, and the more reluctant they will be to hire Asian American litigators or recommend their services compared to White litigators.

C. Core Hypotheses

[26] By combining the insights of Implicit Social Cognition and Role Congruity Theory, we can predict that the psychological "mismatch" between people's stereotypes of ideal litigators and their stereotypes of Asian Americans will operate both explicitly and implicitly. People may have *explicit* stereotypes that the ideal litigator is White not Asian. In other words, they may be conscious of these beliefs, be able to articulate them, and even endorse them.

[27] In addition, folks may have *implicit* stereotypes that they are not fully aware of and cannot articulate. In fact, they may reject that stereotype and sincerely believe that race is irrelevant to good lawyering. These implicit stereotypes need not stem from animus; rather, they are likely to be learned over time through passive exposure in society and culture to nearly all White litigators (Kang 2005). Either way, we propose that explicit *and* implicit stereotypes—both of which accentuate the lack of fit between "litigator" and "Asian American"—should produce a net racial discrimination against Asian American lawyers and favoritism toward White litigators.

II. THE EXPERIMENT

A. Method

1. Participants

[28] A sample of 68 adults (50 females, 18 males) from the Los Angeles community volunteered to participate in this study. These adults had volunteered for the UCLA School of Law Witness Program which recruits non-student adults in the community to act as mock witnesses or mock juries in trials conducted by law students. Participants' age ranged from approximately 18 to 85. The sample included 62 White Americans (91%), 2 African Americans (3%), and 4 Hispanic Americans (6%).[8] As compared to an exclusively student sample, these participants more closely resembled the jurors who would be called for service on the Westside of Los Angeles.

2. Independent Variable Measures

a. Implicit Measures

1. Stereotypes linking Ideal Litigators to Whiteness

[29] We created a new Implicit Association Test (IAT) to measure the degree to which White versus Asian Americans are associated with traits that embody the ideal litigator. As described above, the IAT is a rapid computerized task in which participants' speed of response in categorizing pictures of racial groups and traits describing ideal litigators is taken to be an indirect measure of how quickly and

[8] Three participants who appeared to be Asian Americans (on the basis of physical appearance and name) were excluded from the sample. Their inclusion changes none of the findings.

easily a racial group "pops into mind" when people think of a successful litigator. One characteristic of the IAT is that it measures the *relative* speed with which people associate race with one profession (litigator) compared to another profession. In our study, we chose scientist as the comparison profession because it has a comparable status, similar valence,[9] is not overwhelmingly associated with Asians,[10] and traits commonly associated with the two professions differ substantially.

[30] Five Asian faces and five White faces, of comparable age and attractiveness,[11] were used to represent the two racial groups. Recognizing that

[9] We conducted a small pilot test to provide a manipulation check on the social status of litigators vs. scientists (N= 15). Two items were used to assess status of each profession on a 7-point scale:

- How influential are litigators (or scientists) in American society?
- How much social status do litigators (or scientists) have in American society compared to other professions?

The internal consistency for litigator items was high (α = .73); in other words, the answers to the questions about influence and social status "hung together" and tap into the same conceptual construct. The same goes for the scientist items (α = .72). For further discussion of the meaning of Cronbach's α, see *infra* note 18. Accordingly, we created a single score that was the numerical average of the influence and status answers. On this metric, participants perceived litigators (M = 5.63) and scientists (M = 5.47) to be equally influential and have equal status in society, $t(14) = 1.00$, p = .33.

[10] Before we implemented the current study we had conducted a pilot test to determine the extent to which each of the racial groups (Asians and Whites) were associated with each of the two professions (litigator vs. scientist). We asked participants (N = 43): "What do you estimate to be the percentage of lawyers/litigators (or scientists) in Los Angeles that fall into the demographic categories below?" Participants were given a list of racial groups next to which they typed out the percentage they estimated.

Results showed that for lawyers, participants thought that a significantly higher percentage of lawyers were White (M = 64.21%) vs. Asian American (M = 14.21%), $t(42) = 16.02$, $p < .001$. Similarly, for litigators, participants thought a significantly higher percentage of litigators were White (M = 65.09%) vs. Asian American (M = 12.60), $t(42) = 13.97$, $p < .001$. Similarly, for scientists, participants thought a significantly higher percentage of scientists were White (M = 55.57%) vs. Asian American (M = 33.07%), $t(41) = 4.99$, $p < .001$.

In selecting scientist as a profession to compare with litigators, our goal was to find an appropriate profession that was of equal status and social influence as legal professionals, but where people could readily imagine professionals who were Asian or White. As expected, our pre-test showed that people perceived a larger race difference in the percentage of White vs. Asian lawyers than in the percentage of White vs. Asian scientists. In the ideal world, we would have picked a comparison profession that showed no race difference. But it wasn't clear what that profession might be--while maintaining equal status and likeability. Using scientists offered a reasonable comparison. For more discussion, see *infra* Part III.D.2.

[11] We conducted a pilot test to ensure that White and Asian faces used in the IATs were matched on attractiveness and age (N = 15). Participants rated attractiveness on a 7-point scale: 1 (Not at all Attractive) to 7 (Very Attractive). Results showed that faces of both races were evaluated as equally attractive: Asian faces (M = 4.13) and White faces (M = 4.24), $t(14) = -1.20$, p = .25.

Participants also rated the approximate age of each face, Asian (α = .71) and White (α = .76) on equal-interval age brackets: 1 = (20-24 years old), 2 = (25-29), 3 = (30-34), 4 = (35-39), 5 = (40-44), 6 = (45-49), 7 = (50-54), 8 = (55-59), 9 = (60-64), 10 = (65-69), 11 = (70-74). Results showed that on average, Asian American faces were seen as roughly 34 years old and White faces were seen as roughly 35 years old, $t(14) = -0.73$, p = .48

the racial category "Asian American" is a social and political construction that encompasses heterogeneous subgroups, we selected East Asian faces, which observers would likely group together as Chinese, Japanese, or Korean on the basis of physical appearance. Recognizing that gender would act as an important confound, we used photographs of only men. Our strategy was not to ignore gender, but to control for it, based on past evidence showing that lawyers are expected to be men rather than women (Gorman 2005; Hahn and Clayton 1996; Sigal et al. 1985) and other research showing that stereotypes of men and women within the same ethnic group differ quite often (Eagly and Kite 1987). As such, we expected that implicit and explicit stereotypes about ideal lawyers would activate thoughts of White men more than Asian men, but would not much activate thoughts of women of either race. Faces used in the IAT were matched in age, attractiveness, facial hair, and expression (all had neutral facial expressions).

[31] Five words stereotypic of litigators and five words stereotypic of scientists were used to capture traits associated with the ideal successful litigator and scientist respectively.

Table 1

Litigator Words	Scientist Words
Eloquent	Analytical
Charismatic	Methodical
Verbal	Mathematical
Assertive	Careful
Persuasive	Systematic

These words were selected based on ratings from a pre-test in which a separate group of participants (N = 14) were asked to rate a larger pool of 22 traits in terms of how descriptive they were of the "ideal litigator" [or the "ideal scientist"] on a 7-point scale ranging from "Not at all descriptive" (1) to "Very descriptive" (7). From the average responses of pretest participants we selected 5 traits that were rated as uniquely descriptive of the ideal litigator, but not ideal scientist (i.e. assertive, eloquent, persuasive, verbal, and charismatic), and 5 other traits that were rated as uniquely descriptive of the ideal scientist, but not ideal litigator (i.e. mathematical, analytical, methodical, systematic, and careful).[12]

[32] If a participant implicitly envisions White individuals in the professional role of litigator, they should be faster to group together White faces and Litigator words with one response key and Asian faces and Scientist words with a different response key (White + Litigator | Asian + Scientist) compared to the opposite combinations (Asian + Litigator | White + Scientist). Thus the IAT served as an

[12] For further discussion of these word choices, see *infra* Part IV.D.1.

implicit measure of the relative degree to which ideal litigators are associated with Asian Americans compared to White Americans.[13]

2. Attitudes toward Asian Americans versus White Americans

[33] In social psychology, stereotypes and attitudes are carefully distinguished because they reflect different cognitive processes (Amodio & Devine, 2006; Millar & Tesser, 1986). For example, even if one has strong stereotypes that Asians are not litigators, one may still have a very positive attitude toward them. For example, one could like and admire Asian Americans but believe that they belong in an accounting office. One could also strongly dislike lawyers but still stereotype them as competent, assertive, and persuasive.

[34] Even though Eagly's Role Congruity Theory focuses on stereotypes only, we decided to measure implicit racial *attitudes* as well as implicit stereotypes about litigators. First, this would allow us to rule out a plausible alternate hypothesis that discrimination against Asian American litigators is driven by generalized dislike or prejudice toward this group, rather than specific stereotypes about the implausibility of Asian Americans in litigator roles. Second, it would provide us more data about racial attitudes toward Asian Americans, an understudied racial group.

[35] Accordingly, a second IAT was used to measure participants' implicit racial attitudes or the degree to which they favored one racial group over another overall. Implicit attitudes were measured as the differential speed with which participants categorized "Asian American + Good" and "White American + Bad" stimuli together compared to the speed with which they paired opposite combinations of stimuli together (White American + Good | Asian American + Bad). The same five East Asian faces and five White faces were used to represent the racial groups and five positive words and five negative words were used to represent positive and negative concepts. By design these words are unrelated to specific stereotypes about Asian Americans.[14]

Table 2

Good Words	Bad Words
Beauty	Filth
Gift	Repulsive
Happy	Pain
Joyful	Hurt

[13] For discussion of why we focus on the ideal litigator instead of the ideal scientist, see *infra* Part IV.D.2.

[14] A few studies have examined implicit bias against Asian Americans, including implicit attitudes toward Asian Americans (e.g. Rudman & Ashmore, 2007) and implicit stereotypes about their foreignness (e.g. Devos & Banaji, 2005; Devos & Ma, 2008). However, no research has examined: (a) whether people hold implicit stereotypes about the link between race (being Asian) and professions (being a lawyer or scientist), and (b) no research has tested whether such stereotypes predict biased professional evaluations.

Enjoy	Sick

This set-up, including the words representing the "Good" and "Bad" categories, resembles the standard race-attitude IAT that has been completed by millions of participants on Project Implicit.

b. Explicit measures

[36] The above measures were implicit: they measured reaction times instead of asked for self-reports. But, of course, explicit bias may also help explain racial discrimination. Accordingly, we also asked participants direct questions. Because our primary hypotheses were about stereotypes linking litigators and Whiteness (rather than general attitudes toward Asian Americans) and because we sought to avoid participant fatigue by limiting the length of the study, we asked explicit questions only about stereotypes (not attitudes). We administered both personal and cultural measures of stereotypes.[15]

[37] *Personal endorsement of stereotypes.* Participants completed a self-report measure assessing the extent to which they personally believed White and Asian American litigators possess qualities necessary for an ideal litigator. For example: how ELOQUENT do you think WHITE AMERICAN litigators are?" Participants rated how much each of the litigator traits used in the IAT (i.e. eloquent, charismatic, verbal, assertive, and persuasive) described White American [Asian American] litigators on a scale ranging from "not at all" (1) to "very much" (7).

[38] *Knowledge of societal stereotypes.* We also asked these questions differently, to assess what they knew about the society's general stereotypes of Asian Americans. For example, we asked "According to *MOST AMERICANS*, how ELOQUENT are litigators who are WHITE AMERICAN?" (italics added). We explained to participants that by "most Americans," we meant "not just Americans in your city or state, but the entire country. These questions are not about your own personal opinion, but instead about the opinion of the average American person."

[39] For both explicit measures, we calculated a difference score to capture the degree to which participants applied litigator-like traits to White Americans compared to Asian Americans by subtracting ratings of litigator traits given to Asian Americans from ratings given to White Americans. Thus, larger positive numbers indicated the belief that Whites are more suited to be litigators than Asians.

[15] We did not counterbalance implicit and explicit stereotyping measures because past research has found that the magnitude of the effects on each type of stereotyping measure doesn't change substantially as a function of order (Nosek, Greenwald & Banaji 2005).

3. Dependent Variable Measures

a. Depositions

[40] Two realistic but fictitious depositions involving accidents (an auto accident and a slip-and-fall accident) were created for this study by an experienced litigator. The written transcript and audio recording of each deposition depicted a litigator deposing an opponent party.[16] The accident fact patterns were selected because they are, by far, the most common type of civil cases. Moreover, their subject matter did not trigger race or interracial conflict (e.g., they were not race discrimination cases).

[41] The two depositions were created to be comparable in complexity, length (the audio recordings were 5 minutes long), quality of the litigator's performance, and ability to capture the listener's interest. Two individuals with typical tone, timbre, and vocal range provided the voices for the deposing lawyers; both spoke with what might be called a "standard" American accent (Matsuda 1991). So did both deponents.

[42] Participants saw the deposing litigator's picture and name for five seconds before each deposition began. We manipulated the race of the litigator by varying his name and photograph to be prototypically White ("William Cole") or Asian ("Sung Chang"). The pictures of the Asian and White men used to represent the two litigators were matched in apparent age and attractiveness.[17]

b. Litigator evaluations

[43] After listening to each deposition, participants were asked to evaluate the litigator heard in the deposition on three types of dimensions: the litigator's competence (6 items), the litigator's warmth (6 items), and participants' willingness to hire him and recommend him to friends and family (2 items).

[44] In the *competence* dimension, participants judged how smart, effective, assertive, eloquent, persuasive, and professional the litigator seemed. These items showed high internal consistency (α = .89).[18] In the *likeability* dimension,

[16] In the auto accident, the litigator was deposing a Defendant Campbell, who was driving a car that struck the litigator's client. In the slip-and-fall, the litigator was deposing a Plaintiff Turner, who fell on a stairwell of an apartment building owned by the litigator's client.

[17] We conducted a pilot test to ensure that the White and Asian faces used to represent the two lawyers were matched on attractiveness and age (N = 15). Ps rated the lawyers' attractiveness on a 7-point scale (1=Not at all attractive; 7 = Very attractive). Results showed no statistically significant difference in attractiveness between the two faces: Asian Lawyer (M = 3.87), White Lawyer (M = 4.27), $t(14) < 1$, $p = .37$. Also remember that the small, black-and-white photographs were flashed only five seconds before the beginning of the deposition exercise.

[18] Cronbach's alpha (α) is a statistic that assesses how well participants' responses to all the traits within a given dimension actually "hang together." That is, to what extent are participants' ratings of a given litigator's smartness similar to their ratings of the same litigator's effectiveness, assertiveness, etc.? If all these traits capture the perceived competence of the litigator, then a litigator who received high marks on "smartness" should also receive high marks on "effectiveness." By convention, Cronbach's alphas greater than or equal to .70 are considered to indicate that participants' ratings on individual items hang together (or covary) well (Christmann & Van Aelst, 2006).

participants evaluated how friendly, likeable, trustworthy, humorous, easy to talk to, and similar to the self the litigator was. These items also showed high internal consistency (α = .90). Finally, participants rated how willing they were to *hire* this litigator and how willing they were to recommend the litigator to a friend or family member. These two items also showed high internal consistency (α = .98). All 14 of these items were rated on a scale of 1 (Not at all) to 7 (Very much).

B. Procedure

[45] *Cover story*. When participants came for the study, they were told that they would complete several tasks related to skills relevant to jury decision-making such as memory, reasoning, analytical reasoning, listening and processing legal information, and making rapid judgments. This was part of the "cover story" so that participants would not suspect the actual purpose of the study.[19] Participants came into a room where they were greeted by the experimenter[20] who explained what they would be doing over the next hour.

[46] *Implicit measures*. After signing the informed consent form, participants completed two computerized IATs that assessed their (1) implicit stereotypes linking the ideal litigator with particular racial groups and (2) implicit racial attitudes toward Asians relative to Whites. The order of the IATs were counterbalanced such that half the participants first completed an IAT assessing their implicit stereotypes followed by an IAT assessing their implicit attitudes, while the other half of the participants completed the IATs in reverse order.

[47] *Distracter tasks*. Participants then completed a few unrelated distracter tasks such as a crossword puzzle[21] and a memorization task in which they were asked to memorize an 8-digit number. These tasks were inserted between the IATs and the depositions that followed in order to support the cover story.

[48] *Deposition evaluation*. Participants were then told that they would hear two depositions from two unrelated cases. At the beginning of each deposition, participants were shown for five seconds a picture of the litigator on a computer screen accompanied by his name. As mentioned earlier, we manipulated the race of the litigator by varying his name and photograph to be prototypically White ("William Cole") or Asian ("Sung Chang").

[49] Participants then listened to the deposition through headphones and, at the same time, read the script of the deposition presented on a computer screen.

[19] Our "cover story" only partly succeeded. In the exit interviews, most participants guessed that the purpose of the study had something to do with racial stereotypes. This is not especially unusual when using an Implicit Association Test to measure racial attitudes and stereotypes. However, if people figured out the point of the experiment and wanted to engage in "impression management," they would be inclined to show as little racial bias as possible both on the stereotyping measures (especially the self-report questions) and in terms of their judgments of the litigators. Notwithstanding such a motivation, we found both bias against Asian Americans and correlations between these biases and evaluations of the depositions. If the cover story had succeeded, some of the obtained biases and correlations would likely have been even larger.

[20] By name and phenotype, most people would map the experimenter (a woman) to the racial category White.

[21] None of the questions or answers were related to race or race discrimination.

The transcript identified who was speaking, which meant that participants saw labels such as "Attorney Cole" or "Attorney Chang".

[50] At the end of the deposition, participants were asked to evaluate the litigator's competence (6 items), warmth (6 items), and their willingness to hire him or recommend him to family and friends (2 items). Next, participants saw a picture of the second litigator, then listened to the second deposition and evaluated the second litigator on the same dimensions.[22]

[51] The order in which the two depositions were presented and the race of the litigator were counterbalanced between participants. In other words, half the participants first heard the auto accident deposition followed by the slip-and-fall deposition, while the other half heard the depositions in the reverse order. Within each deposition order described above, for half the participants the first deposition was conducted by a White litigator (William Cole) and the second deposition was conducted by an Asian American litigator (Sung Chang) whereas for the other half, the order of the lawyer's race was reversed. In sum, the pairing of deposition type and litigator race was varied between subjects, and so too was the order in which participants encountered these pairs. This ensured that any difference in participants' evaluations of the two litigators, if obtained, could not be due to the content of the deposition or the order in which they encountered each particular litigator.

[52] *Explicit measures.* Finally, we measured the degree to which participants personally endorsed the stereotype linking ideal litigators' personality to race by asking them to judge how well each of the five litigator traits described Asian Americans as a group and White Americans as a group. In addition to measuring personal stereotypes, we asked about societal stereotypes—what "most Americans" believed. Once this task was finished, participants completed an exit interview to see if they had guessed the point of the experiment. They were then thanked for their participation and debriefed about the purpose of the study.

C. Results

1. Biases against Asian Americans

a. Explicit biases

[53] Recall that we asked for explicit personal self-reports on stereotypes, to see whether participants viewed Whites as more the ideal litigator as compared to Asian Americans. A composite of explicit stereotypes was created by averaging the five attribute ratings of White vs. Asian American litigators separately. On the personal stereotype measure, we found no such bias. On average, participants reported that White (M = 5.03) and Asian Americans (M = 4.95) possess litigator-

[22] The Greenwald et al. (2009) meta-analysis revealed that the order of tasks (i.e. whether implicit and explicit attitudes or beliefs were assessed before or after behavior) makes no significant difference in the strength of the relationship between implicit or explicit measures with behavior. Therefore, we expect that reversing the order would not have affected the results of the study.

related characteristics to an equal degree, $t(67) = -1.15$, $p = .25$. The minor difference was *not* statistically significant.

[54] We did, however, find differences on the cultural stereotype measure. Recall that we also asked what participants thought about the beliefs of "most Americans." When asked that way, participants reported that most Americans think that Asian Americans possess fewer characteristics necessary to be a successful litigator ($M = 4.40$) compared to White Americans ($M = 5.54$). This difference was statistically significant, $t(67) = 7.84$, $p < .0009$. In sum, although participants claimed that they themselves did not hold racial stereotypes about the ideal litigator, they thought "most Americans" did.

b. Implicit biases

[55] *Implicit stereotypes linking litigators with race*. Implicit stereotypes were measured using the differential speed with which participants paired Asian + Litigator and White + Scientist compared to the reverse combination (White + Litigator and Asian + Scientist). These difference scores (in milliseconds) were converted into effect sizes similar to standardized units known as Cohen's *d* (IAT *D* score) using the algorithm standard within the literature (proposed by Greenwald et al., 2003). As expected, results showed that on average, participants were significantly faster at pairing litigator-related traits with White faces compared to Asian faces ($M = 330$ ms; IAT $D = 0.45$), $t(67) = 9.93$, $p < .001$.

[56] Notice the "dissociation" between explicit and implicit stereotypes. On the explicit measure, participants denied personally associating litigator traits more to Whites than to Asians. (They did, however, report that "most Americans" had such stereotypes.) But according to the implicit measure, those associations exist and are of moderate strength. It would be wrong to say that the implicit measures show the explicit self-reports to be either erroneous or insincere. Instead, explicit bias and implicit bias are best viewed as related but independent mental constructs. Both types of bias should be taken seriously, and neither should be privileged as the only authentic or socially significant measure.[23]

[57] *Implicit Racial Attitudes.* Finally, as expected, on average, participants were significantly faster at pairing positive valence words with White faces compared to Asian faces ($M = 331$ ms; IAT $D = 0.62$), $t(67) = 13.31$, $p < .001$. They were not colorblind in their implicit attitude, even toward a "model" minority.

[58] In sum, we collected evidence of bias against Asian Americans. When asked explicitly, participants reported that they themselves had no racialized stereotypes associating Whites more than Asian Americans with litigators; however, they reported that "most Americans" did. When measured implicitly, participants' responses revealed medium-sized implicit stereotypes associating the ideal litigator with Whiteness and medium-sized[24] implicit attitudes in favor of Whites (over Asian Americans).

[23] Implicit stereotypes also did not correlate significantly with knowledge of societal stereotypes.

[24] Standard convention is to consider Cohen's d=.2 small; d=.5 medium; d=.8 large. (Cohen 1988).

2. Predictive Validity for Deposition Evaluations: Correlations

[59] We measured four *independent* variables: implicit stereotypes, implicit attitudes, explicit personal stereotypes, and explicit (knowledge of) societal stereotypes. The *dependent* variables were the deposition evaluations of the White American and Asian American litigator, which clustered into three separate scores (competence, likeability, and hireability) for each deposition. Bivariate correlations[25] were conducted to test which of the independent variables would be related to participants' evaluations of the Asian and White deposing lawyer.

[60] As shown in Table 3, participants' evaluation of the *Asian American litigator* conducting the deposition was significantly correlated with their *explicit (not implicit) stereotypes* about ideal lawyers. However, participants' evaluation of the *White American litigator* was significantly correlated with their *implicit (not explicit) stereotypes* about ideal lawyers. Participants' knowledge of societal stereotypes and their global implicit attitudes toward Asians and Whites in general were not systematically related to evaluations of either litigator.

Table 3: Correlations between implicit and explicit stereotypes and evaluations of the White vs. Asian Litigator

Dependent Variables	Implicit Stereotypes	Explicit Stereotypes	Knowledge of Societal Stereotypes	Implicit Attitudes
Asian Lawyer				
Competence	-.07	**-.42****	-.09	.09
Likeability	-.01	**-.41****	-.20	.07
Willingness to Hire	-.18	**-.39****	.00	-.04
White Lawyer				
Competence	**.32****	.01	-.05	.03
Likeability	**.31****	-.11	-.31**	.25*
Willingness to Hire	**.26***	.09	-.04	-.12

* p < .05, ** p < .01

[25] Note that correlations range from -1 to +1; large positive or negative correlations that are statistically significant suggest that there is a non-random relationship between participants' bias and their evaluations of the deposing lawyers, whereas correlations close to zero mean that the two variables are completely unrelated. The negative or positive sign attached to the correlation coefficient specifies the direction of the relation, as explained below.

a. Evaluations of the White American lawyer

[61] The more participants *had an implicit stereotype*, the more competent they thought the White deposing litigator was (r = .32, p < .01), the more they liked him (r = .31, p < .01), and the more willing they were to hire him personally and recommend him to friends and family (r = .26, p < .05). However, evaluations of the White litigator on all three dimensions were uncorrelated with *explicit stereotypes* about ideal lawyers (all rs were close to zero).[26]

b. Evaluations of the Asian American lawyer

[62] Unlike evaluations of the White litigator, participants' evaluation of the Asian American litigator was significantly correlated with their *explicit stereotypes*. The more they explicitly and personally endorsed the belief that the qualities required to be a successful litigator are more prevalent among Whites than Asians, the less competent they judged the Asian American deposing lawyer to be (r = -.42, p < .01), the less they liked him (r = -.41, p < .01), and the less willing they were to hire him personally or recommend his services to friends and family (r = -.39, p < .01). However, their implicit stereotypes were not correlated with evaluations of the Asian litigator (all rs were close to zero). Moreover, participants' knowledge of societal stereotypes and global implicit attitudes toward Asians and Whites were also uncorrelated with their evaluations of the deposing litigator who was Asian American.

[63] In sum, the take-home message from the correlations is that people's evaluations of the White litigator's performance was most strongly related to their *implicit stereotypes of who they envisioned as the ideal litigator*; whereas their evaluations of the Asian litigator's performance was most strongly related to their *explicit stereotypes about the ideal litigator*. The other measures did not influence evaluations of the deposing lawyers in a systematic way.[27]

3. Comparing the predictive validity of implicit vs. explicit measures of stereotyping: Hierarchical regressions

[64] The correlations reported above suggest that participants' evaluations of the Asian and White deposing litigators can be predicted by knowing their implicit and explicit stereotypes of ideal lawyers. However, to ensure the *independent*

[26] Scatter plots of the data reveal a clear linear pattern of results suggesting that correlational analyses were appropriate for the data. Additionally, all regression analyses discussed below examined the data using both linear functions and higher order functions (e.g. quadratic and cubic curvilinear functions) and found no significant pattern of results using higher order functions (all p's > .10).

[27] In addition to these primary correlations, two other correlations were significant, but we interpret them cautiously because they only emerged for liking judgments given to the White lawyer (not competence or hireability). Thus, they may be spurious. Participants who implicitly preferred Whites as a group over Asians tended to like the White litigator more (r = .25, p <.05) and those who reported knowing that Americans in general associate ideal lawyers to Whiteness reported liking the White litigator less (r = -.31, p < .01).

contribution of each type of social cognition (implicit vs. explicit stereotypes) in explaining evaluations of each litigator, we conducted hierarchical regressions.

a. Predicting favoritism toward the White litigator

[65] In the first set of 3 regressions, evaluations of the White litigator served as the dependent variable (competence, likeability, hireability) while implicit and explicit stereotypes served as predictor variables.[28] These hierarchical regressions allow us to determine how much of the variability in participants' judgments of the White litigator can be explained by knowing their *explicit* beliefs about lawyers in general. Once these explicit beliefs have been considered (controlled for) in the first step of the regression equation, the regression then assesses whether *implicit* stereotypes explain participants' judgments of the same lawyers over and above what can be predicted from their explicit stereotypes. If the test for implicit stereotypes remains statistically significant, it implies that knowing participants' implicit stereotypes provides additional information (*over and above* explicit beliefs) with which to forecast their evaluations of lawyers.

[66] Regression results confirmed correlational findings reported earlier: participants who implicitly associated the ideal litigator with Whiteness significantly favored the White litigator by judging him to be highly competent (B = 0.95, SE = 0.35, p = .008), highly likeable (B = 1.21, SE = 0.45, p = .009), and eminently hireable (B = 1.35, SE = .63, p = .04) even after controlling for the effects of explicit stereotypes (see Figures 1, 2, and 3). In other words, for every one unit increase in implicit stereotyping, participants' evaluations of the White lawyer's competence increased by 0.95 units, likeability increased by 1.21 units, and hireability increased by 1.35 units on the 7-point scale.[29]

[67] The following Figures graphically depict the regression results. In each figure, the two regression lines for the Asian and White lawyer represent two separate regression analyses. They are presented together within each figure only for illustrative purposes—to help the reader visually compare the results for the Asian vs. White lawyer.

Figure 1. Competence of White Litigator

[28] For evaluations of the White litigator, the regression equations are as follows:
Competence: Y = 5.06 – 0.01(explicit stereotypes) + 0.95(implicit stereotypes)
Likeability: Y = 4.36 – 0.32(explicit stereotypes) + 1.21(implicit stereotypes)
Hireability: Y = 4.30 + 0.26(explicit stereotypes) + 1.35(implicit stereotypes)

[29] We also ran the same regression after reversing the order of the predictor variables (entering implicit stereotypes as the first predictor and explicit stereotypes as the second predictor). Results didn't change and confirmed findings from the original correlations: explicit stereotypes were unrelated to evaluations of the White litigator's competence (B = -0.01, SE = 0.23, p = .95), likeability (B = -0.32, SE = 0.29, p = .27), or hireability (B = 0.26, SE = 0.41, p = .53) after controlling for the effect of implicit stereotypes.

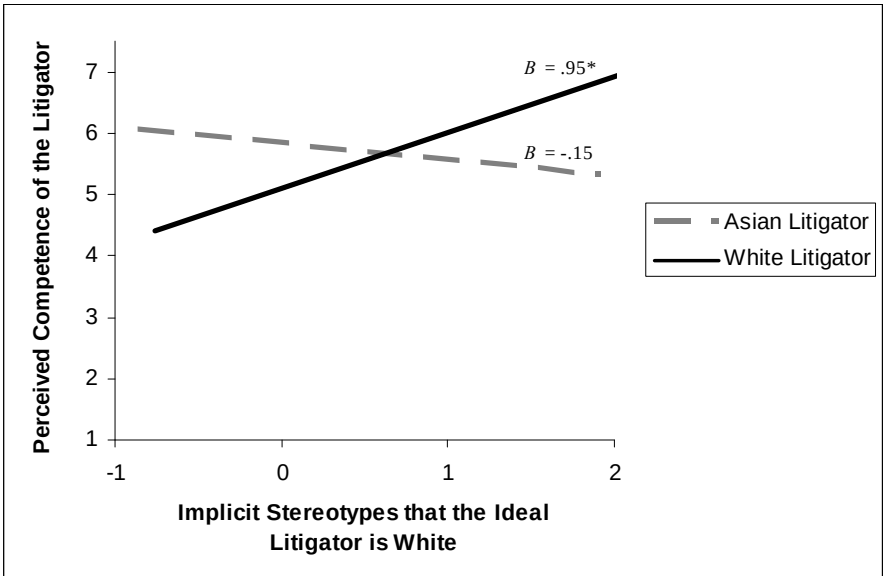


Figure 2. Likeability of White Litigator

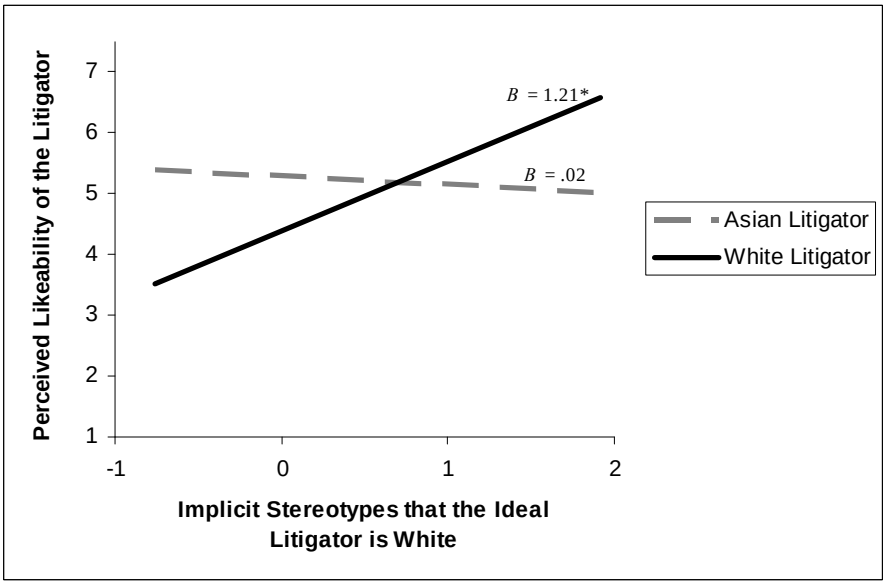
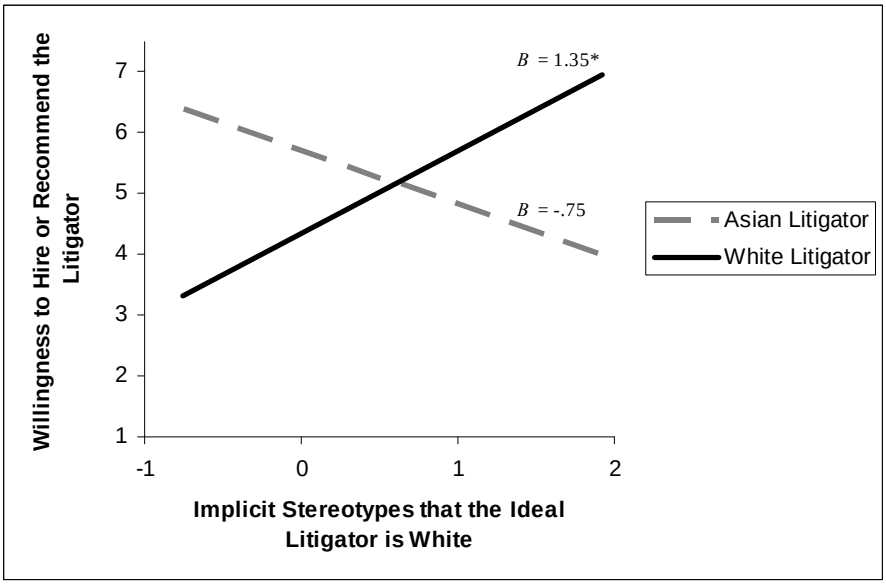


Figure 3. Hireability of White Litigator



b. Predicting Discrimination against Asian litigators

[68] Another set of 3 hierarchical regressions were conducted; this time evaluations of the Asian American litigator served as the dependent variable (competence, likeability, hireability) while implicit and explicit stereotypes served as predictor variables.[30] As before, these hierarchical regressions allow us to determine how much of the variability in participants' judgments of the Asian litigator in the deposition can be successfully explained by knowing their *explicit stereotypes* about lawyers in general after controlling for implicit beliefs.

[69] Regression results revealed that participants' *explicit stereotypes* significantly predicted greater bias against the Asian litigator even after statistically partialing out the effect of implicit stereotypes. Participants who explicitly endorsed racialized stereotypes about the ideal successful lawyer thought the Asian litigator in the deposition was significantly less competent (B = -0.76, SE = 0.20, p < .001), less likeable (B = -0.86, SE = 0.24, p = .001), and were less willing to hire him or recommend him to others (B = -1.19, SE = 0.35, p = .001). In other words, for every one unit increase in explicit stereotyping, participants' evaluations of the Asian lawyer's competence decreased by .76 units, evaluations of his likeability decreased by .86 units, and hiring recommendations decreased by 1.19 units on the 7-point scale (see Figure 4, 5, and 6).[31]

[30] For evaluations of the Asian litigator, the regression equations are as follows:
Competence: Y = 5.80 – 0.15(implicit stereotypes) - 0.76(explicit stereotypes)
Likeability: Y = 5.25 + 0.02(implicit stereotypes) - 0.86(explicit stereotypes)
Hireability: Y = 5.67 - 0.75(implicit stereotypes) - 1.19(explicit stereotypes)

[31] We also ran the same hierarchical regression after reversing the order of the predictor variables (entering explicit stereotypes as the first predictor and implicit stereotypes as the second predictor). Results confirmed findings from the original correlations: implicit stereotypes were

[70] As with the above figures, the two regression lines for the Asian and White lawyer represent two separate regression analyses. They are presented together within each figure only for illustrative purposes—to help the reader visually compare the results for the Asian vs. White lawyer.

Figure 4. Competence of Asian American Litigator

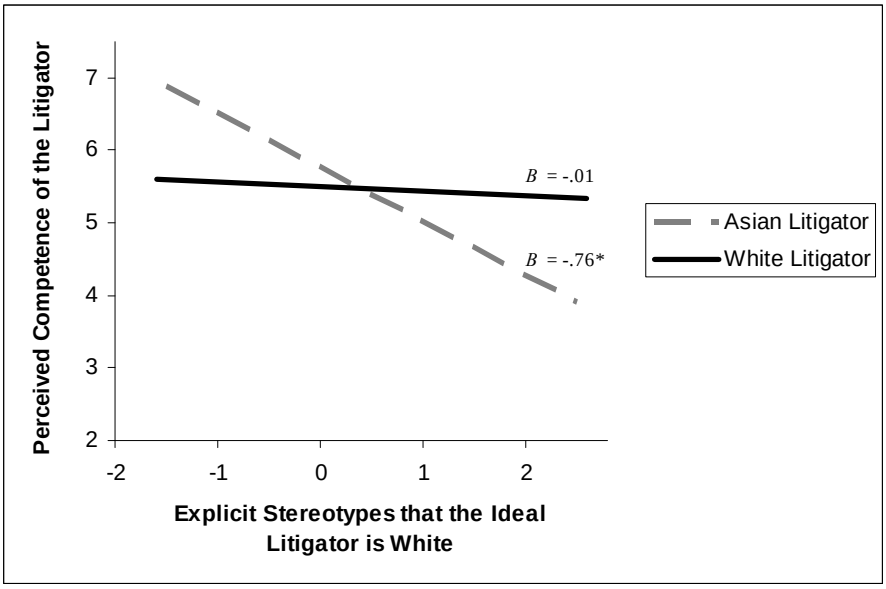
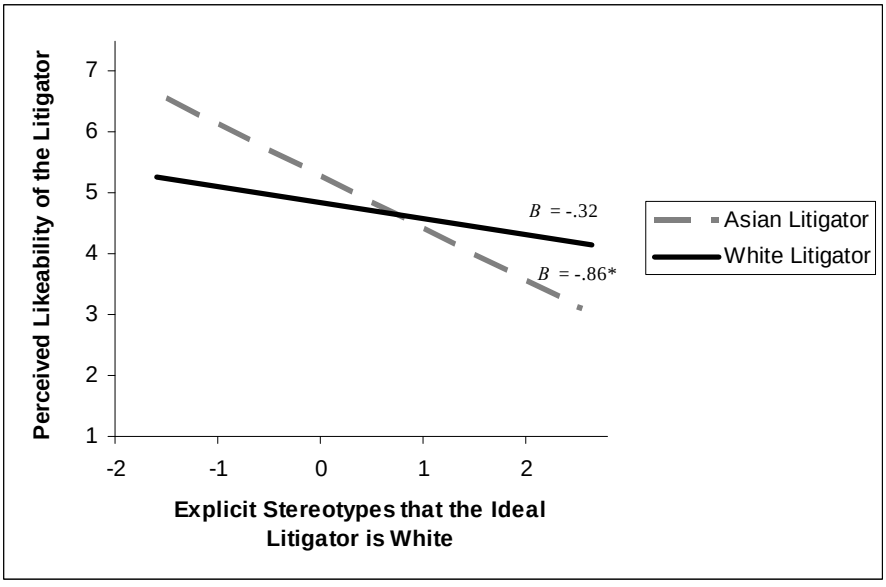
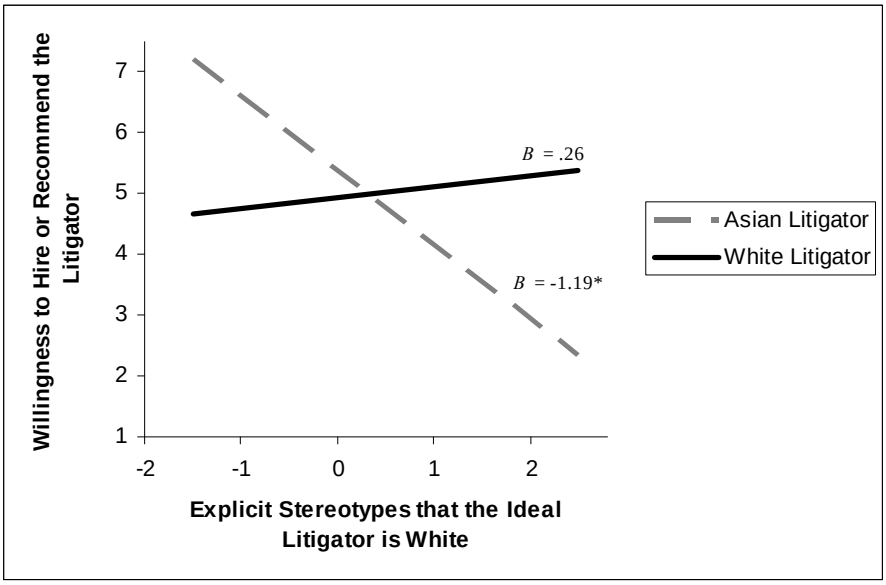


Figure 5. Likeability of Asian American Litigator



unrelated to evaluations of the Asian litigator's competence (B = -0.15, SE = 0.31, p = .63), likeability (B = 0.02, SE = 0.36, p = .95), and hireability (B = -0.75, SE = 0.54, p = .17), after controlling for the effects of explicit stereotypes.

Figure 6. Hireability of Asian American Litigator



III. LAW AND POLICY IMPLICATIONS

A. Lack of Colorblindness

[71] The well-known naturalistic fallacy is to think that what "is" is what "ought" to be. The converse moralistic fallacy is less familiar: it is to think that what "ought" to be is what "is." Many people believe that we "ought" to be colorblind, and through the mental slip, they assume that we already "are" colorblind.

[72] Traditionally, these claims of colorblindness were challenged by personal narratives told by racial minorities about the continuing significance of race in their daily lives (Williams 1991). But these stories were often disregarded as subjective, exaggerated, and atypical (Farber and Sherry 1993). When claims of colorblindness were challenged by broader social statistics showing non-random, and sometimes stark racial disparities, again there was plausible deniability about their cause. After all, those differences might reflect actual racial differences in merit—not racial discrimination.

[73] This is why social science findings from the social cognition and behavioral economics literatures provide crucial new evidence to shed light on the empirical debate of colorblindness. Audit studies have powerfully challenged claims of colorblindness by showing that individuals carefully controlled to be identical on all relevant measures except for race still experience disparate treatment because of their race (Bertrand and Mullainathan 2004; Rooth 2007). The same can be said of the Implicit Social Cognition studies that show quantitatively and objectively that, at least on an implicit level, we can't but help see race.

[74] For our study, we picked a racial minority designated as "model" and selected intentionally as a hard case. Moreover, our experiment took place in Southern California, with many participants drawn from neighborhoods near UCLA. In these areas, social contact with Asian Americans should have been high compared to the rest of the United States. In other words, we were not targeting some rare racial/ethnic group with whom contact was infrequent and thus toward whom more prejudice was likely (see Pettigrew and Tropp 2006, for meta-analysis of contact hypothesis).

[75] Nevertheless, we recorded implicit stereotypes and prejudice against Asian Americans. The study participants were not colorblind, at least at the implicit level. They held implicit attitudes in favor of Whites. They also held implicit stereotypes that associated Whiteness with the ideal litigator. Even though Asian Americans are complimented as the "model minority," they remain targets of bias.

B. Predictive Validity

[76] But for many, reaction time differences on some computerized test aren't especially important or meaningful. What's crucial is real-world behavior (Dasgupta 2008). In this experiment, we found evidence supporting just that: implicit stereotypes of the ideal litigator as being White elicit favorable evaluations of the White attorney. Accordingly, we have provided further evidence that implicit biases do predict racial discrimination, even when it is narrowly defined as disparate treatment of an individual because of race.

[77] Moreover, this "because of" doesn't resort to some distant "but for" race discrimination such as the Chinese Exclusion Acts (130 years ago), the internment of Japanese Americans (70 years ago), or the torching of Korean shops in Los Angeles (20 years ago). It does not resort to "structural racism" that may have led to decreased opportunities for skills and ability development. Instead, the "because of" is much more proximate and direct. Because of racial stereotypes operating in their individual minds, participants evaluated lawyers who were objectively indistinguishable as significantly different.

[78] Of course, "significantly" was used in the last sentence in the sense of statistical significance—as in not likely to be caused by random variations in sampling participants. But not everything that is statistically significant is worth fretting about. After all, the effect sizes of implicit bias might be trivial. Regrettably, that is not the case here.

[79] To appreciate the effect size of *implicit* stereotypes, consider the following comparison between two hypothetical participants, "James" who is implicitly colorblind (IAT *D* score of zero) and "Greg" who has an IAT *D* score of 1.[32] According to the regression, Greg would likely evaluate Attorney Cole, the White lawyer, very favorably as 6.01 on the 1-7 scale on competence, 5.57 on likeability, and 5.65 in terms of recommending his services to friends and family. By contrast,

[32] We have not made Greg an implicit bias freak. An IAT D = 1 score is within 1.5 standard deviations from the average IAT D = .45 (SD = .37). Assuming a normal curve distribution, 95% of the participants are expected to fall within 2 standard deviations of the mean.

James would evaluate Attorney Cole as 5.06 in terms of competence, 4.36 in terms of likeability, and 4.30 in terms of recommending his services to others.

Table 4: Differences in White Litigator Evaluations by Hypothetical James v. Greg

White Litigator Evaluation	James (IAT D = 0)	Greg (IAT D = 1)	Difference
Competence	5.06	6.01	0.95
Likeability	4.36	5.57	1.21
Hireability (all on 1-7 scale)	4.30	5.65	1.35

[80] To appreciate the effect size of *explicit* stereotypes, consider a hypothetical participant "Emily" who said that successful lawyers are more likely to be White than Asian (i.e., who gave Whites a 6 and Asians a 5 on the 1-7 scale).[33] Emily would probably evaluate Attorney Chang, the Asian American lawyer as 5.04 in terms of his competence, 4.39 in terms of his likeability, and 4.48 in terms of recommending his services to friends and family. By contrast, another hypothetical participant "Lisa" who said that successful lawyers are *equally* likely to be White and Asian (gave both groups a 6 on 1-7 scale)[34] would probably evaluate Attorney Chang as 5.80 in terms of competence, 5.25 in terms of likeability, and 5.67 in terms of recommending his services to others.

Table 5: Differences in Asian Litigator Evaluations by Hypothetical Lisa v. Emily

(all on 1-7 scale)	Lisa (White = 6, Asian = 6)	Emily (White=6, but Asian=5)	Difference
Competence	5.80	5.04	-0.76
Likeability	5.25	4.39	-0.86
Hireability	5.67	4.48	-1.19

[33] Again, we did not manufacture a strawperson Emily, who is freakishly explicitly biased. The Asian rank of 5.0 is essentially at the mean of participants' evaluations (M = 4.95, SD =.91). The White rank of 6.0 is 1.2 standard deviations above the mean for participants' evaluations (M = 5.03, SD = .83). Again, assuming a normal distribution, about 77% of the participants would fall within 1.2 standard deviations from the mean. Finally, the difference score of 1 (White = 6, Asian = 5) is only .37 standard deviations away from the average difference score (M = .79, SD = .57).

[34] Nor is Lisa an outlier. Given that the mean for explicit stereotypes of Asians = 4.95 (SD = .91), and the mean for Whites = 5.03 (SD = .83), Lisa's score of 6.0 for both groups is roughly within 1 SD for both the Asian (1.15) and White ratings (1.17).

[81] Finally, often conflated with the concept of predictive validity is the idea of ecological validity, namely that laboratory conditions do not approximate real-life situations. This study made advances on these concerns in several ways. Our participants were not undergraduates, but jury-eligible adult residents drawn from the community. Also, the dependent variables were not only written vignettes. Instead, there was a multimedia component, in which participants actually listened to a full five-minute long deposition, which provided a richer set of materials for participants to interpret and judge.

[82] We recognize that this was not truly "real-world" in that we weren't measuring real jurors viewing a real deposition at a real trial. Doing so would be nearly impossible under current Institutional Review Board practices and would introduce a new set of real-world confounds. Skeptics might also define "behavior" very narrowly and refuse to consider evaluating a litigator's deposition and answering questions about his hireability to count as "behavior." But under such a standard, we point out that it would be exceedingly difficult to measure something like hiring "behavior" *in any experimental setting*. What we call "behavior" is well within the mainstream usage of the term in psychology, and we seek to be fully transparent with our readers about what we're measuring (Amodio & Devine, 2006; Millar & Tesser, 1986; see also Ajzen & Fishbein, 2005; Greenwald et al., 2009).[35]

[83] Finally, we point to evidence of general convergence between behaviors and judgments measured in hiring decision studies done in the lab and real-world behaviors captured in archival studies and field studies, conducted in real-world organizations. For example, Eagly, Karau and Makhijani (1995) reviewed a vast number of studies and found that lab experiments reporting hiring discrimination against female job candidates paralleled similar findings obtained in real organizations. Also, Irene Blair's work on race-based stereotyping based on physical appearance demonstrates a convergence between findings obtained from archival studies and lab experiments (see Blair, Judd & Chapleau, 2004; Blair, Judd & Fallman, 2004). In closing, we remind legally-trained readers that "validity" of a psychological construct or instrument is never established conclusively by any single experiment; instead, it is produced by an entire research program, to which this paper's findings contribute.

C. Janus-faced Discrimination

[84] One of the most intriguing findings is the Janus-faced nature of the discrimination. Implicit stereotypes predicted ingroup favoritism—more favorable evaluations of the White attorney. By contrast, explicit stereotypes predicted outgroup derogation—worse evaluations of the Asian American attorney. When designing the experiment, we assumed that explicit stereotypes would not predict discrimination much. We thought that there were too many "impression management" reasons that would make the explicit self-reports of personal

[35] For another line of research that uses "behavioral" measures similar to ours, see the lab experiments on aversive racism's impact on hiring decisions (e.g., Dovidio & Gaertner, 2000; Son Hing, Chung-Yan, Hamilton & Zanna, 2008).

stereotypes not very useful, particularly when it became clear in exit interviews that the "cover story" had been only partly successful. We were thus surprised to find that implicit versus explicit stereotypes predicted different kinds of discrimination.

[85] In retrospect, we can offer some explanation for the different roles that explicit and implicit biases seem to be playing. The explicit bias in this experiment measured explicit endorsement of the belief that Asian Americans as a group do not possess the characteristics necessary to be a successful litigator. It should not be surprising, then, that these explicit stereotypes produced a "confirmation bias." If Asian Americans are generally viewed as worse litigators, then any specific example of litigating that is ambiguous in quality is likely to be interpreted in a manner that confirms one's pre-existing stereotypes.

[86] Implicit bias about the ideal lawyer, by contrast, may not have much to do with Asians at all. Instead, it's more about the rightness of Whiteness. The status quo conception of the ideal lawyer is a White man, and that prototype may fill one's entire mental field. We may simply not think of Asian Americans as litigators, any more than we think of White women as litigators. On this view, a White male litigator gets preferential treatment for fitting naturally into one's preconceived expectations. By comparison, an Asian American man doesn't receive the same boost; but neither does he receive a direct penalty because he is largely invisible and irrelevant to the very category of litigator.

[87] Despite our lack of a detailed theoretical account for this Janus-faced finding, we want to resist any easy characterization that implicit-bias induced ingroup favoritism is unproblematic. As a matter of impact, although the specific form of discrimination is different, both implicit versus explicit stereotypes predictably produce disparate treatment of White versus Asian litigators in judging the quality of their work, likeability, and hiring and recommendation decisions. As a matter of antidiscrimination and equal protection law, race discrimination is not excused because it's driven by ingroup favoritism (treating Whites better) instead of outgroup derogation (treating Asian Americans worse).

[88] If one argues that the *motivation* of ingroup favoritism is somehow less offensive than that of outgroup derogation, again the law disagrees. For example, under current equal protection analysis, race-conscious action by the state triggers strict scrutiny. The Supreme Court has made clear that this is so regardless whether the action has benign ("affirmative action") or malign ("racial subordination") motivations (Adarand Constructors v. Pena, 515 U.S. 200 [1995]). If the motivation of remedial affirmative action doesn't excuse race-contingent behavior, why should the motivation of ingroup racial favoritism fare any better?

D. Objections

[89] Having made our affirmative case, we answer a few objections and concerns, especially those that might be salient to legal audiences.

1. Word Stimulus Selection

[90] Within an Implicit Association Test, specific stimuli must be selected to represent a category. In the stereotype IAT we constructed, photographs were used to represent races, and words were used to represent the category "litigator" on the one hand ("eloquent, charismatic, verbal, assertive, persuasive") and "scientist" on the other ("analytical, methodical, mathematical, careful, systematic"). One could object, however, that the words we claim to represent the stereotype of ideal litigator (and conversely the ideal scientist) are somehow inaccurate or inappropriate. After all, not all litigators are eloquent or assertive. And lots of litigators are analytical, methodical, and systematic. Conversely, many scientists are eloquent, charismatic, and verbal.

[91] First, to repeat, these litigator traits were not selected randomly. They were chosen through a pre-testing procedure, described above.

[92] Second, they were consistent with prior studies of consensually shared stereotypes about lawyers (Gorman 2005; Hahn and Clayton 1996; Kunda et al. 1997; Sigal et al. 1985).

[93] Third, it does not matter whether these traits capture the difference between litigators and scientists accurately on some "objective" or expert's metric. What matters is whether average people likely to be jurors believe this distinction to be true, and if so, do their beliefs affect their evaluations of litigator performance?[36] If our choice of litigator traits were completely off—imagine if we had chosen words such as "prudish," "caring," "lofty," "sweaty"—then we would not have found any correlation between the implicit stereotypes and evaluation of the two lawyers, which we did.

[94] We offer one final argument, which runs deeper. Suppose that we told participants that the five litigator words described the ideal "Xanthie" and the five scientist words described the ideal "Quan" (see Ashburn-Nardo et al. [2001], using these made-up names to show how easily ingroup favoritism is generated). Both of these "professions" are, of course, made-up. Nevertheless we might still see the reaction time differences regardless of the labels because participants have implicit stereotypes associating Whites with the cluster of traits arbitrarily labeled as the ideal Xanthie. In other words, whether we call these traits implicit stereotypes of the ideal "litigator" or of the ideal "Xanthie," may not matter as much. The implicit association between these traits and Whiteness exist regardless of how we label the cluster. And if they predict behavior, they do so regardless of our naming conventions.

2. Asian-Scientist Driver

[95] Since the IAT always compares two categories, one might ask whether the IAT effect was generated in part by the implicit stereotype that Asian Americans are scientists than the implicit stereotype that White Americans are litigators.

[36] Here's another way to think about it. If we are interested in what average consumers want in a dessert wine, it may not matter much that their associations differ from what expert sommeliers identify as uniquely distinctive. We are not trying to predict sommeliers' behavior.

Indeed, there may be some mutually exclusive relationship between the set of attributes we identified pertaining to the ideal litigator and the set of attributes related to the ideal scientist. In other words, to the extent that we associate any social category *more* with one profession, we may tend to associate that social category *less* with the other profession. Thus, one could argue that we may not be viewing Whites as ideal litigators; instead, we are viewing Asians as the ideal scientists, which simultaneously make us view them as *not* ideal litigators. This is a reasonable objection, and the same conceptual question can be asked of any IAT measure. Future research using different instruments such as priming tests could help disentangle more cleanly what amount of the IAT effect is driven by the White + Litigator association as compared to the Asian + Scientist association.

[96] That said, this complementary explanation does not undermine the basic empirical finding that implicit stereotypes of Whites as compared to Asians lead participants to rate Whites as better litigators. At most, it would suggest a longer title to the paper: "Are Ideal Litigators more White than Asian *and/or Are Ideal Scientists more Asian than White*? Measuring the Myth of Colorblindness *in Litigator Performance*."

[97] Still, the current paper's title and framing could be criticized as misleading if the IAT effect were driven principally by the Asian + Scientist association. But the evidence suggests otherwise. First, recall that in our pre-testing, the profession of "scientist" was guessed to be majority White. In other words, we didn't pick a comparison profession like sushi chef or martial arts instructor, which folks might have guessed to be majority Asian. Second, and more important, if the Asian + Scientist association were the principal driver, we should not see correlations with participants' evaluations of the deposing lawyers—which is precisely what we see. Remember, we weren't asking participants to evaluate how two men performed some science experiment; we were asking them how they performed a litigator's task of taking a deposition. If this implicit bias is only about Asians and scientists, participants should have had no reason to evaluate *litigators* differently as a function of race.[37]

[98] In conclusion, we want to focus readers on the principal experimental findings regarding implicit bias: implicit stereotypes predicted differential evaluations of the exact same litigator performance. In moral or legal terms, evaluating White litigators better because Asians are viewed as ideal scientists is not obviously more defensible than doing so because Whites are viewed as ideal litigators. Both break the norm of formal colorblindness.

CONCLUSION

[99] People who decry the play of the "race card" believe that we already compete in something like a meritocratic tournament, in which individuals are

[37] Indeed, to the extent that the Asian-Scientist connection is driving the results, that would simply add noise to our measure and weaken our correlations between that implicit bias measure and the deposition evaluations. In other words, the true correlations are likely higher, not lower due to this confound.

evaluated based on their performance only. Differences in evaluation are presumed to come only from differences in actual merit, which is independent of social categories, such as race. If this is what's going on, then most claims of racial discrimination can be seen as self-interested whining by those who lost in a fair game.

[100] But do we really live in such a world? Or in less Manichean terms, how much does race continue to influence our merit evaluations? And by this, we don't mean to go back decades in an individual's life to trace how race might have affected her trajectory of human capital development. We mean, instead: "Does race influence merit evaluations *right now*, when the performance is objectively indistinguishable?"

[101] Our study demonstrates that explicit and implicit stereotypes about litigators and Whiteness alter how we evaluate identical lawyering, simply because of the race of the litigator. The race was only primed by a five-second picture and the last name of the lawyer shown on the transcript. Nonetheless, race was sufficiently salient as to predict different evaluations of the litigator's deposition. Implicit stereotypes predicted pro-White favoritism. Explicit stereotypes predicted anti-Asian derogation. Both types of bias produced net racial discrimination against a "model" minority either by elevating Whites or by putting Asians down.

[102] Many folks resent "affirmative action" programs and instead say that everyone should be colorblind. Appeals to an only partially redeemed history are rejected. It's as if some statute-of-limitations has passed on claims of justice for past wrongs. But if we are sincere and accurate about our own colorblindness, then the race of the litigator should not cause one iota of difference in how we evaluate a garden-variety deposition. But our data show otherwise—that race still does matter. We need more evidence on how and why; more important, we need to start studying what we might do about it (Dasgupta 2009; Blasi 2002).

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Asian American Lawyers Still Underdogs

Vivia Chen

February 3, 2011

It's the start of Chinese New Year--the Year of the Rabbit--so what better time to check on the state of Asian American lawyers?

Arguably, all that "You-better-make-straight-A's-or-I-will-kill-you-then-commit suicide-myself" Chinese parenting style must be paying off, because Asian American lawyers seem to be at all the elite, swanky firms.

In New York, Asians represent over 50 percent of all minority lawyers, reports The New York City Bar in its latest diversity study. Nationally, they make up about half of all minority associates, reports NALP in its January bulletin. Moreover, even during the economic turbulence, when minority lawyer figures declined from 19.67 percent in 2009 to 19.53 percent in 2010, Asian Americans actually saw their numbers increase, from 9.28 percent to 9.39 percent.

Asian American lawyers are on a roll, right? Not exactly.

The bottom line is that Asian American lawyers thin out at the top. In fact, they are losing ground, says the NYCB study: "Over multiple periods of tracking the diversity benchmark data, the representation of Asian attorneys consistently declined with increasing levels." The study says that, among minority lawyers, they represented 55 percent of associates, 49 percent of partners, and 36 percent of practice group heads, as of March 2010.

What's puzzling about the data, says Lisa Levey, who led the NYCB research, is that there's no obvious reason for the consistent decline of Asians in the upper ranks. Unlike women who bail out of the profession in greater numbers, "Asians have attrition rates that parallel the overall rate," says Levey. Logically, then, Asians should be rising through the system.

"We have to contend with the myth of the model minority," says Yang Chen, executive director of The Asian American Bar Association of New York, about how Asian lawyers are presumed to be successful. "People are surprised that we need an organization for Asian lawyers. They always say to me, 'But you're all so successful.'" It

might be news to everyone else, but the lack of upward movement is hardly a surprise to the Asian American lawyers, says Chen.

But I thought I found a silver lining in the NYCB study: Asian Americans are increasingly heading up practice groups. In 2007, Asians represented just over 14 percent of all minorities leading a practice area, while in 2010, that figure jumped up to 36.1 percent.

Chen, however, is not that impressed. "Maybe they're leading an Asian practice group or intellectual property," he says, pointing to the two areas where Asians tend to get slotted. "If they're heading corporate or general litigation, then I'd be more impressed."

So are Asian Americans choosing other career paths as they get closer to partnership or are they getting sidelined?

On that cliffhanger, Happy Chinese New Year!

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Do you have topics you'd like to discuss or tips to share? E-mail The Careerist's chief blogger, Vivia Chen, at VChen@alm.com.

Photo: Bob Jagendorf / Flickr

Posted by Vivia Chen at 03:10:18 PM in Diversity

Comments

Vivia,
I'm glad you are bringing attention to this issue. As an APA lawyer myself, I have personally struggled against breaking through the "social" hurdles in US law firms and organizations that keep APA lawyers in certain niches. My opinion is that APA lawyers have to make a concerted effort to not always conform to their counterparts. It should be okay to work very hard and represent those stereotypical "Asian virtues" while leading the litigation practice group and being a rainmaker. Asian lawyers get passed over not because they are not comfortable rainmaking or socializing or building relationships --- but because their non-Asian counterparts at the helm may not be comfortable grooming, mentoring and partnering with Asians. It is a two-way street.

Posted by: Marie | February 15, 2011 at 10:10 PM
To Jackson Indiana in Asia - Your comments seem a bit off the mark. The study Vivian writes about isn't about native Asians in US law firms, it's about Asian-AMERICANS in US law firms. If you are not of Asian ethnicity but still have "native" language ability (I know a few non-Asians who grew up in China), would you still not be considered for those BIgLaw positions in Asia? That seems the more analogous comparison. Alternatively, ask how well native Asians fair in the US legal market -- my impression (having been an Asian American partner in a Big Law firm and heard what other partners said) is that those native Asians, who speak English fluently (albeit with an accent) and graduated from US law schools, have two strikes against them.

Posted by: EK | February 8, 2011 at 04:11 AM
Vivien - I enjoy your blog; your advice is usually practical and opinions tethered to facts. However, you are a little nearsighted on this subject.

Check out the job postings for lawyer positions in Asia - typically, they require "native Mandarin speaker," "native Korean speaker," etc... These are postings for jobs at major US law firms. The ads do not say "fluent" Chinese/Korean speaker - they say "native."

There is no question that non-Asian lawyers are at a per se disadvantage getting hired in Asia, even controlling for language. You can see the rosters of BigLaw Asia outposts scattered with Berkley grads whose Chinese experience is limited to arguing with their grandmothers at reunion dinners. Do a study of the numbers non-Asian associates at those outposts and then let us know your findings.

Further, check out the AmLaw article about the "death of China hands" and the smirking tone it takes toward non-Asians in Asia-related jobs. Flip that tone and see how you would appreciate it if the same were written about Asians trying to fit into American culture.

No question, there is discrimination at home. But there is legal redress for that. And the level of discrimination in the U.S. is nothing compared to that faced by non-Asians in getting BigLaw jobs in the fastest growing markets in Asia. Leave aside that many of these markets - such as India - flat out bar non-Asians from participating at all.

It's an attitude familiar to those who do business in China - what's mine (China) is mine, and what's your's (the rest of the world) - also mine!

Posted by: Jackson Indiana | February 7, 2011 at 05:18 PM
There is no denying that minorities, whether African American, Latino, or Asian still face considerable challenges advancing in business. While those in the majority can simply discount this reality as nonsense, does not detract from the experience of these minorities. To the point of a previous poster, yes rapport is extremely important in business and perhaps in all facets of life. This has long been the rationale of the "old white" men who have been in power positions for ages. They simply feel more comfortable around other “old white” men. I commend this study and report; Asian Americans have long suffered under the misconception put forth by the model minority myth and therefore the challenges faced by this community have long been discounted and marginalized.

Posted by: John Lin | February 6, 2011 at 05:38 PM
My theory: APAs thin out the higher ranks of big law firms because they realize making parter is not the end-all. They get smart... and go in-house!

Posted by: Doug Chia | February 4, 2011 at 05:28 PM
Some people shouldn't even try to interpret statistics.

For instance, comparison solely to other "minorities" - rather than the total pool of attorneys - is ridiculous.

Secondly, I'd like to know how many Asian associates there were 10 years ago? If it was less than 49%, for instance, than they are over-achieiving relative to other minorities with respect to making partner.

Finally, when are we going to get beyond this racialist nonsense? Does anyone really think in 2011 there are major law firms denying positions to Asian-Americans on account of their ethnicity?

Posted by: DirkJohanson | February 4, 2011 at 09:17 AM
While Asian lawyers aren't dropping out of the workforce as women tend to during childbearing years, their reasons for not ascending into the law firm stratosphere may be similar. Huge generalization here but women and Asians are particularly good at working very hard -- so hard that they overlook the importance of relationship building within the organization. The fact is that people tend to promote those with whom they feel comfortable. Essential to this dynamic are rapport and trust which can only be accomplished through an intentional relationship-building effort.

Women also are not necessarily comfortable being out front and asking for business and I suspect the same is true for Asians. signing business, or rainmaking, is essential to the viability of professional firms (especially now) and very few can afford to cover lawyers who just do the work.

So, for both women and diverse employees to ascend to the higher ranks, they must cultivate genuine relationships with colleagues, managers, partners and clients alike. It's no longer just about the work.

Posted by: Dani Ticktin Koplik | February 4, 2011 at 09:13 AM

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The Careerist takes an inside look at how lawyers shape their careers and manage their lives. The blog aims to dissect developments in the profession, provide useful information and advice, and give lawyers a platform to voice their views. The goal is to provide a fresh, provocative take on the state of lawyering.

About Vivia Chen

Vivia Chen, The Careerist's chief blogger, has been covering the business and culture of law firms for a decade. A former corporate lawyer, Chen is fascinated by those who thrive (as well as those who don't) in the legal profession. Her take: Success in the law (and life) doesn't always travel a linear path. If you have topics you'd like to discuss or information to share, contact her: VChen@alm.com

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Be the Change: One Asian-American's View on Advancing the Legal Profession, part I

Posted by Ryan B. Whitacre on Nov 6, 2014 11:15:00 AM

Quick background: I spent the first half of my career practicing in Big Law and then in-house at large corporations. In my current role as a legal recruiter, I'm often asked about my experience as an attorney-turned-legal recruiter, especially for my perspective on "diversity in the law" and the Asian Pacific American (APA) experience, in particular.

My response: I find it disconcerting that a small percentage of APA attorneys make it into the upper echelons of the legal profession. I'm also weary of how the corporate arena and the legal community have required that those (dis)affected address the problems of minority advancement and retention, but without a strong contribution from leadership. **It's not us who are holding ourselves back. Or are we…?**

MY IDENTITY

Identity has been tricky for me. I'm ethnically Korean, was orphaned in Seoul, and adopted and raised in the Rust Belt of the U.S. I grew up with only a passing connection to my Korean heritage – my mom's attempt to send me to Korean camp did not end well – and I instead tried to fade into the all-American surroundings of Flint, Michigan. Once in college, I was proud when friends introduced me as "a good guy, 'cause he's not really Asian."

This trend continued in law school; I was turned off by the Asian Pacific American Law Student Association chapter, judging it as too much of a clique. The whole truth is I was also intimidated by the organization, because I didn't share the same cultural upbringing or experience as those classmates.

Upon entering the legal profession, I still didn't view myself as a minority – I was hired on merit, of course! Nevertheless, I was put on various diversity-focused committees and task forces from my earliest days in a law firm, despite adverse feelings. Many of the diversity issues we discussed then are similar to those debated now, e.g., How come 21% of law firm associates are minority, but only 7.1% are partners and only 3.2% are equity partners

FACING REALITY: WE CONTROL OUR DESTINY

It became clear that while I didn't view myself as a minority, others did, and I had a responsibility to help advance diversity. As I paid closer attention, I also noticed that I served on each iteration of the firm's "diversity initiative" with the same group of colleagues – the "out" income partner, the Black litigation associate, the Latino associate from Tax, the South Indian benefits counsel… No wonder this group kept having the same discussion, as nary a figure of leadership with real power to affect change was in the room.

While I did not come from a traditionally Asian household, I've faced the stereotypes – after disabusing the notion we are all in IP, let alone IT – that APA attorneys are hard working and "good

technicians," but risk averse and passive, not decisive nor "leadership material." These stereotypes can certainly stall careers, because the connotation opposes the characteristics routinely rewarded by companies and firms, which prize extroversion, self-promotion and dynamism.

At a certain point, I realized that I—*we*—have more agency than we might believe. It's up to us individually, and as a group, to embrace solidarity and to advocate for the advancement of ourselves and others. ***We*** have the power to discontinue inaccurate stereotypes by disproving them.

LEADERSHIP MUST BE ENGAGED

It is not possible to bring about change in the absence of strategic commitment by leadership – e.g. a managing partner, management committee member, chief executive officer, or the like. Once those roles are engaged in the discussion, sharing their views, minorities (including the APA community) can truly begin to represent in the leadership ranks.

Exciting proof of this, and a huge motivator for me, is seeing the current critical mass of senior APA in-house counsel that, by dint of authority and status, commands considerable power of both pulpit and pocketbook in today's corporate America. At an Asian-American General Counsel Roundtable co-hosted by Vedder Price and Major, Lindsey & Africa recently, the panel and participants recognized there's a long way to go towards full inclusion, but we are making progress. We're doing so by having discussions about how to fairly provide APA attorneys with the same paths to leadership as any other lawyer has, whether working as outside counsel or in a legal department.

ACTIVE PARTICIPATION IS THE STRATEGY

The way to foster more high-level APA inclusion is to make it an active priority. APA attorneys in leadership positions should connect with and encourage one another in the same way as other affinity groups. We should be mentoring one another as part of our strategy that leads us to leadership, rainmaking, billing credit, etc.

I support my personal mission—to promote APA lawyers as they ascend to the leadership ranks—through active participation. I promote the APA cause in the legal community by continuing this dialogue, whether that be by authoring this blog post, participating in the roundtable discussion in Chicago this past spring*, or attending this week's NAPABA 2014 convention in Scottsdale, Arizona, which is the largest annual gathering of Asian lawyers in the U.S. APA lawyers should focus on their goals to rise to leadership positions and roles, remain confident and work together to promote our collective progress up the ladder.

**MLA will continue this discussion by hosting another APA GC roundtable, with a different set of panelists (including lawyer-turned-author Helen Wan), in the Bay Area in spring 2015. Check MLA's Events online for further details.*

Find a Recruiter

* * * * *

Ryan B. Whitacre joined Major, Lindsey & Africa in 2013 following more than 12 years of legal practice that included tenure in large law firms and the in-house legal departments of a $22 billion privately-held food distributor and a publicly-traded real estate investment trust. This breadth of experience affords him a unique perspective, which he offers to clients engaged in a wide range of industries who are seeking the right fit for a variety of legal positions at all levels in their respective enterprises, from corporate counsel to Chief Legal Officer. Ryan can be reached at (312) 288-4914 and rwhitacre@mlaglobal.com.

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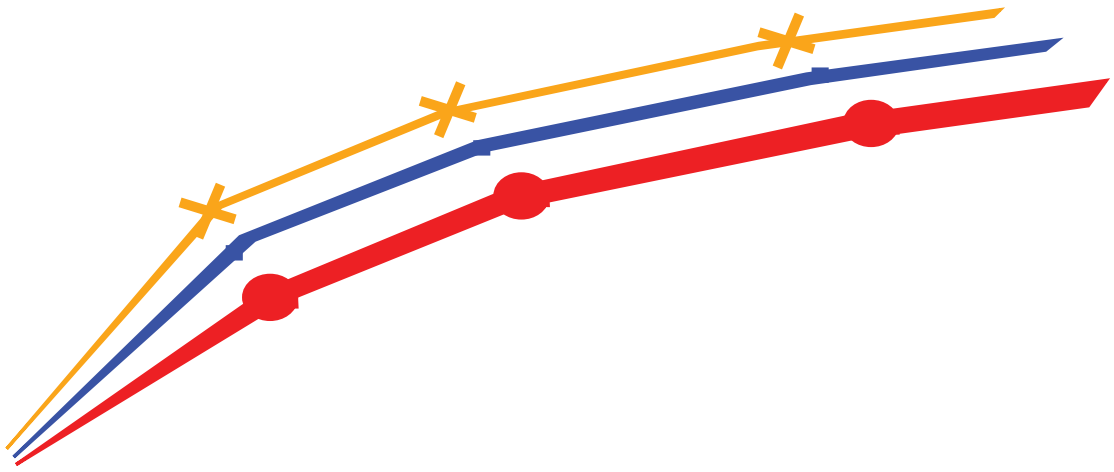

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- Since 1975, the representation of women, African Americans, Hispanics and Asian Americans as professionals in larger Legal Service firms has increased substantially.
  - Women increased from 14.4 percent in 1975 to 40.3 percent in 2002.
  - African Americans from 2.3 percent to 4.4 percent.
  - Hispanics from 0.7 percent to 2.9 percent.
  - Asians from 0.5 percent to 5.3 percent.

- There were parallel increases in J.D. degrees from 1982 to 2002.
  - Women receiving law degrees increased from 33 percent in 1982 to 48.3 in 2002.
  - African Americans from 4.2 percent to 7.2 percent.
  - Hispanics from 2.3 percent to 5.7 percent.
  - Asians from 1.3 percent to 6.5 percent.

- Firm characteristics such as size, number of offices, locations, prestige and earnings rankings appear to have more effect on the proportion of minority legal professionals than the proportion of women legal professionals. However, both the proportion of women and the proportion of minorities are significantly higher in firms with more offices.

- Minority legal professionals are likely to be associated with firms in the top ten legal markets (cities), and in firms ranked in the top 100 on the basis of prestige and/or earnings.

- Large, nationally known law firms generally have a higher proportion of women and minorities than other types of law firms. There is also less variation in the proportion of women and minorities among these large, nationally known law firms.

- In comparing associates and partners in a sample of large law firms, women, African Americans, Hispanics and Asians all have lower odds of being partners than White males.

U.S. Equal Employment Opportunity Commission
DIVERSITY IN LAW FIRMS

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INTRODUCTION

PURPOSE

The purpose of this report is to examine the employment status of women and minorities at law firms required to file EEO-1 reports. An employer is required to file an EEO-1 report if it employs 100 or more employees. Therefore, this study covers law firms which would be characterized as medium to large. Specifically, it examines employment status in a general sense to display the changes in the employment of minorities and women as attorneys since 1975. It also looks at the organizational characteristics of firms to explore the variations in the current employment of minorities and women. Finally, a major issue in law firms, the prospect of becoming a partner, is examined empirically to determine the relative likelihood of women and minorities being partners.

THE LEGAL PROFESSION

The importance of the legal profession in today's society is unquestionable. Lawyers are often powerful players in social, economic and political circles and as women and minorities become an increasing part of this profession, their ability to obtain public and private influence is increasing.[1]

> [L]awyers are very often key players in designing and activating the institutional mechanisms through which property is transferred, economic exchange is planned and enforced, injuries are compensated, crime is punished, marriages are dissolved and disputes are resolved. The ideologies and incentives of the lawyers engaged in these functions directly influence the lived experience of Americans, including whether they feel fairly treated by legal institutions (p. 346).[2]

However, perhaps more important than the influence of attorneys is the central role they play in maintaining social stability.

> The persuasive power of law as a tool to change or eliminate certain or nonproductive behavior must, in part, be attributable to the respect and acquiescence afforded to the law and lawyers by those subject to it. . . .

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[1] Hagan J. and F. Kay, *Gender in Practice: A Study of Lawyers' Lives*, New York: Oxford Press, 1995, p. 3.

[2] Nelson, R. "The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society", *Case Western Reserve Law Review*, vol 44, 1994, pp. 345-406.

> Hence, the development of law and its practice as a noble profession rather than as a trade or occupation (p. 1022).[3]

More specifically,

> Patterns of stratification with the legal profession are important in their own right . . . but they are of particular concern to legal scholars and legal educators because principles of inequality among lawyers may suggest much about whether access to justice in our society is fairly distributed. If race, gender, and social class are determinants for entry into the profession and for the attainment of certain positions within the profession, it may imply that these same attributes affect the sorts of treatment individuals will receive by legal institutions, in part because they do not have access to lawyers who share a similar social background (Nelson, 1988, p. 368).[4]

Social scientists have researched many aspects of American law firms including size, geographic location, hiring and promotion patterns, legal specialties, profitability, and client characteristics. Several themes emerge from this literature.

PUBLIC SECTOR EMPLOYMENT

Many studies find that women and minorities are likely to hold jobs in the public sector. For example, Payne and Nelson (2003), in a study of the Chicago bar as of 1995, report that 20.7 percent of white women lawyers were employed by government or the judiciary, compared to 7.6 percent of white men. The percentages for African-American lawyers and Hispanic lawyers in government and the judiciary are even higher, 43.8 percent and 37.5 percent respectively. (See their Table 2-2).[5]

[3] Johnson, Jr. A., "The Under representation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective", *Michigan Law Review*, vol 95, February 1997 pp. 1105-1062.

[4] Nelson, R, *Partners with Power: The Social Transformation of the Large Law Firm*, Berkeley: University of California Press.

[5] Monique R. Payne and Robert L. Nelson, "Shifting Inequalities: Stratification by Race, Gender, and Ethnicity in an Urban Legal Profession, 1975-1995," 2003, unpublished manuscript.

PRIVATE SECTOR EMPLOYMENT

Almost all studies find a substantial increase in the employment of women and minorities in private sector law firms. For example, in a study of ninety-seven elite law firms in Chicago, Los Angles, New York, and Washington, Elizabeth Chambliss (1997) states that " . . . the lawyers who work in elite law firms historically have been white Protestant men who graduated from prestigious law schools such as Harvard, Columbia, and Yale. As recently as 1970, women and people of color were almost completely excluded. Since 1970, the gender and race composition of elite law firms has changed considerably at the associate level. By 1980, 23.2% of the associates in the sample were women; by 1990, 36.2% of associates in the sample were women. Although the level of racial diversity is much lower, it too has increased. By 1980, 3.6% of associates in the sample were minorities; by 1990, 6.5% of associates were minorities" (pp.695-696).[6]

INFORMATION ON MINORITIES

As a general rule, the available literature tends to focus more on women than minorities in the legal profession.[7]

INCREASING FOCUS ON MECHANISMS

Although many of earlier studies concentrated on broad questions about the distribution of women and minorities across different sectors of the legal profession, recent studies are increasingly examining employment practices in large private law firms. Examples follow.

[6] Elizabeth Chambliss, "Organizational Determinants of Law Firm Integration," 1997, *The American University Law Review*, vol. 46, pp. 669-746.

[7] There are, however, several major articles with substantial data on minorities. These include the study of the members of the Michigan Law School classes of 1970-96 undertaken by Richard O. Lempert, David L. Chambers, and Terry K. Adams in "Michigan's Minority Graduates in Practice: The River Runs Through Law School," 2000, *Law and Social Inquiry*, pp. 395-505 and the study of the New York University Law School classes of 1987-90 undertaken by Lewis A. Kornhauser and Richard L. Revesz in "Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt," 1995, *New York University Law Review*, vol. 70, pp. 829-964.

Attrition[8]

The 2003 NALP Foundation Study of entry-level hiring and attrition[9] concluded that,

> Compared to men as a whole, male minority associates were more likely to have departed their employers within 28 months (29.6 percent vs. 21.6% of men overall) and were far more likely to have departed within 55 months of their start date (68 percent) minority males departed vs. 52.3 percent of men overall . . . Female minority associates departed their law firm employers at somewhat greater rates than women as a whole, with the differential widening as the years in the job increased. Nearly two-thirds (64.4 percent) of female minority associates had departed their employers within 55 months compared to just over half (54.9 percent) of women overall (p. 23).[10]

Earnings

An examination of pay differences among University of Michigan Law School graduates by Noonan, Corcoran, and Courant (2003)

> . . . compared male/female differences in earnings 15 years after graduation for two cohorts: (1) men and women who graduated from law school between 1972 and 1978, and (2) men and women who graduated from law school between 1979 and 1985. We find that the gender gap in earnings has remained relatively constant; 15 years after graduation, women in both cohorts earn approximately 60% of men's earnings. Penalties to part-time work and career interruptions[11] also remain steady. While within occupation

[8] For a general discussion of the factors affecting law firm attrition and their changes over time, see Rebecca L. Sandefur, 2003, "Attrition from the Legal Profession and Mutable Labor Markets for American Lawyers, 1949-2000," unpublished manuscript prepared for presentation at the Annual Meetings of the American Sociological Association, Atlanta, Georgia.

[9] The NALP Foundation for Law Career Research and Education, *Keeping the Keepers II: Mobility and Management of Associates*, 2003, Washington.

[10] For a detailed discussion of attrition among Black associates, including scarce training opportunities and access to good work assignments, see David B. Wilkins and G. Mitu Gulati, "Why are There So Few Black Lawyers in Corporate Law Firms: An Institutional Analysis," 84 *California Law Review,* May 1996, pp. 493-618.

[11] In a discussion of part-time work and career interruptions, Sterling and Reichman quote a women attorney from the Denver area who says, " ... There are very few women who are partners with traditional lives. Very few. And the ones that are there are not succeeding

> sex segregation has declined over time, sex differences in hours worked have increased and assume a more prominent role in explaining the sex gap in lawyers' earnings (p. 1).[12]

Promotion

A study of eight large New York corporate law firms describes the traditional "up and out" system of promotions to partner as follows:

> Women have fared poorly under the 'up and out' system. Using data supplied by the firms and the Martindale-Hubbell Law Directory, we tracked cohorts of first-year associates in the eight firms in periods beginning in 1973-74 and 1985-86 for a ten-year period to see how many associates had been elevated to partner. (The last cohort, those hired in 1985-86, were followed until 1994) . . . For each cohort except the first, where one-quarter of women associates (five of twenty) made partner, men associates gained partnership at a higher rate than women. For the entire period, 19% (362 of 1878) of men attainted partnership while only 8% (60 of 754) of women made partner" (p. 358).[13]

RESEARCH METHODOLOGIES

Most studies of legal employment have relied on public data sources or individual interviews with attorneys. With several notable exceptions (e.g., the continuing studies of the Chicago

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... [The ones succeeding] they've either got a stay-at-home partner, husband, whatever, they don't have kids. They're the primary bread-winner." Another women attorney says, " ... I mean you just can't be gone a year. If you gone a few months, clients can kind of make due while you are gone; they don't really have to shift their loyalties. If you're gone a year, you know, some of them go off to different lawyers." See Joyce S. Sterling and Nancy J. Reichtman, "Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers," forthcoming, *Capital University Law Review*.

[12] Mary C. Noonan, Mary E. Corcoran, and Paul N. Courant, "Pay Differences Among the Highly Trained: Cohort Differences in the Gender Gap in Lawyers' Earnings," unpublished revised manuscript based on presentation at the Population Association of America annual meeting in Atlanta, 2002.

[13] Cynthia Fuchs Epstein, and Robert Saute, Bonnie Oglensky, and Martha Gever, "Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession," A Report to the Committee on Women in the Profession, The Association of the Bar of the City of New York, 1995, *Fordham Law Review*, vol. 64, p. 291-449.

bar[14]), there have been relatively few systematic, large-scale sampling studies of American lawyers. Perhaps the most promising future development is the work currently being done by the After the JD (AJD) study. One of the strengths of the AJD study is the broad range of organizations supporting the project. In addition to the National Science Foundation, the AJD project obtained funding from a number of organizations interested in legal education and the profession, including Access Group, American Bar Foundation, Law School Admission Council, NALP and NALP Foundation, National Conference of Bar Examiners, and the Open Society Institute. The AJD project is based on a two-stage, scientific sampling design that first selects among geographic areas and then selects individual attorneys within those areas. The sample population consists of persons who first became members of a state bar in calendar year 2000 and who graduated from law school in the period July 1, 1998 through June 30, 2000. Approximately 9200 individuals received an initial questionnaire sent in March 2002, and a sample of these - about 20% -- are currently being interviewed face-to-face. Respondents will be re-contacted five and ten years after their admission to the bar. The forthcoming results of the AJD project will provide a rich and unparalleled source of data on attorney careers including first job after law school and all subsequent jobs as well as detailed descriptions of the current job such as partnership status, hours worked, and time devoted to different legal specialties.

The next section will examine trends in the legal profession over time. Various data sources are considered. The Current Population Survey covers attorneys, data from the American Bar Association covers prospective attorneys as reflected in law degrees conferred and the EEO-1 covers a range of legal professionals that are predominately attorneys but other job titles (such as non-lawyer accountants) as well. Despite the diversity of data sources, most of the trends suggest a uniform pattern of increased growth in the participation of women and minorities in the American legal profession.

[14] See John P. Heinz and Edward O. Laumann, *Chicago Lawyers*, 1982, Russell Sage Foundation and American Bar Association, and Kathleen E. Hull and Robert L. Nelson, "Assimilation, Choice or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers," 2000 *Social Forces*, vol. 79:1, pp. 229-264.

CHANGES IN THE EMPLOYMENT OF WOMEN AND MINORITIES

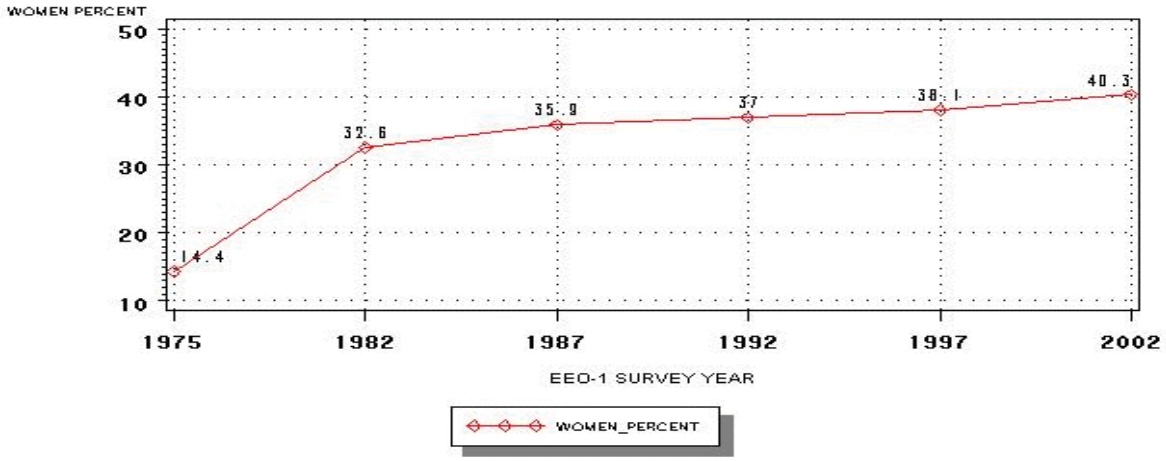
Three different data sources are used to examine how the employment of women and minorities in the legal professional has changed over time. These three data sets provide different perspectives on the employment of attorneys. The Equal Employment Opportunity Commission's (EEOC's) own EEO-1 report is used to reflect employment in large private law firms. Private employers with 100 or more employees are required to file annual EEO-1 reports with EEOC. They are also required to file separate reports for each of their establishments with 50 or more employees. By and large when companies in the Legal Services industry file such reports the professional job group provides a fairly representative index of diversity among associate attorneys.[15] Due to the filing threshold of 100 employees, the EEO-1 data best captures the employment practices of large private firms. Of course, not all lawyers are employed by these types of organizations. Therefore, a second data set, the Current Population Survey[16] was used to obtain a perspective on the more general labor market for attorneys. Finally, to obtain a sense of the availability of women and minority attorneys, data on law degrees (J.D. degrees) conferred is examined.[17] Two different time periods are examined. For EEO-1 data it is possible to construct a relatively long time period from 1975 to 2002. Due to the limitations of the other data sets, the period from 1982 to 2002 is examined when using all three types of data.

[15] The methodological appendix provides analyses comparing EEO-1 reports to a sample of law firms. It specifically examines the relationship between the EEO-1 professional job group and more detailed job titles in law firms. While reliability problems are documented, a relationship between the professional EEO-1 job group and the associate job title is suggested. For the purpose of this report, law firms are defined based on the Standard Industrial Classification code for Legal Services. A parallel code exists for the North American Industrial Classification System. The EEO-1 reports used in this report did not include those from Hawaii, as race/ethnic data is not collected there.

[16] Current Population Survey data is a national monthly survey of approximately 60,000 households conducted by the Bureau of the Census for the Bureau of Labor Statistics. The data used is "Household Data, Annual Averages, Employed Persons by Detailed Occupation, Sex, Race and Hispanic Origin. The 2002 data is available at www.bls.gov/cps/cpsaat11.pdf. Data for other years was obtained directly from the Bureau of Labor Statistics. Data for 1982 is not available so data from the 1980 Census data is substituted for those figures.

[17] Data for women and total for 1982 obtained from *1982 Review of Legal Education*, American Bar Association and the Law School Admission Council, 1982. Other data regarding total and women degrees conferred from www.abanet.org/legaled/statistics/jd.html. Data regarding minority degrees from www.abanet.org/legaled/statistics/mindegrees.html.

FIGURE 1: EMPLOYMENT OF WOMEN
EEO-1, 1975-2002

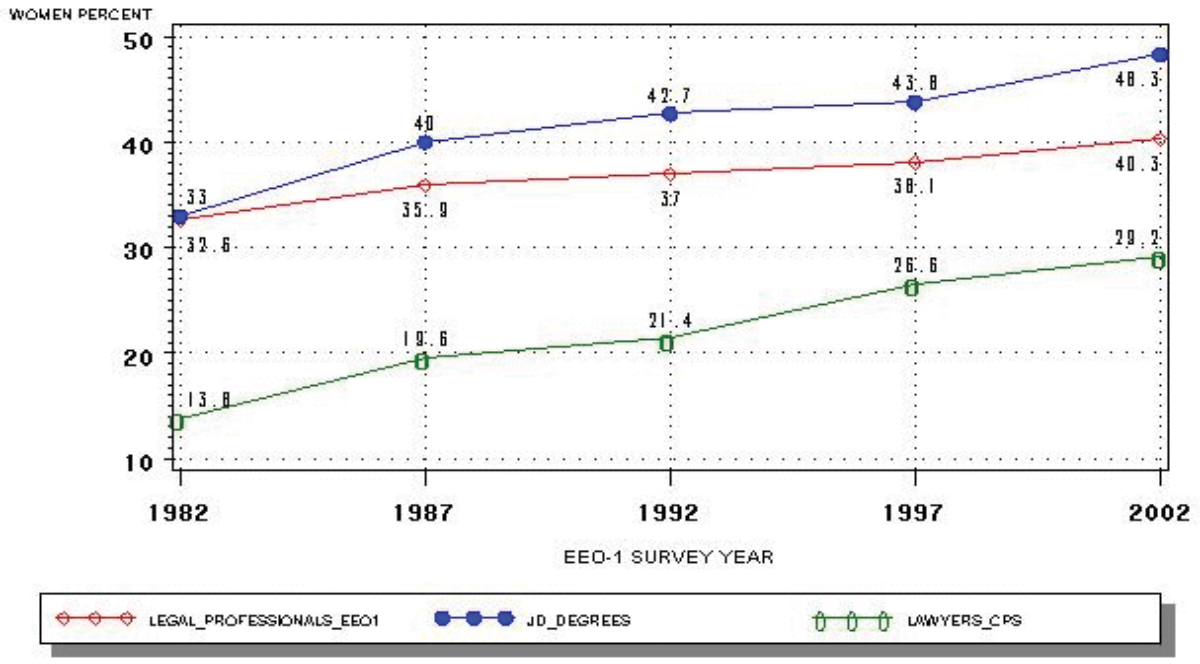


YEAR	1975	1982	1987	1992	1997	2002
WOMEN PERCENT	14.4	32.6	35.9	37	38.1	40.3

Women

In 1975 women represented just 14.4 percent of all professionals in the legal services industry based on their filing of EEO-1 reports. By 2002, this figure increases dramatically to 40.3 percent. See Figure 1. It is interesting to compare these results to the percent of women receiving law degrees and the percent of women lawyers in the entire workforce as reflected in the Current Population Survey. See Figure 2.

Figure 2: Comparisons of Degrees Conferred, EEO-1 Employment and Current Population Survey Data for Women



YEAR	1982	1987	1992	1997	2002
LEGAL PROFESSIONALS EEO1	32.6	35.9	37	38.1	40.3
LAWYERS CPS	13.8	19.6	21.4	26.6	29.2
JD DEGREES	33	40	42.7	43.8	48.3

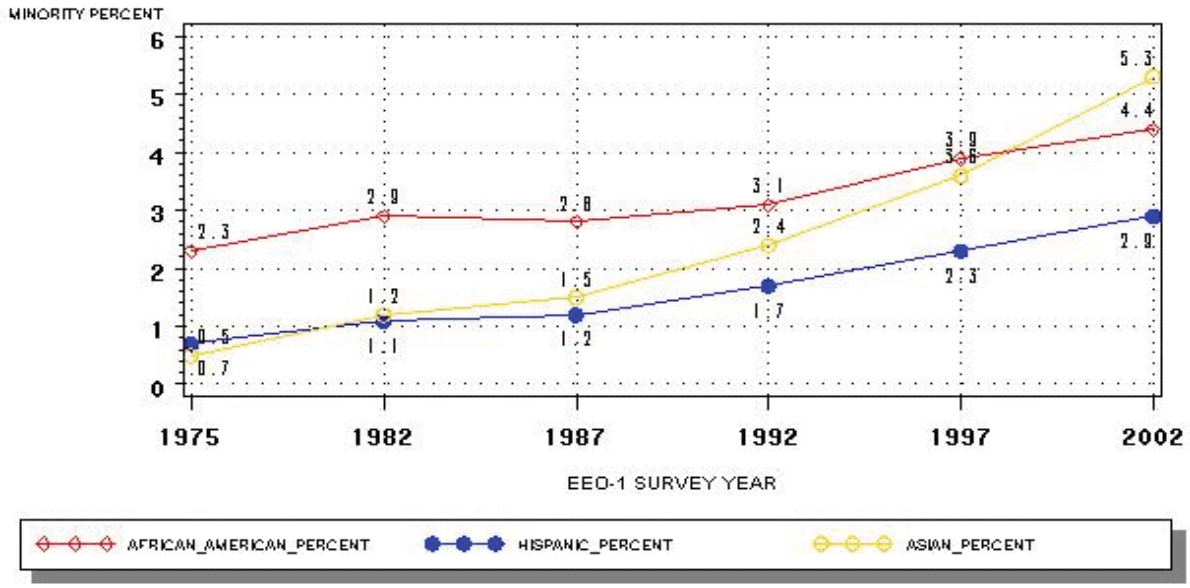
In 1982 the percent of women reported as professionals in Legal Services on the EEO-1 is nearly identical to the percent of women receiving law degrees in that year. However, by 2002 the employment of women as professionals in these larger law firms is eight percentage points below degrees conferred. Employment of women lawyers reported in the Current Population Survey falls behind both the employment of women professionals in legal services as reported on the EEO-1 and law degrees obtained by women. Rates of change were computed for women over this time period in order to obtain a better sense of the relative differences over time. (Because the raw numbers in the three data sources differ in

magnitude, the percentages are used to compute these rates.) The percent of women professionals in legal services on the EEO-1 increased by 23.6 percent during the period, while the rate of change for J.D. degrees conferred was 46.4 percent. CPS employment of women attorneys exhibit a rate of change of 112 percent over the period. This suggests the employment of women in the larger law firms required to file EEO-1 reports may not have kept pace with law degrees obtained by women or the employment of women attorneys in the general work force. Despite this, the employment of women in these firms remained higher than in the more general work force.

Minorities

African Americans represented 2.3 percent of these employees in 1975 and 4.4 percent in 2002. However, the percent of Asian professionals in Legal Services reported on the EEO-1 exceeds African American professionals by 2002. Starting at just 0.5 percent in 1975, Asians represent 5.3 percent in 2002. Hispanics increased from 0.7 percent to just less than 3 percent. Native American Alaskan Natives are poorly represented among these workers. See Figure 3.

Figure 3: EEO-1 Employment by Race/Ethnicity 1975-2002

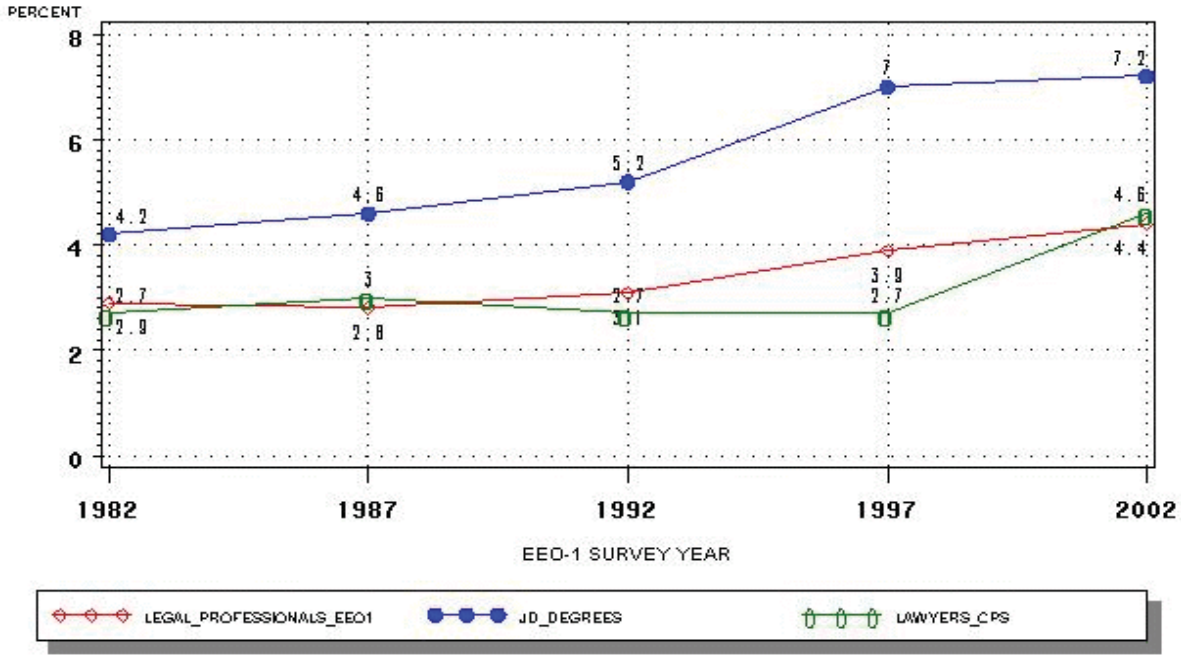


YEAR	1975	1982	1987	1992	1997	2002
ASIAN PERCENT	0.5	1.2	1.5	2.4	3.6	5.3
AFRICAN AMERICAN PERCENT	2.3	2.9	2.8	3.1	3.9	4.4
HISPANIC PERCENT	0.7	1.1	1.2	1.7	2.3	2.9
NATIVE AMERICAN PERCENT	0	0	0.2	0.1	0.1	0.2

African Americans

As Figure 4 shows, law degrees earned by African Americans appear to consistently exceed the employment of African Americans as professionals in Legal Services in large private law firms (EEO-1 data) and as lawyers in the general work force (CPS data).

Figure 4: Comparisons of Degrees Conferred, EEO-1 Employment and Current Population Survey Data for African Americans



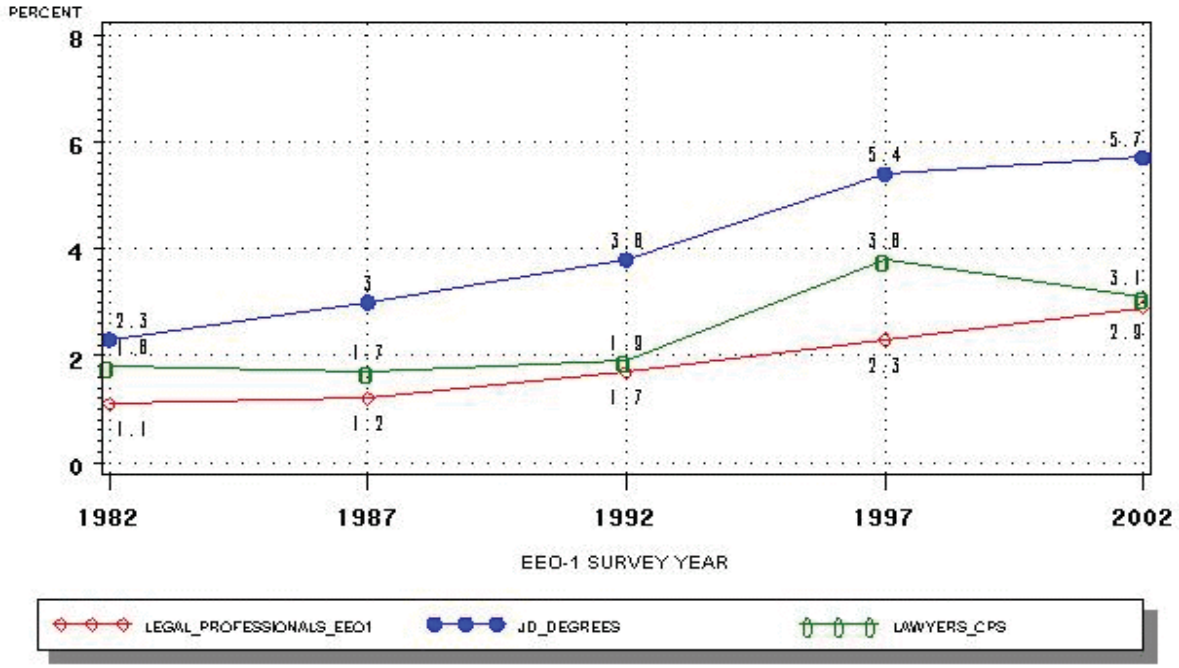
YEAR	1982	1987	1992	1997	2002
LEGAL PROFESSIONALS EEO1	2.9	2.8	3.1	3.9	4.4
LAWYERS CPS	2.7	3	2.7	2.7	4.6
JD DEGREES	4.2	4.6	5.2	7	7.2

Further, unlike the employment patterns for women, the proportion of African Americans employed as lawyers in the general labor market and as professionals in law firms as captured by the EEO-1 data is fairly consistent. However, there is a slight difference in the manner in which these rates have changed over time. At the beginning of the period African Americans make up 2.9 percent of professional employment in the EEO-1 reports filed by Legal Service firms and climb to 4.4 percent in 2002. In the general work force figures captured by the CPS, African Americans start lower in 1982 at 2.7 percent and at the end of the period reaches 4.6 percent which slightly exceeds the EEO-1 figure. Rates of change based on these percentages reflect the same dynamics but produce much larger disparities in rates of change. From 1982 to 2002 the African American percentage of EEO-1 reported professionals in legal services increased 51.7 percent and employment of African American attorneys in the general work force increased at a rate of 70.4 percent. The increase in EEO-1 employment of African Americans as professionals in Legal Services did not keep pace with the change in law degrees earned by African Americans(a rate of change of 71.4 percent), but the CPS based rate of change and degrees conferred is similar. Thus, changes in the employment of African American professionals in private sector firms required to file EEO-1 reports lagged behind their increase as lawyers in the general work force and in their increased rate of receiving law degrees over the past twenty years.

Hispanics

In 1982 Hispanics were earning law degrees at a rate (2.3 percent) exceeding their representation as professionals in Legal Services and as attorneys in the general work force. By the end of the period this disparity continues. However, the more interesting change for Hispanics over the last twenty years is their slow but steady growth in the large law firms required to file EEO-1 reports. Although still a relatively small portion of professionals at 2.9 percent, the rate of change over the period was high at 163 percent. This exceeded their growth in obtaining degrees, 148 percent and was much larger than their growth as attorneys in the general work force of 72 percent. See Figure 5.

Figure 5: Comparisons of Degrees Conferred, EEO-1 Employment and Current Population Survey Data for Hispanics

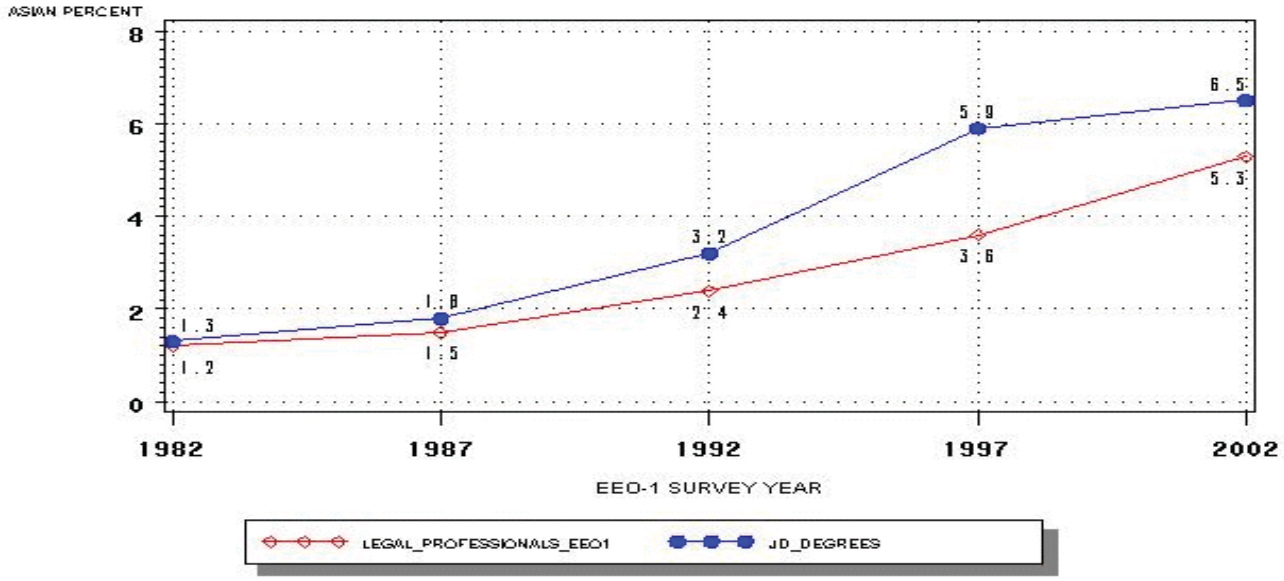


YEAR	1982	1987	1992	1997	2002
LEGAL PROFESSIONALS EEO1	1.1	1.2	1.7	2.3	2.9
LAWYERS CPS	1.8	1.7	1.9	3.8	3.1
JD DEGREES	2.3	3	3.8	5.4	5.7

Asians

As reported above, the growth in Asian attorneys is so rapid that by 2002, the percentage of Asian professionals in Legal Services, 5.3 percent, as reported on the EEO-1 exceeds the percentage of African Americans, 4.4 percent. (Current Population Survey data on the general work force is not available for Asians.) Degrees conferred to Asians also increases during the twenty year study period. In 1982 just 1.3 percent of all law degrees are awarded to Asians but by 2002, they earn 6.5 percent of all degrees. See Figure 6.

Figure 6: Comparisons of Degrees Conferred and EEO-1 Employment Data for Asians



YEAR	1982	1987	1992	1997	2002
LEGAL PROFESSIONALS EEO1	1.2	1.5	2.4	3.6	5.3
JD DEGREES	1.3	1.8	3.2	5.9	6.5

Over the past twenty years the rate of change for the percent of Asians reported as professional by Legal Service firms on their EEO-1 reports is 341 percent. The increase in law degrees earned by Asians is even higher at 400 percent.

Native Americans

Over the past twenty years, the proportion of Native Americans receiving law degrees and reported as professionals by Legal Service firms on their EEO-1 report has increased but still remains less than one percent. By 2002, Native American represented 0.2 percent of the relevant professional work force and 0.7 percent of law degrees conferred.

Summary

Since 1975, the representation of women, African Americans, Hispanics and Asian Americans as professionals in the larger Legal Service firms that are required to file EEO-1 reports has increased substantially. Even greater has been the increase in law degrees earned by minorities. Paralleling the finding regarding increased employment among large law firms are increases in the employment of these groups as attorneys in the general work force.

LAW FIRM ORGANIZATIONAL CHARACTERISTICS

This section examines some issues related to firm size and geographic location that can be studied with the 2002 EEO-1 data on professionals in private legal service firms. The basic research problem can be posed as follows. There has been a substantial increase in the size of law firms over the last thirty years. As summarized by Chiu and Leicht (1999), "Law firms grew dramatically in size and number. In the early 1960s, there were 38 firms with 50 or more lawyers … In 1991, there were 751 firms with more than 50 lawyers and 13% of all lawyers were employed in firms with at least 50 lawyers, up from 5% in 1980" (p.569).[18] Given this growth in the demand for new lawyers and the increased number of women and minorities graduated from law schools, many observers predicted that larger law firms should have a higher proportion of women and minorities than smaller and medium sized law firms. Yet the empirical results are somewhat mixed.

Among lawyers in private practice, the Payne and Nelson study (2003, Table 2-2) of the Chicago bar in 1995 finds a higher percentage of white women attorneys than African American attorneys working for firms with 100 or more lawyers (44.9 percent and 28.0 percent respectively).[19] For the 1990s cohort of Michigan Law School graduates, Lempert, Chambers, and Adams (2000, Tables 11 and 14) find significant differences in the proportion of white and minority alumni taking first jobs in firms with 151 or more lawyers (55.9 percent and 35.7 percent respectively), but no significant differences between white and minority alumni in holding current jobs in firms with 151 or more lawyers (37.9 percent and 31.0 percent respectively). Chiu and Leicht (1999, p. 569) report that in " … Chiu's (1996) analysis of the 1990 National Survey of Lawyers' Career Satisfaction, women were more likely to work in large law firms than men, but this difference was not statistically significant once years since graduation was controlled." The Chambliss study of elite law firms (1997, Tables 11a and 11b) finds a statistically significant negative relationship between firm size the proportion of female partners, but no statistically significant relationship between firm size and the proportion of female associates.

The 2002 NALP summary data on Women and Attorneys of Color at Law Firms[20] suggests that law firm size is more strongly related to the percentage of minority associates than the percentage of women associates. The overall percentage of minority associates in the 2002

[18] Charlotte Chiu and Kevin T. Leicht, "When Does Feminization Increase Equality? The Case of Lawyers," 1999 *Law and Society Review*, vol.33, p. 557-590.

[19] The percentages in private practice (comprising solo practice, small firms, medium firms, and large firms) were recomputed from Table 2-2 by the authors of this report.

[20] See the summary table on the website, www.nalp.org/nalpresearch/mw02sum.htm.

NALP survey is 14.3 percent which varies from 10.1 percent in law firms with less then 100 attorneys to 16.9 percent in law firms with 501 or more attorneys. The overall percentage of women associates is 42.4 percent which varies from 40.6 percent in firms with less than 100 attorneys to 43.4 percent in firms with 251 to 500 attorneys.

These relationships are examined in greater detail using the 2002 EEO-1 data.[21] The following organizational characteristics of law firms are likely to be important factors and are used in this analysis.

1. Total Number of Offices Per Law Firm in the 2002 EEO-1 Survey

2. Total Employment of EEO-1 Legal Professionals in All Offices[22]

3. Geographic dispersion as measured by the Total Number of U.S. Census Divisions where the the Firm has Offices[23]

4. Firm Cited in Top 100 Ranking of Law Firms by Either Prestige or Partner Profits[24]

5. Proportion of Total Legal Professions in the Top Ten Legal Markets[25]

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[21] Readers are reminded that the EEO-1 survey uses a broad definition of professional employees that covers attorneys as well as other non-attorney legal occupations. For the reasons described in the appendix, it appears that the EEO-1 data on legal professionals provides a fairly representative index of diversity among associate attorneys. Readers are also reminded that because of establishment size limitations, the EEO-1 survey not provide information on solo practitioners or relatively small law firms. Therefore, this report examines relative variations in firm size within a group of medium to relatively large law firms.

[22] The total number of EEO-1 legal professionals, for this purpose, represents the sum from all reporting establishments with a common headquarters number and is not necessarily equivalent to the consolidated totals discussed in the methodological appendix.

[23] For a list of the states in each of the nine Census Bureau divisions, see the description on the website, www.bls.gov/help/def/la.htm.

[24] The list of the top 100 law firms, ranked by profits per partner, was taken from *The American Lawyer,* November 2002. The list of the top 100 law firms, ranked by prestige, was taken from "The Top 100 Most Prestigious Firms - 2002". *The Vault.* 2002. Firms on either list were assigned a value of "1", otherwise a value of "0."

[25] The top ten legal markets were estimated by aggregating the number of EEO-1 legal professionals by city and then ranking the cities by the proportion of all legal professionals in the 2002 EEO-1 survey. The top ten cities, encompassing approximately 60

6. Presence of at Least One Firm Office in a U.S. Southern State[26]

The first three explanatory variables, number of law offices per firm, total number of legal professionals, and total number of census divisions covered by the firm, are highly interrelated.[27] To simplify the analysis, we treated the number of offices per firm as a surrogate measure of firm size and created three sub-categories: firms with a single office (319 out of 553 or 57.7 percent), firms with two or three offices (142 out of 553 or 25.7 percent), and firms with four or more offices (92 out of 553 or 16.6 percent). The firms with a single office average 86.9 legal professionals, firms with two or three offices average 204.7 legal professionals, and firms with four or more offices average 454.7 legal professionals.

The Table 1 shows the relationship between the number of offices per firm and other firm characteristics. Because the focus on this analysis is on firm characteristics, average or mean of firm percentages are used to better reflect individual firm characteristics.

percent of all legal professions in the 2002 EEO-1 survey were New York, Washington, DC, Chicago, Los Angeles, Boston, San Francisco, Philadelphia, Houston, Dallas, and Atlanta.

[26] Southern states were defined by the Census Bureau South Region covered the states of Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma, and Texas. This variable is used to capture the higher availability of minorities, particularly African Americans in this area.

[27] The correlations among these three variables range from 0.739 to 0.820. A multivariate factor analysis, not reported here, suggests that these three variables should be treated as a single factor.

Table 1:
Relationship Between the Number of Offices per Firm and Other Explanatory Variables

EEO-1 Data	Percentages		
Law Offices Per Firm	Firm in Top 100 Prestige, Profits Rankings	Total Legal Employees in Top Ten Legal Markets	One or More Southern Offices
One Law Office	5.0	37.9	29.5
Two-Three Law Offices	19.0	49.0	57.7
Four or More Law Offices	48.9	59.3	79.3

The number of law offices per firm is closely associated with the other organizational characteristics.[28] The greater the number of law offices per firm, the greater the proportion of firms ranked among the top one-hundred law firms and the greater the proportion of legal employees located in the top ten legal markets.[29] The average percentage of firms ranked in the top one-hundred by prestige and earnings increases from five percent in law firms with a single office to 48.9 percent in firms with four or more offices. Likewise, the average percent of legal employees in the top ten legal markets increases from 37.9 percent in law firms with a single office to 59.3 percent in firms with four or more offices. It also should be noted that law firms with four or more offices are highly likely to have at least one office in a southern state. Essentially it appears that the firms with four or more offices represent relatively large, national (and in some cases, international) law firms, many of whom are well-known and highly regarded within their field. The firms with fewer offices are likely to be smaller, regional firms that serve a more limited client base.

To examine the diversity characteristics of different types of law firms, we analyzed the following proportions:[30]

[28] The variations in these average proportions are all statistically significant with F probability values of 0.002 or less.

[29] These proportions are the mean of each firm's proportion.

[30] It should be noted that the diversity percentages, reported here, are summary measures, computed by summing all establishments with a common EEO-1 headquarters

Proportion of Women Legal Professionals in All Offices of a Law Firm
Proportion of Minority Legal Professionals in All Offices of a Law Firm

Table 2 summarizes both the total percentage and the average percentage of women and minority legal professionals by type of law firm.

Table 2:
Professionals by Type of Firm

EEO-1 Data	Total Percentages		Average of Percentages	
Law Offices	Women	Minorities	Women	Minorities
One	38.0	9.6	37.7	9.1
Two or Three	39.0	13.5	38.2	11.8
Four or More	41.7	13.8	41.6	13.2
Probability			0.0169	<.0001

Total percentages combine all employees in all firms together. The average of percentages is the mean percentage of minorities and women at each individual firm. While these numbers are very similar, the latter is more appropriate for capturing firm behavior. In Table 2, the average percentages for women and for minorities are larger in law firms with four or more offices than in law firms with a single office, but these proportional differences for minorities shows greater statistical significance than the proportional differences for women.[31] The average percentage of women increases from 37.7 in law firms with a single office to 41.6 in law firms with four or more offices. The probability of observing overall differences in the average percentage of women is about two chances out of one hundred (0.0169).[32]

number. Since EEO-1 data is not collected from non-headquarter offices with less than 50 total employees, these percentages are not equivalent to the consolidated figures on legal professionals discussed in the appendix.

[31] The F-probability values were computed with angular transformations of the proportional diversity values. Angular transformations are designed to achieve a constant error variance, i.e., they reduce the likelihood of a wider range of errors around 0.5 than around 0.01 or 0.99. See, for example, the discussion of variance-stabilizing transformations in Michael O. Finkelstein and Bruce Levin, *Statistics for Lawyers,* 1990, p. 441.

[32] Using the Tukey Studentized Range Test, the comparison between firms with a single office and firms with four or more offices (0.039) is statistically significant at the 0.05

Likewise, the average percentage of minorities increases from 9.1 percent in law firms with a single office to 0.13.2 percent in law firms with four or more offices. The probability of observing overall differences in the average percentage of women is about one chance out of ten thousand (<0.0001).[33] Thus, minority legal professionals are more likely to be found in the largest law firms and the average percentage of minorities tend to vary more by the type of law firm (measured by number of offices) than does the percentage of women.[34]

The employment of minorities is more varied across firms than the employment of women even when controlling for number of firm offices.[35] This suggests that minority legal professionals might be concentrated in certain firms. Perhaps equally important, these variations for both women and minorities decline when the number of law firm offices increase. The percentages of women and minorities tend to be somewhat more uniform among those firms with four or more offices while the percentages of minorities and women changes from firm to firm when those firms have just one office.[36]

The relationships between the proportion of minority and women legal professionals in a firm and firm characteristics are examined in greater detail. Regression analyses are computed separately for law firms with one office, two or three offices, and four or more offices. Given the importance of number of offices, this is done to gain insights into what

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level, but none of the other law firm comparisons (i.e., between single offices and two or three offices and between two or three offices and four or more offices) are statistically significant at the 0.05 level.

[33] Using the Tukey Studentized Range Test, all of the law firm minority comparisons are statistically significant at the 0.05 level except for the comparison between law firms with two or three offices and law firms with four or more offices.

[34] These EEO-1 results are generally consistent with the 2002 NALP results.

[35] This is based on an examination of variations in the proportion of minorities and women among different firms, When the mean values of two groups are unequal, variations around the mean are usually measured by a coefficient of variation expressed as a percentage (computed as the standard deviation divided by the mean). For example, in Table 2 the average proportion of women in single office firms is 0.377, the standard deviation is 0.13225 making the coefficient of variation, 0.3504 (0.13225/0.377) or 35 percent. The higher the coefficient, the greater than the relative dispersion around the mean or average value. The coefficients of variation for women range from 20 percent to 35 percent, and the coefficients of variation for minorities range from 46 percent to 85 percent.

[36] Specifically, for the percentage of women, the coefficient of variation decreases from 35 percent in firms with a single office to 20 percent in firms with four or more offices. For the percentage of minorities, the coefficient of variation decreases from 85 percent in firms with a single office to 46 percent in firms with four or more offices.

characteristics influence the proportion of minorities and women when number of offices is held constant. Table 3 summarizes the regression results for women.[37]

Firm characteristics used as explanatory variables appear to have relatively little effect on the proportion of women legal professionals within the different types of law firms. There are no statistically significant relationships,[38] for either law firms with two or three offices or law firms with four or more offices. The only statistically significant relationship is represented by a single explanatory variable for law firms with one office. In law firms with one office, there is some indication that women legal professionals are less likely to be found in law firms located in the Southern Census Region (a standardized parameter value of -0.134 and a T probability value of 0.018).

[37] The F probability value shows the statistical significance of the overall regression equation. The standardized parameter value shows the relative strength and direction of each explanatory variable ranging from +1 (strong positive effect) to -1 (strong negative effect). The T probability values show the statistical significance of each explanatory variable controlling for the effects of the other variables in the equation. The dependent variables, that is, the variables that are being explained or predicted by the regression equation, are the proportions of women and minority legal professionals in a law firm standardized by angular transformations.

[38] Statistical significance level used here is a probability value less than or equal to 0.05

Table 3:
Regression Results for Women

Law Firms with One Office: Equation F Prob. Value = 0.044				
Proportion Women	Total Number of Legal Profess.	Firm in Top 100 Prestige, Profits, Rankings	Total Legal Employees in Top Ten Legal Markets	One or More Southern Offices
Std. Parameter	-0.039	0.096	0.056	-0.134
T Prob. Value	0.531	0.125	0.336	0.018
Law Firms with 2-3 Offices: Equation F Prob. Value = 0.429				
Proportion Women	Total Number of Legal Profess.	Firm in Top 100 Prestige, Profits Rankings	Total Legal Employees in Top Ten Legal Markets	One or More Southern Offices
Std. Parameter	0.060	0.141	-0.082	0.031
T Prob. Value	0.602	0.202	0.417	0.722
Law Firms with 4 or More Offices: Equation F Prob. Value = 0.550				
Proportion Women	Total Number of Legal Profess.	Firm in Top 100 Prestige, Profits Rankings	Total Legal Employees in Top Ten Legal Markets	One or More Southern Offices
Std. Parameter	-0.010	0.156	0.084	-0.179
T Prob. Value	0.933	0.237	0.472	0.154

The corresponding regression results for minorities are summarized in Table 4. In contrast to the regression results for women legal professionals, firm characteristics appear to have a more substantial effect on the proportion of minority legal professionals. In law firms with a single office, there is a strong likelihood that minority legal professionals will be associated

Table 4:
Regression Results for Minorities

Law Firms with One Office: Equation F Prob. Value = <0.0001				
Proportion Minorities	Total Number of Legal Profess.	Firm in Top 100 Prestige, Profits Rankings	Total Legal Employees in Top Ten Legal Markets	One or More Southern Offices
Std. Parameter	-0.002	0.108	0.327	0.069
T Prob. Value	0.979	0.067	< 0.0001	0.196
Law Firms with 2-3 Offices: Equation F Prob. Value = <0.0001				
Proportion Minorities	Total Number of Legal Profess.	Firm in Top 100 Prestige, Profits Rankings	Total Legal Employees in Top Ten Legal Markets	One or More Southern Offices
Std. Parameter	0.066	0.252	0.230	0.001
T Prob. Value	0.527	0.012	0.013	0.991
Law Firms with Four or More Offices: Equation F Prob. Value = 0.040				
Proportion Minorities	Total Number of Legal Profess.	Firm in Top 100 Prestige, Profits Rankings	Total Legal Employees in Top Ten Legal Markets	One or More Southern Offices
Std. Parameter	0.054	0.168	0.213	-0.026
T Prob. Value	0.652	0.184	0.059	0.828

with law firms concentrated in the top ten legal markets (a standardized parameter value of 0.327 and a T probability value of <0.0001).

In law firms with two or more offices, there are strong effects from both location in a top ten legal market and a top 100 ranking for either prestige or profits per partner. Minority legal professionals are more likely to be located in law firms with a large proportion of professional employees in the top ten legal markets (a standardized parameter value of 0.230 and a T probability value of 0.013). They are also more likely to be associated with law firms ranked in the top100 law firms by prestige or profits per partner (a standardized parameter value of 0.252 and a T probably value of 0.012).

The ability of firm characteristics to explain the proportion of minority legal professionals is much weaker for firms with four or more offices. Taken as a whole, the examined firm characteristics has limited value in explaining or predicting the proportion of minorities (probability of 0.040). Further, the strongest single effect, proportion of legal employees in the top ten legal markets, is not significantly different from having no effect.

In essence, then, minorities are more likely to be employed in firms with more offices. Their employment increases in firms with two or three offices when these firms exhibit characteristics associated with firms with more offices, location in large markets, and top 100 rankings. For single office firms, location in a large market increases minority employment.

Generally speaking, firm characteristics used in this study appear to have more effect on the proportion of minority legal professionals than the proportion of women legal professionals. In addition, it should be noted that the relative size of a law firm, that is, the total number of legal professionals, has little or no effect on diversity proportions within the different types of law firms as defined by the number of offices. Perhaps the most important result concerns the absence of explained variations in diversity proportions among law firms with four or more offices. The large, nationally known law firms generally have a higher proportion of women and minorities than other types of law firms, and there appears to be substantial amount of uniformity within this group, at least for the variables measured in this study.[39]

[39] The best fitting models in this study, minority proportions for law firms with one office and two or three offices, have adjusted R-squared values of 0.124 and 0.185 respectively. This suggests that there may be other explanatory variables, not available in the EEO-1 survey, that need to be considered (e.g., firms with different types of legal specialties such as bankruptcy, criminal practice, tax law, corporate mergers, etc.). For a major study of elite law firms that uses data from the NALP Directory to measure area of legal specialization, see Chambliss (1997).

Summary

An examination of the 2002 EEO-1 data on legal professionals in private law firms has several broad implications for civil rights enforcement. In large, national law firms, the most pressing issues have probably shifted from hiring and initial access to problems concerning the terms and conditions of employment, especially promotion to partnership. In smaller, regional and local law firms, questions about the fairness and openness of hiring practices probably still remain, particularly for minority lawyers. The next section will examine some general characteristics of promotion patterns in large private law firms.

STATUS WITHIN THE FIRM: PARTNERS AND ASSOCIATES

A major issue in law firms generally is the movement from an associate attorney to a partner. Beckman and Phillips explain,

> . . . promotion to partner not only involves the greatest increase in income within the law firm, but the partnership includes membership to a professional elite with access to substantial social and political capital (Nelson 1988). More generally, partners of large corporate law firms are among the elite class in the U.S. (Mills 1956; Smigel 1969; Domhoff 1998). Given the power and influence that accompanies large law firm partnership, women's [and minorities] attainment within law firms has larger societal ramifications for access and opportunities (Hagan and Kay 1995, p. 6).[40]

This promotion takes on special meaning for women and minorities since the decision is often viewed as being subjective and thus subject to non-relevant factors such as race/ethnicity or gender[41] (p. 521). Dixon and Seron describe decision making in law firms, "Partners in firms typically rely on centralized informal collective decision making through consensus of the partners rather than decentralized, formal rule-bound decision making via bureaucratic processes"(p. 389).[42] The study, *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring* found gender and race/ethnic disparities in the perception regarding equity in the "opportunity for advancement to partnership". With respect to the partnership decision, when examining survey responses from associates in firms with more than 100 employees, 74.3 percent of male associates felt opportunities were "equally available to all," but only 50.0 percent of women associates felt that way. Similarly, 70.2 percent of non-minority associates in these type of firms felt opportunities for partnership were equal but only 30.8 percent of minority associates have the same perception.[43]

[40] Beckman, C. and D. Phillips, "Interorganizational Determinants of Promotion: Client Leadership and the Promotion of Women Attorneys", draft manuscript, August 26, 2003.

[41] Kay, F. and J. Hagan, "Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990's", *Law and Society Review*, vol 33 no. 3, 1999, pp. 517-555.

[42] Dixon, J. and C. Seron, "Stratification in the Legal Profession: Sex, Sector, and Salary", *Law and Society Review*, vol. 29 no. 3, 1995, pp. 381-412.

[43] *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring*, National Association of Legal Placement, Foundation for Research and Education, 1999.

There are few data sources that allow the comparison of associates and partners. Such detailed data is not collected on the EEO-1 or relevant Current Population Survey or Census data. The National Association of Legal Placement (NALP), however, conducts an annual survey of law firms to obtain information about their work forces which includes race/ethnic and gender data by partner and associate job categories. (A copy of the form used to collect this information can be found in Appendix A.) This published data[44] was utilized to examine the relationship between associates and partners.

In order to analyze the NALP data it was necessary to enter the data manually from the hard copy directory. Therefore, a sample of firms was utilized. The EEO-1 data base was used to select the sample firms. The sample was drawn from a population of all headquarter facilities in the Legal Service industry filing EEO-1 reports in 2002. There were 1,231 total establishments but just 508 headquarters reports from which the sample could be drawn. Seeking at least a ten percent sample and recognizing that not all firms that file an EEO-1 report would necessarily file a report from the NALP, a random sample of 125 was drawn from the EEO-1 data subset.[45] Of these 33 were not included in the NALP Directory making the actual sample size, 92.

An odds ratio is computed and tested to examine the relationship between partner and associate.[46] Comparisons are drawn between the control group of White men and the various groups of interest, women, African Americans, Hispanics and Asians. The odds ratio is based on the odds of White males being partners based on their employment as associates divided by the odds of the group of interest, for example, women being partners based on their employment as associates.[47] When two groups have the same odds of being selected, the

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[44] *NALP 2002-2003, Directory of Legal Employers*, National Association of Legal Placement, 2002.

[45] The SAS®Institute procedure PROC SURVEYSELECT was used to generate the sample. Additional conditions used were that total employment had to be greater than or equal to one hundred and that the total number of professionals reported had to be greater than or equal to 15.

[46] Fienberg, S. (1977) *The Analysis of Cross-Classified Categorical Data*, The MIT Press, Cambridge, pp. 17-18. Also see Agresti, A. (1990) *Categorical Data Analysis,* John Wiley and Sons, New York, pp. 14-15; Breslow, N. and Day, N. (1980) *Statistical Methods in Cancer Research*, IARC, Lyon, p. 125; Finkelstein, M. and Levin, B. (1990) *Statistics for Lawyers*, Springer-Verlag, New York, p. 2.

[47] The formula used in computing the odds ratio comparing White men and women is,

$$G = (M_p \times F_a) / (F_p \times M_a)$$

odds ratio will be equal to one. Based on the equation applied here, the more the odds ratio exceeds one the more likely it is that White males will be partners. The lower the odds ratio below one, the more likely that the group of interest (for example, women) will be partners.

The test here is not the probability that a female associate will become a partner (necessary data is not available for that analysis). Rather, it is the chance that, given a group of associates and attorneys in a firm, a particular woman, is a partner. Thus, the longevity of partners and historical lack of women and minority associates may produce odds that are different than a woman or a minority's odds of becoming a partner. Nevertheless, this odds ratio, as applied here provides an insight into the status of women and minorities in these firms. Also given the time required to become partner of five to nine years (p. 528),[48] there has been some time for women and minorities participating in the large growth of law degrees obtained, as discussed in a prior section, to become partners.

Odds ratios are computed for each of the sample firms. Table 5 displays the results when examining women attorneys. The average number of women and White male associates in the sample firms are nearly identical (37.68 for women and 37.60 for White men). However, the mean number of White male partners far exceeds the mean number of women partners at 12.71 percent. The mean odds ratio for this comparison is 5.330; clearly not even odds for the two groups. There was only one instance where the computed odds ratio was at even odds (1) or lower. The average sampled firm would require another 11 women partners to make the proportion of women partners match the proportion of female associates.

Table 5:
White Male Attorneys and Women Attorneys
Sample Private Law Firms

Label	Mean	Median	Std Dev
WHITE MALE PARTNERS	62.88	54.50	34.68
WOMEN PARTNERS	12.71	10.00	8.095
WHITE MALE ASSOCIATES	37.60	25.50	33.54
WOMEN ASSOCIATES	37.68	22.50	41.56
ODDS RATIO	5.330	4.661	3.106
LOG OF ODDS RATIO	1.527	1.539	0.551
EXPECTED - OBSERVED	-11.27	-8.025	9.545

where G= Odds ratio for a glass ceiling, M= Male, F= Female, p = partners, a = associates. Parallel equations are used for the other groups.

[48] Kay, Fiona M. and John Hagan, "Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990's," *Law and Society Review*, 33 (3) 1999, pp. 517-555.

One must keep in mind that this simple analysis holds qualifications constant. Associates with ten years experience are handled the same as newly hired associates. Due to the recent increase in women and minorities in the legal profession, one would expect their experiences to be more limited than their White male counterparts. For example, in 1988 the median age (reflecting experience) for male attorneys was 42 but just 34 for women (p. 375).[49] Further, it does not account for variations in the frequency of partnership decisions. However, these results are not necessarily inconsistent with empirical research that controls for such factors. For example, Hull and Nelson report that,

> [C]ontrolling for seniority and a wide range of other potentially relevant variables, women's odds of working as law-firm partners are less than one-third of men's odds. Because firm partners command the most money and prestige in the profession, women occupy a distinctly unequal position among lawyers (p. 250).[50]

Table 6 displays the results for African American attorneys. The mean number of African American associates in the sample firms is 4.413 and the mean number of African American partners is 1.076. The odds ratio does not approach the even odds of one. On average, it would require another African American partner at each sample firm to make the proportion of African American partners match the proportion of African American associates. Of the 92 sample firms, 87 (94.57 percent) have an odds ratio greater than one.

Table 6:
White Male Attorneys and African American Attorneys
Sample Private Law Firms

Label	Mean	Median	Std Dev
WHITE MALE PARTNERS	62.88	54.50	34.68
AFRICAN AMERICAN PARTNERS	1.076	1.000	1.424
WHITE MALE ASSOCIATES	37.60	25.50	33.54
AFRICAN AMERICAN ASSOCIATES	4.413	2.000	6.166
ODDS RATIO	6.928	4.141	7.394
LOG OF ODDS RATIO	1.445	1.421	1.012
EXPECTED - OBSERVED	-1.671	-0.733	2.378

Table 7 provides the results of a parallel analysis for Hispanics. The mean number of Hispanic associates is 1.837 compared to the mean number of Hispanic partners of 0.630.

[49] See Nelson R.,1988, cited above.

[50] Hull, K. and R. Nelson, "Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers", *Social Forces*, September 2000, 79 (1) pp. 229-264.

The mean odds ratio is, again, far from one at 4.262. For these firms on average, they are less than one Hispanic partner short of being having the proportion of Hispanic partners equivalent to the proportion of Hispanic associates in the sample firms.

Table 7:
White Male Attorneys and Hispanic Attorneys
Sample Private Law Firms

Label	Mean	Median	Std Dev
WHITE MALE PARTNERS	62.88	54.50	34.68
HISPANIC PARTNERS	0.630	0	1.035
WHITE MALE ASSOCIATES	37.60	25.50	33.54
HISPANIC ASSOCIATES	1.837	1.000	2.887
ODDS RATIO	4.262	2.555	4.693
LOG OF ODDS RATIO	1.034	0.937	0.891
EXPECTED - OBSERVED	-0.645	-0.207	1.152

The average number of Asian associates in the sample firms is 6.4 and the mean number of Asian partners is 0.804. The odds ratio here is 7.313. On average, if each sampled firm added two Asian partners, the proportion of Asian partners would match the proportion of Asian associates in the sample firms. In ten (10.87 percent) of the sample firms, the odds ratio is less than or equal to one suggesting that in ten percent of the firms, Asians have the same or better odds than White males as being a partner. See Table 8.

Table 8:
White Male Attorneys and Asian Attorneys
Sample Private Law Firms

Label	Mean	Median	Std Dev
WHITE MALE PARTNERS	62.88	54.50	34.68
ASIAN PARTNERS	0.804	0	1.197
WHITE MALE ASSOCIATES	37.60	25.50	33.54
ASIAN ASSOCIATES	6.413	2.000	14.63
ODDS RATIO	7.313	4.895	7.628
LOG OF ODDS RATIO	1.519	1.588	1.023
EXPECTED - OBSERVED	-2.376	-0.393	4.735

Because the federal government does not collect data on disabled individuals employed in the legal profession, the NALP data provides a unique opportunity to compare the status of disabled attorneys to non-disabled attorneys. This analysis, summarized in Table 9, resembles those provided for other groups but the comparison group is not White males but

all attorneys other than those reported as being disabled. The mean number of disabled associates in the sample firms is 0.0761 and the mean number of disabled partners is 0.120. The odds ratio is very close to one at 1.226. Unfortunately, given the very small sample of disabled attorneys being reported these results have limited value.

Table 9:
Disabled and Non-Disabled Attorneys
Sample Private Law Firms

Label	Mean	Median	Std Dev
NON-DISABLED PARTNERS	78.05	68.00	42.94
DISABLED PARTNERS	0.120	0	0.488
NON-DISABLED ASSOCIATES	88.05	58.50	93.90
DISABLED ASSOCIATES	0.0761	0	0.305
ODDS RATIO	1.226	1.145	0.715
LOG OF ODDS RATIO	0.0427	0.136	0.595
EXPECTED - OBSERVED	0.0178	-0.032	0.209

Law Professors

In order to place these findings in context, odds ratios were computed for the same groups using data from law schools.[51] Assistant Professors were compared to Associate Professors to parallel the Associate to Partner decision. Table 10 summarizes the results. It was not possible to replicate the exact methodology utilized above because the level of detail in the data does not allow comparison groups based on White males. Therefore, women were compared to men and race/ethnic groups were compared to White professors. Data regarding disability was not available.

[51] White R., *Updated Tables for the 2001-02 AALS Statistical Report Including Revised Historical Data for the 1990-1991 through 2000-01*, Association of American Law Schools forthcoming Association of American Law Schools Statistical Report on Law School Faculty and Candidates for Law Faculty Positions, 2001-2002.

Table 10:
Odds Ratios for Assistant and Associate Professors of Law

GROUP	ODDS RATIO	ACTUAL	EXPECTED
WOMEN	1.07605	526	533.031
NATIVE AMERICAN	1.31538	13	14.389
ASIAN	1.06585	41	41.886
AFRICAN AMERICAN	0.87891	147	141.765
HISPANIC	1.68077	52	63.317

Note that in this sector, all of the odds ratios approach one indicating even odds. This provides an interesting comparison as labor market competition and qualifications for the promotion from Assistant to Associate law professor seems likely to approximate that found in the movement from associate to partner in private law firms.

Summary

Using an odds ratio to compare different gender and race/ethnic groups chances of being partners in a sample of law firms suggests disparities between their odds and those of White men. The group with the lowest probability of being partners is Asians with a mean odds ratio of 7.3. The second lowest group is African Americans (6.9) followed by women (5.3) and Hispanics (4.2). The relatively high standard deviation for these measures, as shown in Table 5 through Table 9, suggests that not all firms within the sample behave the same so that some firms exhibit more equitable rates.

ADDITIONAL INFORMATION

For additional information, visit our web site at *http://www.eeoc.gov*. Click on *STATISTICS* and *JOB PATTERNS FOR MINORITIES AND WOMEN* (*http://www.eeoc.gov/stats/jobpat/jobpat.html*) for sample copies of the EEO-1 form, an instruction booklet and aggregate statistics.

Prepared By:

Office of Research, Information and Planning
U.S. Equal Employment Opportunity Commission
Washington, D.C.

APPENDIX A

NALP LAW FIRM Questionnaire
2003-2004 Academic Year

This form reflects information for:
☐ one office only
☐ multiple offices
Date completed _____
NALP member Y ☐ N ☐

Office size (attys): ☐ 2-10 ☐ 11-25 ☐ 26-50 ☐ 51-100 ☐ 101-250 ☐ 251-500 ☐ 501+
Total firm size (attys): ☐ 2-10 ☐ 11-25 ☐ 26-50 ☐ 51-100 ☐ 101-250 ☐ 251-500 ☐ 501+

CONTACT INFORMATION
Firm: _____
Street Address: _____
City: _____ State/Province: _____ Zip: _____ Country: _____
Tel: (_____) _____ Fax: (_____) _____

Hiring Attorney: _____
ADDRESS INQUIRIES TO: ☐ Ms. ☐ Mr.
Name: _____
Title: _____
Firm: _____
Address: _____
_____
Phone: (_____) _____
E-mail: _____
Web site: _____

DEMOGRAPHICS (as of 2-1-2003)
Size of Office Completing Form

Ptrs/Mems		Paralegals	
Of Counsel		Other Prof.	
Associates		Support	
Senior Attys.		School-Term	
Staff Attys.		Law Clerks	
Total Attys.			

Other Offices

City	No. Attys

as of 2-1-2003	Ptrs/Mems	Of Counsel	Assocs.	Senior Attys.	Staff Attys.	Summer 03
Men						
Women						
Totals						
Black						
Hispanic						
Am. Ind./Alsk.						
As. & Pac. Isl.						
Multi-Racial						
Disabled						
Openly Gay						
as of 2-1-2002	Ptrs/Mems	Of Counsel	Assocs.	Senior Attys.	Staff Attys.	Summer 02
Men						
Women						
Totals						
Black						
Hispanic						
Am. Ind./Alsk.						
As. & Pac. Isl.						
Multi-Racial						
Disabled						
Openly Gay						

PRIMARY PRACTICE AREAS	No. Ptrs/Mems & Of Counsel	No. Other Lawyers

EMPLOYMENT DATA
Number in parens ( ) represents former summer associates

		Hired 2002	Expected Hires 2003	Expected Hires 2004
Attorneys	Laterals	( )		
	Post-clerkship	( )		
	Entry-level	( )		
	LLMs	( )		
	Foreign LLMs	( )		
Summer	Post-3Ls	( )		
	2Ls	( )		
	1Ls			

No. 2002 summer 2Ls considered for associate offers _____
No. offers made _____
Split summers allowed? Y ☐ N ☐ Min. weeks: _____
1Ls hired? Y ☐ N ☐ Other _____
When after 12/1 should 1Ls apply? _____
Accept applications for 2004 summer program from:
Joint degree applicants graduating in 2006 or later?
Y ☐ N ☐ Considered as 1L ☐ 2L ☐
Judicial clerks? Y ☐ N ☐
Students at foreign law schools? Y ☐ N ☐
Hiring criteria _____
_____
_____

	2002	2003
Avg. annual assoc. hrs. worked	_____	
Avg. annual assoc. billable hrs	_____	
Min. assoc. billable hrs.	_____	_____
1L summer $/week	$_____	$_____
2L summer $/week	$_____	$_____
Post-3L summer $/week	$_____	$_____
Entry-level base $/year	$_____	$_____

Notes: _____
_____
_____

U.S. Equal Employment Opportunity Commission

DIVERSITY IN LAW FIRMS

Firm: _____

PARTNERSHIP DATA 98 99 00 01 02

Lawyers promoted to ptrs/mems ___ ___ ___ ___ ___

Two or more tiers? Y ☐ N ☐

Partnership track (yrs): _____

Notes: _____

OTHER DATA

Work assignments: Departmentalized? Y ☐ N ☐

Rotation? Y ☐ N ☐ Length: _____

Part-time allowed? Y ☐ N ☐ case by case (cbc) ☐

Part-time available to entry level? Y ☐ N ☐ cbc ☐

No. part-time assoc. _____ No. part-time ptrs. _____

PUBLIC INTEREST FELLOWSHIPS _____

BENEFITS _____

PRO BONO _____

MINORITY RECRUITMENT EFFORTS _____

CAMPUS INTERVIEWS

State your organization's non-discrimination policy: _____

NARRATIVE *(No attachments, please):*

METHODOLOGICAL APPENDIX: COMPARISON OF EEO-1 AND NALP SURVEYS

The EEO-1 Survey of Establishments in Private Industry is designed to cover a wide range of industries and job groups. To evaluate the accuracy of the EEO-1 information for law firms, we compared the 2002 EEO-1 data for selected law firms to the 2002-2003 National Association for Law Placement (NALP) Directory of Legal Employers. The analysis in this methodological appendix focuses on two main topics: the extent of agreement or disagreement in estimating the total number of attorneys, and the extent of agreement or disagreement in estimating the proportion of women and minorities. In particular, we compare the EEO-1 professional job group for legal services establishments to the NALP data on attorneys, paralegals, and other professionals. Before examining the results, we briefly summarize the instructions provided to EEO-1 and NALP respondents.

EEO-1 and NALP Survey Instructions

The written EEO-1 survey instructions provide general descriptions of job group positions but they do not provide explicit instructions on the employees of legal services establishments.

> *Professionals*. - Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, teachers, surveyors and kindred workers.[52]

For firms with multiple offices, law firms are expected to follow the general EEO-1 instructions for establishments at different locations. That is, employment information on the main headquarters office is reported regardless of size. Non-headquarter offices, with a minimum number of 50 or 100 employees, should provide separate reports for each location. In addition, firms supply a consolidated report, aggregating all offices together including offices with less than 50 total employees.

[52] See Appendix 5, Description of job categories http://www.eeoc.gov/stats/jobpat/e1instruct.html

The NALP instructions include detailed definitions for selected types of law firm employees. For example, senior attorneys are defined as "lawyers who were hired for a partnership track position but did not or have not yet become partners and who remained at the firm (whether or not your firm refers to them by another name) or lawyers who were hired for full-time, non-partner positions." Staff attorneys are defined as "lawyers hired as non-partnership track associates or for a fixed term of employment (sometimes referred to as contract attorneys)." The terms "partner/member," "associate," and "paralegal" are apparently undefined. The information on hours worked is limited to "full-time partnership track associates," but it is not clear whether the demographic information on associates includes part-time employees. The official supplying the information is asked whether the information reflects one office only or multiple offices. It should be noted, however, there is no guidance about the minimum size required for reporting purposes nor is there a specification of what constitutes an "office" (potentially a problematic issue for firms with multiple locations in the same city).

Comparison Sample

To compare the corresponding information from the EEO-1 and NALP surveys, we retrieved all establishments from the 2002 EEO-1 Survey with a Standard Industrial Classification code of "81" (Legal Services), a total of 1,231 establishments. (This sample did not include Hawaii, as race/ethnic data is not collected there.) We restricted the population to 782 establishments by only including those with more than one hundred total employees and more than fifteen professional employees. Finally, we restricted the analysis to headquarters firms only, excluding all auxiliary field units. From this universe of 508 establishments, we drew a random sample of 125 establishments from the 2002 EEO-1 survey. By matching firm names and address, we were able to identify 92 law firms in the 2002-2003 NALP Directory of Legal Employers (using NALP data as of February 1, 2002). This represents 73 percent of the original sample and 18 percent of the EEO-1 reporting firms meeting the criteria for analysis. Since NALP is a fee-charging listing service, designed to provide information to potential job seekers, it seems likely that the unmatched firms either had other means of recruiting attorneys or chose not to hire attorneys in 2002-2003.

Comparative Measures

The EEO-1 survey provides three basic ways of measuring the total number of professional employees: the total number of professional employees at the firm's headquarters, the total number of professional employees in the firm's field units, and the total number of professional employees overall. For present purposes, we concentrated on the first and third measures, the headquarters report (hereafter, HD) and the overall consolidated report (hereafter, CN). We compared the HD and CN figures from the EEO-1 survey to seven potential measures of professional employment in the NALP survey:

1. the total number of associate attorneys[53]

2. the total number of non-partner attorneys (including associates, of counsel, senior attorneys and staff attorneys)

3. the total number of non-partner attorneys plus non-lawyer professionals (such as economists, accounts, and lobbyists)

4. the total number of non-partner attorneys plus non-lawyer professionals and paralegals

5. the total number of all attorneys (including partners and non-partners)

6. the total number of all attorneys plus non-lawyer professionals (such as economists, accountants, and lobbyists)

7. the total number of all attorneys, non-lawyer professionals, and paralegals.

For each law firm, we computed the absolute difference between the EEO-1 numbers and each of the NALP numbers, producing a total of fourteen comparisons (seven HD measures and seven CN measures). We then identified the comparison that produced the smallest absolute difference and calculated a discrepancy proportion using the appropriate EEO-1 base, either HD or CN.

[53] The NALP Directory of Legal Employers reports two sub-totals for the number of associate attorneys, one in an upper-right box (labeled "Demographics"), the other in a matrix containing counts by gender and minorities. We retained both measures and compared each measure separately to the NALP data. For the purpose of computing overall discrepancy statistics, we used the associate sub-total that produced the smallest discrepancy.

Appendix Table 1:
Hypothetical Example

Hypothetical Example of Discrepancy Calculations Between EEO-1 and NALP			
EEO-1 Total Headquarter Professionals (HD)		157	
EEO-1 Total Consolidated Professionals (HD)		181	
NALP Categories	**NALP Totals**	**Absolute Value of EEO-1 HD Minus NALP**	**Absolute Value of EEO-1 CN Minus NALP**
Associate Attorneys	53	104	128
Non-Partner Attorneys	69	88	112
Non-Partner, Professionals	101	56	80
Non-Partner, Professionals, Paralegals	120	37	61
All Attorneys	119	38	62
Attorneys, Other Professionals	151	6	30
Attorneys, Professionals, Paralegals	170	13	11

Appendix Table 1 provides an example of these discrepancy computations for a hypothetical law firm. According to Appendix Table 1, the smallest HD discrepancy is a difference of six employees for the NALP category, all attorneys plus other non-lawyer professionals. The proportional disagreement for the smallest HD discrepancy is 0.038 (6/157). The smallest CN discrepancy is a difference of eleven employees for the NALP category all attorneys plus non-lawyer professionals and paralegals. The proportional disagreement for the smallest CN discrepancy is 0.061 (11/181). Since the HD proportional disagreement of 0.038 is less than the CN proportional disagreement of 0.061, the overall proportional disagreement between the EEO-1 and NALP data sources is 0.038. The closest fit to the EEO-1 HD data would be assigned to the NALP data for all attorneys plus non-lawyer professionals.[54]

[54] This discrepancy measure compares the relative proportion of EEO-1 and NALP employees, and, therefore, may be subject to random fluctuations, especially for small numeric differences. Other discrepancy measures, incorporating estimates of measurement and sampling error between the two data sources, could yield different discrepancy assignments. For example, the effective dates of the two surveys are likely to produce

Comparative Results for the Number of Law Firm Employees

Appendix Table 2 summarizes the overall proportional disagreement between the EEO-1 and NALP data sources.

Appendix Table 2:
Proportional Disagreement
Between Data Sources

Quartile Statistics	Overall Proportional Disagreement
25 Percent Quartile	0.017
50 Percent Quartile	0.036
75 Percent Quartile	0.074

The median or fifty percent value is 0.036. Approximately one-half of the observations fall within the range of 0.017 (First Quartile) to 0.074 (Third Quartile). The average proportional disagreement, which is strongly influenced by extreme values, is 0.054 with a standard deviation of 0.066. In a preliminary examination of these results, eleven of the law firms with the largest discrepancies were reviewed in detail to determine if there were any systematic reasons for the differences. Many of the differences appear to be consistent with the EEO-1 reporting requirements. For example:

> Law Firm A. Disparity appears to be due to the combination of two offices in the sample city for the NALP survey but not the EEO-1 survey. When the EEO-1 reports for two offices are grouped together, the total number of EEO-1 professionals is within 4.6 percent of the NALP report for total attorneys and other professionals combined.
>
> Law Firm B. Although the NALP entry indicates that a collective form was used, the NALP counts appear to come from a single office. If the NALP entry is compared to the corresponding EEO-1 report for a single establishment and partners are eliminated from the NALP entry, the NALP results are within 5.8 percent of the EEO-1 results.

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different employment totals reflecting the timing of new hires and terminations, particularly in cases of high turnover. We have not attempted to set a threshold for distinguishing between significant and insignificant discrepancy values.

Law Firm C. The revised difference reduces to 6.7 percent if partners reported to NALP are not included.

Law Firm D. Combining associates, of counsel, and other non-lawyer professionals results in an exact match with the EEO-1 data.

Law Firm E. The NALP data and the EEO-1 data can be made consistent under the following conditions. The total number of professionals reported to the EEO-1 appears to equal the total number of Of Counsel, Associates, Staff Attorneys and Other Professionals reported to the NALP if one subtracts 22 technical workers on the EEO-1 report from the 32 other professionals on the NALP report. We suspect that the firm includes technical workers in its NALP report because there is no technician category on the NALP.

The remaining firms with outlying discrepancies either cannot be readily explained or they may be law firms that (incorrectly) classify summer law students as professional employees.

Generally speaking, the total number of professional employees reported to the EEOC is a fairly accurate proxy for the relative size of a law firm. The correlations between the total number of professional employees in the EEO-1 survey and the number of attorneys in the NALP sample range from 0.516 to 0.813. The EEO-1 measure of professional employees has a 0.516 correlation with the NALP measure of total partners, a 0.813 correlation with the NALP measure of total associates, and a 0.781 correlation with the NALP measure of total attorneys (all three correlations have probability values less than 0.0001). While the EEO-1 figures for professional employees is related to attorneys in a firm, the figure lacks reliability as a measure for attorneys. There are three main reasons for this reliability issue. First, some firms, as noted above, hire professionals other than attorneys. While a small proportion of the professional work force, it prevents exact tracking of attorney employment. Second, firms did not appear to be consistent in the manner in which they report partners. In examining data from individual firms it is apparent that some include partners in their EEO-1 reporting and others do not. Third, some firms appear to include paralegals as professional employees on their EEO-1 report.

Appendix Table 3:
Matching NALP Employment to EEO-1
Organizational Unit (Report Type)

Organizational Unit	Agreement (percent)
Consolidated (CONSOL)	2931.52
Headquarters (HDQRT)	63 68.48
Total	92 100.00

Perhaps the best way to see the "attorneys plus others" aspect of the EEO-1 data is to examine the discrepancies with the NALP data. Approximately two-thirds of the NALP law firms (68.5 percent) are most closely matched to the EEO-1 headquarters data rather than the EEO-1 consolidated data. This suggests that a majority of NALP respondents are reporting information based on a single location.[55] See Appendix Table 3.

Appendix Table 4 summarizes the assigned reasons for the EEO-1 and NALP discrepancies. The rows identify the EEO-1 source, either consolidated data or headquarters data, which produces the smallest discrepancy with the NALP information.

[55] NALP respondents were asked whether the information provided was for one law office only or multiple law offices. We compared the NALP responses (collective form equals "N" and "Y") to the designations of headquarter and consolidated discrepancies used in this study. The two measures of office aggregation levels are not strongly related. About one-half of the consolidated designations (48.3 percent) had a collective form value of "N," and about two-fifths of the headquarter designations (42.9 percent) had a collective form value of "Y." The likelihood that differences of this magnitude could have arisen by chance is 0.502 using a two-sided Fisher's Exact Test.

Appendix Table 4:
Matching Various NALP Job Combinations to
EEO-1 Professional Job Group by Organizational Unit

UNIT	NALP JOB COMBINATIONS						
Count Percent Row Pct Col Pct	ASSOC-IATES	NON-PARTNERS	NON-PARTNERS, PROFES-SIONALS	NON-PARTNERS, PROFES-SIONALS, PARALEGALS	ALL ATTORNEYS	ATTORNEYS, PROFES-SIONALS	ATTORNEYS PROFES-SIONALS PARALEGALS
CONSOL	0 0.00 0.00 0.00	0 0.00 0.00 0.00	2 2.17 6.90 33.33	6 6.52 20.69 40.00	11 11.96 37.93 42.31	2 2.17 6.90 20.00	8 8.70 27.59 38.10
HDQRT	2 2.17 3.17 100.00	12 13.04 19.05 100.00	4 4.35 6.35 66.67	9 9.78 14.29 60.00	15 16.30 23.81 57.69	8 8.70 12.70 80.00	13 14.13 20.63 61.90
Total	2 2.17	12 13.04	6 6.52	15 16.30	26 28.26	10 10.87	21 22.83

The columns identify the corresponding NALP data source (job combination) that produces the smallest discrepancy with the EEO-1 information. The results can be interpreted in several different ways. For many firms, the total number of professional employees reported to the EEOC closely resembles that total number of attorneys reported to the NALP. Combining all the attorney reasons together (that is, associates only, non-partners, and all attorneys), about two-fifths of the law firms (40/92 or 43.5 percent) report a similar number of employees on both surveys. Within the combined attorney group, the total number of attorneys is the dominant reason for reduced discrepancies (26 of 40), followed by the total number of non-partners (12 of 40). In very few firms (2.2 percent) does the EEO-1 professional category and the NALP associate attorneys category coincide.

In addition to lawyers, a substantial number of law firms appear to include other selected occupations in the EEO-1 professional job group. Non-lawyer professionals, such as accountants, are unevenly distributed across law firms. One-quarter of the firms have no non-lawyer professionals, but the upper ten percent of the firms have 32 or more non-lawyer professionals. The median number of non-lawyer professionals is seven employees per firm. Grouping attorneys and other professionals together, about three-fifths of the law firms (56/92 or 60.9 percent) report a similar number of total employees on both surveys. The remaining law firms appear to classify paralegals as professional employees. The median number of paralegals is 25 employees per firm. The combined category of attorneys, non-lawyer professionals, and paralegals constitute about two-fifths (36/92 or 39.1 percent) of the

reasons for reduced discrepancies. These results probably reflect the legitimate disagreements about controversies surrounding the terms "legal secretary," "legal assistant," and "paralegal."[56] In summary, it appears that the EEO-1 professional category is composed predominantly of attorneys with substantial number of law firms including non-lawyer professionals and/or paralegals.[57] About three-fifths (57/92 or 62.0 percent) of the law firms appear to report various combinations of all attorneys, including both partners and associates, to the EEOC and about two-fifths (35/92 or 38.0 percent) report various combinations of associate attorneys to the EEOC.

Diversity Results

This section examines the relationship between diversity proportions for law firms in the EEO-1 survey and diversity proportions for law firms in the NALP survey. Appendix Table 5 summarizes the overall proportion of women and minorities for law firms in the 2002 EEO-1 survey.

Appendix Table 5:
Proportion of Women and Minorities Employed
Sample versus Total

EEO-1 Source	Total Women	Total Minorities	Total Professionals	Proportion Women	Proportion Minorities
All Law Firms	40,739	12,955	101,080	0.403	0.128
Random Sample	5,454	1,595	13,064	0.417	0.122

The first row represents all law firms in the 2002 EEO-1 survey (a total of 1,231 observations), and the second row represents the law firms in random sample with corresponding values in the NALP survey (a total of 92 observations). The proportions of women and minorities from the two EEO-1 sources have similar values, between 0.403 and 0.417 for women and between 0.122 and 0.128 for minorities. This suggests that the random sample accurately reflects the proportion of women and minorities among EEO-1 law firms as a whole.

[56] See, for example, the discussions under the heading, Definition of a Paralegal, on the website for the National Federation of Paralegal Associates, Inc. (www.paralegals.org).

[57] Readers are reminded that the discrepancy reasons were assigned on the basis of numeric differences between the EEO-1 and NALP surveys. In the absence of interviews with the responding officials, there is no conclusive way to determine how law firms allocated employees among the different EEO-1 job groups.

The next two tables summarize the proportion of women and minorities in the 2002-2003 NALP survey organized by associate and partner attorneys. Appendix Table 6 examines summary data for all firms, while Appendix Table 7 only looks at the sample of NALP reporting firms used in this report.

Appendix Table 7:
Partners and Associates for All
NALP Reporting Firms

All NALP Law Firms	Proportion Women	Proportion Minorities	Total Number
Partners	0.163	0.037	49,415
Associates	0.424	0.143	61,141
Total	0.307	0.096	110,556

Again, the proportions of women and minorities from the two NALP data sources are in close agreement. Notice that EEO-1 proportions generally track the NALP proportions for associates rather than the NALP proportions for partners or for associates and partners combined together. Comparing population values, the EEO-1 and NALP proportional

Appendix Table 8:
Partners and Associates for Sample
NALP Reporting Firms

NALP Law Firm Sample	Proportion Women	Proportion Minorities	Total Number
Partners	0.163	0.033	7,192
Associates	0.428	0.146	8,108
Total	0.303	0.093	15,300

differences among associates are approximately 0.02, 0.021 (0.403-0.424) for women and 0.015 (0.128-0.143) for minorities. The corresponding proportional differences among partners are 0.240 (0.403-0.163) for women and 0.091 (0.128-0.037). The corresponding proportional differences among associates and partners combined are 0.096 (0.403-0.307) for women and 0.032 (0.128-0.096) for minorities.

Why should the EEO-1 diversity proportions for professionals appear to be in general agreement with the NALP diversity proportions for associate attorneys? Given that approximately two-thirds of the law firms appear to be reporting EEO-1 professional data for partners and associates combined, why are the EEO-1 diversity proportions substantially higher than the NALP diversity proportions for partners and associates combined? There are no conclusive answers to these questions, but the following tables are instructive.

Appendix Table 9 is restricted to the fifty-nine sampled law firms reporting similar employee numbers on both the EEO-1 and the NALP surveys (defined as proportional disparities of 0.05 or less). It compares the imputed discrepancy categories, derived from the NALP data, to the EEO-1 diversity proportions for women and minorities. The first row represents sampled law firms with associate and non-partner discrepancy explanations (associate only, non-partner, non-partner plus other professionals, and non-partner plus other professionals and paralegals). The second row represents sampled law firms with partner and non-partner discrepancy explanations (all attorneys, all attorneys plus other professionals, and all attorneys plus other professionals and paralegals). That is, the first row excludes partner attorneys, and the second row includes both associate and partner attorneys. The NALP results would suggest that the diversity proportions should be higher for EEO-1 responses that exclude partners than for EEO-1 responses that include partners. Consistent with the NALP results, the diversity proportions for the first row are higher than the diversity proportions are for the second row. The proportions of women are 0.463 and 0.375 respectively, and the proportions of minorities are 0.151 and 0.116 respectively. Since some of the law firms classified as non-partners probably include paralegals and other professionals in their EEO-1 reports, the diversity proportions for non-partner respondents on the EEO-1 survey should also be higher than the diversity proportions for "pure" associates reported to the NALP. This expectation is generally confirmed, especially for the proportion of women. For sampled law firms classified as non-partner respondents, the proportion of women is 0.463 on the EEO-1 survey compared to a proportion of 0.428 among associate attorneys on the NALP survey. Likewise, the proportion of minorities is 0.151 compared to 0.146 among associate attorneys on the NALP survey. These results suggest that discrepancy categories, derived from a comparison of total number of employees on the two surveys, are also plausible (or at least potential) explanations for the diversity proportions in the sampled law firms.

Appendix Table 9:
Sampled Law Firms with Proportional Differences of 0.05 or Less

EEO-1 Data from 59 Sampled Firms	Total Women	Total Minorities	Total Professionals	Proportion Women	Proportion Minorities
Non-Partners	1,338	438	2,892	0.463	0.151
All Attorneys	2,206	685	5,888	0.375	0.116
Total	3,544	1,123	8,780	0.404	0.128

Appendix Table 10 attempts to answer the question, what can the NALP data tell us about the likely distribution of different occupational groups (such as partners, associates, and paralegals) in the EEO-1 professional category. As described earlier, the NALP data reports employment totals for a wide range of occupational groups, but it only reports diversity numbers for selected occupational groups (partners, associates, summer students, and auxiliary attorneys). The EEO-1 survey does not differentiate among different types of professional employees that might be present in law firms. Based on household occupation data from the 2002 Current Population Survey (CPS), we made rough estimates for the missing NALP diversity proportions among non-lawyer professionals and paralegals and then used these NALP diversity estimates to predict the overall diversity proportions among EEO-1 professional employees. Specifically, we proceeded as follows:

1. The sample was limited to law firms with minimal discrepancy proportions, i.e., discrepancy proportions of 0.05 or less (a total of fifty-nine law firms).

2. The EEO-1 diversity proportions were computed using the appropriate baseline assigned by the discrepancy measure, either the proportion of headquarters professionals or the proportion of consolidated professionals.

3. Because of time limitations, the NALP category of senior attorneys, of counsel, etc. was eliminated. Diversity proportions for the NALP category of non-lawyer professionals were estimated by averaging the 2002 CPS data for accountants and economists (an average proportion of 0.570 for women and 0.076 for minorities). Diversity proportions for the NADP paralegal category were estimated by the 2002 CPS data for legal assistants (proportions of 0.822 and 0.181 for women and minorities respectively). The remaining NALP categories were based on the actual NALP sample data for partners and associates.

4. The overall NALP diversity was calculated using the appropriate discrepancy category for the sampled firm. For example, law firms classified as non-partners plus non-lawyer professionals were based on the actual number of NALP women and minority associates plus the estimated number of women and minorities among non-lawyer professionals. In a similar fashion, law firms classified as all attorneys plus non-lawyer professionals and paralegals were based on the actual number of women and minorities among partner and associate lawyers plus the estimated number of women and minorities among non-lawyer professionals and paralegals.

5. We then compared the predicted diversity proportions, obtained from the combination of actual and estimated NALP data, to the actual diversity proportions in the EEO-1 data.

The objective of this exercise was to assess the reasonableness of the NALP data as a proxy for the different types of legal sub-groups likely to be present in the EEO-1 data. If we could show that the NALP diversity estimates closely approximated the EEO-1 diversity proportions, we then have a basis for extrapolating the NALP occupational allocations to the EEO-1 data.

As expected, the NALP diversity estimates, derived from the appropriate legal sub-groups, provide a close approximation to the diversity proportions reported to the EEOC. The EEO-1 proportion of women is 0.4023 compared to an NALP estimate of 0.3826, a difference of 0.0197. The EEO-1 proportion of minorities is 0.1246, compared to an NALP estimate of 0.1152, a difference of 0.0094. Neither of these proportional differences is statistically significant.[58]

Based on the NALP sample, the corresponding EEO-1 submissions are, on average, likely to be composed of the following legal sub-groups in Appendix Table 10. The third column shows the proportion of different legal sub-groups in the NALP sample. The fourth column shows the average proportion of women within these sub-groups. The fifth column combines the information on sub-group proportions and average proportions of women to estimate a weighted average proportion of women for each sub-group.[59] The results suggest

[58] The Z score for women is 0.2197 (a two-sided probability value of 0.826), and a Z score for minorities is 0.3294 (a two-sided probability value of 0.742).

[59] Readers are reminded that the estimates for the average proportion of women among non-lawyer professionals and paralegals are based on the 2002 CPS data rather than the NALP sample. It also should be noted that the NALP predictions, described above, used the actual diversity numbers for partners and associates in each law firm rather than overall averages.

that about three-fourths (75.86 percent) of the professional employees reported to the EEOC are either partner or associate attorneys. Associates form the largest legal sub-group in the EEO-1 (42.0 percent), followed by partners (33.8 percent), paralegals (16.9 percent) and non-lawyer professionals (7.3 percent).

Appendix Table 10:
Average Proportion of Women by Job

Sub-Groups	NALP Sample	Group Proportions	Average Proportion Women	Estimated Weighted Average
Partners	4,047	0.3382	0.163	0.0551
Associates	5,031	0.4204	0.424	0.1783
Other Professionals	868	0.0725	0.570	0.0413
Paralegals	2,022	0.1690	0.822	0.1389
Total	11,968	1.0000		0.4136

Although these sub-group percentages are only rough approximations, the estimated weighted averages help to explain why the overall EEO-1 diversity proportions tend to track the NALP diversity proportions for associate attorneys. Although non-lawyer professionals and paralegals are the smallest legal sub-groups, they each have a relatively high proportion of women and minorities. Combined together, the weighted average for women among non-lawyer professionals and paralegals (0.1802) is almost equal to the weighted average among associate attorneys (0.1783). Likewise, the weighted average for minorities among non-lawyer professionals and paralegals (0.0434) is almost equal to the weighted average among associate attorneys (0.0600). Thus, on average, the relatively small number of women and minority partners is counter-balanced by a combination of other legal sub-groups that are similar to associate attorneys in terms of overall contributions to the proportion of women. Put another way, the EEO-1 data seems to provide a fairly accurate surrogate measure of diversity among associate attorneys (at least in the current time period), not because the EEO-1 data is a strict measure of associate employment, but because the mixture of "attorneys plus other occupations" produces diversity proportions much closer to the proportions for associate attorneys than the proportions for all attorneys, partners and associates, pooled together.

Summary

Although the relationships between the EEO-1 and NALP surveys are complex and tenuous, two general principles seem evident. First, because the EEO-1 professional category seems to be composed predominantly of attorneys, combined with selected other legal sub-groups, the EEO-1 data provides a fairly accurate index of a relative firm size, but it is not a reliable

guide to the actual number of partners and associates in any given law firm. Second, the particular mixture of legal sub-groups covered in the EEO-1 survey appear, on average, to provide a plausible indicator of diversity among associate attorneys, but they do not appear to be representative of diversity among partner attorneys or partner and associate attorneys combined. Finally, the measurement problems reviewed in this appendix suggest that the available information on law firms would be greatly improved if all of the organizations responsible for collecting data on law firms could reach a consensus on the appropriate measurement standards to be applied to law firm surveys. For example, the NALP survey provides detailed information on specific legal sub-groups (such as partners, associates, and senior attorneys), but respondents appear to need more guidance on the appropriate definition of a law firm's "office," especially when multiple offices are located in the same geographic area. Likewise, the EEO-1 survey provides fairly detailed definitions for law firm locations, but respondents appear to need more guidance on how to allocate specific legal sub-groups among the EEO-1 job groups. Hopefully this appendix has suggested various ways in which the available law firm surveys can be compared and contrasted to yield insights that might not be evident from any given survey taken by itself.

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Asian American Attorneys: Shattering Conventional Notions

By Elisabeth Frater, Esq.

> ***"We may be in a better position [than other minorities] in some respects, but we are in a worse position in others. Where we are in a better position is that we have quite a high proportion of Asian Americans who have higher education because of the emphasis on education. If, however, the number of Asian Americans at the top of the professions and major corporations is any indication—and it may not be—we seem to be getting a comparatively lower return."***
>
> ***—Woon-Wah Siu***

Despite making gains on all measures of success, from the attainment of advanced degrees to financial holdings, Asian Pacific Americans are still underrepresented in the legal profession. While U.S. Census data indicate that Asian Pacific Americans account for approximately five percent of the U.S. population and are the fastest-growing racial group in the country, they make up almost four percent of the nation's estimated 1.1 million lawyers, according to the National Asian Pacific American Bar Association.

Even worse, many Asian Pacific American lawyers are confronted with harmful stereotypes as they make headway in the legal world. James D. "Jimmy" Nguyen displayed a talent at school in competitive speech, so it comes as no surprise that he became a successful litigator. But it was a taste of the stereotypes to come for this Vietnamese American that others were shocked he was so eloquent. "There is somewhat of a perception that Asian people are either more quiet or not as assertive or certainly not as eloquent as other speakers," says Nguyen, a partner in Foley & Lardner's Los Angeles office.

Julie Cheng, assistant general counsel with Bayer Healthcare LLC, has at times encountered a similar reaction when she demonstrated her natural legal abilities. Some of her former colleagues have expected her to "be able to crank out the work, not make any waves, and be a good do-bee," Cheng relates.

"When I get to work I am not really like that," says Cheng, who is Taiwanese American. "Sure I do a lot of work, but I'm not the kind of person who sits in their office all day and stays quiet. I am often in meetings with people who don't know me. A lot of times, I've been taken to be one of the researchers, and I'm sometimes fairly quiet. When they discover that I'm an attorney and that I will express my opinions, they are often visibly surprised."

What does it take to break down these misperceptions? The answer, according to these attorneys, requires both recognizing and hurdling the stereotypes while pressing for greater acceptance in the higher echelons of business and law.

The Model Minority Fallacy

Joseph J. Centeno, a partner with Philadelphia's Obermayer Rebmann Maxwell & Hippel, says, "There has always been a question about Asians—where do we fit? In the language of black and white and race and politics in America, where are the Asians?"

Centeno, who is Filipino American, appreciates the work of Frank Wu, dean and professor of law at Wayne State University Law School and the author of *Yellow: Race in America Beyond Black and White*, and others who attack the albatross of the Asian American community—the notion that Asians are the "model minority."

Professor Wu has written that the "model minority" viewpoint is that Asian Americans have suffered discrimination but overcame its effects by being conservative, hard-working, and well-educated.

Woon-Wah Siu, a member of Chicago-based Bell, Boyd & Lloyd, encountered the myth when she was in law school. Other students told her, she says, "You Asians are doing well and you don't need any help."

Siu, who was born in China, says this is a harmful assumption. "We may be in a better position [than other minorities] in some respects, but we are in a worse position in others. Where we are in a better position is that we have quite a high proportion of Asian Americans who have higher education because of the emphasis on education. If, however, the number of Asian Americans at the top of the professions and major corporations is any indication—and it may not be—we seem to be getting a comparatively lower return."

Rishi Agrawal of Eimer Stahl Klevorn & Solberg LLP and president-elect of the Asian American Bar Association of Chicago believes that the small percentage of Asian Americans at the top of the legal profession makes it difficult for younger Asian American attorneys to obtain the necessary mentorship that is invaluable to the success of professionals.

"This serves to handicap an Asian American legal community that has only recently entered the field—and therefore, the supposed model minority benefits are overstated," stated Agrawal.

The disadvantage is subtle, according to Siu. "What is not in our favor is that, compared to Hispanic Americans and African Americans, we definitely look foreign. For other minorities, the second generation grows up here, they speak like Americans and people don't see them as foreigners. But with second-generation Asian Americans, people still see them as foreigners," she says. "People just instinctively think that you are different; they think, 'Maybe I have to deal with you differently.' "

Shattering Stereotypes

These stereotypes are different than those facing other ethnic and racial minorities. "I do not believe the 'quiet' and 'science/math' labels have been applied as forcefully to other minorities," says Michael P. Chu, partner at Chicago's Brinks Hofer Gilson & Lione and president of the National Asian Pacific American Bar Association.

Indeed, some view these labels as "good" stereotypes. "But the fact remains that they are stereotypes,"

says Chu, "and stereotypes are just not how a minority—or any group—should want to define itself."

> ***"Just because you're Asian American doesn't mean you can well represent your clients when dealing with an Asian company."***
>
> ***— Larry C. Lowe***

Nearly every attorney interviewed voiced a concern that even enumerating the stereotypes was harmful to Asians. Jeffrey D. Hsi, a partner at Boston's Edwards & Angell, says, "I hate to reinforce the stereotypes that Asian Americans excelled in and focused on science, engineering, and medicine. But, I think the reality is that, in fact, that was the case," he says. "My generation maybe less so than that of the generation ahead of me or the one before that."

These stereotypes can stifle professional growth. Reed Smith Partner Min S. Suh, who is based in Philadelphia, believes that the challenge to Asian American attorneys is to avoid being pigeonholed as excelling only in certain areas, such as the hard sciences. "For instance, she says, "There is a perception, especially in the legal community, that Asian American lawyers are not suitable for management or leadership positions due to the stereotype that Asian Americans lack the personality to influence and lead others."

Centeno points to the stereotype of Asian Americans "not being aggressive or assertive and being meek or sometimes a geek." In addition, he notes the well-worn stereotype that Asians don't want to rock the boat.

"I question whether or not that is true, and even if these are true stereotypes, is that making us a model minority?" he asks. "In our society, to be a leader in any industry, you have to be bold, you have to take risks, and you have to be out there and network and create relationships with people. That's what I think Asian Americans need to do to break what is viewed by me and others to be a glass ceiling," says Centeno.

Bayer's Cheng stresses that some challenges are unique to Asian women.

"There is this perception that a lot of people still have that we are quiet and that we are going to follow orders. We are treated differently than the male associates." But she points out, "We are also treated differently than the white and black females. When you don't act like people expect, people don't know how to deal with you, and sometimes get upset."

Unfortunately, physical appearance may be an unspoken challenge to Asian American attorneys. "I call it a challenge because most of us look really young, and are blessed with genetically good skin. I feel like I look young and I am smaller in stature," says Nguyen. He says that a youthful appearance may be a benefit in one's personal life, but, as a professional, it may cause others to assume he lacks experience.

Not all the myths about Asian Americans revolve around culture, appearance, and values. As Apple Computer Inc. Senior Counsel Larry C. Lowe points out, sometimes the misconceptions have to do with overplaying one's ethnic background. "There is a lot of business going on between Asian companies and companies here in the [Silicon] Valley, including Apple," says Lowe. "There is sometimes a thought that, 'Gee, if I am an Asian American, I can get into that business and help and be an asset.' I don't know if that is actually always true."

Lowe believes this is a dangerous assumption unless the attorney is foreign-born or has spent considerable time in Asia. "Unless you are fluent, and I mean really fluent in the foreign language, it is dangerous to try to do business in that language," he says. "Business negotiations require a precise and

careful use of language, well beyond that of casual conversation. Just because you're Asian American doesn't mean you can well represent your clients when dealing with an Asian company."

Nguyen of Foley & Lardner is sometimes asked whether he can tap into the Vietnamese business marketplace. "I was recently asked, 'Now that Vietnam as a country is opening up more to the Western economy and business, are you able to take advantage of that situation and develop business, and clients?' " Nguyen recalls. "I said not really, because the Vietnamese businesses are at a much younger, less sophisticated place."

Another challenge for Nguyen is that, "My natural contact base is not a good potential client base for me. I think that is true of a lot of ethnic minority groups. While it is helpful that I am Vietnamese—sometimes I do get calls from people looking for a Vietnamese lawyer—they are often not companies of the size and sophistication that can afford our firm's legal services."

Home Influences

Suh of Reed Smith was the first lawyer in her family. Her parents were concerned that Suh, who was born in Seoul, South Korea, would face more discrimination in the legal profession than in other fields.

"While my parents were supportive of my decision to enter the legal profession, they were apprehensive about my future as an Asian American woman in a predominantly white male profession," she says.

Hsi agrees. "It has always been said that the generations before us might have steered us that way [into science and technology] in part because there was less exposure to bias," says Hsi. He notes that during his formative years and then through college and law school, he didn't have a natural network of lawyers or people in the legal community to speak with about potential legal jobs.

"In the Asian culture, especially those before us, people didn't want to be adversarial, they wanted to save face, they held the utmost respect for elders and authority, and those values sometimes are in tension with attributes you might need to be a lawyer," explains Hsi.

Siu disagrees that the home environment might have discouraged Asian Americans in the past from going into the legal profession. "At least in my own case, that is not the case. I think the perception when I was growing up in Asia is that lawyers are these awesome people. They are highly regarded and they definitely are on par with other professionals, like engineers and doctors."

Benjamin T. Lo, a partner in the Chicago-based firm of Ungaretti & Harris, says, "I just don't think that 10 to 15 years ago that Asians thought about going to law school until we started seeing more numbers and observing people in more high-profile positions," says Lo. "You see Asians on television, you see Asians in the news, and working on high-profile cases now."

Marketing 101

Siu points out that for young Asian American attorneys, like all minorities, the key to success is to better market one's abilities to the firm, to the senior lawyers, and, as one becomes more experienced, to the clients.

Lo says, "I think that one thing that has hurt Asian American attorneys is that they may be very good attorneys, but people in the community don't know that they are attorneys or are afraid to approach them."

Suh explains that it goes "hand-in-hand with how we view ourselves. Asian Americans tend to avoid public disputes and controversies. We are not particularly litigious people." Suh points out the differences between the Asian and American legal systems may have some bearing on the issue. "In Asia, the idea of suing someone because you fell on their property is obscene to most people."

"The key is to find the right balance between fitting in and using our ethnicity to our advantage. Through our interactions with our colleagues, we need to display that we belong, that we possess the necessary skills to advance and be an asset to the firm. At the same time, we need to demonstrate how our ethnicity enables us to form specific contacts and networking opportunity for the firm. This is especially important given the growing global legal market," remarked Agrawal, who is also on the board of the Indian American Bar Association of Chicago and the National Association of South Asian Bar Associations.

Nguyen says the challenge of a law firm experience is generating business and client relationships. "I think that is generally harder for minority and women lawyers because the buyers of our legal services tend not to be women and minorities."

"Which isn't to say we only get hired by people like us, but it makes it easier to get access to contacts that will lead to potential contacts in business. I think it is a little bit harder for me as an Asian American attorney," Nguyen adds.

In addition, some attorneys suggest that to get ahead, Asian American attorneys need to break out of their comfort zone. According to Hsi, "We are at an interesting crossroads because, as we speak, diversity has a higher profile." Yet, Hsi continues, geographically, it is still more comfortable to be an Asian American lawyer in cosmopolitan markets like New York and San Francisco, because of the sheer numbers of Asians who practice there.

Asian Americans: The Sum of It All

- 13.1 million U.S. residents say they are Asian or Asian in combination with one or more other races. This group comprises five percent of the total population. Since Census 2000, the number of people who are part of this group has increased nine percent-the highest growth rate of any race group, as stated by the 2000 U.S. Census.
- The projected percentage increase between 2000 and 2050 in the population of people whose only race is Asian is 213 percent. This compares with a 49 percent increase in the population as a whole over the same period, as stated by the 2000 U.S. Census.
- Ninety-five percent of Asian and Pacific Islanders live in metropolitan areas. Fifty-one percent of Asians and Pacific Islanders live in the Western part of the United States, according to the 2000 U.S. Census.
- Sixteen percent of Asians and Pacific Islanders 25 years and over have earned an advanced degree (for example, master's, Ph.D., M.D., or J.D.). This percentage amounts to 1.3 million Asians and Pacific Islanders. The corresponding rate for all adults in this age group is nine percent according to the 2000 U.S. Census.
- The median household income for Asian American families is $10,000 above that of whites according to the 2000 U.S. Census.
- Asian Americans accounted for 5.9 percent of all college enrollment in 2002, while whites were 62 percent, African Americans were 11.5 percent, Latinos were 9.5 percent, and Native Americans were less than one percent, according to the U.S. Department of Education, National Center for Education Statistics (Spring 2003).
- For each dollar earned by white men, Asian American women earn 75 cents. This is better than white women, who earn 70 cents on the dollar, as stated by the Institute for Women's Policy

Research report, "Status of Women in the States," (November 2004).

Reaching Higher

Most observers agree there is room for improvement in the legal profession's highest levels. "There is a clear underrepresentation in one area—the judiciary. Clearly there is a political aspect that goes back to the old boy network," Hsi comments.

Brinks Hofer's Chu points out that there are only six Article III federal judges in the United States. "I view these deficits as incredible opportunities for Asian American lawyers to steer their careers toward judicial positions," he says.

Centeno agrees. "You ask yourself how many Asian American judges sit on the federal bench? In Pennsylvania and New Jersey—the answer is none, never. Why is that?"

Siu, who is also a member of the Chicago Committee on Minorities in Large Law Firms and is the executive vice president of the Organization of Chinese Americans of Greater Chicago, points to the anecdotal evidence that the rank-and-file of Asian American lawyers at the entry level is growing. "But if you look at partnerships in the Chicago area, you see that the number of Asian American partners is small."

Centeno strongly advocates the role of mentors, especially those in the highest law-firm tiers, so that Asian Americans can more easily achieve political acceptance and gain a stronger foothold.

Hsi conveys that the biggest challenge is getting larger numbers of Asian Americans into the profession. "If you look historically at the numbers, there is clearly improvement and that is a good sign, but clearly there is work to be done."

He notes that the number of Asian Americans entering law school has grown. Indeed in 2004, Asian Americans made up the greatest number of minority law student groups, and in many law schools, they dominate the minority student body, according to the American Bar Association's Presidential Advisory Council on Diversity in the Profession (ACD).

But Hsi is disheartened by the lack of Asian Americans who have moved up from the associate level. "The next issue is the transition of Asian Americans into higher ranks, whether in partnerships in law firms, or more senior positions in corporations or government organizations. Obviously, more Asian Americans are starting to ascend to those positions, but I think if you look across the board, those numbers are still lacking compared to population numbers."

> ***"We need to recognize even within our ethnic group there are sometimes diverse views and that all of those views should be encouraged in connection with undermining stereotypes and increasing Asian American participation in the legal profession."***
>
> ***— Terry Bates***

Terry Bates, a partner in Reed Smith's Los Angeles office and his firm's diversity liaison in Southern California, says, "The Asian American Bar needs to make sure that, while it continues to advance its memberships' participation in the judiciary and senior levels of law firms, it does not become politically polarized in its efforts or otherwise creates a bar stereotype."

"I have been to quite a few bar functions where it seems that the group is automatically assuming that

there is one view," says Bates, who is Chinese American.

"We need to recognize even within our ethnic group there are sometimes diverse views and that all of those views should be encouraged in connection with undermining stereotypes and increasing Asian American participation in the legal profession."

Not Yet Colorblind

Geography also plays a part in stereotypes about Asian Americans. Lowe, of Apple Computer, emphasizes the notion that the San Francisco Bay Area is completely a culturally neutral and color-blind society is not true. The reality, says Lowe, is that a minority attorney cannot assume full acceptance from juries or opposing counsel. "You have to be conscious of your ethnicity, although you don't have to be controlled by it. But I think you are foolish if you don't take it into account in jury selection how to present yourself."

"Conversely, having been in the Valley, I don't think it is an issue to be a minority attorney here in the high-tech world," Lowe adds.

Reed Smith's Suh remains optimistic that there will be more opportunities for Asian American lawyers as they become more integrated into society. "I say the word 'integration' in terms of the politics. A lot of Asian Americans are so far removed from the political process."

"You need the grassroots community support to garner political appointments," Suh continues. "But we are not our best advocates when it comes to speaking of our achievements. The public spotlight and immodesty does not sit well with Asians. Fortunately, the second generation Asian Americans are slowly unburdening themselves with these hampering thoughts. They are much more politically active and savvy than the former generation."

While Asian Americans are currently underrepresented in law, they continue to break down stereotypes and move into leadership positions. This minority group seems poised and eager to reach the ultimate levels of success in the legal profession.

Elisabeth Frater, Esq. specializes in business litigation in Napa, Calif.

From the May/June 2005 issue of Diversity & The Bar®

Video Corner

Latest News

- Change Comes Inevitably
  Summary: THE LEGAL PROFESSION is the least diverse of all white collar professions. MCCA's core mission is to change that. Growing up in the deep South, I attended a segregated school system until junior high school. If you look at that in terms of years, it was not that long ago.
- MCCA Hosts 2015 Diversity Gala
  Summary: Today, MCCA hosted its annual Diversity Gala, the premier national awards program that honors leading corporate departments and individuals who champion diversity and inclusion.
- Supreme Court rules states must allow same-sex marriage
  Summary: In a landmark opinion, the Supreme Court ruled Friday that states cannot ban same-sex marriage, handing gay rights advocates their biggest victory yet. By Ariane de Vogue and Jeremy Diamond, CNN

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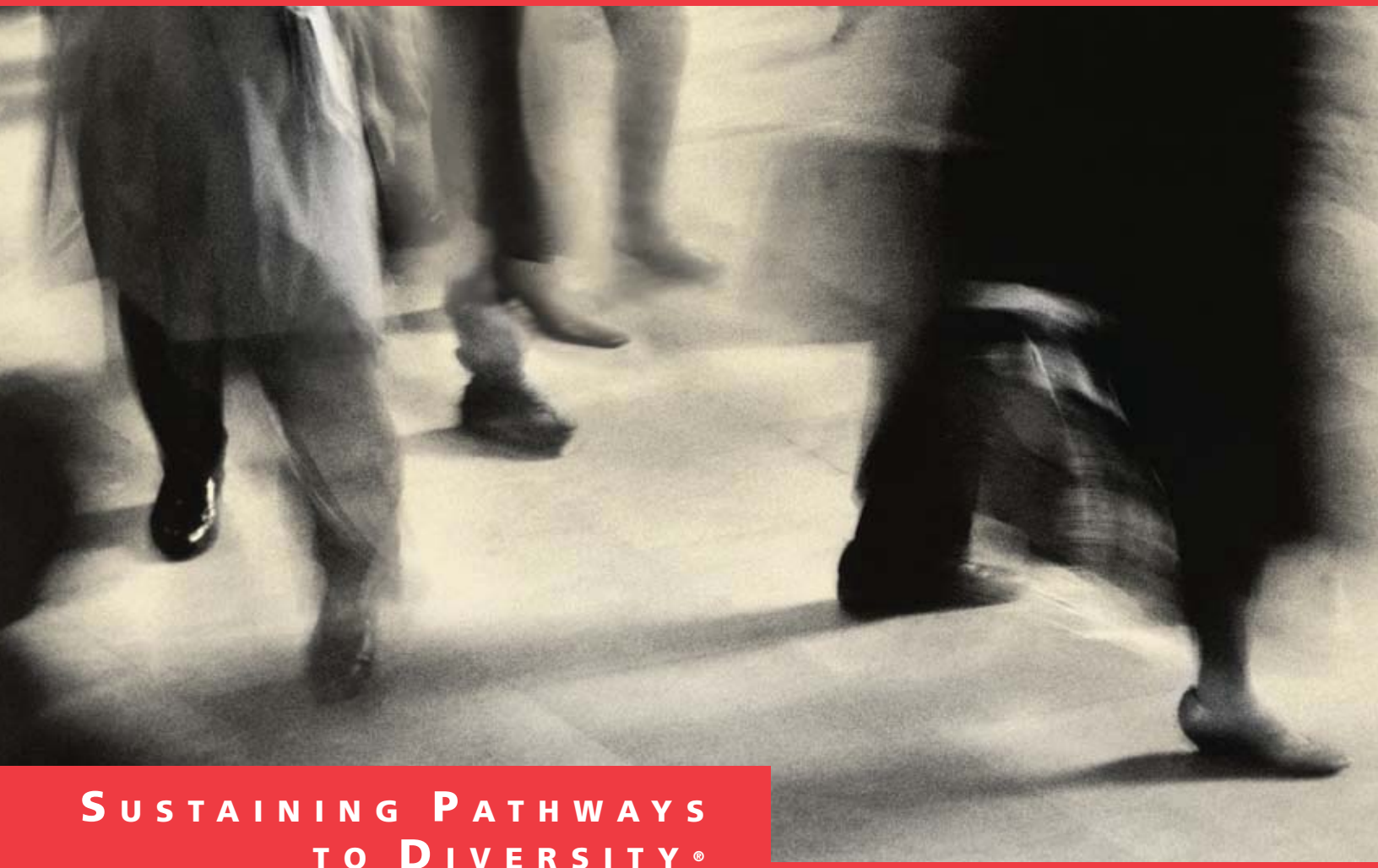

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Leadership Circle of Firms

The MCCA survey that serves as the basis for this research report was distributed to 217 law firms, including the firms that comprise the AmLaw 200 list of top firms by revenue. Lawyers from a total of 124 of those 217 law firms responded to the survey. The following law firms were especially helpful by circulating the survey more than once, and by encouraging their attorneys to complete the survey questionnaire. MCCA extends its appreciation for their diligent efforts and leadership in advancement of this research report.

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Since 2002, when MCCA published its first research report on the bridges and barriers to advancing diversity in law firms, the legal landscape has changed substantially. Back then, I spent a lot of my time trying to convince law firms and their management teams that advancing diversity should even make their list of priorities for the law firm. I remember there was a good bit of resistance, and corporate diversity leadership at that time did not include efforts like the Call to Action.

In fact, in 2002, most law firms were not actively pursuing diversity programs. They had not organized firm-wide diversity committees. No law firm had a dedicated professional serving as a diversity director or chief diversity officer. Many were debating whether collecting data regarding the firm's diversity progress was legal. It was a time when more law firms were concerned about simply complying with the law; their emphasis, basically, was to avoid doing anything wrong that would expose the firm to a suit on the grounds of racism, sexism, or ageism. For lesbian, gay, bisexual, and transgender (LGBT) lawyers, it was a particularly troubling time, because this group was largely excluded from the diversity discussion, and too many LGBT attorneys did not feel safe being "out" in their law firms.

Clearly, a lot has changed for the better over the years. As the findings of this most recent study by MCCA demonstrate, however, circumstances have not changed enough in many areas — and old attitudes die hard, despite the best of intentions.

Sustaining Pathways to Diversity:® The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms represents a fresh look at two law-firm topics previously examined by MCCA.

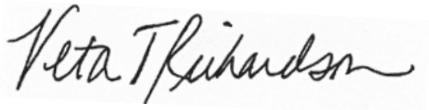
- An examination of the experiences of a diverse group of lawyers in law firms, and an analysis to compare the experiences of different demographic groups of lawyers from a variety of academic backgrounds and at various stages of their careers.
- An *analysis of the "Myth of Meritocracy,"* a widely held belief within many large law firms that academic pedigree and credentials foretell one's potential for success as an associate and fitness for partnership. MCCA previously reported that the majority of successful law firm partners lack the academic pedigree and credentials that many hiring committees of law firms demand of incoming associates. Not only is this still true, but MCCA research also reveals that in large law firms, majority males with lesser academic credentials or law degrees from second- and third-tier law schools report professional experiences and comfort levels that are superior to their better-credentialed colleagues from underrepresented demographic groups (*i.e.*, racial/ethnic minorities, women, and LGBT attorneys who attended Tier 1 law schools).

In addition to reexamining some old challenges, MCCA also uncovered new concerns, such as the importance of approaching diversity initiatives with sensitivity to the views of all lawyers. Many white male lawyers reported feeling that the very programs intended to build more-inclusive workplaces may be unfairly leaving them out. These concerns must be addressed if organizations are to achieve the diversity they seek.

Beyond simply documenting challenges, MCCA is dedicated to offering recommendations and solutions. Therefore, throughout this report, readers will find a number of practical suggestions. MCCA also intends to issue companion reports, using the data from this research, to undertake a closer examination of issues and recommendations for LGBT inclusion, as well as the relationship between white men and diversity. Stay tuned!

This research report was funded through the generosity of the donors to MCCA's special fundraising effort, the 10x10x10 Campaign. We invite you to learn more by visiting MCCA online at www.mcca.com.

Best regards,



Veta T. Richardson
Executive Director, MCCA

Executive Summary

Strategic Leadership and Commitment

The majority of respondents reported overwhelmingly that the leadership of their law firms have communicated a commitment to diversity. However, minority lawyers and female associates rated the strategic leadership and commitment to diversity in their firms lower (81% and 79%, respectively) than did whites and male partners (90% and 94%, respectively).

Many white men reported their perceptions that their firms were committed to diversity, but it was at the expense of the opportunities available to white men and there was some resulting resentment.

The results of the survey suggest that, while law firms are communicating their commitment to diversity more effectively, the commitment may not always be accompanied by a clear message explaining why diversity is important.

Recruiting and the Myth of Meritocracy

Research in this report illustrated that for many law firms, the standards for recruiting minorities was actually higher than it was for recruiting whites, and that the myth of meritocracy (*i.e.*, that law firms hire and promote on purely objective merit criteria) continues to exist at law firms. A strong sentiment continues to exist among white men that racial/ethnic minorities who are hired into law firms are less qualified than other candidates. This perception is reinforced by a related sentiment that even minorities who graduate from top law schools are less qualified because they entered those law schools through racial preference programs.

The survey findings indicate that minorities were less likely than whites to view the criteria of law school ranking and law school grade point average as important. Nevertheless, the group most likely to disregard the primacy of these criteria — female associates — is made up mostly by white women. The group most likely to hold these criteria as critical to recruiting new lawyers was white male partners.

Recommendations
Strategic Leadership and Commitment

- *Law firms should continue to stress the strategic importance of diversity and inclusion from the leadership level, including why it is a priority.*
- *Law firms should ensure that white male voices are included in dialogues on diversity and inclusion, and focus on how more-inclusive workplaces are better for everyone.*
- *Law firms should regularly "check in" with their lawyers to ensure that the diversity and inclusion efforts are working effectively.*

Women generally reported that these two traditional criteria should be balanced with other criteria (*e.g.*, judicial clerkships, prior work experience, and interview performance), whereas men generally responded that these other criteria were less important than the traditional "pedigree" criteria (*i.e.*, law school rank and law school grade point average or individual class rank).

In spite of the perceived tensions between pedigree and diversity, many respondents discussed how law firms have closed off their opportunities to recruit highly qualified and diverse lawyers by staying frozen in historical recruiting models, instead of broadening the recruiting pool.

Inclusion and Work Environment

As previous studies have documented, even when law firms improve their performance in hiring a more diverse lawyer workforce, they continue to struggle in their ability to retain the minorities, women, and lesbian, gay, bisexual, and transgender (LGBT) lawyers that they hire. Current data[1] indicate that the overall levels of inclusion in the workplace have not yet caught up with the commitment to diversity expressed by law firms.

This study closely examined six key inclusion and work environment criteria that lead to greater retention of all lawyers in general, and minority and female lawyers in particular:

- Overall parity in treatment as compared to peers;
- Absence of discrimination (which instead may frequently take more-subtle forms);
- Access to good work;
- Balanced and candid performance evaluations;
- Inclusion in informal networking opportunities; and
- Inclusion in the development of clients and client relationships.

As the responses to this survey illustrate, women and minorities are less likely to feel that they are treated as equals by their peers, and they are more likely to experience disparities that are not reported by those outside of their race, gender, and/or sexual orientation (*i.e.*, straight white males). This research indicates that women and minorities are less likely to receive the work that they are looking for, and they are also more likely to report unfair performance evaluations. Furthermore, women and minorities are less likely to feel included in informal networking, as well as opportunities to develop clients and client relationships.

Minorities and women were less likely than male partners and male associates (most of whom were white) to rate their work environments as places where they were treated as peers by their peers.

Recommendations
Meritocracy Perceptions

- *Law firms should candidly assess the criteria that lead to success in their workplaces, and create interviewing and hiring protocols that reflect their realities, instead of perpetuating the myth that success is predetermined by the rank of the law school candidates attended or their law school grade point averages and/or individual class rank.*
- *Law firms should articulate and communicate their "reality-based" hiring criteria, and ensure that they are consistently and uniformly applying the criteria to all candidates.*
- *To increase diversity among interview candidates, law firms should focus on attending regional job fairs that focus on diverse candidates, increase the universe of schools from which they recruit, and participate in collaborative efforts with other law firms to attract diverse candidates to regions that historically may not have attracted these candidates.*

1 *See, e.g.,* National Association of Women Lawyers, *National Survey on Retention and Promotion of Women in Law Firms* (2007 and 2008 surveys available online at www.nawl.org/Publications/Surveys.htm); NALP — The Association for Legal Career Professionals, *Diversity & Demographics* reports (available online at www.nalp.org/diversity2); American Bar Association Commission on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms* (2006), (available online at www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=4920037).

African American lawyers were the most likely to rate their work environments as the least inclusive, whereas white lawyers were the most likely to rate their work environments as highly inclusive.

Only 58% of minorities reported being satisfied with the opportunities they had to participate in business development efforts with important firm clients, in comparison to 73% of whites.

Inclusion and Reverse Discrimination

Tensions between pedigree and diversity resurfaced in many white men's comments on what they perceived to be "reverse discrimination" in inclusion efforts. These expressed perceptions highlight the communication challenges that law firms continue to face in promoting inclusion in a way that embraces the perspectives of white men, who may see inclusion efforts as a challenge to their perceptions of their workplaces as bastions of meritocracy.

In practice, however, the significance of this resentment by many white men in law firms may be that it perpetuates the disparate treatment that many women, minorities, and LGBT lawyers report.

Work/Life Balance

For many participating in the survey, the work/life balance options offered by their law firms were a direct reflection on the inclusive nature of their workplaces. Respondents also differentiated between the existence of these options and their ability to exercise these options without negative consequences to their careers.

Overall, minorities and women responded more negatively than white men about work/life balance in their law firms. It is interesting to note, however, that the perspectives shared by female associates were much closer to those of male associates than they were to female partners, illustrating a generational difference on this issue that appears of greater impact than a gender difference.

Recommendations
Inclusion and Work Environment

- *Law firms should create an action plan that proactively increases inclusion in the way attorneys experience work and life at their firms.*
- *Law firms should expand their definitions of and trainings on discrimination to include subtle forms of discrimination, as well as examples of disparate treatment.*
- *Law firms should create an ombudsperson role in their firms, so that attorneys who want to discuss their experiences have a well-trained and well-informed person to whom they can turn for guidance.*
- *Law firms should regularly evaluate their work-allocation protocols to ensure that everyone in the firm has equal access to the quantity and quality of work they need to effectively develop and advance in their careers.*
- *Law firms should ensure that all senior lawyers who play a role in the evaluation of attorneys are well-informed and well-trained in effective feedback and evaluation techniques.*
- *Law firms should gather data on how people perceive their experiences and opportunities, as well as create networking, client-relationship building, and client-development activities that ensure that everyone feels included in these integral efforts.*
- *Law firms should focus on the development of inclusive work/life balance programs as well as the cultural change necessary for people to take advantage of these programs without penalty.*

Professional Development and Retention

Coaching, Mentoring, and Supervision

Although the survey revealed that law firms have a lot of work to do to provide adequate coaching and mentoring for all lawyers, one recurring theme reflects the disparity between whites and minorities — as well as the disparity between men and women.

In this survey, 71% of whites felt that they had adequate coaching and mentoring to be successful in achieving their career goals, compared with only 62% of minorities who felt the same. When asked whether they had a mentor who was an influential sponsor and can advance their career, only 58% of minorities responded positively, as compared to 74% of whites. Similarly, only 61% of female associates responded positively to the question regarding influential mentors, in comparison with 68% of male associates; only 76% of female partners responded positively to the same question, in comparison to 82% of male partners.

Minorities who attended Top 10 schools reported having less access to mentoring, coaching, and sponsorship than did all white lawyers without regard to what law school they attended. These responses underscore a startling fact: The reality experienced by "top minorities" (*i.e.*, graduates of elite law schools) in law firms is inferior to that of whites who graduated from second- and third-tier law schools. This finding evinces a level of disparate treatment and/or discrimination that is entirely inconsistent with the assertion of a meritocracy within law firms.

The good news is that the majority of women and minorities do not believe that they are victims of discrimination based upon their race or gender. Many did report, however, that various forms of subtle and often-unconscious bias permeate workplaces today, as compared to the more-traditional forms of discrimination that involve overt and explicit articulation of stereotypes and predjudice.

Training and Development

Overall, 75% of whites perceived that they had access to the training and development that they needed in order to grow and advance professionally, compared to only 59% of minorities. Similarly, 69% of male associates indicated that they had adequate training and development, as compared to only 59% of female associates. Furthermore, 84% of male partners reported having adequate training and development, as compared to only 72% of female partners.

Only 65% of minorities reported that they received appropriate training for the work that they did, compared to 78% of whites. Only 71% of minorities responded that they were satisfied with the level of client contact they received in connection with their development, as compared to 85% of whites.

One area of specific concern to women and minorities was the perception that allocation of work is often dependent on the "old boy network" instead of knowledge, skills, and experience.

Less Support, Higher Standards

Women and minorities reported that they had to perform at a higher level to gain the same credibility and career opportunities as their white male peers. For example, 40% of minorities responded that they had to perform at a higher level to gain the same credibility and career opportunities, as compared to only 19% of whites. Similarly, 31% of female associates and 37% of female partners perceived they had to perform at a higher level, as compared to only 19% of male associates and 15% of male partners.

Advancement and Leadership

Many women and minorities saw their opportunities for advancement and leadership as less realistic than their white and male counterparts. This perception not only affected their perceptions of long-term

Recommendations
Professional Development and Retention

- *Law firms should implement training programs for partners that focus on unconscious and subtle biases to ensure that personal subjectivities do not hinder equality in opportunities for professional development for all attorneys. This anti-bias training must include sexual orientation.*
- *Law firms should develop and implement "upward review" or 360-degree processes for junior lawyers to provide feedback on how partners are assigning work and providing feedback to junior lawyers, as well as evaluating, mentoring, teaching, and developing them. The information gathered through the "upward review" or 360-degree processes can be used to identify opportunities for improvement in the professional development and retention of younger lawyers, as well as hold partners accountable for fully participating in the equitable professional development of all junior lawyers. Without the input of younger lawyers on how senior lawyers are participating in their professional development, the biases of partners to select the lawyers they mentor and develop, based on their own comfort zones, continues unchecked.*
- *Law firms also should have comprehensive exit-interview protocols so that departing attorneys are afforded an opportunity to provide feedback on their experiences, their reasons for leaving, and their suggestions for workplace improvements. These data should be aggregated and reviewed to ensure that the firm draws lessons from current attrition that help increase retention in the future.*
- *Law firms should create leadership development and succession-planning programs that articulate the appropriate skills and characteristics for advancement in order to create a diverse pipeline into leadership positions within the firm. With regard to succession planning in particular, law firms should pay specific attention to ensuring that a diverse group of lawyers is being groomed and mentored to assume relationship and/or billing responsibility for key clients of the firm. It is especially critical to focus on leadership development and succession planning early on in the careers of young lawyers.*
- *Law firms should acquire and apply a thorough understanding of generational differences when creating communication, work allocation, feedback, professional development, and retention strategies to ensure that changes in expectations and perceptions from generation to generation are respected, valued, and accounted for in the workplace.*

success at their law firms, but also increased the likelihood that they would leave their law firms for other opportunities.

Although minority lawyers and white lawyers alike aspired to advance into leadership positions within their firms, only 59% of minority lawyers reported understanding what the criteria were for advancement, as compared to 75% of white lawyers. Moreover, many minority lawyers expressed that the criteria for advancement were both subjective and shared selectively by partners with associates with whom the partners were comfortable. These results indicate that minority lawyers often feel excluded from gaining the information they need in order to advance.

Further, 23% of female associates and 18% of female partners felt that their gender would hinder their advancement in the firm, as compared to only 3% of male associates and 2% of male partners. The white men who indicated that gender would hinder their advancement did so due to perceived harm by reverse discrimination.

Among LGBT respondents, more male LGBT lawyers than female LGBT lawyers believed that their sexual orientation would constitute a barrier to advancement. Female LGBT lawyers reported that gender was a greater barrier than their sexual orientation.

Personal Involvement and the Commitment to Diversity

Although all groups universally reported high rates of support for the desire to work in a diverse and inclusive law firm, the survey results indicate that women and minorities displayed a disproportionately higher level of participation in diversity-related events and initiatives.

Nevertheless, women and minorities reported being significantly less comfortable voicing their disapproval if they overheard negative comments based on race, gender, and/or sexual orientation. Many female and minority lawyers expressed concerns that they would be viewed as "troublemakers" if they spoke out against inappropriate comments.

Special Report on Women of Color

The results of this study confirm that the experiences of women of color need to be examined separately, rather than as a subset of gender or race issues, in order to increase retention and promote advancement among female attorneys of color.

Women of color consistently reported more-negative experiences than their white female or male minority counterparts within law firms in several categories, including exclusion from work opportunities, networking opportunities, and substantive involvement in developing client relationships. Women of color also perceived their firms as less committed to diversity than other groups; they also reported experiencing discrimination and bias more often than other respondents.

Recommendations

Personal Involvement in Diversity Efforts

- *Law firms should continue to monitor the hours that every attorney devotes to diversity and inclusion efforts in order to ensure that the work is being shared by people of all backgrounds.*
- *Law firms should create innovative methods to reward contributions to diversity and inclusion efforts in order to ensure that everyone in the workplace is incentivized to support these issues, particularly white males.*

Finally, women of color had the highest incidence of any demographic group with regard to identifying themselves as personally committed to their firms' diversity and inclusion efforts.

The American Bar Association (ABA) Commission on Women published a series of two comprehensive research reports ("Commission on Women Reports") on the challenges faced by women of color attorneys in law firms. Both MCCA's executive director, Veta T. Richardson, and Dr. Arin N. Reeves, MCCA's research consultant on *Sustaining Pathways to Diversity*,® served as members of the ABA's research advisory board. That group oversaw all aspects of the ABA's research project, including research design, development of surveys and focus groups, and review of all findings and final recommendations. The findings and recommendations were published by the ABA Commission on Women in *Visible Invisibility: Women of Color in Law Firms* in 2006, followed by *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms (Visibly Successful)* in 2008.[2] Rather than devoting limited time and resources to repeat in this report the challenges faced by women of color in law firms, it is recommended that one read and adopt the recommendations set forth in Visibly Successful.

Recommendations

Women of Color

- *Law firms should continue to measure women of color as a separate demographic with respect to the recommendations in this report in order to determine whether the firms' diversity efforts fully benefit women of color.*
- *Law firms should carefully consider the findings and adopt the recommendations found in the Commission on Women Reports.*

2 American Bar Association Commission on Women in the Profession (Commission on Women), *Visible Invisibility: Women of Color in Law Firms* (2006), (available online at www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=4920037); Commission on Women, *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms* (2008), (available online at www.abanet.org/women/woc/VisiblySuccessful.pdf).

Diversity in Large Law Firms:

A Comprehensive Exploration of Successes, Challenges, and Next Steps

Introduction

In 2002, MCCA released a ground-breaking publication, entitled *Creating Pathways to Diversity:® A Set of Recommended Practices for Law Firms* (*"Practices for Law Firms"*), that articulated the business case for diversity, highlighted the barriers in law firms that prevented the full manifestation of diversity and inclusion, and offered key strategies for success that got law firms "moving from lip service toward diversity."

MCCA followed up on *Practices for Law Firms* in 2003 with another ground-breaking publication, entitled *The Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms. The Myth of the Meritocracy* delved deeper into one of the critical barriers to diversity and inclusion examined in *Practices for Law Firms* — the fact that, by adhering to the myth that success in the legal profession is a purely objective process based on "pedigree criteria" (*e.g.*, rank and reputation of law school, grade point average, and class rank in law school), the effort to improve diversity is viewed as a deviation from that meritocracy. MCCA's publication illustrated the consequences of positioning meritocracy and diversity as contradictory to each other, and it offered recommendations for how law firms can reframe their efforts on diversity and inclusion by challenging the myth of meritocracy directly.

Together, these two publications pushed law firms from having conversations on diversity to taking informed and strategic action on creating more-diverse and inclusive workplaces. Recently, law firms have been working diligently to take their diversity efforts to the next level by supplementing their recruiting programs with taking a closer look at their retention strategies; integrating diversity and inclusion into professional development initiatives that benefit everyone; and underscoring the need for action by creating accountability mechanisms. Law firms should be commended for their hard work in the area of diversity; nevertheless, how successful have their efforts been, and what do they have to do to sustain the pathways they are forging towards workplaces with greater diversity and inclusion?

Sustaining the Pathways to Diversity:® The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms reveals MCCA's findings from the most comprehensive survey conducted to date on diversity in large law firms. This report further develops the issues explored in earlier MCCA Pathways series research to more holistically examine how traditional pedigree criteria impact the hiring and retention of diverse lawyers, and how a lawyer's background may inform his or her perspectives on the traditional pedigree criteria.

The survey (reproduced in this publication's Supplemental Materials) was sent to all of the AmLaw 200 law firms, as well as 17 additional firms that were not on the AmLaw 200 list but had submitted information to the *MCCA/VAULT Guide to Law Firm Diversity Programs*. In response, 4,406 lawyers answered the survey. These lawyers represented 124 of the 217 law firms. Moreover, 58 firms had responses from at least 10% of all of their lawyers.

The demographic distribution across the respondents was as impressive as the response rate.

- 49.3% of the respondents were partners, 40.7% were associates, and 8.2% were counsel/of counsel.
- 58.5% of the respondents were male, and 41.5% were female.
- 22.6% of the respondents identified themselves as belonging to one or more racial/ethnic minority groups, and 75.1% of the respondents identified themselves as white/Caucasian.
- 4.9% of the respondents identified themselves as lesbian, gay, bisexual, or transgender.
- 1.8% of the respondents identified themselves as having a disability.

The survey also used a complex matrix of law school rankings by *U.S. News & World Report* (a publication that has ranked law schools since 1987) and law school grades of the lawyers to analyze how traditional pedigree criteria impact the experiences of diverse lawyers. The distribution of the survey respondents across this matrix was both diverse and representative of lawyers in AmLaw 200 law firms.

- 15.5% of all respondents graduated from a law school that was ranked 1-10 at the time of their graduation.
- 12.6% of all respondents graduated from a law school that was ranked 11-20 at the time of their graduation.
- Although only 22.6% of the respondents in the survey were racial/ethnic minorities, 37% of the respondents who graduated from a Top 10 school were racial/ethnic minorities, and 32.4% of the respondents who graduated from a law school ranked 11-20 were racial/ethnic minorities. Caucasians made up 75.1% of the survey respondents, but represented 62.9% of graduates from Top 10 schools, and 64% of law schools ranked 11-20.

Sustaining the Pathways to Diversity:® The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms offers the most comprehensive collection of quantitative and qualitative perspectives to date on how lawyers in large law firms perceive diversity and inclusion in their firms, and how they view the connections between their own careers and the ongoing diversity efforts in law firms.

Strategic Leadership and Commitment

As Table 1 illustrates, the majority of respondents reported overwhelmingly that the leadership of their law firms have communicated and addressed a commitment to diversity, but that significant and substantial differences exist between majority and minority attorneys, as well as between female and male attorneys. The positive responses reflect how far law firms have progressed in communicating their commitment to diversity and inclusion. On the other

hand, the demographic variations for neutral and negative responses suggest that substantial differences exist with respect to how different groups view the progress that remains to be achieved by law firms.

Fewer minority lawyers and female associates reported a positive perception regarding the strategic leadership and commitment on diversity in their firms (81% and 79%, respectively). In comparison, whites and male partners had the highest positive ratings on this subject (90% and 94%, respectively). Although a plurality of minority and female lawyers felt that law firms were moving in the right direction and had worked hard in the area of diversity, many minority attorneys agreed with one respondent's comment that **"most law firms 'talk the talk,' but few 'walk the walk.'"**

Although all groups reported that their firms' commitments to diversity were quite strong, many white men expressed reservations that their firms' commitment to diversity was at the expense of the opportunities available to white men. As one white male lawyer expressed,

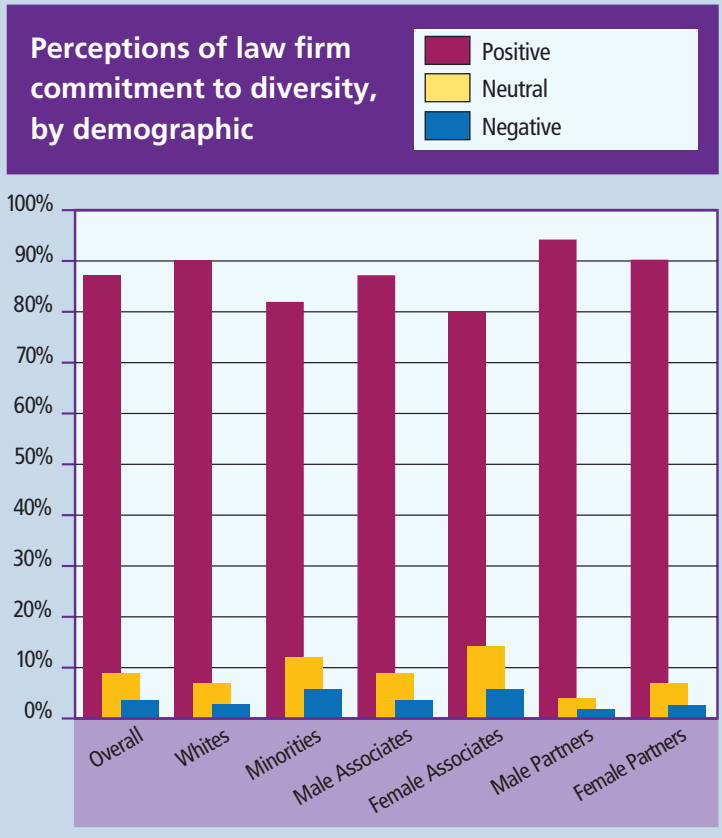
> **"I believe that all persons should be judged (*i.e.*, as potential new hires, potential partners, etc.) based on their merits and not based on their race, gender, sexual orientation, religious beliefs, etc. I believe that every effort should be made to increase the equality of opportunity (*i.e.*, to foster an environment where merit is the sole criteria) and to decrease the equality of results (*i.e.*, to hire or promote 'diverse' applicants based solely on their diverse qualities). As a straight white male associate, I believe that my firm forecloses me from certain opportunities for client and attorney networking that are available to other more 'diverse' associates."**

The survey revealed that law firms are more effectively communicating their commitment to diversity, but that the commitment may not always be accompanied by a clear message on why diversity is important. A minority male lawyer communicated his frustration on the tension in law firms between promoting the business case for diversity and encouraging diversity as the right thing to do:

> **"Law firms should be diverse and inclusive because it is the right thing to do. Too often, I feel as though the major law firm's diversity efforts are business driven and that there is no firm commitment by the partners, whom the associates work with on a daily basis, to train, mentor, or otherwise appropriately evaluate diverse associates."**

Table 1

Perceptions of law firm commitment to diversity, by demographic



A minority female lawyer expressed a similar perspective:

> **"Minority attorneys face career isolation and social isolation. Minority attorneys feel socially isolated for two reasons, either because no one is talking about diversity, thus they become the 300 lb. gorilla in the room. Or second because firms are talking about diversity as an economic tool for firm advancement due to increased pressure from corporate clients. In both situations the minority attorney does not feel like a valued part of the team, either because his/her uniqueness is being completely ignored, or on the other hand the minority attorney's uniqueness is treated like a commodity, and the attorney feels like a token who is simply there for the firm's numbers."**

The survey reveals that white male attorneys continue to wonder whether their firms' diversity efforts will disadvantage them; for their part minority attorneys continue to wonder whether their firms will devalue the ethical underpinnings of inclusiveness by linking diversity efforts only to the business case for diversity. This suggests that law firms have communicated their commitments to diversity, but have much ground to cover in communicating the foundation for its importance, as well as the mechanics of fairness by which diversity efforts will be implemented and sustained.

Recruiting and the Myth of Meritocracy

MCCA's 2003 *Myth of Meritocracy* report found that, in a random sample of partners in large law firms, minority partners were more likely to have graduated from a Top 10 school than their white counterparts. Further research in this report illustrates that for many law firms, the bar for recruiting minorities was actually higher than it was for recruiting whites.

The 2008 survey that forms the basis for this publication finds that the myth of a meritocracy continues to be a critical discussion point for law firms seeking to increase the diversity and inclusion in their workplaces. A strong sentiment continues to be held by many white men that minorities who

Recommendations

Strategic Leadership and Commitment

- *Law firms should continue to stress the strategic importance of diversity and inclusion from the leadership level, including why it is a priority. To minimize the skepticism that a firm's efforts are "all talk," law firms should focus on consistent implementation of their strategies, and create measurement tools that track and report on progress on their efforts.*
- *Law firms should ensure that white male voices are included in dialogues on diversity and inclusion. Strategic communication on diversity and inclusion should focus on how more-inclusive workplaces work better for everyone; likewise, diversity initiatives should be communicated as collective progress efforts, instead of competition catalysts between groups.*
- *Law firms should "check in" with their lawyers on a regular basis to ensure that the diversity and inclusion efforts are working effectively for the needs of their lawyers, and firms should modify their efforts based on the feedback.*

are hired into law firms are less qualified than other candidates. This sentiment is reinforced by a related sentiment that even minorities who graduate from top law schools are less qualified because they entered those law schools through racial preference programs.

As one respondent in the survey comments:

> **"I believe, based upon statistics and empirical data, that I had a more difficult time as a white, straight male being accepted to a top law school. I also believe that I face a higher bar than attorneys who are members of racial or sexual orientation minority groups in terms of billable hours, portable business, and other firm contributions necessary for promotion to a partner or counsel position. I believe that the perspective of those such as myself in these types of 'diversity efforts' is either ignored or dismissed as the ignorant rants of a racist or ill-informed person. I am neither. I hope that someone realizes that this incessant focus on diversity and inclusion — which, judging by the minority students with 145 LSATs at my top ten law school, and the massive effort to recruit and retain minority attorneys at all law firms in which I have worked or for which I have insider knowledge, essentially means taking opportunities and resources from those with merit and giving it to people based upon race, gender, or sexual identity — is forcing us apart, not bringing us together, by dividing us into skin color, gender, and sexual identity fiefdoms fighting for scarce resources. I can think of few things worse for an ostensibly colorblind and meritocratic society. I ask, genuinely and sincerely, that you consider these perspectives as well."**

Although many people who adhere to the law school rank/law school grade point average (GPA) model of meritocracy focus on racial/ethnic diversity as the violator of that meritocracy, this study finds that minorities and white women actually share many of the same perspectives on whether the historical markers of meritocracy (*i.e.*, law school rank and law school GPA) qualify as adequate predictors of future success.

With regard to the role that the traditional pedigree criteria of law school ranking and law school GPA should play in recruiting lawyers into large law firms, the survey findings indicate an interesting trend: Although minorities were less likely to view these criteria as important than whites, the group most likely to disregard the primacy of these criteria were female associates, most of whom are white. The group most likely to hold these criteria as critical to recruiting new lawyers was white male partners.

Table 2-A

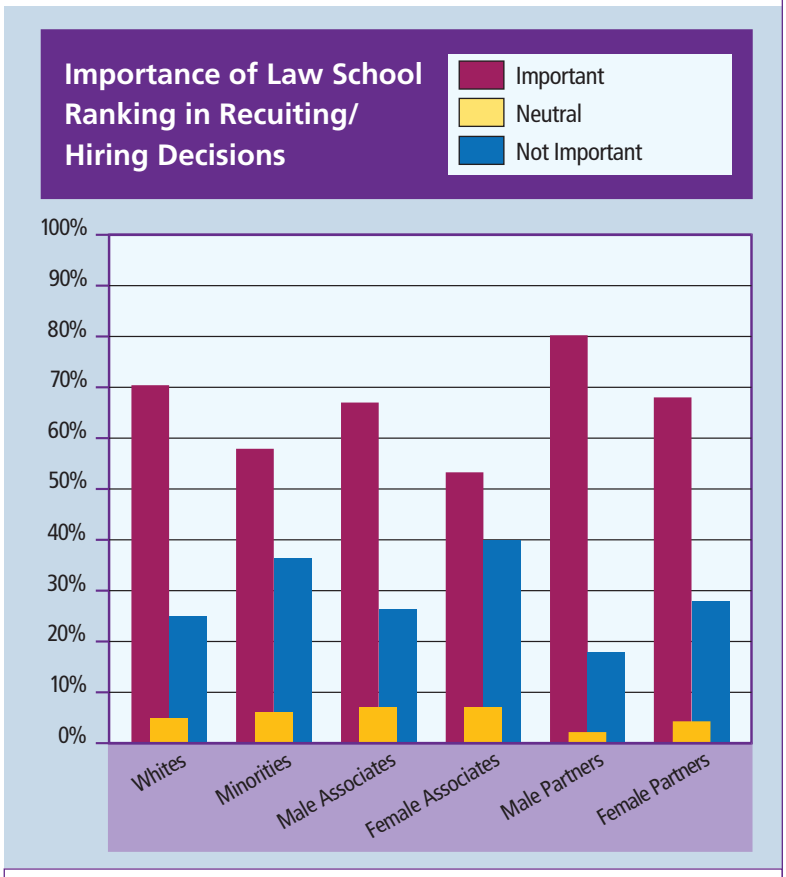


Table 2-B

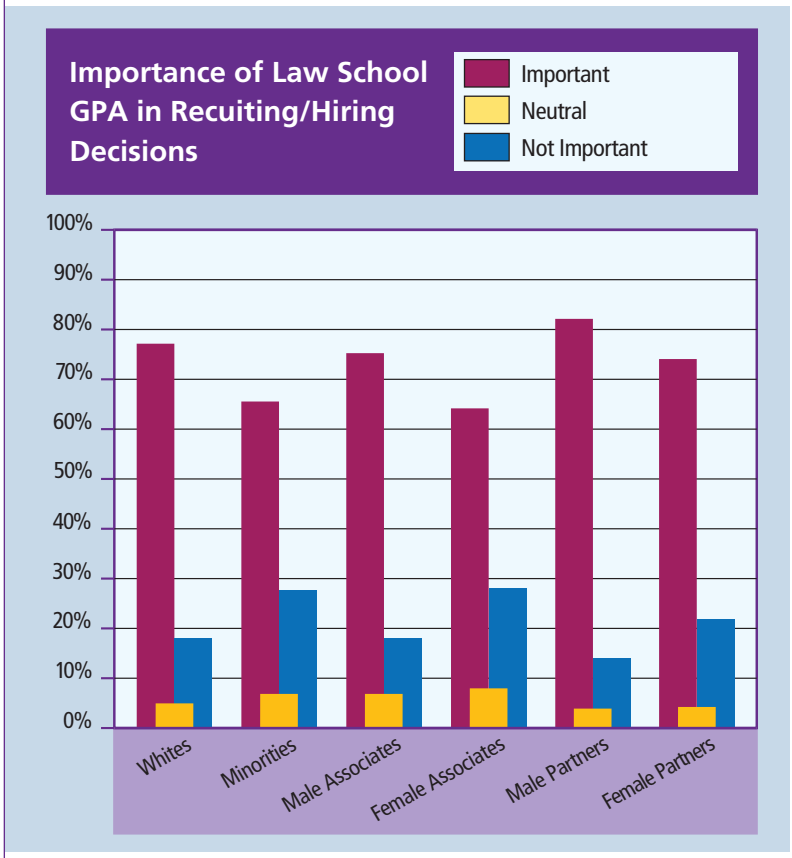
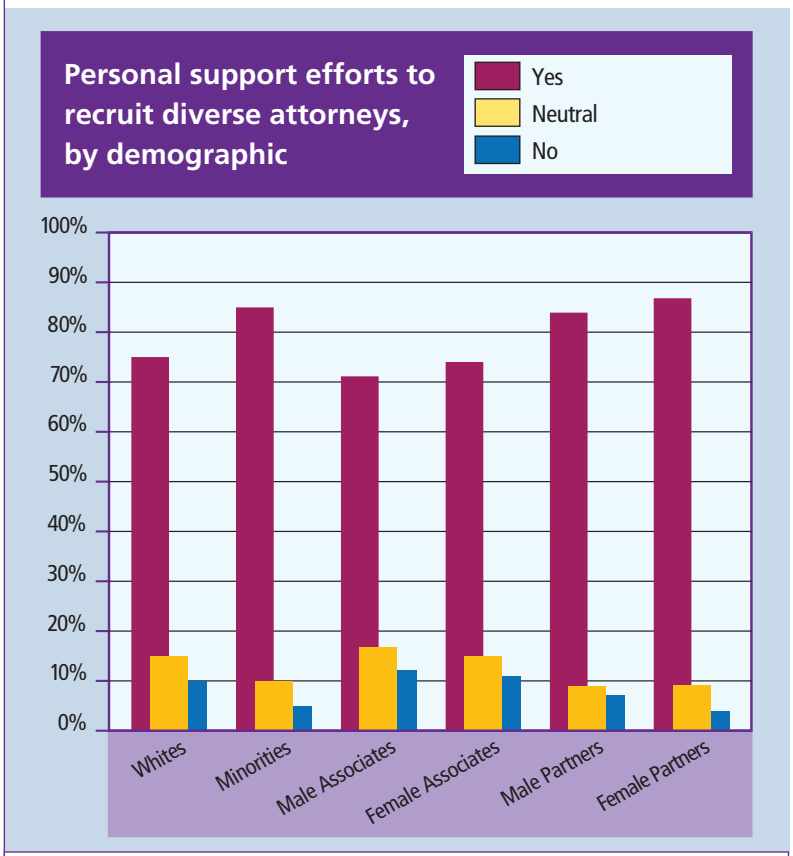


Table 3



Even when focusing specifically on groups who had graduated from the Top 20 schools, the survey's findings determine that minorities were still less likely to rate law school ranking and law school GPA as important criteria for recruitment in comparison to their white counterparts.

Women generally believed that law school rank and law school GPA should be balanced with other criteria, such as judicial clerkships and interview performance, whereas men generally believed that these other criteria were less important than the traditional pedigree criteria. Among lesbian, gay, bisexual, and transgender (LGBT) attorneys, 46% of the women responded that law school rank and GPA should be balanced with other criteria, in comparison with only 34% of their LGBT male counterparts.

Because women and minority lawyers reported higher levels of active support for their law firms' efforts to recruit and hire a diverse group of attorneys (as demonstrated in Table 3), their perspectives on this issue are particularly meaningful.

Many of the women and minorities in this study echoed one minority male lawyer's perspective:

> **"Recruitment should weigh a candidate's potential impact on the work environment as a whole and not place too much emphasis on grades and class rank. Connecting academic performance to success in the law firm environment is not a perfect science."**

Many white males, on the other hand, supported the perspective of one respondent:

> **"Diversity should take a backseat to performance and capability. It should not be considered at all — one way or the other — in hiring or advancement decisions . . . the competition for law students with diverse backgrounds has become intense over the past 5 years.**

While that is exceedingly good news in one respect, as it shows a commitment to recruiting candidates with diverse backgrounds, it also in some instances has led to lowering the standards to promote diverse inclusion, which can lead to its own set of problems."

In spite of the perceived tensions between pedigree and diversity, many respondents discussed ways in which their law firms have closed off opportunities to recruit highly qualified and diverse lawyers by remaining frozen in historical recruiting models. One white male lawyer encouraged law firms to consider:

"The recruiting pool should be as broad as possible so as to permit the achievement of the goals of merit and diversity."

Other respondents recommended that law firms utilize the framework of "removing barriers" and leverage new recruiting methods, such as job fairs hosted by minority, women, and LGBT-focused associations, as tools to align pedigree goals with diversity goals.

Inclusion and Work Environment

As MCCA's previous studies and other studies on law firms have documented[3], even when law firms improve their performance in hiring a more diverse lawyer workforce, they continue to struggle in their ability to retain the minorities, women, and LGBT lawyers that they hire.

The findings in this research indicate that the overall levels of inclusion in the workplace have not yet caught up with the commitment to diversity ex-

3 *See, e.g.,* Minority Corporate Counsel Association (MCCA), *Creating Pathways to Diversity: A Set of Recommended Practices for Law Firms* (2002), (available online at www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=613) (MCCA Blue Book); MCCA, Creating Pathways to Diversity: *The Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms* (2003), (available online at www.mcca.com/index.cfm?fuseaction=Page.viewPage&pageId=614) (MCCA Purple Book); National Association of Women Leaders, *National Survey on Retention and Promotion of Women in Law Firms* (2007 and 2008 surveys available online at www.nawl.org/Publications/Surveys.htm); NALP — The Association for Legal Career Professionals, *Diversity & Demographics* reports (available online at www.nalp.org/diversity2); American Bar Association Commission on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms* (2006), (available online at www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=4920037).

Recommendations
Perceptions of Meritocracy

- *Law firms should candidly assess the criteria that lead to success in their workplaces, and create interviewing and hiring protocols that reflect their realities, instead of perpetuating the myth that success is predetermined by the rank of the law school that candidates attended or their law school grade point averages and/or their individual rank within their graduating class.*
- *Law firms should revisit their hiring criteria with a view to setting standards that better reflect the characteristics and experiences that really delineate who will succeed in today's competitive law firms, as opposed to imposing narrow criteria consisting largely of an examination of a candidate's academic pedigree. Once revised, the new "reality-based" hiring criteria should be articulated and communicated widely to all involved in the hiring process to ensure that the new reality-based criteria are applied consistently and uniformly to all candidates. Law firms should not side-step this difficult analysis of what it takes to succeed in law firms by defaulting to more-rigid adherence to academic pedigree credentials in the mistaken belief that, by more stringently applying academic pedigree-based credentials, they will achieve a more competitive and capable workforce.*
- *To increase diversity among interview candidates, law firms should focus on attending regional job fairs that focus on diverse candidates, increase the universe of schools from which they recruit, and participate in collaborative efforts with other law firms to attract diverse candidates to regions that may historically have not attracted diverse candidates.*
- *Law firms should consistently communicate that diversity and inclusion efforts are intended to increase their pools of qualified candidates and create equal opportunities for everyone to succeed within their workplaces.*

pressed by law firms. Some minority lawyers expressed pessimism regarding law firms' inclusion efforts.

> **"The lack of diversity in law firms is so strongly entrenched that I do not believe full, true, meaningful inclusion will occur in this setting in our lifetimes."**

Others expressed support for their firms' work in this area.

> **"I believe that the benefits of diversity and inclusion are well thought out and presented at our firm. There has been significant attention paid to this, especially in the past few years. It is presented in a positive light and we have a specific diversity initiative in place and a director recently hired through a national search who is very active."**

One minority female lawyer summarized that

> **"I cannot stress how important it is for a firm to make its associates of color feel welcome, included and equal."**

This study explored several areas of inclusiveness in a work environment. To illustrate the demographic differences in how lawyers feel included (or excluded) in their specific work environments, elements 1 – 6 of this section collate the responses to the following six key inclusion and work environment criteria by demographic group:

- Overall parity in treatment as compared to peers;
- Absence of discrimination (which instead may frequently take more-subtle forms);
- Access to good work;
- Balanced and candid performance evaluations;
- Inclusion in informal networking opportunities; and
- Inclusion in the development of clients and client relationships.

In addition to these specific issues, respondents also reported on their perceptions of reverse discrimination in relation to inclusion efforts, as well as perspectives on work/life balance in their law firms. These two topics are explored in further detail in elements 7 and 8 of this section.

As the data referenced in this section will illustrate, women and minorities reported that they are less likely to feel that they are treated as equals by their peers, and they are more likely to perceive discrimination based on race or gender. Further, women and minorities reported that they are less likely to receive the quality work that they are seeking, and that they are more likely to receive unfair performance evaluations. Finally, women and minorities reported that they are less likely to feel included in informal networking opportunities, as well as opportunities to develop clients and client relationships.

Minorities and women were less likely to rate their work environments as places where they were treated as peers by their peers, whereas male partners and male associates (most of whom were white) were the most likely to rate their work environments as places where they were treated as peers by their peers.

Some of the more specific data are even more explicit in their illustration of current rates of attrition. Regardless of their law school rank or law school GPA, African American lawyers were the most likely to rate their work environments as the "least inclusive," and white lawyers were the most likely to rate their work environments as "highly inclusive." Further, African American lawyers who graduated from law schools in the highest tier were still more likely to rate their law firms as not inclusive when compared with their white counterparts from much lower-tier schools.

The following eight factors influence a law firm's success in creating an inclusive work environment.

1. Parity in Treatment

Significant differences were displayed between attorneys who felt that they were treated as equals by their peers and attorneys who felt that they were not. As demonstrated in Table 4, these differences manifested along racial/ethnic and gender identities alike.

When asked if they felt they were treated differently because of their gender, 13% of female associates, 18% of female counsel/of counsel, and 15% of female partners felt that they were treated differently because of their gender.

When asked if they felt they were treated differently because of their race, 10% of minorities felt that they had been treated differently because of their race, in comparison to only 2% of whites who felt that they had been treated differently because of their race.

When asked if they felt they were treated differently because of their sexual orientation, 8% of male LGBT and 10% of female LGBT lawyers felt that they had been treated differently because of their sexual orientation. As one LGBT lawyer explained:

> **"While I have not experienced any outright, blatant discrimination at my firm due to my sexual orientation, there is still a 'chill' surrounding my experience with many of my co-workers and partners that can only be attributed to their fear/ignorance/lack of understanding regarding my sexual orientation. For instance, there is a lot of 'social interaction' at my office and it is clear that 'groups' exist that generally receive work from the same partner over and over. Much of this cohesion seems to stem from a shared social experience, and I have often felt that I am excluded from this due to my sexual orientation (I am gay). By way of example, it is clear that when a group of attorneys are having a social discussion regarding their boyfriends/girlfriends/wives/husbands, the conversation stops when I attempt to join. This does not happen when we are discussing ANY other social topic (except those that could lead to discussion of partners/wives/husbands/girlfriends etc.) . . . this exception regarding socializing and discussing private lives is glaring — especially when it seems that work relationships (i.e., associates who receive more work from the same partner and/or have deeper work relationships with a partner such that they are given more mentoring and treated better) ultimately rely upon these social interactions to further their existence."**

Table 4

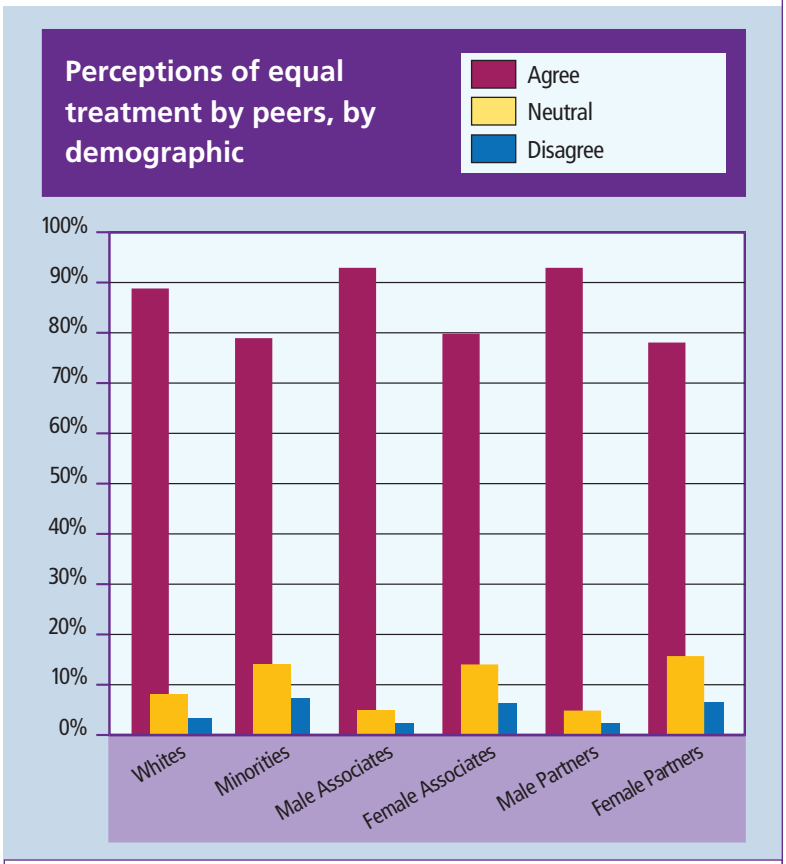
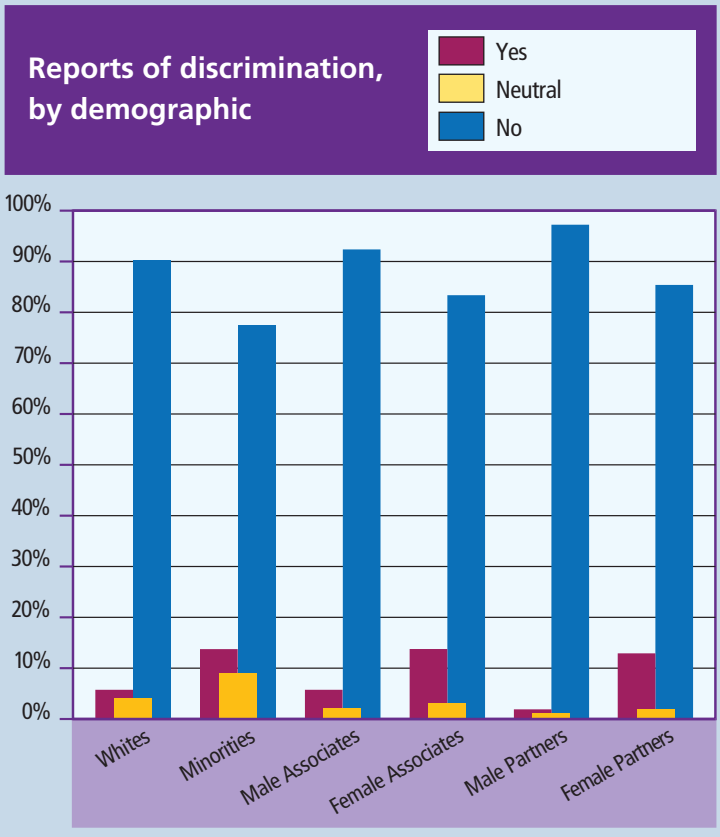


Table 5



2. Discrimination

In addition to the demographic differences in perceptions of being treated as an equal by peers, similar demographic differences (as demonstrated in Table 5) were evident in the reports of discrimination based on diverse identities.

The survey asked respondents about whether they had experienced discrimination based on race, gender, or LGBT identity. Several respondents provided detailed explanations illustrating their quantified answers.

"The discrimination that I have experienced is subtle, the most insidious kind. These guys are too savvy to exercise blatant discrimination. But the numbers speak for themselves."

— minority male

"There are subtle forms of 'discrimination' at firms that are difficult to truly pinpoint or detail. We all know that the best way to succeed at any law firm (and any other business) is to have a strong firm leader to open doors and opportunities. But how is one to know whether missed opportunities are a result of a racial or gender bias? Many times, because personal relationships developed in any working relationship are purely subjective, it is hard to say whether ethnic or gender differences play into decisions. However, it is very apparent that being of the same race, ethnicity or gender as a powerful partner who can make things happen for an associate is definitely easier when that partner feels comfortable with the associate, whether it's because the associate is of the same race, ethnicity or gender as the partner holding the opportunities."

— minority female

"You rarely see or experience glaring discrimination. The biggest problem that I have had to overcome was to show my colleagues that, although different, I'm still intelligent and able to handle their matter. Discrimination is most often exhibited by exclusion or questioning the abilities of people of color whereas they would not do the same for a white attorney."

— minority female

3. Access to Work

Although perceived treatment by peers and experiences of discrimination may affect feelings of being fully included in law firms, many of the respondents were at least as concerned about the substantive ways in which they felt professionally included in their law firms. Equal and unhindered access to good work was viewed by many respondents as a cornerstone to success in their law firms; as Table 6 illustrates, significant demographic differences existed among respondents feeling that their identities had caused them to be excluded from assignments that were necessary for professional development and advancement.

Several respondents provided detailed explanations illustrating their quantified answers.

"Diversity is not considered in the allocation of work or in the process for selecting partners. Firm management should establish benchmarks in both areas and recognize that it may be discrimination, rather than honest concerns about competency, that are keeping women from challenging work and partnership."

— white female

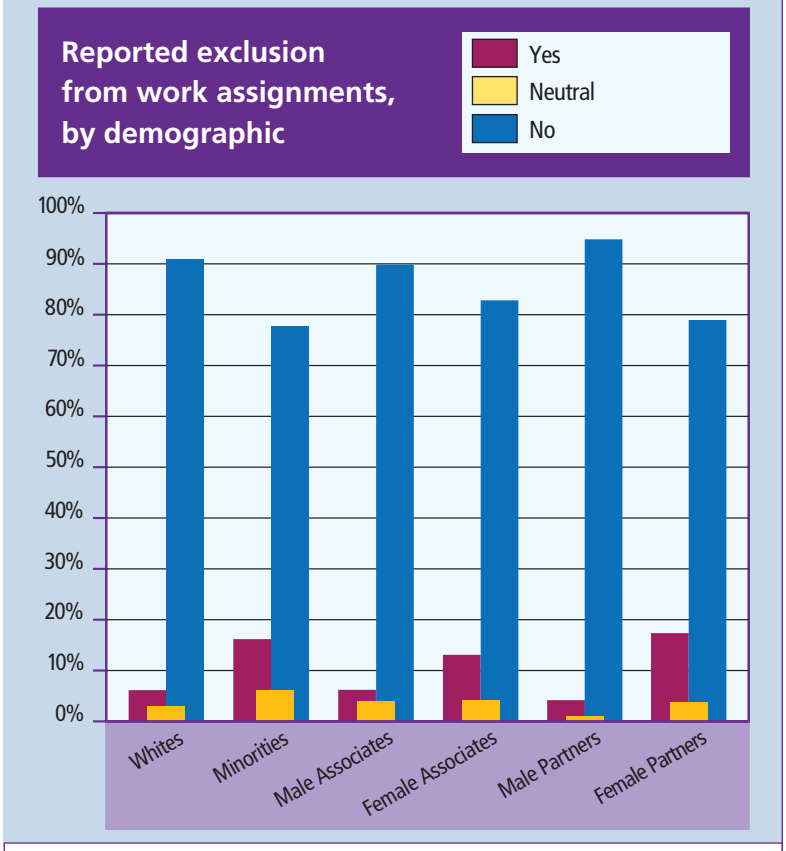
"Work allocation and the recruitment processes should be less subjective. Discrimination occurs in these processes when we allow them to be governed by group/gender/racial identity and comfort levels (or lack thereof)."

— minority female

"Law firms will not be successful on the issue of diversity until they resolve the work allocation issue. Diverse attorneys need to be given the same opportunities to develop their technical skills as majority attorneys. They also have to be given opportunities to meet their billable requirements. If an attorney is not able to get the work they need to both develop and meet their targets, they will not be successful in a law firm."

— minority female

Table 6



4. Performance Evaluations

Table 7 illustrates that the demographic differences in experiencing unfairness in performance evaluations closely paralleled the demographic differences in experiencing unfairness in work allocation. Taken together, these two data points suggest that minorities and women feel both excluded from desirable work assignments and unfairly evaluated on the work assignments they do receive.

Several respondents provided detailed explanations illustrating their quantified answers.

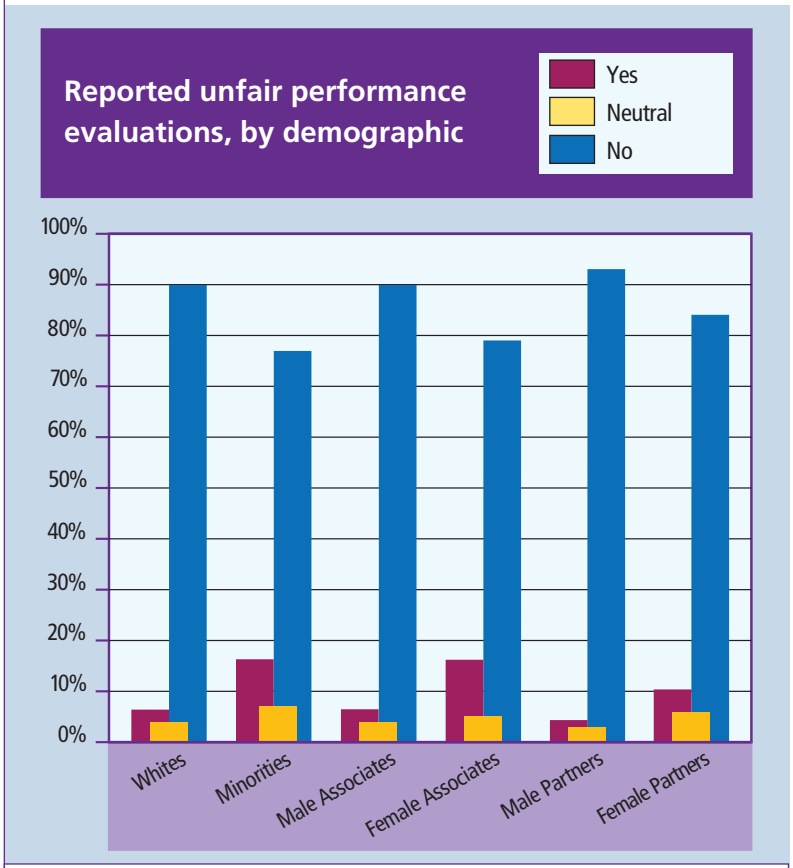
"I have felt discriminated against at every stage of my career… My work product is constantly questioned. I am required to go back and verify my work many times and I have never found anything wrong with my initial assessment. I am doubted all the time. My evaluations have reflected this — I have done stellar work only to receive poor feedback. For example, I worked on a project with a male associate who was very experienced in this particular assignment, while it was my very first time doing it. When a mistake arose, which we were both responsible for, I was taken off the case even though my male colleague proceeded to make two additional mistakes."

— minority female

"I have continually asked for more responsibilities, business development opportunities, client contact, etc. only to be given document review and a very long research project that a 1st year could do, which left me at my computer for several weeks, without contact with anyone. When evaluations come up, no one even knew my capabilities and gave me poor reviews for not being a team player and not being available for work."

— white female

Table 7



5. Informal Networking Opportunities

For many of the survey's respondents, informal networking opportunities in their law firms (especially between associates and partners) provided the foundation through which they were able to access the information, resources, assignments, and advice they needed in order to develop their careers strategically. As demonstrated in Table 8, the differences in perceptions between the different demographic groups suggest that women and minorities experience their careers in law firms in substantively different ways than do their male and white counterparts.

Several respondents provided detailed explanations illustrating their quantified answers.

"I think there are many good intentions to increase diversity in my firm, but too often, there seems to be little follow through with inclusion. There is a strong male-dominated sports culture that by its very nature excludes most women. I don't see much effort to include women in networking and business development, perhaps the male-dominated partner group doesn't know how to do that."

— white female

"Although I am generally not a fan of formal inclusion requirements, I think they could be used for a period of time to educate older male attorneys and break down the barriers to inclusion of women attorneys in more networking and business development activities. A requirement that male attorneys interact with their female peers (periodic required lunches, for example) a certain number of times per month/year might be helpful. Also, there needs to be some effort to assist women attorneys with business development activities to overcome the hesitance of clients to interact with female attorneys."

— white female

6. Client Development and Relationship Opportunities

Just as Table 8 illustrates a difference in perceptions regarding access to informal networking opportunities, Table 9 shows that the differences in perceptions of access to client development and client relationship opportunities are equally stark between different demographic groups.

Table 8

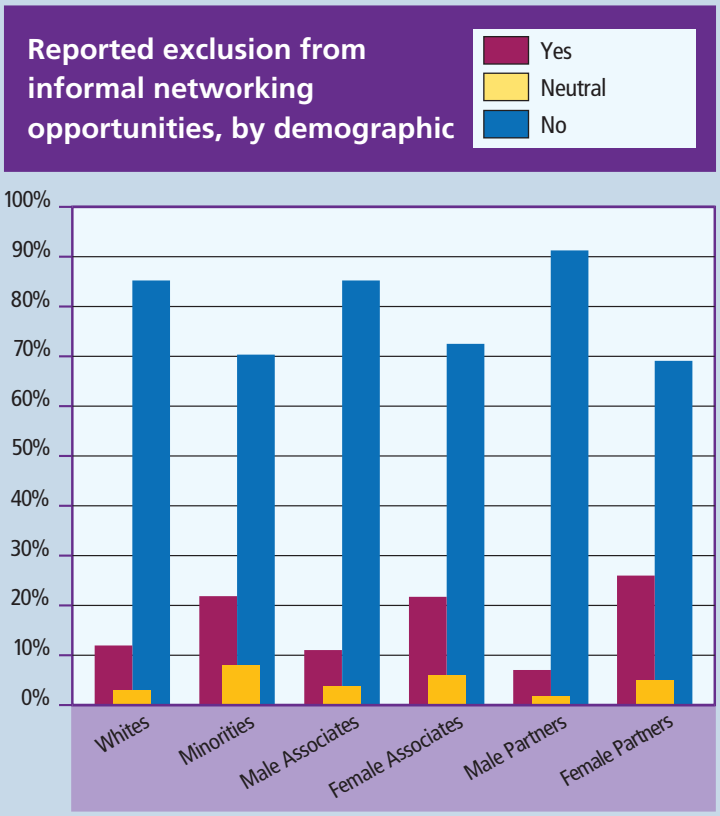
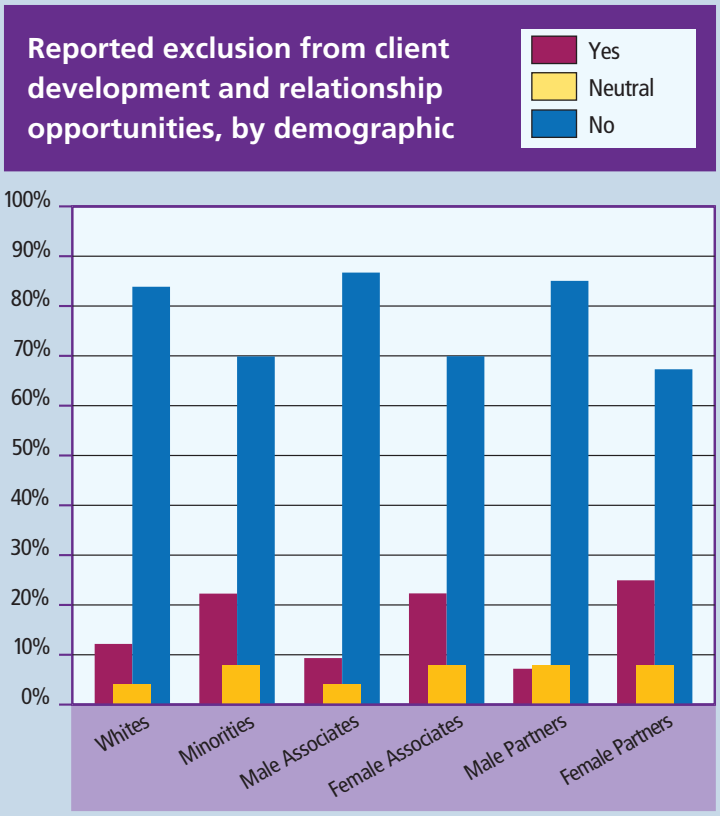


Table 9



In addition to the disparities in feeling excluded from client development and relationship opportunities, only 58% of minorities reported being satisfied with the opportunities they had to participate in business development efforts with important firm clients, in comparison to 73% of whites.

Several respondents provided detailed explanations illustrating their quantified answers.

"I think the number one problem I have experienced is that for my experience and capabilities I have not been included in some key client relation teams which I thought would have been appropriate."

— minority male

"My chief complaint or observation regarding barriers to advancement and improved practice development focus on issues of gender — most of the key decision makers at our clients are men and client development events tend to be geared towards more traditionally 'male' events, such as football games, other sporting events and occasionally visiting 'gentlemen's' clubs. The level of discomfort I have felt on previous occasions, especially in the last cited circumstance, was unacceptable and I felt had a demeaning impact on the professional relationships I had tried to establish with male clients."

— white female

"Access to mentoring, client development, leadership opportunities, etc. is still disproportionately provided to the white male associates. While some of this perpetuation is deliberate (if not overt), much of the perpetuation hinges on an unwillingness in most law firms and most partners to make diversity a priority and to accept possible changes to the power structure, as well as an utter lack of recognition that effecting diversity (as opposed to just promoting diversity) requires a conscious effort."

— minority female

"Management seems to think that once you make partner, you don't need or want or deserve constructive guidance anymore. That is simply not true: the exclusionary practices of the predominantly white male partner population make it nearly impossible for women especially to get the high profile work and participate in high-profile client development — even when the white male counterpart skill set is inferior. It is highly frustrating for senior women who have 'stuck it out' in the profession only to find that nothing has really changed, and the focus is all on the younger generation. If more attention were paid to improving the situations of senior

women and minorities, that would deliver the positive message so sought after on the younger generation's behalf."

— white female

7. Inclusion and Reverse Discrimination

Tensions between pedigree and diversity resurfaced in many white men's comments on what they perceived to be "reverse discrimination" in inclusion efforts.

Several respondents provided detailed explanations illustrating their quantified answers.

"Reverse discrimination seems to be becoming an issue. Attorneys of color are often sought out for RFPs even though they will not be working on the projects. Also, a negative trend of making people feel as though they need to endorse or support others' lifestyles and behaviors is beginning to detract from the weight of pushes for a fair and equal or nondiscriminatory policy. These are not the same. If too much is pushed on people, they will rebel, and not only not take things seriously, but resent [the initiative]."

— white male

"Diversity and inclusion are important but stretch hires of minorities who are not qualified sometimes does much to undermine the message and acceptance of diversity and inclusion."

— white male

" 'Diversity and inclusion' are pernicious forms of racial etc. discrimination. I do not discriminate for or against anyone based on race, sex, religion etc."

— white male

"The best way to achieve diversity and inclusion is outstanding performance. The use of pernicious discrimination in the name of diversity and inclusion fosters a victim mentality and an expectation that success does not need to be earned."

— white male

These statements highlight the communication challenges that law firms continue to face in promoting inclusion in a way that embraces the perspectives of white men who may see inclusion efforts as a challenge to their perceptions of their workplaces as bastions of meritocracy.

8. Work/Life Balance

For many lawyers who participated in the survey, the work/life balance options offered by their law firms were a direct reflection on the inclusive nature of their workplaces. The lawyers also differentiated between the existence of these options and their ability to exercise these options without negative consequences to their careers.

Overall, minorities and women were more negative about work/life balance in their law firms; it is interesting to note, however, that female associates' perspectives were much closer to that of male associates than they were to female partners. This illustrates that a generational difference on this issue appears to be greater than a gender difference.

"Gender diversity is adversely affected by the firm's inconsistent attitudes toward part-time lawyers. It appears that part-timers are overpaid, in that their pay percentage is spoken of as if it should match their hours percentage, rather than their contribution to the bottom line. Because they are perceived as overpaid, they are resented as slackers. If every lawyer's time commitment was valued

Table 10-A

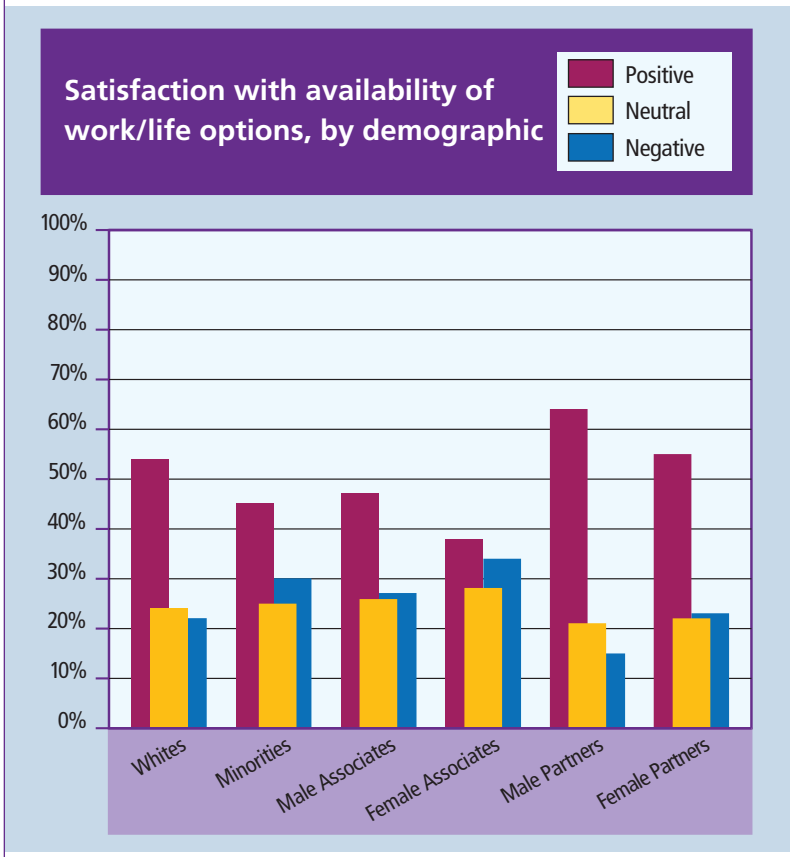
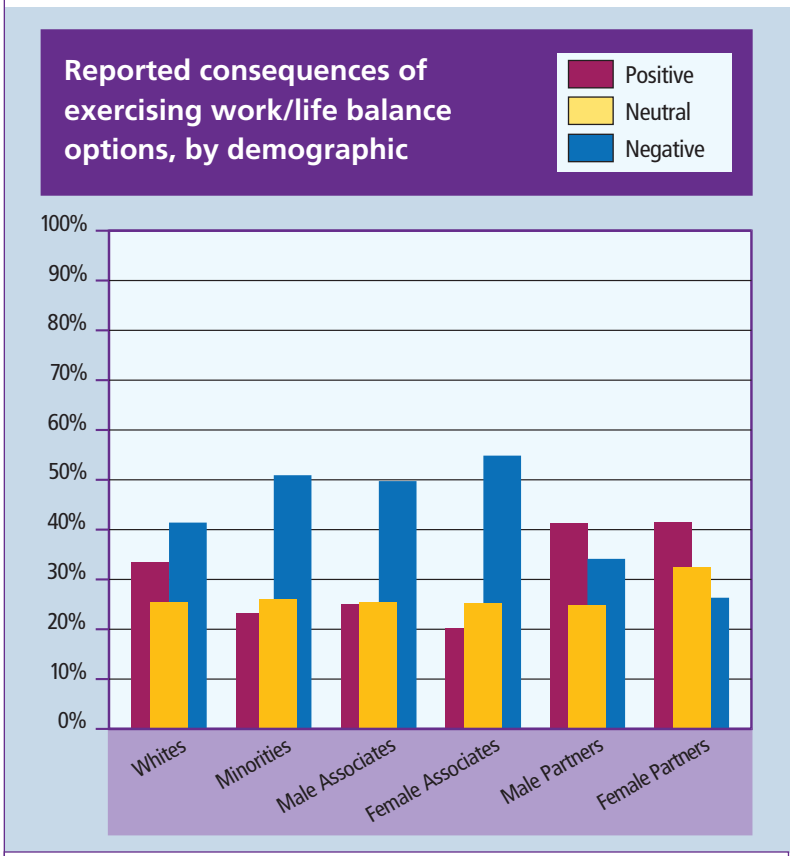


Table 10-B



and compensated based on contribution to the bottom line, part-timers would not be perceived as inefficient and costly members of the firm. As a 'Daddy Tracker' I have always thought it strange that part-time arrangements and family balance are treated as a women's issue. Until part-time and family balance are recognized as gender neutral, women will always be disadvantaged at the firm."

— white male

As this response demonstrates, perceptions within a law firm regarding work/life balance programs can be harmful to men and women alike who pursue alternative work arrangements. Tables 10-A and 10-B, along with the related quotes, illustrate the demographic breakdown in responses regarding satisfaction with available work/life balance options, as well as whether exercising those options might result in negative consequences for their careers.

One respondent provided a detailed explanation illustrating her quantified answers.

"Mean what you say when you recruit. As a summer associate, I was told that my firm championed 'work-life balance.' As a first year, I was told that 'balance' may be best achieved by working over-drive in your first few years of an associate, and beginning a life later in my career. By the time I reached my third year, 'balance' was no longer discussed. Retention of all associates becomes problematic once the associate feels baited and switched."

— white female

Several respondents provided detailed explanations illustrating their quantified answers.

"A key aspect of diversity in my opinion is recognition and accommodation of the fact that many younger lawyers have a

different view of work-life balance than more senior attorneys in the firm. I see this difference as not only generational, but as an outgrowth of the significant increase in dual-income families and the different demands placed upon families with young children now as opposed to many years ago. I think my firm is making strides toward recognizing that and providing opportunities for work arrangements that recognize that difference. However, there is still a long way to go."

— white female

"Provide alternate tracks to success. Most firms provide all or nothing. Absent the first and second years who are seeking the highest bidder, mid- to senior level attorneys are seeking balance and would forfeit the higher salary for higher flexibility — so long as they would not be penalized in reputation, perception or ability to succeed in the organization."

— white female

Recommendations
Inclusion and Work Environment

- *Law firms should recognize that a commitment to diversity and inclusion does not automatically translate into inclusive work environments. Law firms have to strategically assess their workplaces with regard to creating an environment of full inclusion, and create an action plan that proactively increases inclusion in the way attorneys experience work and life at their firms.*
- *Law firms should also recognize that a decrease in overt and explicit discrimination alone does not signal the elimination of all discrimination. Law firms should expand their definitions of and trainings on discrimination to include subtle forms of discrimination and disparate treatment that often have the same consequences for diverse lawyers as explicit discrimination.*
- *Law firms should create an ombudsperson role for their workplaces, so that attorneys who want to discuss their experiences have a well-trained and well-informed person to whom they can turn for guidance.*
- *To ensure equal opportunities in work allocation, law firms should regularly evaluate their work-allocation protocols to ensure that everyone in the firm has equal access to the quantity and quality of work they need to effectively develop and advance in their careers. Law firms also should create accountability measures for leaders of departments and practice groups to ensure that inequality of opportunity is immediately and effectively addressed by the leadership.*
- *Law firms should ensure that all senior lawyers who play a role in the evaluation of attorneys are well-informed and well-trained in effective feedback and evaluation techniques.*
- *Law firms should develop and implement "360-degree" feedback loops within their workplaces to gather data on how people perceive their experiences and opportunities, as well as create networking, client-relationship building, and client development activities that ensure that everyone feels included in these integral efforts.*
- *Law firms should focus on the development of inclusive work/life balance programs, as well as the cultural change necessary for people to take advantage of these programs without penalty.*

Professional Development and Retention

In addition to inclusion and workplace issues discussed earlier, many survey respondents cited professional-development and retention efforts as critical to their overall experiences in their law firms. These key areas, discussed in the following section, illustrate how demographic differences in professional development experiences are connected with lawyers' perspectives on their own opportunities for long-term retention and advancement.

Coaching, Mentoring, and Supervision

Survey responses regarding perspectives on coaching and mentoring reveal that law firms have a lot of work to do to provide adequate coaching and mentoring for all lawyers to feel that they are developing fully as professionals. As with many issues involving perception among legal professionals, the disparity between whites and minorities, as well as the disparity between men and women, continues to be a recurring theme.

In this survey, 71% of whites felt that they had adequate coaching and mentoring to be successful in achieving their career goals; only 62% of minorities felt the same. When asked specifically about having a mentor who was an influential sponsor who can advance their career, only 58% of minorities responded positively, as compared to 74% of whites. Similarly, only 61% of female associates responded positively, in comparison with 68% of male associates, and only 76% of female partners responded positively, in comparison to 82% of male partners.

Minorities who attended Top 10 schools reported having less access to mentoring, coaching, and sponsorship than did white lawyers from all law schools. These responses underscore a startling fact: The reality experienced by "top minorities" (*i.e.*, graduates of elite law schools) in law firms is inferior to that of whites who graduated from second- and third-tier law schools. This finding evinces a level of disparate treatment and/or discrimination that is entirely inconsistent with the assertion of a meritocracy within law firms.

Minorities who attended top-ranked law schools (*i.e.*, the Tier 1 law schools, which include elite institutions such as Harvard, Yale, Columbia, NYU, Michigan, and Stanford) report having less access to mentoring, coaching, and sponsorship than did white lawyers from all law schools. The contrast is especially striking when one compares the experience of minority graduates of Tier 1 schools ("Tier 1 minorities") to that of their white counterparts who graduated from Tier 3 law schools ("Tier 3 whites") or Tier 2 law schools ("Tier 2 whites").

When asked if they felt that the evaluation of their work by senior lawyers was free of assumptions and stereotypes based on background, only 53.25% of Tier 1 minorities reported being satisfied that they received fair evaluations, whereas 73% of Tier 3 whites felt their evaluations were fair and bias-free and 72% of Tier 2 whites agreed. Similarly, in contrast

to their Tier 3 white and Tier 2 white counterparts, Tier 1 minorities reported inferior experiences when it comes to whether they are receiving satisfactory levels of coaching/mentoring in their law firms. A whopping 74% of Tier 2 whites and 73% of Tier 3 whites are satisfied that they receive adequate coaching and mentoring, whereas only 60% of Tier 1 minorities report that they do.

Taken together with the research finding that many straight white males (who constitute the majority in large law firms) reported some resentment regarding diversity programs, which many perceive as "reverse discrimination," one has to question whether this sentiment manifests itself in backlash behaviors (whether conscious or unconscious) directed at Tier 1 minorities who are viewed as a competitive threat to mid-level to senior associates hoping to make partner.

It is worthwhile to note that, in most cases, minority attorneys who attended Tier 2 and Tier 3 law schools ("Tier 2 minorities" and "Tier 3 minorities") appear to fare better than their Tier 1 minority counterparts in the areas of mentoring, coaching, and evaluations. It is unclear whether Tier 2 and Tier 3 minorities may be subjected to lesser degrees of backlash than Tier 1 minorities because those who attended lesser-ranked law schools are perceived as less of a competitive threat than their Tier 1 counterparts, or whether the expectations of Tier 1 minorities may be simply be significantly higher than those of their lesser-tiered peers. In any event, the disparity of experience remains quite striking.

Many lawyers also shared the impression that the ways in which they were supervised by senior lawyers reflected on the senior lawyers' abilities to mentor and coach them through their professional development. Women and minorities overwhelmingly expressed that they were evaluated differently by senior lawyers because of their race and/or gender, as expressed in the following remarks.

Table 11-A

Evaluation of work as free of assumption/ stereotypes, by demographic

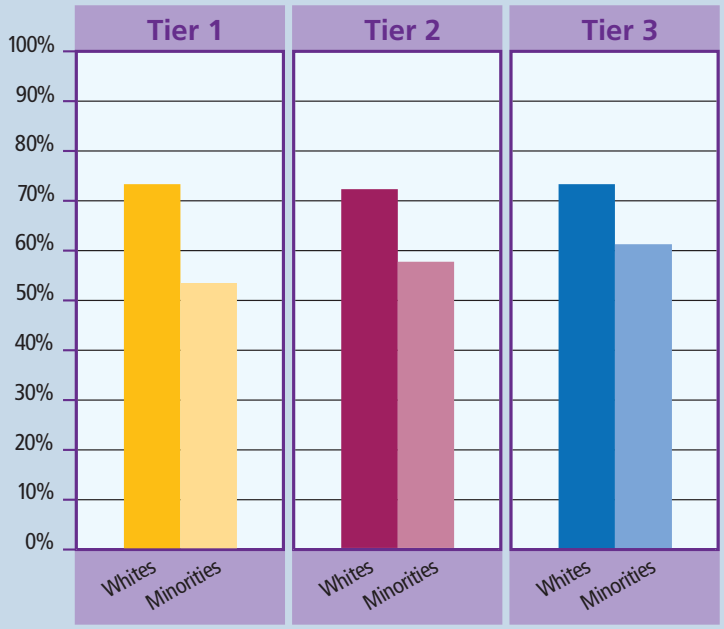
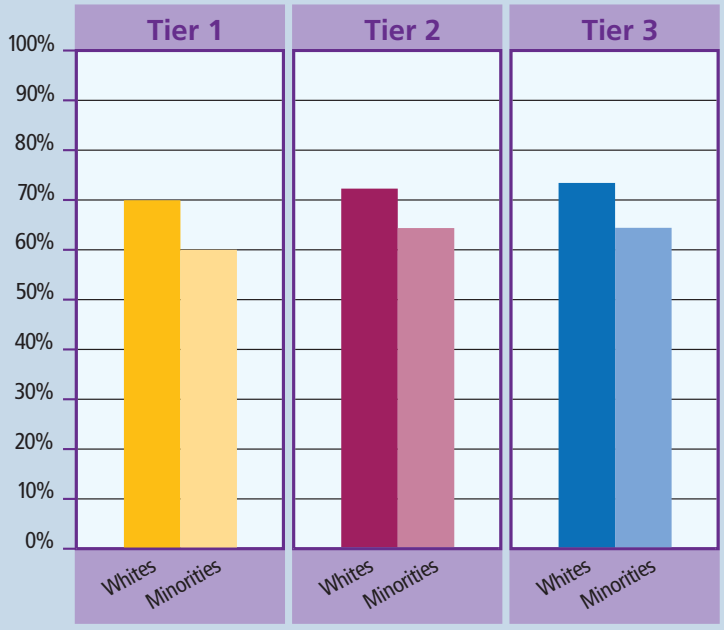


Table 11-B

Satisfaction with coaching/mentoring received, by demographic and law school tier



"In this day and age it is rare for discrimination to be overt or measurable, but rather it is more of a feeling or perception by those in power, that, for example, a working mother cannot devote the time and make the commitment to the practice of law. These stereotypes will take time to overcome and the best way to fight them is to get more and more women and minorities in the workforce and in positions of power."

— white male

"Instead of blatant discrimination, I feel that the struggle in law firms today is with stereotypes and assuming an attorney must look and act a certain way to be successful."

— minority female

With regard to perceptions of inconsistent treatment, 8% of minorities felt that their supervisors treated them differently because of their race, as compared to only 1% of whites. Furthermore, 14% of female associates and 11% of female partners felt that their supervisors treated them differently because of their gender, in comparison to only 2% of male associates and only 1% of male partners.

Overall, this appears to be good news; the majority of women and minorities do not believe that they are victims of discrimination based upon their race or gender. When considering these data, however, it is important to recognize that many of the respondents referenced the subtle and often unconscious bias that permeates workplaces today, as compared to the more-traditional forms of discrimination that involve overt and explicit articulation of stereotypes and predjudice. As one minority male stated:

"The biggest challenge to the success of diversity programs is unconscious bias. While I believe (or want to believe) most partners want to help promote diversity — or at least to be sensitive to the issue — they may be unwittingly undermining diversity efforts through unconscious bias in their treatment of diverse attorneys. Firms must make partners aware of how unconscious bias and micro-inequities impact minority attorneys and erode the positive impact of the firm's diversity efforts."

A white female lawyer articulated a similar sentiment:

"I do not see overt racism or sexism in my firm and believe that the firm is dedicated to promoting the careers of lawyers regardless of race and sex. Concerns remain, as they do in society at large, about unconscious bias. It is important for senior male partners to mentor women as well as men. While many of the senior male partners do this, some do not or do not do so on the same terms that they mentor men. I believe that this firm is ahead of the curve on diversity issues, and it now needs to devote concerted efforts to eradicating unconscious forms of discrimination."

Training and Development

Overall, 75% of whites felt that they had access to the training and development that they needed in order to grow and advance professionally; only 59% of minorities felt the same way. Similarly, 69% of male associates felt that they had adequate training and development, as compared to only 59% of female associates; 84% of male partners reported having adequate training and development, as compared to only 72% of female partners.

Only 65% of minorities felt that they received appropriate training for the work that they did, compared to 78% of whites, and only 71% of minorities felt that they were satisfied with the level

of client contact they received in connection with their development, as compared to 85% of whites.

One area of specific concern to women and minorities was the perception that allocation of work is often dependent on the "old boy network," instead of knowledge, skills, and experience. These differences in perception between minorities and women and their white male counterparts regarding the apportionment of work according to knowledge, skills, and, experience highlight the ways in which women and minorities often feel that they are operating on the periphery within a law firm.

Several respondents provided detailed explanations illustrating their quantified answers.

"The firm preaches gender diversity, but the final numbers don't reflect it. Sure, there are more women associates than male associates, but it is clear from the first few assignments that the men get the better assignments and have an easier time being brought within the firm's inner circle. By the time partnership time comes around, there are few women left. Why? Because we feel excluded and underappreciated and who wants to work in an environment like that?"

— white female

"As a new female associate, I feel like some of the male partners are too comfortable giving me assignments that border on secretarial work. I don't think that those male partners would ever ask me to do work like that if I was a man. It's interesting to me that I have never received a secretarial-type assignment from any of the women I work with."

— white female

"While overt discrimination is largely a thing of the past, covert discrimination is still more prevalent than people want to admit. In spite of everyone's best intentions, the older white male attorneys that dominate firm leadership still seem most comfortable around younger white male attorneys. This has all kinds of potential effects from client development opportunities to work assignments to promotion decisions. I have experienced the differing 'comfort levels' in casual group conversations and also in team meetings. I'm still a junior attorney, but the longer I'm here I think the more this is going to make me unhappy."

— minority female

Another area of concern for women and minorities involved the need for timely and useful feedback from supervisors. Only 50% of minorities reported getting timely and useful feedback, in comparison with 65% of whites. Moreover, 49% of female

associates reported getting timely and useful feedback, in comparison with 58% of male associates. One minority female lawyer summarized her frustration in this way:

> **"I am a woman and a person of color. I want work assignments that allow me to advance in my career, timely and thoughtful feedback about my work, and mentoring from partners. My frustration stems from what appears to be inequitable distribution of work assignments, lack of feedback, and lack of mentoring."**

Another minority female lawyer stressed that the feedback needed to be both formal and informal:

> **"The firm needs to be sure that diverse attorneys receive the proper informal feedback to develop the skills necessary to excel at the firm."**

Less Support, Higher Standards

In spite of reporting consistently lower incidents of receiving the mentoring, coaching, training, and development that they needed to succeed, women and minorities still felt that they had to perform at a higher level to gain the same credibility and career opportunities as their peers. For example, 40% of minorities felt that they had to perform at a higher level to gain the same credibility and career opportunities, as compared to only 19% of whites; 31% of female associates and 37% of female partners felt they had to perform at a higher level, as compared to only 19% of male associates and 15% of male partners. As one white female stated:

> **"We still practice in a white male dominated firm, preference is given to white males in terms of opportunities for challenging work, mentoring and business development. Women have to work twice as hard and prove themselves everyday to be recognized. Women are paid less than men, men advance quicker even when women meet the same requirements as the men for advancement. It is obvious that women and attorneys of color are at a disadvantage."**

Opportunities for Advancement and Leadership

When the various aspects of professional development are experienced differently among demographic groups of lawyers, one key consequence is the resulting difference in how those groups of attorneys view their potential for advancement and leadership in the law firms in which they work. Many women and minorities participating in the survey saw their

opportunities for advancement and leadership as less realistic then their white and male counterparts. This perception not only affected their perceptions of long-term success at their law firms, but also increased the likelihood that they would leave their law firms for other opportunities.

Although minority lawyers and white lawyers alike aspired to advance into leadership positions within their firms (67% for both groups), only 59% of minority lawyers reported understanding what the criteria were for advancement, as compared to 75% of white lawyers who reported understanding what the criteria were. Many minority lawyers felt that the criteria for advancement were both subjective and shared selectively by partners with associates with whom the partners were comfortable. This perceived behavior often excluded minority lawyers from gaining the information they needed in order to advance, regardless of their desire to do so.

Further, 23% of female associates and 18% of female partners felt that their gender would hinder their advancement in the firm, as compared to only 3% of male associates and 2% of male partners who felt that their gender would hinder their advancement. The white men who felt that gender would hinder their advancement did so from the perspective of being harmed by reverse discrimination, as demonstrated in the following responses:

"I strongly believe discrimination in any form is wrong. Our society, including this law firm, should be a meritocracy. Certain classes of individuals should not be penalized or rewarded based on factors such as race, sex, sexual orientation, etc."

"I have been truly astounded over the past years with what appears to be a profession-endorsed culture of reverse discrimination. I am aware of examples of situations in which attorneys have been advised in no uncertain terms that they would not receive work from a client because they were not a 'diverse' attorney (or their firm was not sufficiently 'diverse'). Firms affirmatively assign 'diverse' attorneys to matters for certain clients over 'non-diverse' attorneys not necessarily because those attorneys are the most qualified, but because the clients are threatening to pull work if there are not a sufficient number of diverse attorneys staffing their matters."

"I feel that striving for 'diversity' is a move towards equality and non-discrimination among all employees in a law firm. However, I have been prohibited from working on a number of projects for certain clients because of the clients' 'diversity' policies. That, in itself is discrimination, pure and simple. Just because it is reverse discrimination, does not make it right. If a firm is truly striving for 'diversity' then it must end all forms of discrimination and treat each employee equally. No person should be denied work based on their gender (be they male or female) or based on their color (be they white, black or other)."

Among LGBT respondents, more male lawyers than female lawyers believed that their sexual orientation would constitute a barrier to advancement. Female LGBT lawyers reported that gender was a greater barrier than their sexual orientation.

Respondents to the survey focused on the overall issue of advancement and opportunities to grow into leadership positions. Many of them provided qualitative details to more fully illustrate their quantitative responses.

"Positive mentoring by and opportunities for access to work from more senior attorneys with books of business and influence regardless of race or gender is critical to the advancement of women and minorities in law firms. Women and minorities need to be trained to seek this out early in their careers and firms need to find mechanisms for making sure that women and minorities are given equal access to these kinds of opportunities through formalized processes instead of relying on it to happen naturally."

— white female

Recommendations
Professional Development and Retention

- *Law firms should implement training programs for partners that focus on unconscious and subtle biases to ensure that personal subjectivities do not hinder equality in opportunities for professional development for all attorneys. This anti-bias training must include sexual orientation.*
- *Law firms should develop and implement "upward review" or 360-degree processes for junior lawyers to provide feedback on how partners are assigning work and providing feedback to junior lawyers, as well as evaluating, mentoring, teaching, and developing them. The information gathered through the "upward review" or 360-degree processes can be used to identify opportunities for improvement in the professional development and retention of younger lawyers, as well as hold partners accountable for fully participating in the equitable professional development of all junior lawyers. Without the input of younger lawyers on how senior lawyers are participating in their professional development, the biases of partners to select the lawyers they mentor and develop, based on their own comfort zones, continues unchecked.*
- *Law firms also should have comprehensive exit-interview protocols so that departing attorneys are afforded an opportunity to provide feedback on their experiences, their reasons for leaving, and their suggestions for workplace improvements. These data should be aggregated and reviewed to ensure that the firm draws lessons from current attrition that help increase retention in the future.*
- *Law firms should continue to refine their articulations of expectations for advancement and leadership to ensure that clear and accurate information is shared with everyone.*
- *Law firms should create leadership development and succession-planning programs that articulate the appropriate skills and characteristics for advancement in order to create a diverse pipeline into leadership positions within the firm. With regard to succession planning in particular, law firms should pay specific attention to ensuring that a diverse group of lawyers is being groomed and mentored to assume relationship and/or billing responsibility for key clients of the firm. It is especially critical to focus on leadership development and succession planning early on in the careers of young lawyers.*
- *Law firms should acquire and apply a thorough understanding of generational differences when creating communication, work allocation, feedback, professional development, and retention strategies to ensure that changes in expectations and perceptions from generation to generation are respected, valued, and accounted for in the workplace.*

"The legal profession has changed in recent years so that many firms, including mine, are 'eat what you kill' environments where business development is more important than anything else for advancement. That being the case, reports concerning results of diversity studies such as this should discuss results with respect to inclusion in business development opportunities most prominently so that firms that are weak in this particular area pay more attention to it."

— minority male

"Female associates are given repetitive tasks that tend to pigeon hole them into categories (such as document reviewer) that do not afford much true advancement in the firm. In particular, I find it disturbing that male associates are constantly 'tapped' to cover hearings, depositions, and client meetings at a higher rate than any female associates. Also, the male associates' work always seems to be discussed in such glowing terms — as to the quality of the male associates' work — but never, or very rarely (only when prodded and prompted), do the female associates receive the same type or similar public accolades relating to the quality of their work."

— white female

"Although I believe many law firms are becoming better at recognizing the issues and putting in place procedures for advancement of a diverse work force, there is still a great deal of unconscious bias at firms that prevents advancement."

— white female

Personal Involvement and Commitment to Diversity

All groups reported universally high rates of support for the desire to work in a diverse and inclusive law firm. Nevertheless, women and minority lawyers demonstrated a disproportionately higher level of participation in diversity-related events and initiatives.

Although women and minorities were disproportionately more likely to be involved in their firms' diversity efforts and initiatives, they were significantly less comfortable voicing their disapproval if they overheard negative comments based on race, gender, and/or sexual orientation. Many female and minority lawyers expressed concerns that they would be viewed as troublemakers if they spoke out against inappropriate comments, a label that many perceived as having negative consequences for their careers.

The answers of women and minorities indicate that they are less likely to speak out in comparison to their peers. The responses of partners in firms indicate that they are more likely to speak out than associates. Not surprisingly, male partners (most of whom are white) more frequently responded that

Recommendations

Personal Involvement in Diversity Efforts

- *Law firms should continue to monitor the hours that every attorney devotes to diversity and inclusion efforts in order to ensure that the work is being shared by people of all backgrounds.*
- *Law firms should create innovative methods to reward contributions to diversity and inclusion efforts in order to ensure that everyone in the workplace is incentivized to support these issues, particularly white males.*

they would speak out against inappropriate comments, although their responses indicate that they are the least likely to be actively involved in their firms' diversity events and initiatives.

Special Report on Women of Color

The American Bar Association (ABA) Commission on Women published a series of two comprehensive research reports ("Commission on Women Reports") on the challenges faced by women of color attorneys in law firms. Both MCCA's executive director, Veta T. Richardson, and Dr. Arin N. Reeves, MCCA's research consultant on *Sustaining Pathways to Diversity,*® served as members of the ABA's research advisory board. That group oversaw all aspects of the ABA's research project, including research design, development of surveys and focus groups, and review of all findings and final recommendations.

In 2006, the ABA Commission on Women in the Profession released *Visible Invisibility*,[4] a study that explored the unique experiences of women of color in law firms. That study found that women of color experienced greater challenges to inclusion and advancement in law firms than either white women or men of color. These results served to alert law firms that diversity and inclusion efforts need to focus on women of color as a category that is distinct from women in general or people of color in general. That study was followed by *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms (Visibly Successful)* in 2008.[5]

The results of this MCCA research confirm the findings of the Commission on Women Reports across a larger sample of respondents, and reiterates for law firms that the experiences of women of color need to be examined separately, instead of as a subset of gender or race issues, in order to increase retention and advancement among female attorneys of color.

As in the Commission on Women Reports, women of color participating in MCCA's study consistently reported more-negative experiences than their white female or male minority counterparts within law firms in several categories, including exclusion from work opportunities, networking opportunities, and substantive involvement in developing client relationships. Women of color also perceived their firms as less committed to diversity than other groups; they also reported experiencing discrimination and bias more often than other respondents.

Finally, women of color had the highest incidence of any demographic group with regard to identifying themselves as personally committed to their firms' diversity and inclusion efforts.

Rather than devoting limited time and resources to repeat in this report the challenges faced by women of color in law firms, it is recommended that one read and adopt the recommendations set forth in *Visibly Successful*.

Recommendations
Women of Color

- *Law firms should continue to measure women of color as a separate demographic with respect to the recommendations in this report in order to determine whether the firms' diversity efforts fully benefit women of color.*
- *Law firms should carefully consider the findings and adopt the recommendations found in the Commission on Women Reports.*

4 American Bar Association Commission on Women in the Profession (Commission on Women), *Visible Invisibility: Women of Color in Law Firms* (2006), (available online at www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=4920037).

5 Commission on Women, *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms* (2008), (available online at www.abanet.org/women/woc/VisiblySuccessful.pdf).

Compilation of All Recommendations

Strategic Leadership and Commitment

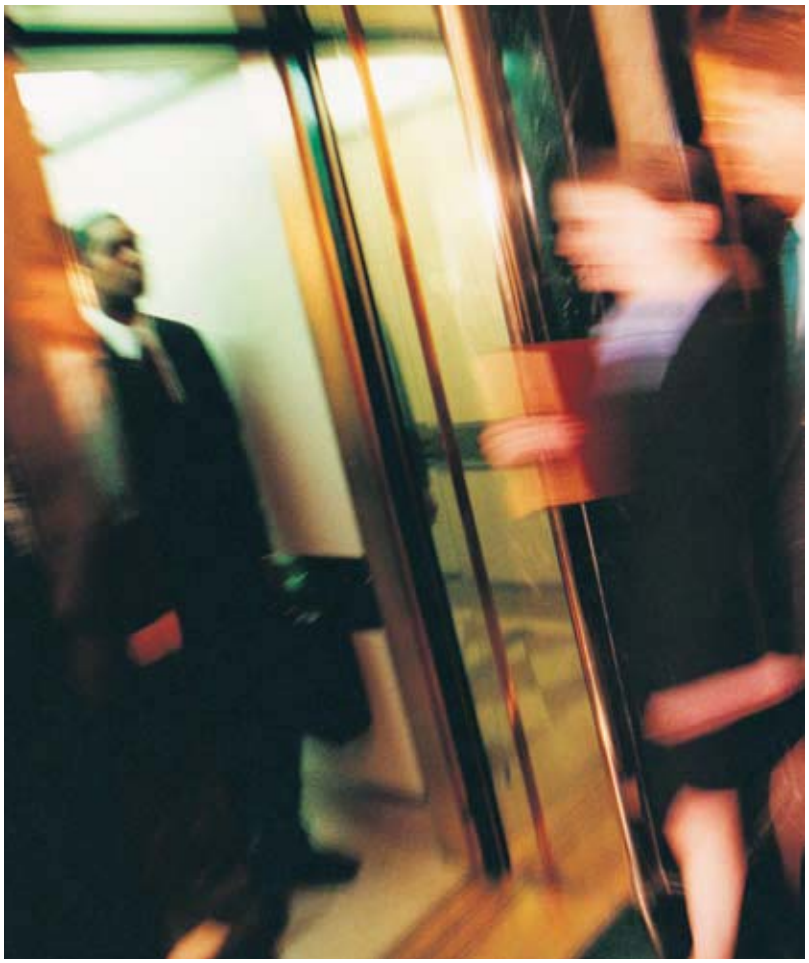
- Law firms should continue to stress the strategic importance of diversity and inclusion from the leadership level, including why it is a priority. To minimize the skepticism that a firm's efforts are "all talk," law firms should focus on consistent implementation of their strategies, and create measurement tools that track and report on progress on their efforts.
- Law firms should ensure that white male voices are included in dialogues on diversity and inclusion. Strategic communication on diversity and inclusion should focus on how more-inclusive workplaces work better for everyone; likewise, diversity initiatives should be communicated as collective progress efforts, instead of competition catalysts between groups.
- Law firms should "check in" with their lawyers on a regular basis to ensure that the diversity and inclusion efforts are working effectively for the needs of their lawyers, and firms should modify their efforts based on the feedback.

Perceptions of Meritocracy

- Law firms should candidly assess the criteria that lead to success in their workplaces, and create interviewing and hiring protocols that reflect their realities, instead of perpetuating the myth that success is predetermined by the rank of the law school that candidates attended or their law school grade point averages and/or their individual rank within their graduating class.
- Law firms should revisit their hiring criteria with a view to setting standards that better reflect the characteristics and experiences that really delineate who will succeed in today's competitive law firms, as opposed to imposing narrow criteria consisting largely of an examination of a candidate's academic pedigree. Once revised, the new "reality-based" hiring criteria should be articulated and communicated widely to all involved in the hiring process to ensure that the new reality-based criteria are applied consistently and uniformly to all candidates. Law firms should not side-step this difficult analysis of what it takes to succeed in law firms by defaulting to more-rigid adherence to academic pedigree credentials in the mistaken belief that, by more stringently applying academic pedigree-based credentials, they will achieve a more competitive and capable workforce.
- To increase diversity among interview candidates, law firms should focus on attending regional job fairs that focus on diverse candidates, increase the universe of schools from which they recruit, and participate in collaborative efforts with other law firms to attract diverse candidates to regions that may historically have not attracted diverse candidates.
- Law firms should consistently communicate that diversity and inclusion efforts are intended to increase their pools of qualified candidates and create equal opportunities for everyone to succeed within their workplaces.

Inclusion and Work Environment

- Law firms should recognize that a commitment to diversity and inclusion does not automatically translate into inclusive work environments. Law firms have to strategically assess their workplaces with regard to creating an environment of full inclusion, and create an action plan that proactively increases inclusion in the way attorneys experience work and life at their firms.



- Law firms should also recognize that a decrease in overt and explicit discrimination alone does not signal the elimination of all discrimination. Law firms should expand their definitions of and trainings on discrimination to include subtle forms of discrimination and disparate treatment that often have the same consequences for diverse lawyers as explicit discrimination.
- Law firms should create an ombudsperson role for their workplaces, so that attorneys who want to discuss their experiences have a well-trained and well-informed person to whom they can turn for guidance.
- To ensure equal opportunities in work allocation, law firms should regularly evaluate their work-allocation protocols to ensure that everyone in the firm has equal access to the quantity and quality of work they need to effectively develop and advance in their careers. Law firms also should create accountability measures for leaders of departments and practice groups to ensure that inequality of opportunity is immediately and effectively addressed by the leadership.
- Law firms should ensure that all senior lawyers who play a role in the evaluation of attorneys are well-informed and well-trained in effective feedback and evaluation techniques.
- Law firms should develop and implement "360-degree" feedback loops within their workplaces to gather data on how people perceive their experiences and opportunities, as well as create networking, client-relationship building, and client development activities that ensure that everyone feels included in these integral efforts.
- Law firms should focus on the development of inclusive work/life balance programs, as well as the cultural change necessary for people to take advantage of these programs without penalty.

Professional Development and Retention

- Law firms should implement training programs for partners that focus on unconscious and subtle biases to ensure that personal subjectivities do not

hinder equality in opportunities for professional development for all attorneys. This anti-bias training must include sexual orientation.

- Law firms should develop and implement "upward review" or 360-degree processes for junior lawyers to provide feedback on how partners are assigning work and providing feedback to junior lawyers, as well as evaluating, mentoring, teaching, and developing them. The information gathered through the "upward review" or 360-degree processes can be used to identify opportunities for improvement in the professional development and retention of younger lawyers, as well as hold partners accountable for fully participating in the equitable professional development of all junior lawyers. Without the input of younger lawyers on how senior lawyers are participating in their professional development, the biases of partners to select the lawyers they mentor and develop, based on their own comfort zones, continues unchecked.
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- Law firms should acquire and apply a thorough understanding of generational differences when creating communication, work allocation, feedback, professional development, and retention strategies to ensure that changes in expectations and perceptions from generation to generation are respected, valued, and accounted for in the workplace.

Personal Involvement in Diversity Efforts

- Law firms should continue to monitor the hours that every attorney devotes to diversity and inclusion efforts in order to ensure that the work is being shared by people of all backgrounds.
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Women of Color

- Law firms should continue to measure women of color as a separate demographic with respect to the recommendations in this report in order to determine whether the firms' diversity efforts fully benefit women of color.
- Law firms should carefully consider the findings and adopt the recommendations in the Commission on Women Reports.

Supplemental Materials

An Overview of the Journey from *Creating Pathways to Diversity®* to *Sustaining Pathways to Diversity®*

Since 2000, MCCA has published a number of research reports under its award-winning *Creating Pathways to Diversity®* series ("*Pathways* series"). This report is the update of two ground-breaking reports that addressed the experiences of attorneys in law firms.

The first report, titled *A Set of Recommended Practices for Law Firms,* was designed to offer law firms an overview of the business case for diversity, suggest a set of "best practices" to advance diversity within large law firms, and offer a Seven-Step action plan to assist law firms to launch a new diversity program.

The second report for law firms was a watershed set of findings titled *The Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms* was the result of a year-long effort aimed at understanding what true factors distinguish those who succeed in law firms versus those who do not, and whether a correlation exists between their academic backgrounds and scholastic distinctions of those who succeed (with the measure of success being those who make partner). MCCA found that the majority of those who made partner in law firms lacked the academic honors and credentials that their hiring committees set as benchmarks against which new recruits are measured, thus calling into question the notion of a true meritocracy in law firms because the definition of what it means to be "qualified" was so subjective and unevenly applied — often to the detriment of minorities, women, and LGBT lawyers.

Now, almost ten years after its first report issued in the *Pathways* series, MCCA finds itself at a crossroads as the association embarks on a series of second- and third-generation examinations of the next phase of challenges that must be overcome as organizations seek to build workplaces of inclusion. To reflect this evolution, MCCA has aptly titled this second-generation look at the challenges to inclusion in large law firms, *Sustaining Pathways to Diversity*, and issued it as the next phase of the popular MCCA *Pathways* series.

MCCA set two primary goals for all research published under the *Pathways* series: first, to identify and spotlight the challenges to diversity and inclusion that are faced by the legal profession; and second, to offer a set of proposed recommendations and solutions to overcome these challenges.

IMCCA's research revealed that, with respect to their diversity efforts, most organizations can be placed on a spectrum from mere compliance with federal regulations to an awakening to the benefits of diversity, and from that point to a workplace of

inclusion which is the result of successful diversity initiatives and creates an environment in which employee satisfaction levels are higher. The *Pathways* concept is as follows:

- **Compliance** emphasizes how to bring people into an organization without doing anything wrong;
- **Diversity** demonstrates an appreciation for their differences and seeks to benefit from these differences; and
- **Inclusion** creates an environment in which all people feel valued and want to stay.

The transition and progress through these various stages is facilitated by integrated initiatives that align diversity goals with strategic business goals.

Furthermore, MCCA's *Pathways* research reveals that, when diversity programs are successfully executed, *all* attorneys — not just minorities, women, or LGBT lawyers — benefit from the programs. This is best described by the concept of "a rising tide that lifts all boats." Productivity and innovation are improved by eradicating communication barriers among people of different backgrounds, generations, sexual orientation, race, and/or culture. Career growth opportunities are enhanced through the types of mentoring and developmental training frequently fostered by successful diversity initiatives. Lastly, attrition rates are reduced because peer or affinity groups (*e.g.*, Gay and Lesbian Task Force, Muslim Employee Network) are available to stem feelings of isolation and lack of support often faced by minorities, women, or LGBT lawyers — or because resources that were previously unavailable, (*e.g.*, flexible work arrangements, part-time schedules, on-site day care) make balancing work and personal commitments easier to juggle. In addition, the employer gains a strategic advantage by leveraging diversity to tap emerging markets and solve complex business problems for its clients.

Research Team and Methodology

The Research Team

The research effort was led by Veta T. Richardson, MCCA's executive director, who had general oversight and financial responsibility for the project, in addition to the selection of all consultants for the research team. MCCA retained Dr. Arin N. Reeves of The Athens Group to collaborate on this research and assist with all aspects of the project, including setting standards of research protocol, designing the survey questionnaire and instructions, determining of the research sampling, analyzing of the survey findings, preparing of the written report, and developing the final set of recommendations.

In addition, MCCA retained Novations Group, Inc., as an independent third party to provide data design and collection service, as well as statistical analysis and consultation regarding the survey's findings. The core team members from Novations Group, Inc., were Maureen Giovannini, Ph.D., senior consultant; and Carolyn Jones, client survey specialist. Other participants included client survey specialists David Johnston and Russ Macbeth in addition to senior measurement consultant, Sean Gyll, and executive consultant, Tim Vigue.

About Dr. Arin Reeves, The Athens Group (www.athensgroup.net)

Dr. Reeves has worked in the areas of racial/ethnicity, gender, age/generation, sexual orientation, class, and cultural diversity in organizations for over fifteen years. She received her Juris Doctorate from University of Southern California, and her Ph.D., in Sociology from Northwestern University, where she led several comprehensive research projects on diversity and inclusion in the workplace. In her practice as a consultant on diversity issues in the legal profession, Dr. Reeves has personally worked with more than 100 law firms, almost 50 legal departments of Fortune 500 companies, dozens of law schools, and bar associations/organizations in every major legal market.

About Novations Group, Inc. (www.novations.com)

Novations Group, Inc., helps the world's leading organizations unleash the capacity of their employees. Its core competencies address today's critical organizational challenges: selecting the right talent; fostering inclusion and engagement; building leadership at every level; and optimizing development for all. Building upon more than 30 years of experience, Novations Group offers a full suite of consulting, training, and measurement services to help organizations gain a competitive edge in today's global market.

About Other Contributors

In addition to the members of the research team, MCCA thanks Crosby Marketing Communications for public relations, media, and graphic design services in support of this research project. MCCA also gratefully acknowledges the editorial and production services provided by Rob Truhn, managing editor of *Diversity & the Bar*® magazine, who served as the director of publications for this report.

Overview of Research Methodology and Objectives

This research study is an in-depth, data-driven analysis that balances quantitative and qualitative findings about the experiences of a diverse group of attorneys who practice in large competitive law firms. The project was designed to reach the maximum number of U.S. attorneys in law firms ranked in the top 200 (by revenue) by *The American Lawyer* magazine ("AmLaw 200 firms"). Its objective was to uncover relevant data on the perceptions and experiences of attorneys at large law firms regarding a variety of subjects relevant to diversity and inclusion through use of a comprehensive survey questionnaire that measured several major thematic categories. Other related goals were:

- To examine whether, and to what extent, the demographic and/or organizational backgrounds of attorneys affect these perceptions and experiences; and
- To test some of the key assumptions underpinning the "myth of the meritocracy," including the belief that objective talent and accomplishments are the major criteria used to hire and advance attorneys at AmLaw 200 law firms and are the best predictors of their success (*see* MCCA's *Myth of the Meritocracy* publication, also known as the "Purple Book").

The Survey Instrument

The comprehensive survey consisted of 83 forced-choice items that were organized according the following 13 major thematic categories:

- Myth of the Meritocracy
- Strategic Leadership and Commitment
- Experience of Exclusion
- Supervision
- Work Environment
- Work/Life Balance
- Advancement/Leadership
- Personal Involvement/Commitment
- Training and Development
- Coaching and Mentoring
- Recruitment—General
- Recruitment—Importance of "Traditional" Meritocracy Criteria
- Career Impact of Law Firm Changes

The possible responses for each of the 83 items or statements were arranged on a five-point Likert scale. For many of the survey categories, the choices included: 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; and 5) Strongly Agree. For other survey categories and related items, the choices in the Likert scale were different, depending on the issue explored and the type of information sought.

For example, in the category of Exclusion, respondents were given a list of typical forms of exclusion and asked to respond in terms of whether, and how frequently, they had experienced each form of exclusion over the past five years. Here, the scale included these choices: 1) Frequently; 2) Sometimes; 3) Neutral; 4) Infrequently; 5) Never. In another example, for the category of "Career Impact of Law Firm Changes," respondents were asked to rate each proposed change in terms of: 1) No effect; 2) Little Effect; 2) Neutral; 4) Positive Effect; 5) Very Positive Effect on their careers.

For each category as well as the 83 individual survey items, the percentage of responses across the scale was calculated and conveyed using descriptive statistics. These percentages frequently were compared and contrasted across demographic and organizational groups to uncover correlations between these characteristics and attorneys' perceptions and experiences relevant to diversity and inclusion. Cross-tabulations also were created and analyzed where appropriate (*e.g.*, codifying responses related to job level by gender as well as race/ethnicity).

In addition to the forced-choice items, the survey also posed the following two open-ended questions to which participants were asked to respond.

- Are there any other thoughts on diversity and inclusion in law firms you would like to share with us? (758 responses).
- Are there any recommendations you have for increasing diversity and inclusion in law firms you would like to share with us? (446 responses).

A thematic content analysis was used to organize and categorize these qualitative comments and relate them to the quantitative data. Examples of key themes in the form of illustrative quotations are interspersed at appropriate points in the report.

Survey Administration

The survey instrument was administered electronically through the Novations Group website, for which each law firm was provided a unique access code. The survey site was launched on December 6, 2007, and closed on May 15, 2008.

The survey focused on the perceptions and experiences of attorneys in a variety of areas relevant to diversity and inclusion. The identity of individual respondents remained completely anonymous. The survey team, however, used background information to sort the data by important variables such as gender, attorney level, race/ethnicity, law firm tenure, and sexual orientation in order to analyze trends and patterns within and between groups.

The data were not sorted by individual firm, but rather analyzed in aggregate across firms. Consultants could, however, determine the number of responses

from each law firm. Thus, they were able to contact firms with low or no response in order to encourage them to participate. This secondary outreach was undertaken midway through the survey.

Targeted Audience

The survey was made available to all attorneys in 217 law firms across the United States, most of which are listed in the AmLaw 200 and the *MCCA/VAULT Guide to Law Firm Diversity Programs*.

Veta T. Richardson, the executive director of MCCA, sent a personal communication to each law firm's designated leader of diversity and inclusion efforts. The managing partner of each firm was copied on the communication. These leaders were asked to forward the message to all of the attorneys in their firm so that they could log onto the designated site and participate in the survey.

The Sample Size and Confidence Level

The overall survey sample consists of 4,406 attorneys out of a possible 105,649, or 4.17% of the total attorney population in the 217 law firms. In all, 124 law firms had at least one attorney who responded to the survey. Of these firms, 47% had 10% or more of their attorneys respond.

With this sample size, the final results yielded a confidence level of 99%, with a confidence interval of 1.9%. This means that there is a 99% chance that, if the entire population of attorneys took the survey, the results for each item would be the same as what we have obtained from our sample, plus or minus 1.9%. In other words, if these results included an item with a response rate of 60% "agree," there is a 99% chance that the results from the overall population that would "agree" with the item would be between 58.1% and 61.9%.

Survey Sample Breakdowns

As stated, one major goal of this survey was to compare and contrast the responses of attorneys who differ in terms of key demographic and organizational variables. Therefore, the survey asked respondents to provide their own background information in several areas, including gender, race/ethnicity, sexual orientation, job level, disability, marital status, caretaking responsibilities, and years of tenure in a law firm.

In order to examine some of the assumptions associated with the "myth of the meritocracy," the survey also asked respondents to indicate what law school they attended and their graduation year. With those two pieces of information, the survey team was able to place respondents in one of three tiers, based on the school rankings provided by *U.S. News & World Report* for an 18-year period (1987, then 1990 to 2007). The rankings were as follows:

- Tier 1: Top 1 – 10 law schools for the year in which one graduated;
- Tier 2: Top 11 – 20 law schools for the year in which one graduated; and
- Tier 3: Those not ranked among the top 1 – 20 law schools for the year in which one graduated.

The remainder of this section presents the survey sample breakouts according to all key variables relevant to this study.

Level/Position

		Frequency	Percent	Valid Percent
Valid	Associate	2,159	49.0	49.3
	Counsel or Of Counsel	361	8.2	8.2
	Partner	1,781	40.4	40.7
	Other	79	1.8	1.8
	Total	4,380	99.5	100.0
Missing	0	24	.5	0
Total	**4,404**	**100.0**	**100.0**	

Gender

		Frequency	Percent	Valid Percent
Valid	Male	2,551	57.9	58.5
	Female	1,813	41.2	41.5
	Total	4,364	99.1	100.0
Missing	0	40	.9	0
Total		**4,404**	**100.0**	**100.0**

Sexual Orientation

		Frequency	Percent	Valid Percent
Valid	Heterosexual	4,130	93.8	95.1
	Gay/Lesbian	175	4.0	4.0
	Bisexual	37	.8	.9
	Transgender	1	.0	.0
	Total	4,343	98.6	100.0
Missing	0	61	1.4	0
Total		**4,404**	**100.0**	**100.0**

Person With a Disability

		Frequency	Percent	Valid Percent
Valid	Yes	78	1.8	1.8
	No	4,264	96.8	98.2
	Total	4,342	98.6	100.0
Missing	0	62	1.4	0
Total		**4,404**	**100.0**	**100.0**

Race or Ethnic Background

		Frequency	Percent	Valid Percent
Valid	Arab or Arab American	27	.6	.6
	Asian or Asian American (incl. South Asian)	327	7.4	7.5
	Biracial or multi-racial	102	2.3	2.4
	Black, including Caribbean and African or African American	295	6.7	6.8
	Caucasian or White (excluding Hispanic)	3,256	73.9	75.1
	Hispanic or Latino	208	4.7	4.8
	Native American or Alaskan Native	14	.3	.3
	Pacific Islander	9	.2	.2
	Other	98	2.2	2.3
	Total	4,336	98.5	100.0
Missing	0	68	1.5	0
Total		**4,404**	**100.0**	**100.0**

Law School Tier

		Frequency	Percent
Valid	Tier 1: Top 1 to 10 ranking	683	15.5
	Tier 2: Top 11 to 20 ranking	553	12.6
	Tier 3: Below 20 or no ranking	2,749	62.5
	Total	3,985	90.5
Missing	0	419	9.5
Total		**4,404**	**100.0**

Race or Ethnic Background, by Law School Tier

		Tier				Total
		1 to 10	11 to 20	No ranking	Other	1 to 10 ranking
Valid	Arab or Arab American	2	3	6	15	26
	Asian or Asian American (incl. South Asian)	83	57	41	118	299
	Biracial or multi-racial	39	15	8	34	96
	Black, including Caribbean and African or African American	63	49	27	130	269
	Caucasian or White (excluding Hispanic)	430	373	273	1,904	2,980
	Hispanic or Latino	49	36	24	90	199
	Native American or Alaskan Native	1	3	0	9	13
	Pacific Islander	0	1	2	5	8
	Other	16	15	5	48	84
Total		***683***	***552***	***386***	***2,353***	***3,974***

Survey Instrument

Minority Corporate Counsel Association
Creating Pathways to Diversity Research Project

INTRODUCTION

The Minority Corporate Counsel Association (MCCA) is sponsoring this comprehensive survey to update and expand on our current research publications: the Blue Book, "Creating Pathways to Diversity"; and the Purple Book, "The Myth of the Meritocracy." (Both publications are available on MCCA's website at www.mcca.com.)

We are inviting the attorneys in your firm along with those in all other AmLaw 200 firms across the United States to participate. The survey will focus on the perceptions and experiences of attorneys in a variety of areas relevant to diversity and inclusion. The identity of individual respondents will remain completely anonymous. We will, however, use background information to sort the data by important variables such as gender, attorney level, race/ethnicity, marital status, and sexual orientation in order to analyze trends and patterns within and between groups.

Although we will not be sorting the data by individual law firm, your firm and others will benefit from the findings and recommendations that emerge from the research as you seek better understanding and strategies for strengthening your own diversity efforts. Each firm that has at least a 10% participation rate from its lawyers will be listed in the report as a supportive participant. We do stress, however, that data will only be analyzed in the aggregate across all firms. There will be no individual firm data compiled or analyzed. A key part of this effort is for you to provide thoughtful and honest feedback based on your perceptions and experiences related to the areas addressed. There are no "right" or "wrong" answers. So please record your impressions as accurately as possible, regardless of why you have them.

INSTRUCTIONS

The survey consists of a number of statements. Following each statement is a series of possible responses arranged along a scale. Please select the response that most closely matches your perception and experience. If you feel as though you cannot respond to the statement, please select "Don't Know/ Not Applicable" as your choice.

There are also two open-ended questions near the end of the survey. Please take some time to share any additional thoughts you have on these issues.

The survey should take no longer than 30 minutes, and we recommend that you complete it in one sitting. If you are interrupted you can use the "save for later" button. However, if you click this, you will be given a new, unique password that you must use to log back on. The original password will no longer be valid.

If you have any questions about the survey you can email the vendor, the Novations Group, at the following email address: MCCA-Survey@novations.com.

Thank you for participating in this important research project.

Strategic Leadership and Commitment

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree) 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- In my experiences and observations at my firm, diversity has been communicated and addressed by key firm leaders.
- My firm has a Diversity Committee or a comparable entity, and I am aware of who is on that committee and what the committee is doing.
- If I have a concern or complaint about my work environment, I have someone I can go to in order to seek a resolution.

Work Environment

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I feel that that I am treated as an equal by my peers.
- I feel that I am treated differently by my peers because of my race.
- I feel that I am treated differently by my peers because of my gender.
- I feel that I am treated differently by my peers because of my sexual orientation.
- In my work environment I sometimes hear negative comments or slurs/ jokes based on gender, race, ethnicity, sexual orientation, or disability.

Supervision

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I feel that the senior lawyers for whom I work treat me differently because of my race.
- I feel that the senior lawyers for whom I work treat me differently because of my gender.
- I feel that the senior lawyers for whom I work treat me differently because of my sexual orientation.
- I feel that the evaluation of my work by senior lawyers for whom I work is free of assumptions or stereotypes based on my background.

Training and Development

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I am satisfied with the opportunities I have received to actively participate in business development efforts with important clients.
- I feel that I have to perform at a higher level to gain the same credibility and career opportunities as my peers.
- I receive appropriate training for the work that I do.
- I receive the assignments I need in order meet the firm's billing requirements.
- I receive timely and useful feedback on my work so that I understand both my strengths and what I need to do to improve.
- In my department, work assignments are apportioned according to attorneys' knowledge, skills, and experience.
- I am satisfied with the level of client contact I receive.

Coaching and Mentoring

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I have had at least one mentor (formal or informal) in my firm who has played an important part in supporting my career development.
- It is very difficult for me to advance in this firm because I don't have an influential sponsor.
- I have a mentor who provides assistance in getting high-visibility assignments and desirable feedback.
- I have a sponsor in my firm to vouch for my skills and champion my advancement.
- I have a mentor in the firm who serves as a confidential resource for navigating the "informal rules," career advice, and/or conflict resolution.

Advancement/Leadership

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I aspire to advance into leadership positions in this firm.
- I believe that my gender will not hinder my advancement in this firm.
- I believe that my race/ethnicity will not hinder my advancement in this firm.
- I believe that my sexual orientation will not hinder my advancement in my firm.
- I understand what the criteria are for advancement in my firm.

Work-Life Balance

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- If I choose to reduce my hours, telecommute, make my work schedule more flexible, or seek other alternative work arrangements, I feel that I can exercise those choices without any negative consequences for my career.
- My firm has alternative work arrangement policies in place that are easy to access, understand and utilize by all attorneys in the firm.

Personal Involvement/Commitment

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I prefer to work in a diverse and inclusive law firm.
- If I overhear negative comments based on race, gender, sexual orientation, or other differences, I feel comfortable voicing my disapproval.
- I actively participate in diversity-related events and

initiatives sponsored by my firm — for example, serve as member of the Diversity Counsel (or comparable group), attend Minority Corporate Counsel events, or other specialty bar associations for non-majorities (e.g., NBA, HNBA, NAPABA, Lavender Law, etc).
- I actively support my firm's efforts to recruit and hire a diverse group of attorneys—for example, by participating in special recruitment events on or off site and/or visiting schools.

Recruitment – General

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- My firm recruits at schools with a high percentage of law students of color.

Recruitment — Myth of the Meritocracy

How important do you think the following criteria should be in decisions related to the recruitment and hiring of lawyers in your firm?

1) Most Important; 2) Very Important; 3) Neutral; 4) Balanced with Other Criteria; 5) Of Little Importance; 6) Don't Know/Not Applicable
- Law school rank
- Moot Court Board
- Member of the Law Review (the top journal at his/her school)
- Federal Judicial Clerkship
- Recommendations from law school professors
- Grade point average
- Community service
- Recommendations from firm attorney(s)
- Diverse backgrounds
- Prior work experience
- Interview performance
- Informal impressions of recruiters
- Informal impressions of influential firm members

Career Impact of Law Firm Changes

Rate the following changes in your current law firm in terms of the positive effect each would have on your career.

1) No Effect; 2) Little Effect; 3) Neutral; 4) Positive Effect; 5) Very Positive Effect; 6) Don't Know/Not Applicable
- The establishment of formal policies for reduced/alternative work arrangements.
- Consistent implementation of current policies relating to the workplace.
- Less pressure to engage in client development.
- Lower billable hours.
- More flexibility from the firm in accommodating my personal life.
- Greater opportunity to shape the future direction of the firm.
- More and better mentoring by senior attorneys/partners.
- More opportunities for pro bono work.
- Less subjectivity in the work allocation processes.
- Less subjectivity in the promotion processes.
- More racial diversity in the workplace.
- More gender diversity in the workplace.
- More receptive/inclusive environment for LGBT attorneys

Experience of Exclusion

Over the past five years of your work experience in a law firm, have any of the following happened to you based on your gender, race, sexual orientation, and/or physical disability?

1) Frequently; 2) Sometimes; 3) Neutral; 4) Infrequently; 5) Never; 6) Don't Know/Not Applicable.
- Experienced demeaning comments or other types of harassment.
- Was excluded from assignments that I sought out.
- Was excluded from informal or formal networking opportunities.
- Was excluded from client development and client relationship opportunities.
- Experienced unfair performance evaluations.
- Was denied advancement or promotional opportunities.
- Experienced one or more other forms of discrimination.

Myth of the Meritocracy

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- I possess and exhibit the necessary interpersonal/communication skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my interpersonal/communication skills accurately reflects my skills.
- I possess and exhibit the necessary client relationship skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my client relationship skills accurately reflects my skills.
- I possess and exhibit the necessary technical skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my technical skills accurately reflects my skills.
- I possess and exhibit the necessary research and writing skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my research and writing skills accurately reflects my skills.
- I have a high level of commitment to my career and to the firm.
- The formal and informal performance reviews and feedback that I have received regarding my level of commitment to the firm and to my career is accurate.
- I possess and exhibit the necessary time management skills I need in order to execute my responsibilities at work.
- The formal and informal performance reviews and feedback that I have received regarding my time management skills accurately reflects my skills.
- I present myself in a professional manner that is appropriate for the various contexts in which I represent the firm.
- The formal and informal feedback that I have received regarding my professional appearance is accurate.

COMMENTS

Are there any other thoughts on diversity and inclusion in law firms that you would like to share with us?

Are there any recommendations that you have for increasing diversity and inclusion in law firms that you would like to share with us?

BACKGROUND INFORMATION

This information will be used to help us compare and contrast survey responses between and among different groups of attorneys. No group will be formed with less than five participants. At no time will anyone other than the Minority Corporate Counsel Association researchers have access to this information.

Level
- Associate
- Counsel/Of Counsel
- Partner
- Other

Gender
- Male
- Female

Sexual Orientation
- Heterosexual
- Gay, Lesbian
- Bi-Sexual
- Transgendered

Person With a Disability
- Yes
- No

Race/Ethnic Background
- Asian/Asian American (incl. South Asian)
- Black including Caribbean and African/African American
- Caucasian/White (excluding Hispanic)
- Arab/Arab-American
- Native American/Alaskan Native
- Hispanic/Latino
- Pacific Islander
- Bi-racial/multi-racial
- Other

Current marital status?

- Single, never married
- Married, heterosexual couple
- Domestic Partner/Married, same-sex couple
- Divorced
- Widowed

Caretaking Responsibilities

At any time during your tenure at your current firm what kind of caretaking responsibilities do/did you have for the following people?

Own biological or other children (adopted, step) under 18:

- Primary
- Shared
- Some, not primary
- Little
- None

Someone else's children under 18:

- Primary
- Shared
- Some, not primary
- Little
- None

Elderly parents including in-laws or other adult relatives over 18:

- Primary
- Shared
- Some, not primary
- Little
- None

Law School Attended

- Boston College
- Boston U
- Columbia
- Cornell
- Duke
- Emory
- Fordham
- George Wash. U
- Georgetown
- Harvard
- Northwestern
- NYU
- Stanford
- U of Chicago
- U of Iowa
- U of I-Urbana
- U of Michigan-AA
- U of Minn-TC
- U of Notre Dame
- U of Pennsylvania
- U of Texas-Austin
- U of Virginia
- U of Washington
- U of Wisconsin
- UC Berkeley
- UC Davis
- UC Hastings
- UCLA
- UNC Chapel Hill
- USC
- Vanderbilt
- Wash. & Lee
- Washington U
- Yale
- Other

Year Graduated from Law School

- 1987
- 1988
- 1989
- 1990
- 1991
- 1992
- 1993
- 1994
- 1995
- 1996
- 1997
- 1998
- 1999
- 2000
- 2001
- 2002
- 2003
- 2004
- 2005
- 2006
- 2007
- Other

Please tell us about your law school academic honors or achievements.

Check all that apply:

- I graduated in the top 10% of my class and/or was selected to Order of the Coif.
- I graduated in the top 20% of my class, but not in the top 10% of my class.
- I did not graduate with academic honors or in the top 20% of my class and/or I would characterize my law school performance as "good/average" but not "stellar."
- I did poorly in law school and credit my post-law school work experience for the success I have been able to achieve in a law firm.
- I did poorly in law school and credit my personal contacts/networks for the success I have been able to achieve in a law firm.
- I was selected for and served as a member of my law school's Moot Court Board.
- I was selected for and served as a member/editor of the top Law Review/Journal for my school.
- I was selected for and served as a member/editor of an alternative law review or journal.
- I completed a Federal Judicial Clerkship.
- I cannot answer this question regarding class ranking because my law school did not rank students.
- I do not remember the specifics about my grades, class rank, or other information in order to respond to any of the above.

MCCA
MINORITY CORPORATE COUNSEL ASSOCIATION

Additional resources from MCCA's *Pathways* Research series

A Study of Law Department Best Practices (1st Edition)

A Set of Recommended Practices for Law Firms

Metrics for Success: Measurement in Diversity Initiatives

The Myth of the Meritocracy: A Report On the Bridges and Barriers to Success in Large Law Firms

From Lawyer To Business Partner: Career Advancement in Corporate Law Departments

Perspectives From The Invisible Bar: Gay & Lesbian Attorneys in the Profession

Mentoring Across Differences: A Guide to Cross-Gender and Cross-Race Mentoring

A Study of Law Department Best Practices (2nd Edition)

A Comprehensive Examination of Diversity Demographics, Initiatives, and Policies in Corporate Legal Departments

Sustaining Pathways to Diversity®

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Sustaining Pathways to Diversity:®

A Comprehensive Examination of Diversity Demographics, Initiatives, and Policies in Corporate Legal Departments

Corporate Law Department Members

The Minority Corporate Counsel Association (MCCA) acknowledges the support of the following law department members and our Firm Affiliate Network (FAN) law firms whose financial contributions have helped to advance the goal of furthering diversity in the legal profession. For information about both groups, please contact MCCA's Director of Membership at (202)739-5906, or visit mcca.com

Corporate Law Department Members

3M Company
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AECOM
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Deere & Company
Del Monte Foods Corporation
DHL Express
Diageo North America
Duke Energy Corporation
DuPont Company
Eaton Corporation
Eli Lilly & Company
Entergy Corporation
Exelon Business Services Company
Federal Home Loan Bank of San Francisco
Freddie Mac
Gap Inc.
Genentech, Inc.
General Electric Company
General Mills
GlaxoSmithKline
Graduation Management Admission Council
GTSI Corporation
H.J. Russell & Company
Halliburton
Harley-Davidson Motor Company
Hewlett-Packard Company
Honeywell
IBM Corporation
Intel Corporation
International Paper Company
ITT Corporation
JC Penney Company, Inc.
JetBlue Airways Corporation
JM Family Enterprises, Inc.
JPMorgan Chase Bank NA
Kaiser Permanente.
KeyCorp
Kraft Foods Inc.
Kroll, Inc.
Leo Burnett Company, Inc
Liberty Mutual Insurance Company
LifeLock, Inc.
Liquidity Services, Inc.
Macy's Inc.
Marriott International, Inc.
MassMutual Financial Group
McDonald's Corporation
Merck & Co., Inc.
National Grid
Navistar, Inc.
New York Life Insurance Company
Newegg Inc.
Nike Inc.
Pepco Holdings, Inc.
PepsiCo. Inc
Pfizer Inc.
Pitney Bowes Inc.
Porzio Pharmaceutical Services, LLC
PPG Industries, Inc.
PRAXAIR, Inc.
Premier Media Inc.
Prudential Financial
Quest Diagnostics Incorporated
Qwest Communications International Inc.
Reckitt Benckiser Inc.
Reed Elsevier Inc.
Rockwell Collins
Rolls Royce North America
Sara Lee
Scripps Networks Interactive, Inc
Sears Holding Company
Sempra Energy
Shell Oil Company
SMG Consulting, Inc.
Sodexo, Inc
Sony Electronics Inc.
Southern California Edison Company
Staples, Inc.
Starbucks Coffee Company
Starwood Hotels & Resorts Worldwide
Taco Bell Corporation
Target Corporation
The Brookings Institution
The Church Pension Fund
The Clorox Company
The Dow Chemical Company
The Juilliard School
The Vanguard Group, Inc.
UBS AG
UnitedHealth Group
United Technologies Corporation
U.S. Foodservice, Inc.
Verizon
Wal-Mart Stores, Inc.
Waste Management
WellPoint, Inc.
Wells Fargo & Company
Xerox Corporation
XO Holdings, Inc.

Firm Affiliate Network (FAN)

Bressler, Amery & Ross, PC
Bricker & Eckler LLP
Buchanan, Ingersoll & Rooney, PC
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
DeMahy Labrador & Drake, PA
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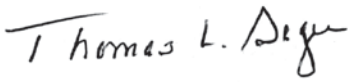
Forward

It is very exciting to see this research study come to fruition. Four years ago, I had the honor of making an introduction between Veta T. Richardson, then the Executive Director of MCCA, and Tammy Patterson and Pam Malone, the administrative leadership team for the NALP Foundation. Both of these organizations further their missions through the collection and dissemination of information about the legal profession. MCCA's mission is to advance the hiring, retention, and promotion of diverse attorneys in legal departments and the law firms that serve them. The NALP Foundation, through research, publication and professional exchange, seeks to improve upon legal leadership, professional growth and development, ethics awareness and education, professionalism, and diversity within our profession. Having served on Boards for MCCA and the NALP Foundation, it was my belief that collaboration between the two organizations could produce very valuable benchmark data about the state of diversity within our industry.

Soon after the introduction, work began to design and distribute a survey to corporate legal departments across the United States in an attempt to gather new information on our progress towards the *Call to Action* mandate and mission. The response rate was exceptional. Over 700 legal departments utilized this survey to share their attorney demographics as well as diversity initiatives and/or best practices—an illustration of the widespread desire to achieve and support our goal of a more diverse legal workplace.

The collaborative efforts and commitment to this project are apparent in this report. The findings and their underlying issues are of great personal and professional interest to me. My sincere hope is that these results will inform and assist all who are involved in creating and leading the legal workforce of the future.



Thomas L. Sager
Senior Vice President & General Counsel
DuPont Company

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Acknowledgements

The Minority Corporate Counsel Association and the NALP Foundation are pleased to have had the opportunity to work together to provide new groundbreaking benchmark research spotlighting diversity demographics within corporate legal departments. This important and timely study also examines specific efforts and initiatives undertaken by these companies to support and promote diversity and inclusion throughout the legal industry. This research project is the first of its kind on a subject of significant importance to both corporations and their outside counsel. We are grateful for the support of many experienced leaders in the profession who contributed to this endeavor, including the leaders of the Association of Corporate Counsel (ACC) for assisting with the dissemination of the research survey to ACC's membership of more than 26,000 in-house counsel.

More specifically, we extend special thanks to Tom Sager, Senior Vice President and General Counsel for DuPont Legal for initiating the introduction and partnership of our organizations. Tom's passion for improving diversity and inclusion in our industry led him to suggest this collaboration which draws on the strengths of both organizations.

Additionally, the research data and this report have been made possible by the participation of many key groups and individuals, all of whom are due recognition and words of appreciation. First among them are the lawyers and administrators who participated in development and reviews of the draft survey instruments for this study. Their input and insights were invaluable to the effort to create a concise, targeted inquiry into the major facets of this study. Thanks are extended to all who contributed to our effort.

Our sincere appreciation is also extended to each of the 765 corporate legal departments for their candid, comprehensive responses to the survey questions. Using the latest online technology, we were able to acquire many new insights and ideals related to the promotion and support of diversity. We offer our sincere appreciation for their time as well as their insights and candor.

In addition to those participating in the study as respondents, our research was made possible by the contributions and membership of leading legal employers, corporations, and other donors who support the ongoing efforts of both MCCA and the NALP Foundation. In particular, we extend special appreciation to the law firm of Sidley Austin LLP for underwriting the design, printing and distribution of this report.

The contributions by everyone mentioned by group or by name have been essential in this effort. Sincere thanks are extended to everyone.

Joseph K. West
President and CEO
Minority Corporate Counsel Association

Tammy Patterson
CEO/President
NALP Foundation

Introduction

"While recognizing the need for change, many elements within the legal profession have been very slow to adapt to the evolving workforce and competitive non-legal business environment. Too often, there has been a preference on both the corporate and firm side to adhere to the traditional way of doing things. For instance, many firms employ the same business model used since their inception, which includes billable hour structures, habitual recruiting practices and the established associate/partner career track.

"Similarly, corporate legal departments often continue to seek out many of the same firms and individuals for their outside counsel needs. The notion is that these firms and individuals are proven and offer comforting assurances when dealing with critical legal matters. And many corporate legal departments go to the same groups in the same firms to recruit their new hires. Yet, this tradition comes at a cost.

"The traditional way of doing things does not necessarily lend itself to attracting and retaining diverse talent. Nor does it acknowledge the need for cultivating strong environments that support and nurture individual attorneys, offering opportunities for growth and advancement across all races and genders. The consequence is many people leaving the profession after a few years, which in turn results in a lack of minority, female and non-traditional mentors at the upper echelons of the profession, who could help guide younger lawyers through the course of their careers. A shift must be made in both mindset and practices if the profession is to succeed going forward."[1]

The message delivered in this excerpt from a 2008 white paper on the progression of diversity in the legal profession, a follow-up to the *Call To Action* mandate signed and endorsed by prominent general counsel at some of America's leading legal departments, serves as the basis for this study and represents the need for and importance of benchmark research in this arena. While much has been written and discussed about private law firms and their commitment to and advancement of diversity in our industry, little is known about the diversity demographics, initiatives and standards that exist in the corporate legal departments that provide much of the legal work performed by the private sector.

This survey seeks to provide a new perspective on diversity and inclusion in the profession by examining efforts within the legal departments of corporations in the U.S. and in other countries. As a starting point, it

1. A Call to Action: Diversity in the Legal Profession

was necessary to take a close look at the diversity metrics inside these legal departments including the percentage of diverse individuals who hold the top legal officer and "direct report" positions.

The second phase of the survey explored the structures, administration and scopes of the diversity programs and special outreach efforts and collaborative initiatives of the participating companies. Finally, we examined how these legal departments measure and track the diversity demographics and progress of their outside counsel law firms.

While it is clear that there is much more to be done to improve and support a more diverse legal profession, we believe this study and the results are an important step toward identifying and highlighting the actions being taken and the progress made by corporate America and in other countries. The benchmarking data provided in this report are much needed and anticipated and will help build awareness, encourage innovation, and support new efforts to create a greater awareness of the successes and challenges that are present as we continue down the pathway of creating a more diverse legal workforce.

Executive Summary

Supporting and improving diversity and inclusion in the legal industry has been an important and challenging business strategy for corporations and their legal departments for a number of years. The findings in this report reflect data collected in the first quarter of 2011 from online surveys completed by 765 corporate legal departments. Three percent of the responding legal departments had headquarters outside of the United States, with approximately two-thirds of those located in Canada.

The report on this study of diversity and inclusion is segmented into three major sections: (1) diversity demographics, (2) diversity program structures and administration, and (3) tracking and measuring outside counsel efforts. The major findings are summarized below.

Corporate Legal Department Diversity Demographics

Initially, respondents were asked to provide the number of attorneys in their U.S. legal departments as well as a breakdown of those attorneys by primary diversity measures including race/ethnic minority, gender, sexual orientation and physically challenged or disabled status. The respondents consisted of law departments of various sizes. Approximately 62% of the responding legal departments employed 10 or fewer attorneys, while 17% reported legal departments of more than 50 attorneys.

Overall, 20% of the responding legal departments reported that their top legal officer position was held by an individual who is a race/ethnic minority. Thirty-six percent of the respondents reported that their top legal officer was a woman, while only 9% reported that that the position was held by a race/ethnic minority woman.

Thirty-one percent of the legal departments with only one employee (who would most commonly also be considered the top legal officer) reported that those individuals were race/ethnic minority attorneys. In contrast, only 10% of the responding departments of more than 75 attorneys reported that their top legal officer was a race/ethnic minority.

Sixteen percent of the total U.S. direct reports to the chief legal officer represented in the study were race/ethnic minority attorneys, with departments of two to five employees holding the highest percentage

of race/ethnic minority direct reports to the chief legal officer (23%). Overall, a slightly higher percentage of race/ethnic minority women (9%) were reported to hold direct report positions than race/ethnic minority men (7%).

Legal departments of two to five attorneys reported the highest percentage of total other attorneys who are race/ethnic minorities (21%). Departments of 26 to 75 attorneys reported the lowest percentage of total other attorneys who are race/ethnic minorities (15%).

Corporate Legal Department Diversity Program Structures and Administration

Overall, only 30% of responding legal departments reported having some type of diversity and inclusion program. However, the larger the department, the more likely they were to have a program in place. For example, only 14% of the departments with two to five attorneys reported having a diversity program, while 87% of respondents with more than 75 attorneys favorably responded to having a formal or informal program.

Thirty-one percent of the legal departments of 11 to 25 attorneys reported having special outreach or recruiting efforts to attract race/ethnic minority attorneys, while departments of 26 to 75 and 76 or more attorneys reported having these outreach efforts in place at much higher percentages, 52% and 74%, respectively. Overall, only 13% of the responding legal departments stated that they had special outreach efforts in place for attracting women attorneys, yet 54% of the largest departments of more than 75 attorneys have these efforts as part of their diversity plan.

Tracking and Measuring Diversity Efforts of Outside Counsel

Over one-half of the departments with 26 attorneys or more reported that they survey or meet with their outside counsel to track results and measure progress.

Ninety-one percent of respondents, overall, said that they did not track hours billed for specific diversity groups, yet 53% of the largest legal departments (i.e., more than 75 attorneys) stated that they tracked billable hours for race/ethnic minority attorneys, and one-half stated that they track hours for women attorneys. Only 18% of these largest departments track hours billed for LGBT attorneys, and even fewer (11%) track hours for physically challenged or disabled attorneys.

Overall, only 8% of responding legal departments reported that they have changed their relationship with any law firm based on the diversity metrics or efforts of the firm. Those departments that did implement some type of change most commonly reported that the change resulted in a decrease or increase in work assigned to the firm.

Corporate Legal Department Diversity Demographics

Measuring the progress of diversity initiatives or programs within an industry or even an individual organization is not always an easy task. Most often we use quantitative measures which focus on the amount or number of persons in an organization based on traditional affirmative action definitions. For purposes of this study, respondents were asked to provide the overall number of attorneys in the company's U.S. legal department as well as a more detailed demographic perspective of the department using traditional primary dimensions of diversity such as race/ethnicity, gender, physical ability, and sexual orientation.

Table 1: Size of U.S. Corporate Legal Departments of Participating Companies

Size of U.S. Legal Department	Number of Respondents	Percent
1	114	15 %
2	86	11 %
3	59	8 %
4	68	9 %
5	33	4 %
6	31	4 %
7	29	4 %
8	23	3 %
9	13	2 %
10	16	2 %
11-15	53	7 %
16-20	24	3 %
21-25	29	4 %
26-30	16	2 %
31-35	11	1 %
36-40	13	2 %
41-50	20	3 %
51-60	16	2 %
61-70	15	2 %
71-100	23	3 %
101-150	23	3 %
151-200	14	2 %
201-300	8	1 %
301 - 500	21	3 %
> 500	7	1 %
Total	**765**	**100%**

Percentages may not sum to 100% due to rounding.

Corporate Legal Department Diversity Demographics

At the onset, it is important to establish the overall size of the U.S. legal departments of the participating corporations in order to assess the representation of diverse employees. Interestingly, approximately 62% (472) of the corporations responding to the survey reported having 10 or fewer attorneys in their legal department, while only 17% (127) reported legal departments with more than 50 employees.

The non-U.S. based corporations participating in the study had U.S. legal departments ranging in size from one to 25 attorneys with the median size of these departments being eight attorneys

Respondents were asked to provide the diversity composition of those holding the top legal officer and direct report positions within the U.S. legal department as well as a breakdown of diversity metrics for all other attorneys in the department.

The insights revealed by this new data are of interest. For example, as illustrated by Tables 2, 3 and 4 that follow:

- Overall, 20% of the responding legal departments reported that their top legal officer position was held by a race/ethnic minority individual.
- Thirty-six percent reported that their top legal officer was a woman, while only 9% reported that that the position was held by a race/ethnic minority woman.
- Thirty-one percent of the legal departments with only one employee (who would most commonly also be considered the top legal officer) reported that those individuals were race/ethnic minority attorneys. In contrast, only 10% of the responding departments of more than 75 attorneys reported that their top legal officer was a race/ethnic minority individual.

" Law Department Leadership Team is leading a current fiscal year business plan team to better define our department's Diversity & Inclusion Strategy, including developing specific goals and metrics. The strategy consists of four core areas: recruitment, inclusion, global collaboration and innovation. Our U.S. Diversity team includes members from all workgroups and meets monthly with specific action items and goals that cover a range of diversity efforts. We measure success in our diversity efforts through the company's employee engagement survey which includes specific questions relating to diversity and inclusion issues and through our supplier diversity program metrics."

— Cargill Incorporated
Minneapolis, Minnesota

Corporate Legal Department Diversity Demographics

Table 2: Diversity Demographics of Top Legal Officers in Participating Companies (Individuals may be counted in more than one demographic category.)

Demographic	All Respondents	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Race/Ethnic Minority	20%	31%	23%	13%	14%	22%	10%
White (non-Hispanic)	80%	69%	77%	87%	86%	78%	90%
Men	64%	47%	54%	71%	68%	75%	86%
Women	36%	53%	46%	29%	32%	25%	14%
Race/Ethnic Minority Men	11%	19%	8%	10%	8%	18%	6%
Race/Ethnic Minority Women	9%	13%	14%	2%	6%	6%	4%
White (non-Hispanic) Men	59%	35%	52%	71%	64%	61%	84%
White (non-Hispanic) Women	21%	33%	26%	17%	22%	15%	6%
Openly LGBT	3%	3%	3%	3%	2%	3%	3%
Physically Challenged or Disabled	< 1%	**	**	**	**	**	**

Percentages do not sum to 100% because individuals may be counted in more than one demographic category or due to rounding.
** Insufficient cases for analysis.

- Responding legal departments stated that, overall, only 16% of total U.S. direct reports were held by race/ethnic minority attorneys.
- Departments of two to five employees had the highest percentage of race/ethnic minority direct reports (23%).
- A slightly higher percentage of race/ethnic minority women (9%) were reported to hold direct report positions than race/ethnic minority men (7%).

- Overall, just 3% of direct reports in the responding legal departments were openly LGBT. Companies with legal departments employing 6 to 10 attorneys had the highest percentage of LGBT direct reports (5%) while legal departments with 11 to 25 and more than 75 attorneys had the lowest percentages (2%).

Less than 1% of all direct reports across all responding legal department were reported as physically challenged or disabled attorneys.

Table 3: Diversity Demographics of U.S. Direct Reports in Participating Companies (Individuals may be counted in more than one demographic category.)

Percent of U.S. Direct Reports Who Are:	All Respondents	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)				
		2 to 5	6 to 10	11 to 25	26 to 75	> 75
Race/ethnic Minority*	16 %	23 %	16 %	15 %	13 %	17 %
White (non-Hispanic)*	84 %	77 %	84 %	85 %	87 %	83 %
Men*	56 %	41 %	49 %	59 %	62 %	68 %
Women*	44 %	59 %	51 %	41 %	38 %	32 %
Race/ethnic Minority Men	7 %	6 %	6 %	9 %	6 %	11 %
White (non-Hispanic) Men	49 %	35 %	43 %	50 %	55 %	57 %
Race/ethnic Minority Women	9 %	17 %	11 %	6 %	6 %	6 %
White (non-Hispanic) Women	35 %	42 %	41 %	35 %	32 %	27 %
Openly LGBT	3 %	3 %	5 %	2 %	3 %	2 %
Physically Challenged or Disabled	<1 %	**	**	**	**	**

* Results for race/ethnic minority vs. white and men vs. women are based on 390 companies with complete data on these categories. These 390 companies had 2,330 direct reports to the top legal officer. Results for Openly LGBT are based on 335 companies which provided data in this category, and these 335 companies employed 1,902 direct reports. Results for physically challenged or disabled are based on 326 companies which provided data in this category, and these 326 companies employed 1,781 direct reports.

** Insufficient cases for analysis.

- Again, legal departments of two to five attorneys reported the highest percentage of total other attorneys (i.e., attorneys who are neither the top legal officers nor his/her direct reports) who are race/ethnic minorities (21%). Departments of 26 to 75 attorneys reported the lowest percentage of total other attorneys who are race/ethnic minorities (15%).
- Forty-four percent of the total other attorneys employed by the legal departments participating in the study are women, with 34% being white (non-Hispanic) women and 10% being race/ethnic minority women.
- Legal departments of 11 to 25 attorneys employed the highest percentage of women categorized as other legal department attorneys.

Table 4: Diversity Demographics of Other Legal Department Attorneys in Participating Companies (Individuals may be counted in more than one demographic category.)

Percent of Total Other Attorneys Who Are:	All Respondents	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)				
		2 to 5	6 to 10	11 to 25	26 to 75	> 75
Race/ethnic Minority*	18 %	21 %	20 %	17 %	15 %	19 %
White (non-Hispanic)*	82 %	79 %	80 %	83 %	85 %	81 %
Men*	56 %	57 %	59 %	52 %	58 %	56 %
Women*	44 %	43 %	41 %	48 %	42 %	44 %
Race/ethnic Minority Men	8 %	7 %	7 %	7 %	6 %	9 %
White (non-Hispanic) Men	48 %	50 %	53 %	45 %	52 %	47 %
Race/ethnic Minority Women	10 %	14 %	13 %	10 %	8 %	11 %
White (non-Hispanic) Women	34 %	29 %	27 %	38 %	34 %	34 %
Openly LGBT	2 %	**	**	**	**	**
Physically Challenged or Disabled	<1 %	**	**	**	**	**

* Results for race/ethnic minority vs. white and men vs. women are based on 344 companies with complete data on these categories. These 344 companies employed 7,507 other attorneys in all U.S. legal departments. Results for openly LGBT are based on 314 companies which provided data in this category, and these 314 companies employed 4,660 other attorneys in their legal departments. Results for physically challenged or disabled are based on 304 companies which provided data in this category, and these 304 companies employed 4,992 other attorneys.

** Insufficient cases for analysis.

Corporate Legal Department Diversity Program Structures and Administration

Bearing in mind that 62% of the legal departments participating in this survey reported having 10 or fewer attorneys, it is not surprising that, overall, only 30% of respondents report having some type of diversity and inclusion program. Our research has found that the need for and prevalence of diversity programs is higher among larger law departments. In fact, the data reveals that the larger the department the more likely they are to have a diversity program in place. For example, only 14% of the departments with two to five attorneys reported having a diversity program, whereas 87% of respondents with more than 75 attorneys reported having a formal or informal diversity program.

Approximately one quarter of the non-U.S. based legal departments participating in the study cited that they had established a formal or informal diversity program.

Table 5: Has your legal department established a formal or informal diversity program or initiatives aimed at increasing diversity and inclusion?

	All Repondents (n=619)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Yes	30 %	9 %	14 %	22 %	48 %	76 %	87 %
No	70 %	91 %	86 %	78 %	52 %	24 %	13 %

Table 6: Is the program or set of initiatives: (Select all that apply.)

	All Repondents (n=175)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Independent to the legal department	46 %	33 %	10 %	11 %	57 %	72 %	54 %
Part of a larger organization-wide program	70 %	67 %	83 %	78 %	62 %	72 %	60 %
Other	9 %	0 %	7 %	11 %	8 %	2 %	22 %

Percentages do not sum to 100% because more than one response could be selected.

The question about who is responsible for the department's diversity program yielded a wide range of responses, and the many variations in job titles, managerial level, and reporting relationships were not always clear and thus made it difficult to draw comparisons. However, it was most frequently reported that the general counsel

or chief legal officer is the person who bears responsibility for the law department's diversity program. Other frequently mentioned titles included assistant or deputy general counsel, and diversity officer or chair.

Table 7: Top Five Positions Most Commonly Responsible for Diversity Program

1. General Counsel/Executive or Senior Vice President/Chief Legal Officer
2. Assistant General Counsel/Deputy General Counsel
3. Diversity Officer or Chair
4. Human Resources Director
5. Compliance Officer

When asked about the existence of a formal or informal diversity committee, again these structures were more likely to exist in the larger departments. In fact, 91% of departments with more than 75 attorneys reported having some form of diversity committee.

Table 8: Does your legal department have a formal or informal diversity committee separate from any company-wide diversity committee?

	All Repondents (n=169)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Yes	42 %	0 %	7 %	0 %	22 %	69 %	91 %
No	58 %	100 %	93 %	100 %	78 %	31 %	9 %

"In 2008, Exelon introduced a new diversity and inclusion strategy to ensure that the articulated commitment to diversity and inclusion also defined ownership, accountability, goals, and behavioral expectations for all employees. To implement this strategy, our legal department developed the following three goals to build on the company's and the legal department's commitment to diversity and inclusion: 1) To attract, develop and retain key talent that reflects the realities of the market place, our communities and the relevant labor market; 2) to create a culture of inclusion through consistent and sustained execution of the diversity and inclusion strategy, including progress measurement and accountability for results; and 3) to achieve a diverse range of contract suppliers, vendors and service providers. As of July 2011, 42% of our legal department's attorneys were female and 19% were persons of color. Diverse lawyers are enlisted to assume leadership roles on special initiatives within our legal department and the company. These assignments provide opportunities for diverse lawyers to develop relationships with business representatives as well as with outside counsel who serve as preferred providers. These leadership opportunities also provide visibility within the company including direct exposure to management, and often provide the lifeblood for later career development."

— Exelon Corporation
Chicago, Illinois

Most commonly, legal departments reported that the results and progress of their diversity efforts were reviewed annually, although 35% of respondents stated that results were reviewed on "other" timeframes rang-

Table 9: Frequency for reviewing results and progress of legal department's diversity program or initiatives

	All Repondents (n=153)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Annually	37 %	33 %	42 %	33 %	58 %	27 %	30 %
Bi-Annually	7 %	0 %	8 %	0 %	10 %	7 %	9 %
Quarterly	21 %	17 %	13 %	0 %	10 %	29 %	39 %
Other	35 %	50 %	37 %	67 %	23 %	37 %	21 %

Percentages may not sum to 100% due to rounding.

Of those departments that review progress of their program, 86% reported that the results were reviewed by or with the top legal officer of the company. In fact, 100% of the responding legal departments with more than 75 attorneys stated that the top legal officer was a part of the review process.

Table 10: Are the results and progress of your department's diversity program reviewed by or with the top legal officer of your company?

	All Repondents (n=162)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Yes	86 %	63 %	73 %	65 %	91 %	93 %	100 %
No	14 %	37 %	27 %	35 %	9 %	7 %	0 %

Table 11, on the next page, details the outreach and/or recruiting efforts specifically directed at attracting diverse attorneys. While overall only 17% of the participating legal departments reported having special efforts for outreach and recruiting diverse attorneys, it is important to keep in mind that at the time this survey was conducted, hiring throughout the entire legal industry was at its lowest point in many years. Significant differences do exist, however, when comparing the responses of the smallest legal departments with those of the largest. For example:

- Thirty-one percent of the legal departments of 11 to 25 attorneys reported having special outreach or recruiting efforts to attract race/ethnic minority attorneys, while departments of 26 to 75 and 76 or more attorneys reported having these efforts in place at much higher percentages, 52% and 74%, respectively.

- Overall, only 13% of the responding legal departments stated that they had special efforts in place for attracting women attorneys, yet 54% of the largest departments have these efforts as part of their diversity plan.

• Ultimately, 75% of the legal departments reported having no specific diversity outreach or recruiting efforts.

Table 11: Does your legal department have any special outreach or recruiting efforts directed at attracting diverse attorneys?: (Select all that apply.)

	All Repondents (n=531)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Minorities	17 %	1 %	4 %	8 %	31 %	52 %	74 %
Women	13 %	2 %	3 %	4 %	23 %	36 %	54 %
LGBT	5 %	0 %	1 %	1 %	10 %	14 %	28 %
Physically challenged or disabled	2 %	1 %	1 %	1 %	1 %	2 %	10 %
No special outreach/ recruiting efforts	75 %	90 %	90 %	84 %	62 %	36 %	21 %
Other	8 %	8 %	6 %	6 %	10 %	12 %	10 %

Percentages do not sum to 100% because more than one response could be selected.

Outreach efforts often involve some type of partnership or collaboration with outside organizations. As part of this study, legal departments were asked to provide the names of outside organizations they partner with to further their diversity efforts. Of the 167 departments who answered this question, 12% said they did not partner with any outside organizations, and 88% listed one or more organizations. Over 500 organizations were mentioned by respondents.

National bar associations, including diversity bar associations dedicated to the interests of a specific demographic group (e.g., national bar associations focused on women and/or specific race/ethnic groups), were the most frequently cited outside organizations used to enhance corporate diversity efforts. Local, metro, county, and regional bar associations, including bars aimed at promoting the interest of race/ethnic minority attorneys,

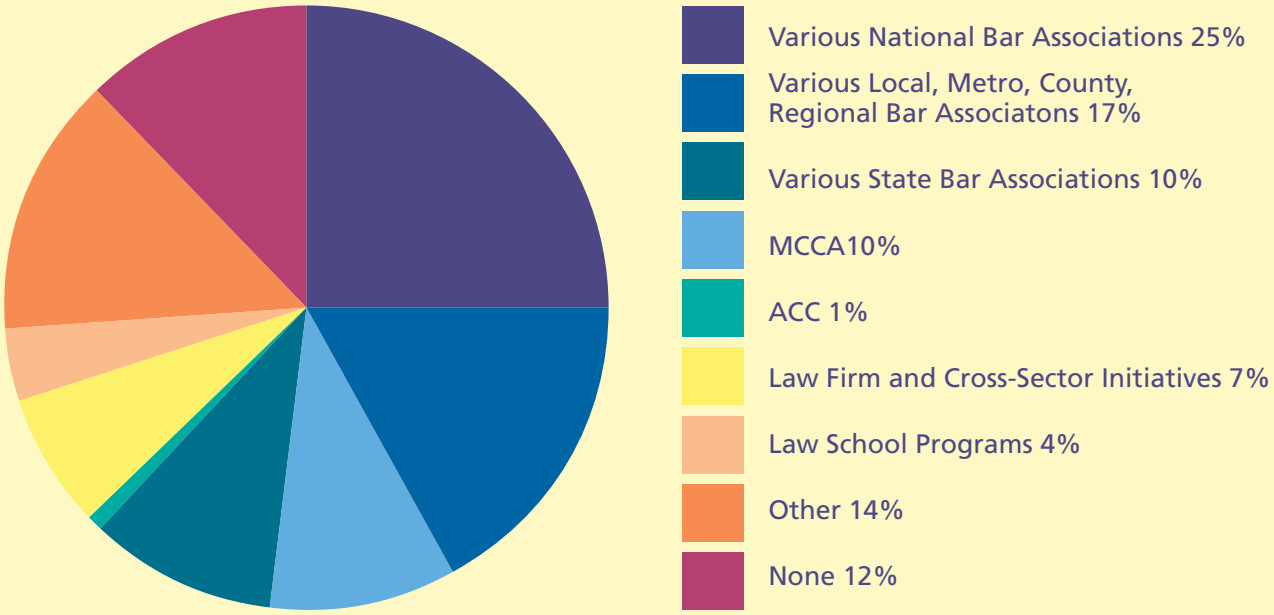
"UPS participated in the Corporate Legal Diversity Pipeline program which gave 60 students from a public high school the opportunity to explore legal careers, interact with professional role models, and learn about key legal concepts that impact their everyday lives. The team of legal professionals from UPS taught students about employment law, contracts, and intellectual property and provided a window into the lives of corporate lawyers. Students ended the program with a more comprehensive understanding of these important legal concepts. Through interactions with caring and enthusiastic adults, the students were able to consider career options, envision a pathway to legal careers, and lay the groundwork for the pursuit of that pathway. After the program, almost 90% of the students said that they were more interested in legal careers than they had been beforehand. We will continue this program in 2011 along with sponsored internships from local legal associations."

— United Parcel Service
Atlanta, Georgia

were the second most common type of organization the responding corporations utilized in their diversity efforts —17% of all the organizations used by the responding legal departments in their diversity efforts were bars of this type. The Minority Corporate Counsel Association (MCCA) was the most commonly cited non-bar related association used by legal departments to assist their diversity efforts.

Though less frequently mentioned than national and local/regional bars groups, state-wide associations of attorneys were also widely used by the responding corporations. Ten percent of the organizations that used outside resources to further corporate diversity programs turned to state-wide attorney associations. These associations include traditional state bars where membership is mandated for or open to all attorneys in a state and specialty bars serving attorneys of various races/ethnicities in that state.

Chart 1: External Diversity Partner Organizations
(n=507 organizations mentioned by responding corporations)



Tracking and Measuring Diversity Efforts of Outside Counsel

The *Call to Action* mandate established in 1999 encouraged many corporate legal departments, especially those who were original signatories on the document, to take greater steps toward advancing diversity in the profession by imposing criteria for improving diversity in the law firms they do business with. To that end, many of the larger legal departments have implemented methods for tracking and measuring the results of their outside counsel.

Over one-half of the departments with 26 attorneys or more reported that they survey or meet with their outside counsel to track results and measure progress. Of the non-U.S. based legal department respondents, only 13% reported that they monitor the diversity efforts and results of their outside counsel.

Table 12: Does your legal department survey or meet with outside counsel to track their diversity progress and results?

	All Repondents (n=564)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Yes	18 %	2 %	7 %	7 %	27 %	53 %	77 %
No	82 %	98 %	93 %	93 %	73 %	47 %	23 %

The majority of responding legal departments that do track or measure diversity efforts of their outside counsel, regardless of size, reported doing so on an annual basis, and almost all respondents (91%) who have some type of tracking process in place reported that the results are reviewed with their chief legal officer.

"Microsoft Corporation collects official diversity data from our Premier Providers. On a quarterly basis, these firms report on the hours billed by 'diverse' attorneys (per our specific definition and categories) and we compare such performance against the firms' historical marks and our own internal diversity ratio. We also ask the firms to provide monthly impressions regarding the ratio of diverse-to-total hours billed on our matters."

— Microsoft Corporation
Redmond, Washington

Table 13: Frequency of Surveying or Meeting with Outside Counsel to Track Diversity Progress and Results

	All Repondents (n=100)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Annually	54 %	50 %	67 %	50 %	53 %	50 %	54 %
Bi-Annually	6 %	0 %	0 %	0 %	10 %	7 %	7 %
Quarterly	3 %	0 %	0 %	0 %	0 %	4 %	7 %
Other	37 %	50 %	33 %	50 %	37 %	39 %	32 %

Percentages may not sum to 100% due to rounding.

Table 14: Are the results and progress of outside counsel diversity programs reviewed by or with the top legal officer of your company?

	All Repondents (n=99)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Yes	91 %	100 %	80 %	100 %	90 %	86 %	100 %
No	9 %	0 %	20 %	0 %	10 %	14 %	0 %

The majority of responding legal departments that do track or measure diversity efforts of their outside counsel, regardless of size, reported doing so on an annual basis, and almost all respondents (91%) who have some type of tracking process in place reported that the results are reviewed with their chief legal officer.

Table 15: Measuring or Tracking Hours Billed by Diverse Attorneys in Outside Law Firms

	All Repondents (n=551)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Race/ethnic Minorities	9 %	3 %	0 %	4 %	10 %	30 %	53 %
Women	8 %	3 %	0 %	4 %	7 %	30 %	50 %
LGBT	3 %	0 %	0 %	1 %	3 %	13 %	18 %
Physically challenged or disabled	2 %	0 %	0 %	1 %	0 %	8 %	11 %
No - do not measure or track hours billed by outside counsel in this manner	91 %	97 %	100 %	96 %	90 %	70 %	47 %

Percentages do not sum to 100% because more than one response could be selected.

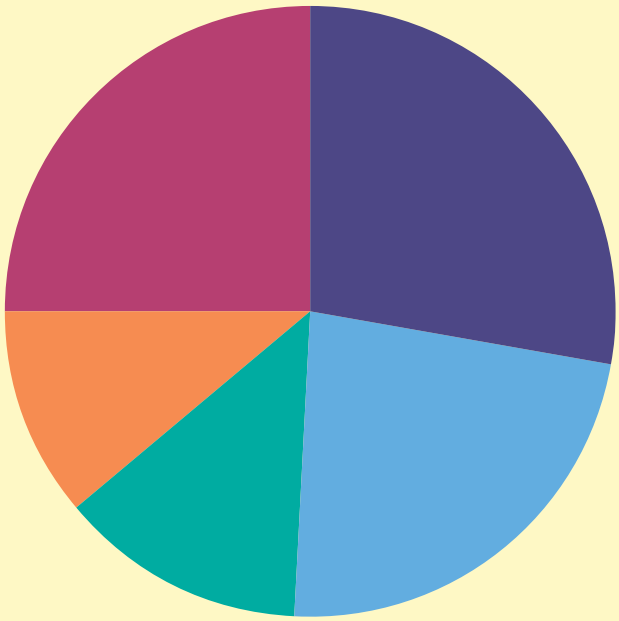
Overall, 88% of responding legal departments reported that they did not track the work performed by diverse attorneys beyond billable hours.

Table 16: Measuring and Tracking Work Performed (beyond billable hours) by Outside Race/ethnic Minority, LGBT, and Physically Challenged or Disabled Counsel

	All Repondents (n=544)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Yes	12 %	6 %	5 %	8 %	18 %	26 %	40 %
No	88 %	94 %	95 %	92 %	82 %	74 %	60 %

Chart 2 below illustrates the various ways in which the legal departments that do track or measure the diversity efforts and progress of their outside counsel approach the issue.

Chart 2: Tracking Diversity Efforts and Results of Outside Counsel



* Formal tracking includes any organized system for tracking work performed by outside counsel other than a survey. Ex: through billing system, in a database, other formal records.

** Informal tracking includes encouragement to work with diverse outside counsel, actively looking for diverse outside counsel, making sure lead outside counsel is a minority.

Yet, despite all the pledges signed by general counsel over the years, relatively few legal departments, only 8% overall, reported that they have changed their relationship with any law firm based on the diversity metrics or efforts of the firm. However, in departments with more than 10 attorneys, that average climbs to a little more than 20% indicating that for corporations with bigger departments and presumably larger outside counsel budgets, failure to meet the client's diversity expectations will impact whether the firm retains its business relationship with the law department.

Table 17: Has your company changed its relationship with any law firm based on their internal diversity metrics or efforts?

	All Repondents (n=544)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Yes	8 %	1 %	2 %	5 %	21 %	22 %	19 %
No	92 %	99 %	98 %	95 %	79 %	78 %	81 %

The legal departments who stated that they have changed relationships with outside counsel based on diversity metrics or efforts were asked to describe the ways in which these relationships were changed. Most often these legal departments reported they either decreased work or awarded more work based on diversity metrics. In addition, 18% of these respondents reported that they terminated their outside counsel for poor diversity results or efforts.

"The senior leadership of General Mills' Law Department is accountable for yearly objectives that contain diversity metrics, including raising the bar on what we will require from outside law firms in order to do business with General Mills. The annual objectives of all other members of the Law Department (including paralegals, legal administrative assistants and other specialists) must also contain a diversity component against which performance is measured. General Mills' Law Department's Diversity and Inclusion Council is charged with implementing the Law Department's diversity strategic plan and mission, which is as follows: 'We will leverage the value of diversity by influencing and measuring law firms' efforts to attract, retain and promote diverse legal professionals, by increasing internal appreciation and ownership of diversity and inclusion, and by meeting minority vendor spending goals.' We regularly benchmark and share ideas with other corporate law departments and law firms about diversity and inclusion initiatives and best practices."

— General Mills Corporation
Chicago, Illinois

Table 18: Ways in Which Legal Departments Have Changed Relationships with Outside Counsel Based on Diversity Metrics or Efforts

	All Repondents (n=44)	Size of U.S. Legal Department (Total Attorneys Employed 1/1/2010)					
		1	2 to 5	6 to 10	11 to 25	26 to 75	> 75
Terminated the law firm	18 %	0 %	0 %	25 %	20 %	17 %	14 %
Terminated a specific partner within the law firm	5 %	0 %	0 %	25 %	7 %	0 %	0 %
Reassigned work to another attorney within the same firm	23 %	0 %	25 %	25 %	27 %	17 %	29 %
Decreased the amount of work being given to the firm or partner	55 %	100 %	25 %	50 %	53 %	75 %	43 %
Awarded additional work to the firm or partner for meeting expectations	55 %	100 %	50 %	25 %	67 %	42 %	71 %
Imposed a probationary period in which the firm had to improve efforts	11 %	0 %	0 %	25 %	13 %	8 %	14 %
Other	23 %	0 %	0 %	50 %	20 %	17 %	43 %

Percentages do not sum to 100% because more than one response could be selected.

"Annually, the law department establishes goals for achieving a certain percentage of our U.S. outside counsel spend with certified minority-owned, certified women-owned and "non-certified" law firms. Non-certified firms are firms that do not meet the criteria for minority or women-owned certification, but nonetheless further the cause of excellence through diversity. The process involves analyzing data, reviewing the company's goals with Supply Chain Management and discussing adjustments with the Law Department's senior management based on business conditions/strategic plans. Quarterly, the department tracks certified and non-certified spend of our principal law firms as compared to total quarterly spend for the firm. These quarterly results are shared with all Law Department members."

— Eaton Corporation
Cleveland, Ohio

Appendices

Appendix A — About the Participating Law Departments

An email invitation to participate in this study was disseminated to approximately 10,000 legal departments of leading corporations, which make up the membership rosters of the Minority Corporate Counsel Association (MCCA) and the Association of Corporate Counsel (ACC). A total of 765 corporate legal departments provided partial or complete responses to the survey. Information regarding the demographics and composition of the respondent law departments follows in Tables A1 (Size), A2 (Headquarters Location), and A3 (Industry).

Respondent Demographics

Table A1: Size of U.S. Corporate Legal Departments of Participating Companies

Size of U.S. Legal Department	Number of Respondents	Percent
1	114	15 %
2	86	11 %
3	59	8 %
4	68	9 %
5	33	4 %
6	31	4 %
7	29	4 %
8	23	3 %
9	13	2 %
10	16	2 %
11-15	53	7 %
16-20	24	3 %
21-25	29	4 %
26-30	16	2 %
31-35	11	1 %
36-40	13	2 %
41-50	20	3 %
51-60	16	2 %
61-70	15	2 %
71-100	23	3 %
101-150	23	3 %
151-200	14	2 %
201-300	8	1 %
301 - 500	21	3 %
> 500	7	1 %
Total	**765**	**100%**

Percentages may not sum to 100% due to rounding.

Table A2: Headquarters Location (n=259)		
Domestic vs. Foreign Based	**Number of Respondents**	**Percent of Respondents**
Headquartered in USA	251	97 %
Headquartered Outside of USA	8	3 %
Percentages may not sum to 100% due to rounding.		

Table A3: Respondent Profile - Industry		
Industry	**Number of Respondents** (n=182)	**Percent**
Agricultural	2	1 %
Automotive	2	1 %
Aviation	4	2 %
Banking	8	4 %
Biological Products	1	<1%
Biotechnology	1	<1%
Business Equipment	3	2 %
Chemical	1	<1%
Commercial Construction	2	1 %
Compliance	1	<1%
Consumer Packaged Goods	3	2 %
Distribution	2	1 %
Do not know	1	<1%
Education	4	2 %
Electronics	2	1 %
Employment Agencies	1	<1%
Energy	10	5 %
Engineering	4	2 %
Financial	12	7 %
Grocery	1	<1%
Healthcare	11	6 %
Hospital Construction	1	<1%
Hospitality	2	1 %
Industrial	2	1 %
Insurance	12	7 %
Internet	3	2 %
IT Services	8	4 %
Management	3	2 %
Manufacturing	14	8 %
Many	1	<1%
Marketing and Advertising	1	<1%
Media	1	<1%
Medical Devices	1	<1%
National Security	1	<1%

Table A3: Respondent Profile - Industry (cont.)		
Industry	**Number of Respondents** (n=182)	**Percent**
Non-profit	3	2 %
Outsourcing	1	<1%
Patent Owners and Lessors	1	<1%
Pharmaceuticals	8	4 %
Professional Services	5	3 %
Real Estate	6	3 %
Retail	11	6 %
Social Services	1	<1%
Technology	6	3 %
Telecommunications	5	3 %
Trade Association	2	1 %
Transportation	2	1 %
Travel	1	<1%
Utility	4	2 %
Total	**182**	**100%**
Percentages may not sum to 100% due to rounding.		

Appendix B — Research Methodology and Acknowledgements

This report continues the research that MCCA has published as part of its *Sustaining Pathways to Diversity®* series, which addresses a variety of issues concerning diversity and inclusion in corporate legal departments. MCCA's work on the corporate law department survey instrument began more than four years ago, but two prior distributions of the early survey instrument failed to yield a sufficiently robust response rate. The establishment of a collaborative working relationship with two leading organizations — the Association of Corporate Counsel (ACC) and the NALP Foundation — proved instrumental to the success of this survey, as measured by the overwhelming response rate and the quality and depth of analysis of the findings.

The survey had multiple objectives:

- Collect diversity demographic information specifically concerning the chief legal officer (CLO), direct reports to the CLO, and all other attorneys in the law department;
- Obtain insight regarding the prevalence of formal or informal diversity and inclusion initiatives as well as who bears primary responsibility for the success of these programs;
- Examine how diversity impacts the selection, retention, and management of outside counsel including whether work has been reassigned based upon a firm's diversity performance.

MCCA retained The NALP Foundation as an independent research consultant to work with MCCA to collect the data necessary to meet the stated objectives. The survey was administered online by the NALP Foundation using Zoomerang® and was comprised of 26 questions. (See Appendix C for survey instrument.) Given the expertise of MCCA concerning diversity and corporate legal departments and of the NALP Foundation concerning the administration and review of large-scale surveys, this project presented a unique opportunity for each organization to play to its respective strengths. In addition, MCCA tapped its longstanding relationship with ACC, which enabled the survey to be disseminated to tens of thousands of in-house counsel around the world, thereby achieving an unprecedented number of responses and making this report the largest and most comprehensive ever published about in-house legal departments and diversity.

An electronic invitation with a link to the survey was distributed by ACC and MCCA to approximately 10,000 in-house law departments. The survey data was collected from December 2010 through April 2011. Only one response per law department was accepted. Responses were received from a total of 765 unique law departments. Participants did not receive a financial incentive for participating and participation was purely voluntary. However, in appreciation for participation in the survey, MCCA and the NALP Foundation will provide an individual, customized report for each respondent allowing the law department to benchmark against the overall findings.

All information collected in the survey was self-reported by respondents with the understanding that all response data would be reported solely in the aggregate and that appropriate steps would be taken to maintain confidentiality of individual responses. MCCA did not engage in independent verification of any reported data.

About the Research Team

Veta T. Richardson, in her capacity as former Executive Director of MCCA, served as project director, and as such had general oversight and financial responsibility for production of this research report. In addition, Ms. Richardson contributed substantively to development of the survey instrument, analysis of the data, and preparation of the final report. Lori L. Garrett served as project manager for MCCA, and as such had responsibility for finalizing, designing and printing this research report.

Tammy Patterson served as project manager and the primary draftsperson for this report. Her many contributions also included data design for the survey instrument, managing the logistics for distribution and data collection, as well as supervision of other research consultants. In addition to Ms. Patterson, other NALP Foundation staff that were instrumental to the completion of this report include Cynthia Spanhel, PhD., who served as a research analyst and statistician, and Pamela Malone, who assisted with corporate relations and project coordination.

Acknowledgements

MCCA and NALP Foundation extend appreciation to the law firm of Sidley Austin LLP for its generous financial support of this project, which helped to defray MCCA's costs regarding the design and printing of this report.

In addition, a debt of gratitude is extended to the Association of Corporate Counsel because without its collaboration and commitment, the survey would not have reached such a broad cross-section of in-house legal departments.

Appendix C — The Survey Instrument

Page 1 – Heading

Definitions: On this survey, "minority" refers to people who are members of racial/ethnic groups traditionally considered in the minority of the U.S. population (e.g., Hispanic/Latino(a), African American or Black, Asian or Asian Pacific American, Native American or Indian, or persons who are of mixed racial/ethnic heritage.)

Page 1 – Question 1 – Open Ended – One Line

As of January 1, 2010 how many attorneys were employed in all of your company's legal departments in the United States? (Please enter a whole number only.)

Page 1 – Question 2 – Choice – Multiple Answers (Bullets)

As of January 1, 2010, was your company's top legal officer: (Select all that apply. The individual may be counted in more than one demographic category.)

❑ Minority
❑ White (non-Hispanic)
❑ A Man
❑ A Woman
❑ Openly Lesbian, Gay, Bisexual or Transgendered (LGBT)
❑ Physically Challenged or Disabled

Page 2 – Question 3 – Open Ended – One or More Lines with Prompt

As of January 1, 2010, how many of your company's U.S. Direct Reports to the top legal officer were: (Please enter whole numbers only, and enter a zero if there are no individuals in the listed category. Individuals may be counted in more than one category.)

❑ Minority Men _____
❑ White (non-Hispanic) Men _____
❑ Minority Women _____
❑ White (non-Hispanic) Women _____
❑ Openly Gay, Lesbian, Bisexual or Transgendered (LGBT) _____
❑ Physically Challenged or Disabled _____

Page 3 – Question 4 – Open Ended – One or More Lines with Prompt

As of January 1, 2010, how many of your company's other attorneys in all U.S. legal departments were: (Please enter whole numbers only, and enter a zero if there are no individuals in the listed category. Individuals may be counted in more than one category.)

❑ Minority Men _____
❑ White (non-Hispanic) Men _____
❑ Minority Women _____
❑ White (non-Hispanic) Women _____
❑ Openly Gay, Lesbian, Bisexual or Transgendered (LGBT) _____
❑ Physically Challenged or Disabled _____

Page 4 – Question 5 – Choice – One Answer (Bullets)

Has your legal department established a formal or informal diversity program or initiatives aimed at increasing diversity and inclusion?

❑ Yes
❑ No

Page 5 – Question 6 – Choice – Multiple Answers (Bullets)

Is the program or set of initiatives (Select all that apply.):

- Independent to the legal department?
- Part of a larger organization-wide program?
- Other (Please describe.)

_____

Page 5 – Question 7 – Open Ended – One or More Lines with Prompt

Who has the primary responsibility for leading the diversity plan and initiatives within the legal department?

❑ Name _____
❑ Title _____

Page 6 – Question 8 – Choice – One Answer (Bullets)

Does your legal department have a formal or informal diversity committee separate from any company-wide diversity committee?

❑ Yes
❑ No

Page 6 – Question 9 – Choice – One Answer (Bullets)

How often are the results and progress of your legal department's diversity program or initiatives reviewed?

❑ Annually
❑ Bi-Annually
❑ Quarterly
❑ Other (Please describe.)

_____

Page 6 – Question 10 – Choice – One Answer (Bullets)

Are the results and progress of your firm's diversity program reviewed by or with the top legal officer of your company?

❑ Yes
❑ No

Page 7 – Question 11 – Choice – Multiple Answers (Bullets)

Does your legal department have any special outreach or recruiting efforts directed at attracting attorneys who are: (Select all that apply.)

❑ Minorities
❑ Women
❑ LGBT
❑ Physically Challenged or Disabled
❑ No special outreach/recruiting efforts
❑ Other (Please describe.)

_____

Page 7 – Question 12 – Open Ended – Comments Box

Please list names of any outside organizations you are currently involved with or partnering with to further your diversity efforts.

_____

_____

Page 7 – Question 13 – Open Ended – Comments Box

Please list names of any internal committees, affinity groups, programs and related entities designed to further your diversity efforts.

_____

_____

Page 8 – Heading

Outside Counsel Diversity Programs

Page 8 – Question 14 – Choice – One Answer (Bullets)

Does your legal department survey or meet with outside counsel to track their diversity progress and results?

❑ Yes
❑ No

Page 9 – Question 15 – Choice – One Answer (Bullets)

How often do you survey or meet with outside counsel to track diversity progress and results?

❑ Annually
❑ Bi-annually
❑ Quarterly
❑ Other (Please describe.)

_____

Page 9 – Question 16 – Choice – One Answer (Bullets)

Are the results and progress of outside counsel diversity programs reviewed by or with the top legal officer of your company?

❑ Yes
❑ No

Page 10 – Question 17 – Choice – Multiple Answers (Bullets)

Does your company measure or track hours being

billed for work performed by outside counsel by attorneys who are: (Select all that apply.)

❑ Minorities
❑ Women
❑ LGBT
❑ Physically Challenged or Disabled
❑ No — do not measure or track hours billed by outside counsel in this manner

Page 11 –- Question 18 – Open Ended – One or More Lines with Prompt

What percentage of work billed by outside counsel for your company is billed by: (Percentages will not add up to 100% as it is possible for individuals to be listed in more than one category. Please enter whole numbers only, and enter a zero if there are no individuals in the listed category.)

❑ Minority Men _____
❑ Minority Women _____
❑ White (Non-Hispanic) Men _____
❑ White (Non-Hispanic) Women _____
❑ Openly LGBT Men and Women _____
❑ Physically Challenged or Disabled Men and Women_

Page 12 – Question 19 – Choice – One Answer (Bullets)

Beyond hours billed, does your company formally or informally track the work performed by outside minority, LGBT, and physically challenged or disabled counsel?

❑ Yes
❑ No

Page 13 – Question 20 – Open Ended – One or More Lines with Prompt

Aside from billing work as members of the outside counsel team, it is important for attorneys in law firms to serve as the engagement or relationship managers who assemble and/or lead the outside counsel team that does the work for the corporate clients.

What percentage of work billed by outside counsel for your company is managed or led by law firm engagement or relationship managers who are: (Percentages will not add up to 100% as it is possible for individuals to be listed in more than one category. Please enter whole numbers only, and enter a zero if there are no individuals in the listed category.)

❑ Minority Men Partner(s) _____
❑ Women Partner(s) _____
❑ White (Non-Hispanic) Women Partner(s) _____
❑ White (Non-Hispanic) Men Partner(s) _____
❑ Openly LGBT Partner(s) _____
❑ Physically Challenged or Disabled Partner(s)_____
❑ Minority Men Non-partner Attorney(s) _____
❑ Minority Women Non-partner Attorney(s) _____
❑ White (Non-Hispanic) Men Non-partner Attorney(s) _____
❑ White (Non-Hispanic) Women Non-partner Attorney(s) _____
❑ Openly LGBT Men or Women Non-partner Attorney(s) _____
❑ Physically Challenged or Disabled Non-partner Attorney(s) _____

Page 13 – Question 21 – Open Ended – Comments Box

Please describe what your company does to track the work managed by outside counsel who are minorities, women, LGBT, and/or physically challenged or disabled?

_____

_____

Page 14 – Question 22 – Choice – One Answer (Bullets)

Has your company changed its relationship with any law firm based on their internal diversity metrics or efforts?

❑ Yes
❑ No

Page 15 – Question 23 – Choice – Multiple Answers (Bullets)

How have these relationships changed? (Select all that apply.)

❑ Terminated the law firm
❑ Terminated a specific partner within the law firm
❑ Reassigned work to another attorney within the same firm
❑ Decreased the amount of work being given to the firm or partner
❑ Awarded additional work to the firm or partner for meeting expectations
❑ Imposed a probationary period in which the firm had to improve efforts
❑ Other (Please describe.)

_____

Page 16 – Heading

Best Practices

Page 16 – Question 24 – Open Ended – Comments Box

Please describe any internal best practices in any of the following categories you would like to share and have published in the survey results. Examples may include:

Commitment from Senior Management

A Broadened Interpretation of Diversity

Measuring Diversity in the Legal Department

Targeted Recruiting Efforts/Pipeline Programs

Retention

Inclusion in Succession Planning

Compensation Tied to Diversity Efforts

_____

_____

Page 16 - Question 25 - Open Ended - Comments Box

Please describe any external best practices in the areas of influencing and measuring diversity of outside law firms you would like to share and have published in the survey results. Examples may include:

Outreach efforts to diverse outside counsel

Requiring diverse attorneys for RFPs

Diversity metrics

Holding in-house attorneys accountable

_____

_____

Page 17 – Question 26 – Open Ended – One or More Lines with Prompt

Respondent Profile: (needed to send you a report of the survey's key findings):

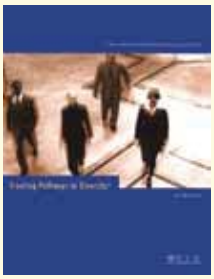
❑ Company name _____
❑ Headquarters City and State _____
❑ Industry or SIC code _____
❑ Name of person completing survey _____
❑ Title of person completing survey _____
❑ Email address of person completing survey _____
❑ Telephone number of person completing survey ____

Notes

MINORITY CORPORATE COUNSEL ASSOCIATION

Additional resources from MCCA's *Pathways* Research series

A Study of Law Department Best Practices (1st Edition)



A Set of Recommended Practices for Law Firms

Metrics for Success: Measurement in Diversity Initatives

The Myth of the Meritocracy: A Report On the Bridges and Barriers to Success in Large Law Firms

From Lawyer to Business Partner: Career Advancement in Corporate Law Departments

Perspectives From The Invisible Bar: Gay & Lesbian Attorneys in the Profession

Mentoring Across Differences: A Guide to Cross-Gender and Cross-Race Mentoring

A Study of Law Department Best Practices (2nd Edition)

The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms

The New Paradigm of LBGT Inclusion: A Recommended Resource for Law Firms

WORKPLACE 2020:
What Gen Y Attorneys Experience & Expect

SUSTAINING PATHWAYS TO DIVERSITY®

MCCA
MINORITY CORPORATE COUNSEL ASSOCIATION

WORKPLACE 2020
What Gen Y Attorneys Experience & Expect

MCCA Board of Directors

MINORITY CORPORATE COUNSEL ASSOCIATION

SUSTAINING PATHWAYS TO DIVERSITY®

WORKPLACE 2020

What Gen Y Attorneys Experience & Expect

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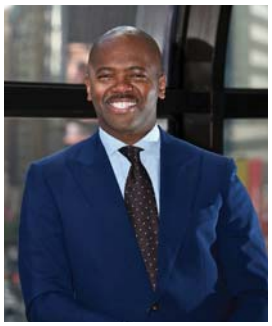


It has been said that the only constant is change itself. Changing demographic patterns require and demand an on-going assessment of how those changes affect the workplace. The legal profession and its newest generation of lawyers is no exception. This study of "Generation Y" lawyers seeks to examine this dynamic in all of its complexities. Theirs is a generation that arrives at the workplace at the confluence of a number of extraordinary and exciting circumstances. It is a time of globalization, a rollercoaster economy, technological advances, and uncertainty around employment trajectories and traditional billing arrangements. These circumstances are layered with this generation's shifting appreciation for the import and impact of diversity and inclusion, as well as, flexible work schedules and varying workplace cultures.

This report is designed to both introduce this generation to the marketplace and provoke thought and discussion around where both they and the profession are headed.

Joseph K. West
President & CEO
Minority Corporate Counsel Association

II. Introduction

"Generation Y is entitled, lazy, selfish, tech savvy, and incompetent,"
-Scott Greenfield, Attorney.[1]

"I had a summer associate call me and ask me, 'So that my girlfriend and I can coordinate our showers in the morning- can I schedule to come in at 9:30 instead of 8:30 to work?"
-Dan Hull, Attorney.[2]

"The Millennial: Generation Enlightened or Generation Lazy?"
-Ashby Jones, WSJ Law Blog[3]

"I don't envy the Millennial Generation. In fact I don't think they are equipped for the hard going that lies ahead of them…Technology provides them with mountains of instant data, but all that technology and data are useless without judgment. Judgment, like thinking, is a process that must be introduced and internalized, nurtured and practiced…Is this young generation, weaned as they are on video games and the internet, equipped to meet such challenges?"

Hon. John L. Kane, U.S. District Court,
District of Colorado[4]

According to the Integrated Postsecondary Education Data System at The National Center for Educational Statistics approximately 25,000 to 35,000 Generation Y (Millennials or Gen Y) lawyers have passed the bar each year since approximately 2006.[5] Further, it is estimated that between 120,000 to 150,000 Gen Y attorneys are currently in the workplace, and those numbers will continue to rise by approximately 15,000 to 20,000 each year.

Comments, anecdotes, and article titles such as those listed above have become commonplace in legal publications over the past few years. The kind of complaints noted above, primarily from Baby Boomers (born between 1947 and 1964), about Generation Y (born after 1980), abound in informal conversations, meetings, conferences, and publications. Yet, the legal profession has done very little analysis on who this generation is, what they experience and expect in the legal workplace.

This study is an exploration of the legal workplace from the perspective of Millennial attorneys. The report provides an analysis of the Gen Y perspectives, and is an effort to better understand who they are and how they compare to Baby Boomers and Generation X (born between 1964 and 1980) attorneys.

This report focuses on five key areas of the Gen Y workplace experience: 1) selecting an employer, 2) attachments to their employer and aspirations, 3) experiences and expectations for the use of technology, 4) experiences and expectations for the workplace, workday, and work style, and 5) the value of diversity and inclusion. The findings of this study illustrate that Gen Y experiences and expectations for the legal workplace are complex and not always reflective of the stereotypes and complaints affixed to this generation. This report provides a portrait of an emerging generation that cannot be captured by simplistic stereotypes. It is a generational portrait that is critical for anyone who wants to better understand and lead change in legal workplaces.

III. Executive Summary

For several years, Generation Y, also known as Gen Y or the Millennials, have been a heated topic of conversation in informal conversations, meetings, conferences, and publications. Generation Y, comprised of individuals born after 1980, tends to clash particularly with the generation that is primarily responsible for parenting and leading them: the Baby Boomers. Issues around work ethic, propriety, informality, communication preferences, and value systems are active in workplaces across the country. In spite of conversations surrounding Generation Y, little analysis has been done on who this generation is, and what they experience and expect in legal workplaces. This study is an exploration of legal workplaces from the perspective of Millennial attorneys, without comparison or contrast points to other generations. The findings in this study illustrate that Gen Y's experiences and expectations for legal workplaces are complex and not always reflective of the stereotypes and complaints that have been affixed to their generation. This portrait is one of an evolving generation and it is critical for anyone who wants to better understand and lead change in legal workplaces.

Methodology

The Workplace 2020 methodology was designed to explore the experiences and expectations of Generation Y attorneys through their own eyes. A web-based survey was developed, which focused on the perceptions and experiences of Gen Y attorneys in a variety of areas relevant to their selection of employers, their experiences with and expectations of their employers, and their overall perspectives on the legal profession.

The Minority Corporate Counsel Association (MCCA) used an open, self-selection model of inviting respondents to participate in this survey. The overall sample size of 938 respondents, all born after 1980, represented workplaces primarily in the private sector including corporations and law firms of varying sizes. The gender representation of the respondents was roughly equal with slightly more women than men, and the representation of racial/ethnic minorities and sexual orientations was consistent with average percentages of minority representation in law schools.

Below is a summary of the study's findings, broken down by categories that were designed to capture the full experience a typical Gen Y employee in the workforce. The full report is available at **www.mcca.com/research**.

1. Selecting An Employer

In selecting an employer, respondents were asked to consider the factors present in their decision making process. For example, geographical location, reputation, organizational values, financial rewards, learning opportunities, opportunity to do meaningful work, ability to travel, diverse workforce, inclusive workplace, opportunity to learn from proven experts, opportunity to advance, employee benefits, and flexibility. It is notable that, in their decision-making process, many respondents identified current economic conditions as an additional and important consideration in their decision, if not a deciding factor.

Respondents identified the five factors below, in order of importance, as most critical to their decision:

1. Geographical location
2. The opportunity to do meaningful and satisfying work
3. The opportunity to work with great colleagues
4. Learning and training opportunities
5. The opportunity to learn from proven experts/leaders

The least important factors are: limited travel, ability to travel, a diverse workforce, flexibility and an inclusive workplace.

While the above factors represent the average perspective, there were notable differences for minority respondents. For example, learning and training opportunities were ranked as having greater importance than the opportunity to work with great colleagues. Women ranked organizational values and culture among the most important criteria in selecting an employer, above opportunities to learn from proven experts and leaders.

2. Attachments and Aspirations

Even though Gen Y attorneys in this study were thoughtful and deliberate in how they selected their employers, attachment to their employer was tenuous. How long a Millennial attorney planned to stay with their current employer and their long-term aspirations with their employer (advance into leadership positions) was more indicative of short-term career choices in contrast to long-term career decisions. Comments by several respondents also indicate that economic conditions were reflected in their short-term choices but not in their long-term attachments or aspirations.

The overwhelming majority of respondents were not planning to stay with their employer for more than five years, with higher percentages of minorities and women planning to stay less than five years. Approximately 25% of respondents, across all demographic groups, reported they were planning to stay in their workplace between one to three years. Only 18% of women and 20% of minorities were planning to stay in their workplace more than five years. Women and minority respondents generally felt that the opportunity to advance into senior leadership roles within their workplace was not a significant criterion.

The overall positive sentiment expressed by Millennial attorneys was a complex mix of wanting to advance into leadership positions while not being completely sure how long they wanted to stay with their current employer. Regardless of their long-term trajectory, respondents expressed a strong desire for the opportunity to shape their current workplace. This shift from future-based investment to investment for the "here and now" is critical for senior lawyers and workplace leaders to understand in order to best integrate this generation's perspectives into the overall work environment.

3. Experiences and Expectations for the Use of Technology in Communication and Professional Development

A significant portion of respondents expressed frustration and dissatisfaction with the underutilization of technology, especially within the context of informal professional development. The majority, across all groups, reported feelings that their workplaces did not use technology as an informal communication tool for feedback, training, and professional development.

Approximately 35% of all respondents felt that communication mechanisms used by leadership were not very effective. For these respondents, the key issues of ineffectiveness were: outdated technology, underutilized intranets, lack of transparency, outdated telephone systems, ineffective information technology support systems, and other inefficiencies in technology infrastructures.

About 33% of all respondents felt that their workplace was not utilizing technology very well with regards to overall productivity, while 48% of all respondents felt that their workplaces did not utilize technology efficiently as a training and development tool. Some key suggestions from respondents included:

- Increasing on-line trainings, webinars, and on-demand video trainings
- Better trained staff who execute trainings
- More intranet-based and easily searchable materials
- Better use of the intranet
- Increase use of Skype technology instead of conference calls

Men, in comparison to women, chose telephone communications as needing more improvement than email communications. Women and minorities expressed a greater comfort level with email communications because they felt they would be evaluated more objectively.

4. Experiences and Expectations of the Workplace, Workday, and Workstyle

According to Gen Y attorneys, the factors that would best maximize their productivity at work included:

- Flexibility with the place and time of work
- Individual office space
- An informal work culture

Respondents indicated that the following would most likely have a positive impact on their work experience:

- Increased compensation
- Increased and better mentoring by senior attorneys
- Increased flexibility in accommodating personal life
- Better utilization of technology to create flexible hours
- Greater opportunity to shape the future direction of the workplace

Increased compensation was noted by many respondents to be directly connected with their insecurities about overall market conditions. Many Millennial respondents also expressed a frustration with senior attorneys because of their lack of informal communication, feedback on work, and constructive advice on career development.

The issue of flexibility, although agreed upon by all groups as an important factor for productivity and satisfaction, was fraught with differentials based on gender. Specifically, how men versus women internalized what flexibility meant and how accessible it was to them as individuals. Women were far more likely than men to believe that

the balance options in their workplace did not work for them (24.51% men versus 31.38% women), that their careers would be negatively impacted if they utilized the available options (34.80% men to 41.34% women) and that greater flexibility in the workplace would have a positive impact on their careers (65.19 % men to 79.20% women).

Rather than being directly correlated with career advancement, respondents also identified their desire for flexibility in accommodating personal life and better utilization of technology to create flexible hours as critical components to "feeling comfortable" in the workplace. However, the flexibility offered by a workplace was not an important factor in how these attorneys selected their workplace.

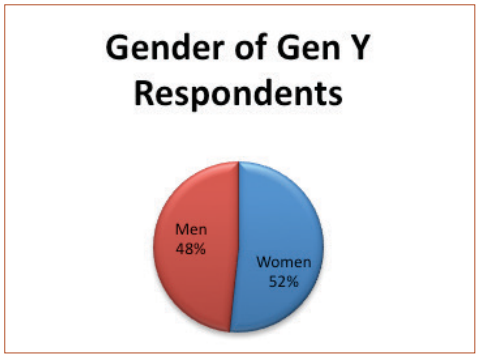
5. Perspectives on Diversity

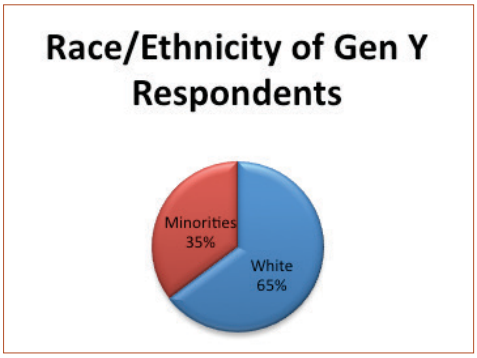
Unsurprisingly, women and minorities were significantly more likely than men or whites to say that it was important to them to have a diverse legal profession. However, the data also marks the generational trend of a majority stating that a diverse legal profession is important. White respondents and male respondents felt that a diverse profession and a diverse and inclusive workplace was important to them in spite of their belief that such a priority would not benefit them personally.

IV. Workplace 2020: What Gen Y Attorneys Experience and Expect

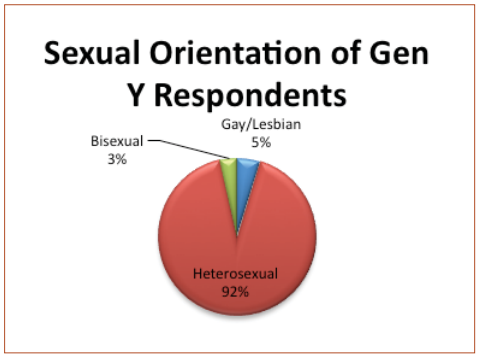
A. The Gen Y Respondents

The Minority Corporate Counsel Association (MCCA) used an open self-selection model for inviting respondents to participate in this survey. The overall sample size of Gen Y respondents was 938, all born after 1980. The pool of participants represented workplaces primarily in the private sector including corporations and law firms of varying sizes. The gender representation of the respondents was roughly equal with slightly more women than men, and the representation of racial/ethnic minorities was consistent with average percentages of minority representation in law schools.[6]



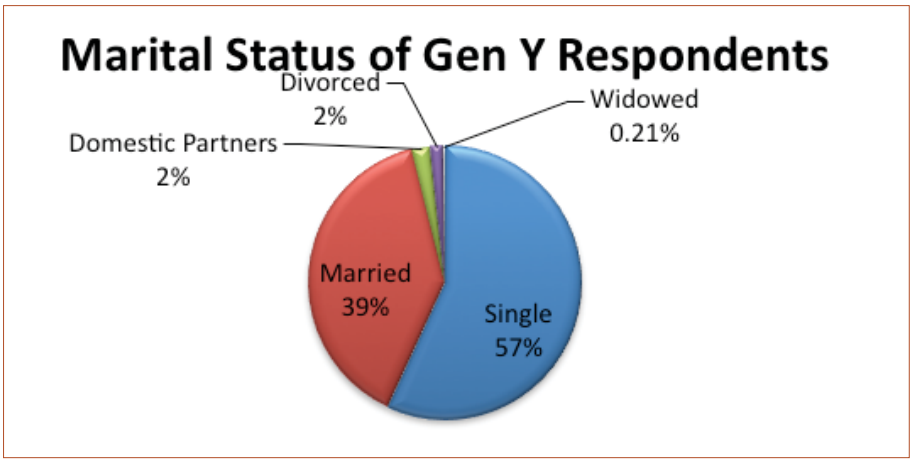


Respondents also reported sexual orientation representation similar to what has been reported in law schools, and about 1% of respondents reported disabilities.[7]

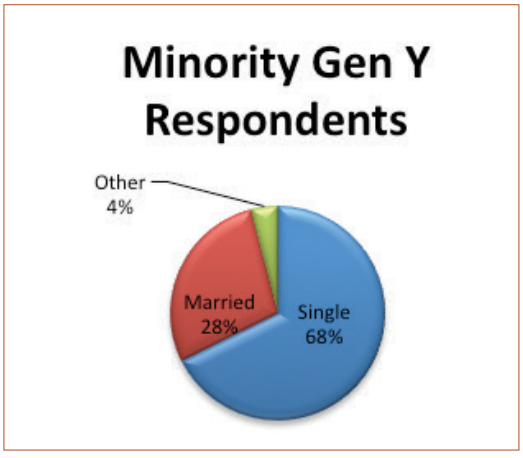


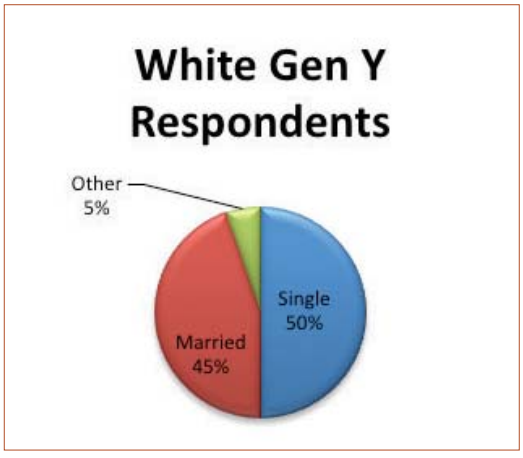
While there were no significant differences between men and women or minorities and whites in the sexual orientation or disability reports, there were substantial differences between these demographics in the area of marital status.

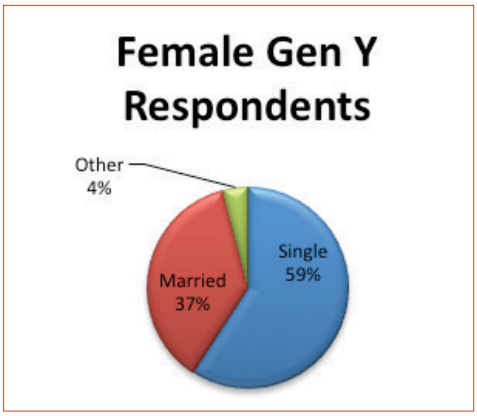
Overall, a substantial majority (56.3%) of the respondents reported being single (never married) while 38.87% of respondents reported being married. 2.1% of respondents reported being in domestic partner/same-sex couples, 1.47% reported being divorced, and .21% reported being widowed.

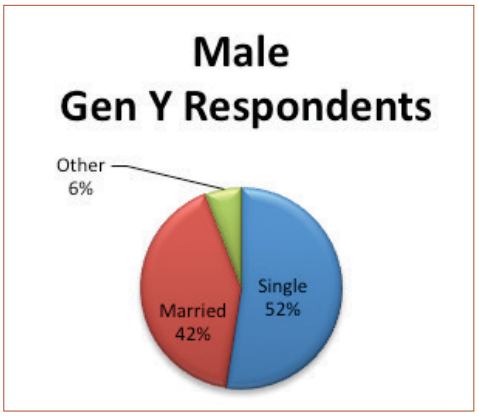


Whites were significantly more likely to be married than minorities and men were significantly more likely to be married than women.









B. Gen Y's Expectations and Experiences as Attorneys

1. Selecting An Employer

In selecting an employer, respondents were asked to consider the factors present in their decision making process. For example, geographical location, reputation, organizational values, financial rewards, learning opportunities, opportunity to do meaningful work, ability to travel, diverse workforce, inclusive workplace, opportunity to learn from proven experts, opportunity to advance, employee benefits, and flexibility.

Respondents identified the five factors, noted that in the chart below in order of importance, as most critical to their decision in selecting an employer. It is notable that in their decision-making process, many respondents identified current economic conditions as an additional and important consideration in their decision, if not a deciding factor.

The focus on the economy permeated the responses of all demographic groups. Many respondents noted that the current economic conditions greatly impacted their decision making processes. Comments on this topic ranged from "I was lucky to find a job," "lacking options in a recession," and "simply wanted to be employed," to "high student loans" and "previous offer was rescinded due to economy." There were a few key differences between minorities and whites and women and men that distinguished how these different demographics interpreted and internalized market conditions.

While the above factors represent the average perspective, there were notable differences for minority respondents. For example, learning and training opportunities were ranked as having greater importance than the opportunity to work with great colleagues. Women ranked organizational values and culture among the most important criteria in selecting an employer, above opportunities to learn from proven experts and leaders.

Overall, 48% of respondents felt it was very important to work with great colleagues. For minorities, learning and training opportunities were ranked as having greater importance than the opportunity to work with great colleagues. A majority of respondents, approximately 67%, noted an inclusive environment as being very important or important when selecting a current employer. While 50% of respondents overall ranked diversity as important, inclusiveness was still assigned a greater value than diversity. Similarly, minority respondents commented that although having a diverse workforce was not that important to them, having an inclusive workplace was important to them. However, minority respondents differed as to which was a greater influence on their individual success, diversity within the workforce or the practices of inclusion that were incorporated into the workplace.

Minority respondents also felt that the opportunity to advance into senior leadership roles was not an important criterion for selecting an employer. Many minority respondents were skeptical about being with their employer long enough to advance into leadership roles, as reflected in comments like "I just want to get the opportunity to succeed…I doubt I'll be here long enough to actually make it into leadership." While others commented on the lack of minorities in leadership as a harbinger of their own futures. One minority respondent commented, "I don't even see enough minority partners to start thinking about myself as a partner or in leadership of any kind."

Similar to minorities, women also prioritized an inclusive workplace as more important than the opportunity to advance into senior leadership roles, and they did so for many of the same reasons. Women also ranked organizational values and culture as one of the most important criteria in selecting an employer. For women, the preference for working "at a place where their values are consistent with mine," and the perspective that "it's difficult for me to see myself working somewhere where my values are not considered important" were illustrations of how this criteria rose above others in helping identify a workplace of choice.

2. Attachments and Aspirations

Even though the Millennials attorneys in this study were thoughtful and deliberate in how they selected their employers, their attachments to their employers (how long they plan to stay with their current employers) and their long-term aspirations with their employers (desire to advance into leadership positions in their workplace) were more indicative of short-term career choices in contrast to long-term career decisions. Several comments by the respondents also indicated that the impact of the economic conditions was reflected in their short-term choices but not in their long-term attachment to or aspirations in their workplaces.

The overwhelming majority of respondents were not planning to stay at their employers for more than five years, and higher percentages of minorities and women were planning to stay less than five years.

As the table illustrates, the highest percentage, approximately 25%, of respondents in all demographic groups, reported they were planning to stay in their workplace between one and three years. Approximately 18% of women and 20% of minorities were planning to stay in their workplace more than five years.

Expectations of Staying with Current Employer	Average Duration	Duration for Minorities	Duration for Women
Less Than 1 Year	15.94%	18.58%	15.22%
Between 1 and 3 Years	**26.38%**	**24.59%**	**27.34%**
Between 3 and 5 Years	14.76%	19.13%	16.61%
Between 5 and 10 Years	15.94%	6.56%	7.27%
More Than 10 Years	19.49%	11.48%	12.8%

The data for the number of Millennial attorneys who aspired to advance into leadership roles with their current employer was more positive than the data illustrating how long respondents wanted to stay with their current employer. Approximately one-third of all respondents did not aspire to advance into leadership roles in their current workplace, with minorities and women having less desire to do so than the average. The data, upon closer examination, also shows a few interesting perspectives that are worth noting.

Approximately 49% of participants responded positively ("Strong Yes" or "Yes") when asked about their aspiration to advance into leadership in their current workplace, while only 46% of minorities and 48% of women responded similarly. However, minorities were the demographic group most likely to respond "no" (26%) to this question. The overall positive sentiment expressed by Gen Y attorneys, is a complex mix of wanting to advance into leadership positions even while they are not completely sure of how long they want to stay with their current employers.

Aspiration to Advance into Leadership	Average	Minorities	Women
Strong Yes	20.08%	17.49%	17.30%
Yes	**29.13%**	**28.96%**	**31.14%**
No	22.24%	26.23%	24.91%
Strong No	11.42%	9.84%	11.07%

3. Experiences and Expectations for the Use of Technology in Communication and Professional Development

Across all demographic groups, the majority of respondents felt that their workplaces used technology well as a formal communication tool. However, the majority of all demographic groups felt that their workplaces did not use technology well as an informal communication tool for such things as feedback, training, and professional development.

Approximately 35% of all respondents felt that communication mechanisms used by leadership were not very effective. For these respondents, the key issues of ineffectiveness were: outdated technology, underutilized intranets, lack of transparency, outdated telephone systems, ineffective information technology support systems, and other inefficiencies in technology infrastructures.

Some respondents noting that the lack of transparency regarding information led them to sites like Above the Law as being more of a resource than their own workplace websites. While all of these comments did not touch on the direct communications from the leadership, many respondents expressed frustrations with their leadership's overall inability to modernize their workplace with the technology necessary to make communication processes smoother throughout the organization.

As a formal communication tool, the respondents' expectations primarily revolved around getting frequent information communiques from leadership as to what was expected of them and what they could anticipate in terms of business decisions from organizational leaders. To that end, the respondents were generally satisfied with email communications that served this purpose as well as digital storage of necessary policies, manuals, and other information on workplace intranets.

Effective Communication from Leadership	Average	Minorities	Women
Strong Yes	13.01%	11.89%	13.95%
Yes	**49.71%**	**53.51%**	**49.32%**
No	28.35%	27.03%	28.91%
Strong No	7.77%	6.49%	6.80%

Regarding informal communication, especially communication related to feedback, the overwhelming majority of respondents felt that the primary types of communication that needed to be improved in the workplace were: face to face communications, networking, and email communications, in that order. Interestingly, men, in comparison, to women differed from the majority and chose telephone communications as needing more improvement than email communications.

Whites	Minorities	Men	Women
Communication that is Most Necessary to Improve in the Workplace			
Face to Face	Face to Face	Face to Face	Face to Face
Networking	Networking	Networking	Networking
Email	Email	Telephone	Email

The above table illustrates the order in which each demographic group ranked communications that needed improvement.

In their comments on this topic, women and minorities expressed a comfort level with email communications because they felt they would be evaluated more objectively. Men felt they made better impressions if they were to see people face to face or talk on the phone with them. Men also valued face to face communications the most in their professional lives in contrast to minorities and women who valued email the most as a communication tool in their professional lives. Minorities, in comparison to whites, valued networking events more than telephone communications, and many minority respondents reflected on the fact that they are more likely to connect with other minority attorneys through strategic networking events. These connections, according to the minority attorneys, led to informal peer networks, mentoring relationships and future opportunities that they felt were lacking in their own workplaces.

Whites	Minorities	Men	Women
Communication that is Most Valued in Professional Life			
Email	Email	Face to Face	Email
Face to Face	Face to Face	Email	Face to Face
Telephone	Networking Events	Telephone	Telephone

All of the groups ranked Twitter, text messaging, instant messaging and video and web conferencing as the least valued communication modes in their professional lives.

All of the groups also ranked Twitter and video conferencing along with networking events as the least valuable modes of communication in their personal lives. All demographics were also fully aligned with face to face, text and email (in that order) as the most valued modes of communication in their personal lives. Only men reported face to face communication as the most valuable mode of communication in both their personal and professional lives indicating a seamless communication process across personal and professional lives whereas women and minorities preferred face to face in their personal lives and email in their professional lives.

About 33% of all respondents felt that their workplaces were not utilizing technology very well with overall productivity, and 48% of all respondents felt that their workplaces did not utilize technology efficiently as a training and development tool. As one respondent stated, "Every meeting has either people standing up and talking to us or it is people using powerpoints that are even more boring than if they were standing up and talking." Another noted that "the online trainings we use are horrible at best."

Recommendations from the respondents for improving the use of technology for training and development included:

- More webinar and on-demand video trainings,
- Effective online and elearning trainings,
- Better trained staff who execute trainings,
- More intranet-based easily searchable materials,
- Better use of the intranet, and
- More skype technology instead of conference calls.

4. Experiences & Expectations of the Workplace, Workday and Workstyle

According to Millennial attorneys, the factors that would best maximize their productivity at work

included: flexibility with place and time of work, individual office space, and an informal work culture. All three were expressed both as productivity maximizers and overall job satisfaction enhancers.

Many of the respondents did not feel that their work environments saw flexibility and hard work as compatible or complementary. Several respondents reported that they often had to "look like they were working" to senior lawyers by staying in their offices even if it was not productive to do so.

Top Productivity Maximization Factors for All Demographics
Flexibility with when and where I work. Flexible work day with some structured hours.
Individual office space. By myself but not always in my office.
Informal work culture.

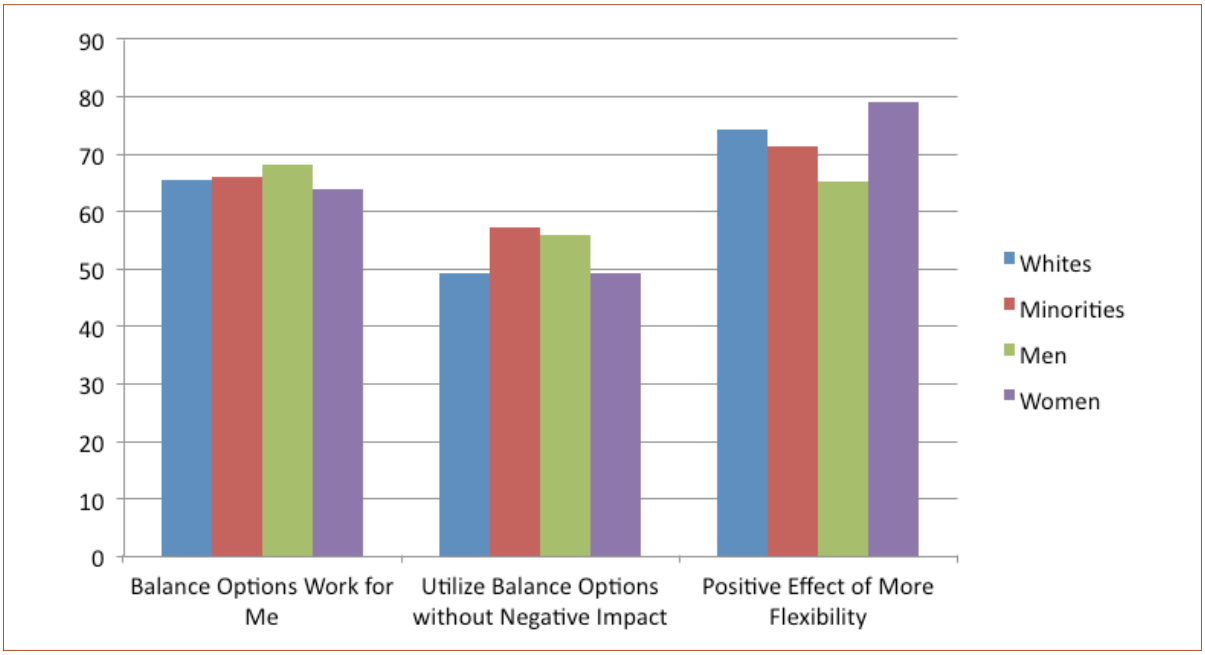
When asked about what changes in their workplace would have a positive impact on their careers, they responded with: increased compensation, more and better mentoring by senior attorneys, more flexibility in accommodating personal life, better utilization of technology to create flexible hours

and greater opportunity to shape the future direction of the workplace. Increased compensation was noted by many to be directly connected with their insecurities about overall market conditions. Many Gen Y respondents also expressed a frustration with senior attorneys because of their lack of informal communication, feedback on work and constructive advice on career development. Even attorneys who were in environments with robust professional development programs commented that those professional development programs were not adequate or effective substitutes for one-on-one mentoring by senior attorneys.

Workplace Changes with Most Positive Impact on Careers
Increased compensation.
More and better mentoring by senior attorneys.
More flexibility in accommodating personal life.
Better utilization of technology to create flexible hours.
Greater opportunity to shape the future direction of the workplace.

More flexibility in accommodating personal life and better utilization of technology to create flexible hours were noted as critical components to "feeling comfortable" in the workplace. Although flexibility offered by an organization was not an important factor in how these attorneys selected their workplaces, it did become crucial to how they experienced satisfaction and productivity in the workplace. A few respondents commenting "what they say they do and what they actually do is so different that you can't believe what they say in recruiting" and "even if they have the policies, there are unwritten rules to not use the policies if you want to get ahead." Rather than being directly correlated with career advancement, respondents also identified their desire for flexibility in accommodating personal life and better utilization of technology to create flexible hours as critical components to "feeling comfortable" in the workplace. However, the flexibility offered by a workplace was not an important factor in how these attorneys selected their organization.

The issue of flexibility, although agreed upon by all groups as an important factor for productivity and satisfaction, was fraught with differentials based on gender. Specifically, how men versus women internalized what flexibility meant and how accessible it was to them as individuals. Women were far more likely than men to believe that the balance options in their workplace did not work for them (24.51% men versus 31.38% women), that their careers would be negatively impacted if they utilized the available options (34.80% men to 41.34% women) and that greater flexibility in the workplace would have a positive impact on their careers (65.19% men to 79.20% women).



The above chart indicates the percentage of respondents who responded yes to questions related to workplace expectations and experiences.

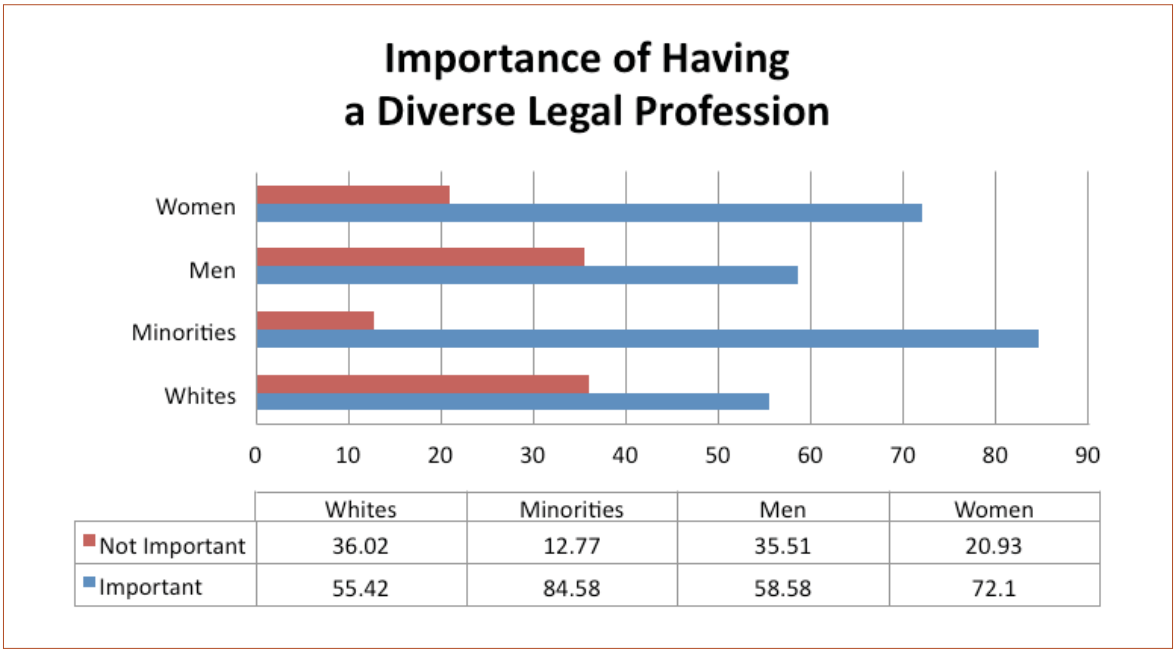
Question	Whites	Minorities	Men	Women
Balance options in my workplace work for me	65.47% (yes) 29.64% (no)	66.09% (yes) 26.31% (no)	68.14% (yes) 24.51% (no)	63.87% (yes) 31.38% (no)
People in my workplace can utilize balance options without negative impact on their careers	49.19% (yes) 41.36% (no)	57.31% (yes) 29.64% (no)	55.88% (yes) 34.80% (no)	49.27% (yes) 41.34% (no)
Positive effect of more flexibility it the workplace to accommodate my personal life	74.27% (yes) 21.50% (no)	71.34% (yes) 20.47% (no)	65.19% (yes) 26.47% (no)	79.20% (yes) 17.15 % (no)

From a gender perspective, there is also evidence that Gen Y men and Gen Y women are starting to think about flexibility options in different ways. At the same time, the number of men who are seeking and utilizing flexibility options is higher than it has been in previous generations.

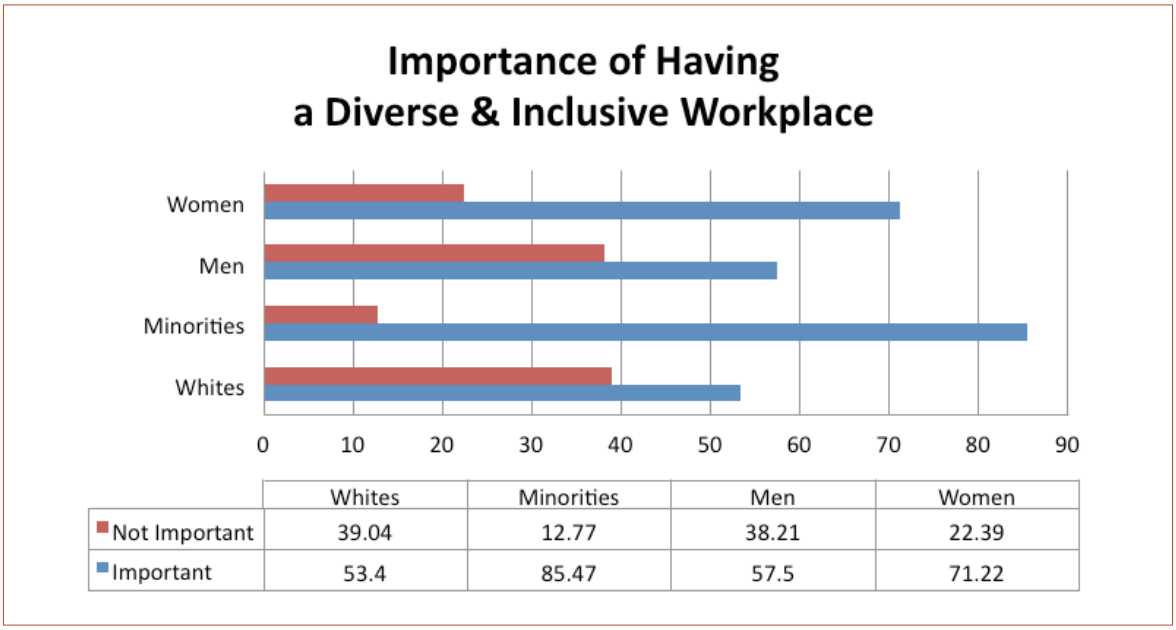
The final reported change for positive impact on careers was a greater opportunity to shape the future direction of the workplace. Although many of the attorneys commented that they were not sure if they wanted to stay within their organization long enough to ascend into leadership positions, they did want to have the opportunity to shape the while they were there. This generation of lawyers is very engaged in their current workplaces without necessarily being attached or invested in being in that organization for the rest of their careers. This shift from future-based investment to investment for the "here and now" is a shift that is critical for senior lawyers and workplace leaders to understand in order to best integrate this generation's perspectives into the overall work environment. As one respondent wrote, "I don't know where I'll be in 10 years, but I'm here now and I want to make a difference while I'm here."

5. Perspectives on Diversity

Gen Y's complex perspectives on diversity add the final layer of understanding on the experiences and expectations of this generation. Unsurprisingly, women and minorities were significantly more likely than men or whites to say that it was important to them to have a diverse legal profession. However, the data also marks the generational trend of a majority stating that a diverse legal profession is important. White respondents and male respondents felt that a diverse profession and a diverse and inclusive workplace was important to them in spite of their belief that such a priority would not benefit them personally.



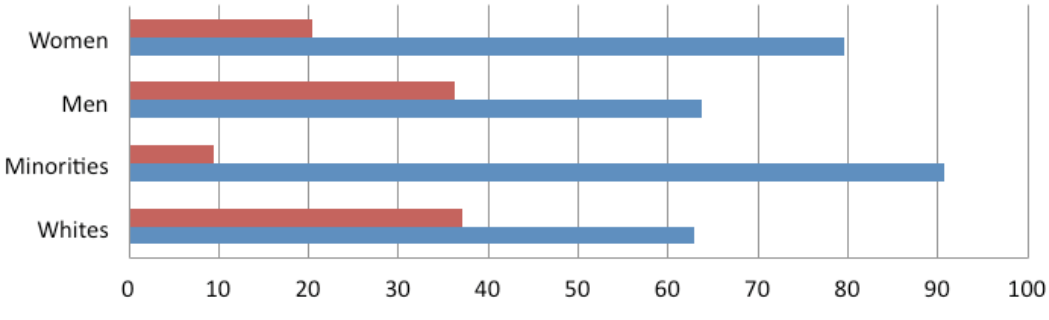
	Whites	Minorities	Men	Women
Not Important	36.02	12.77	35.51	20.93
Important	55.42	84.58	58.58	72.1



	Whites	Minorities	Men	Women
Not Important	39.04	12.77	38.21	22.39
Important	53.4	85.47	57.5	71.22

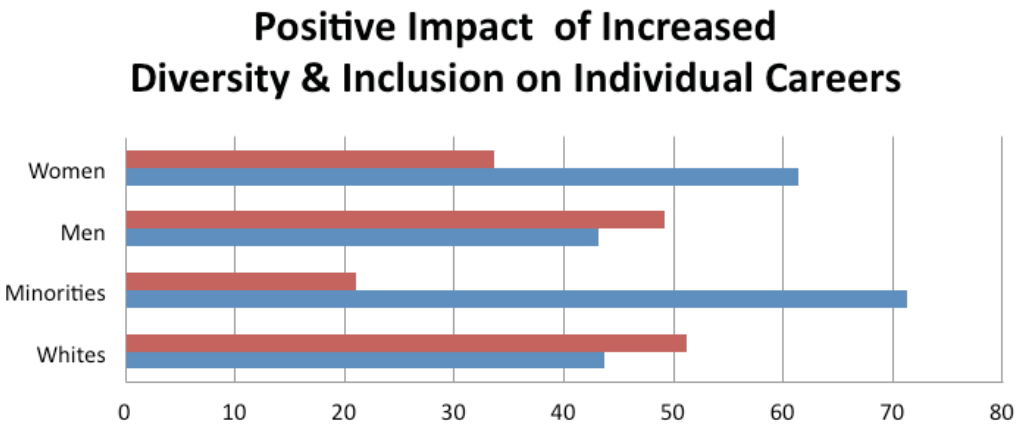
The shifting importance of diversity in the legal profession to the importance of having a diverse and inclusive workplace is a similar trend among the various demographic groups (whites versus minorities, men versus women). Having a majority report that it is important for them to be in a diverse and inclusive workplace is a trend evident from the responses as well. Overall, the value of a diverse legal profession and a diverse and inclusive workplace are greater for this generation than in previous ones even as the differentials between the represented and the underrepresented continue.

A corollary to the value of a diverse profession and a diverse and inclusive workplace is the respondents' perspectives on whether the legal profession will still need diversity and inclusion efforts in ten years. An overwhelming majority answered in the affirmative, but the differentials between men and women, as well as, whites and minorities persist.



	Whites	Minorities	Men	Women
No	37.13	9.36	36.27	20.44
Yes	62.87	90.64	63.73	79.56

The question of whether increased diversity and inclusion in the workplace would have a positive impact on their careers is the only diversity question where the overall perspectives of whites and minorities dip below the majority. Even though whites overall and men felt that a diverse profession and a diverse and inclusive workplace was important to them, they did not equally feel that increased diversity and inclusion would be beneficial to them personally.



	Whites	Minorities	Men	Women
No	51.14	21.05	49.15	33.57
Yes	43.65	71.35	43.14	61.31

C. Recommendations

1. Assess Your Environment

2. Communicate Expectations Clearly and Frequently

3. Collaborate and Include Gen Y's Voices

4. Integrate Technology into all Strategies

5. Create Feedback Loops

End notes

[1]Adrian Dayton, "Why Partners Don't Understand Generation Y." (May 2009). http://adriandayton.com/2009/05/why-partners-dont-understand-generation-y/

[2]Ibid.

[3]Ashby Jones, "The Millennials: Generation Enlightened or Generation Lazy?" (May 2009). http://blogs.wsj.com/law/2009/05/21/the-millennials-generation-enlightened-or-generation-lazy/.

[4]Hon. John L. Kane, Remarks at the 50th Class Reunion of the University of Denver College. http://westallen.typepad.com/files/50th-class-reunionuniversity-of-denver-college-of-lawmay-22.pdf.

[5]Integrated Postsecondary Education Data System at The National Center for Educational Statistics. http://nces.ed.gov/ipeds/. See additional data analysis by Economic Modeling Specialists Inc. at: http://www.economicmodeling.com/2011/06/22/new-lawyers-glutting-the-market-in-all-but-3-states/.

[6]American Bar Association Section of Legal Education and Admissions to the Bar. http://www.americanbar.org/groups/legal_education/resources/statistics.html.

[7]Ibid.

V. Supplemental Materials

A. Methodology

This research project was designed to explore the experiences and expectations of Generation Y attorneys through their own eyes. A web-based survey was developed, which focused on the perceptions and experiences of Millennial attorneys in a variety of areas relevant to their selection of employers, their experiences with and expectations of their employers, and their overall perspectives on the legal profession. The web-based survey instrument for this research was designed and edited by Nextions LLC with substantial input from the Minority Corporate Counsel Association (MCCA) as well as MCCA's sponsors.

MCCA used an open, self-selection model of inviting respondents to participate in this survey. The overall sample size of 938 respondents, all born after 1980, represented workplaces primarily in the private sector including corporations and law firms of varying sizes. The gender representation of the respondents was roughly equal with slightly more women than men, and the representation of racial/ethnic minorities and sexual orientations was consistent with average percentages of minority representation in law schools. The identity of individual respondents remained completely anonymous, and individual surveys were and are only accessible to the research team at Nextions. However, demographic data provided by the respondents was used to sort the data by important variables such as gender, race/ethnicity, and sexual orientation in order to analyze trends and patterns within and between groups. The data were not sorted by individual responses but rather analyzed in the aggregate.

The survey was distributed through MCCA's network as well as the networks of the American Bar Association, state, local, and specialty bar associations. The survey was also distributed through individual networks of MCCA supporters.

Nextions LLC conducted the research for this MCCA study with Dr. Arin N. Reeves serving as the primary researcher and Debbie T. Ierome serving as the project manager.

B. Survey Instrument

Minority Corporate Counsel Association
Sustaining Pathways to Diversity Research
MCCA Workplace 2020: Gen Y Survey

Please tell us a little information about you.

1. When were you born?

- ❍ Before 1927
- ❍ Between 1928 and 1946
- ❍ Between 1947 and 1964
- ❍ Between 1965 and 1980
- ❍ After 1980

*** 2. What is your racial/ethnic background?**

- ❍ Asian/Asian American (including South Asian)
- ❍ Black including Caribbean and African/African American
- ❍ Caucasian/White (excluding Hispanic)
- ❍ Arab/Arab-American
- ❍ Native American/Alaskan Native
- ❍ Hispanic/Latino
- ❍ Pacific Islander
- ❍ Bi-racial/multi-racial
- ❍ Other

*** 3. What is your gender?**

- ❍ Male
- ❍ Female

Please tell us a little about how you like to work.

*** 4. From the factors listed below, please rate the importance of each of the following factors in terms of how much it influenced your decision to select your current employer:**

	Very Important	Important	Not Important	Don't Know
Geographical location				
Reputation/prestige				
Organizational values/culture				
Compensation/financial rewards				
Learning/training opportunities				
Opportunity to do meaningful/satisfying work				
Access/ability to travel				
Limited travel				
Diverse workforce				
Inclusive workplace				
Opportunity to work with great colleagues				
Opportunity to learn from proven experts/leaders				
Opportunity to advance into senior leadership roles				
Employee benefits				
Flexibility with where and/or when I work				

5. Please share any additional reasons, if any, that influenced your decision to choose your current employer:

_____

_____

*** 6. During the first three months of my current employment, I received the information and advice that I needed to begin performing well.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

_____

7. What additional information/resources would have been helpful in orienting you to your work environment?

_____

_____

*** 8. I feel that connecting with my peers on a professional and social level is important in my ability to be productive and happy in the workplace.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

_____

*** 9. I feel that connecting with senior leaders on a professional and social level is important in my ability to be productive and happy in the workplace.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

_____

*** 10. From the factors listed below, please rate how important each factor is in your ability to maximize your productivity:**

	Very Important	Important	Not Important	Don't Know
Work environment (design, ambiance, etc.)				
Informal work culture				
Formal work culture				
Ability to work in a team				
Ability to work by myself				
Collaboration work spaces				
Individual office space				
Flexibility with when I work				
Flexibility with where I work				

*** 11. How important is to you to have a diverse legal profession?**

- ❍ Extremely Important
- ❍ Very Important
- ❍ Not Important
- ❍ Not at All Important
- ❍ Don't Know

Additional Comments

_____

_____

*** 12. How important is to you to work in a workplace that is diverse and inclusive?**

- ❍ Extremely Important
- ❍ Very Important
- ❍ Not Important
- ❍ Not at All Important
- ❍ Don't Know

Additional Comments

_____

_____

Please tell us a little more about how you like to work.

*** 13. I prefer to work: (please choose the response that describes your strongest preference)**

- ❍ By myself in a private office
- ❍ With people from my team in a shared work environment
- ❍ By myself, but not always in my office
- ❍ With people from my team, but not always in the office

Additional Comments

_____

_____

*** 14. I prefer to work: (please choose the response that describes your strongest preference)**

- ❍ A conventional work day with structured hours
- ❍ A flexible work day with some structured hours and some unstructured hours
- ❍ A flexible work day with mostly unstructured hours

Additional Comments

_____

_____

*** 15. I am currently very productive in my work environment.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

_____

Please tell us a little about your perspectives on technology at work.

*** 16. My workplace utilizes technology efficiently as a productivity tool.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

17. How could technology be better used to improve productivity in your workplace?

_____

_____

_____

_____

*** 18. My workplace utilizes technology efficiently as a communication tool.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

19. How could technology be better used to improve communication in your workplace?

_____
_____
_____
_____

*** 20. My workplace utilizes technology efficiently as a training and development tool.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

21. How could technology be better used to improve training and development?

_____
_____

Now, a few questions about your communication preferences.

*** 22. How much do you value each of the following communication methods in your professional life?**

	Very Much	Somewhat	Not At All	Don't Know
Face to face interactions				
Telephone interactions				
Networking events				
Video conference interactions				
Skype/web conference interactions				
Email				
Text messages				
Instant messages				
Twitter				
Social/professional networks (such as LinkedIn, Facebook, etc.)				
Other:_____				

*** 23. Which of the following communication methods do you wish were more effectively utilized in**

your workplace?

Very Much | Somewhat | Not At All | Don't Know

Face to face interactions
Telephone interactions
Networking events
Video conference interactions
Skype/web conference interactions
Email
Text messages
Instant messages
Twitter
Social/professional networks (such as LinkedIn, Facebook, etc.)
Other: _____

*** 24. How much do you value each of the following communication methods in your personal life?**

Very Much | Somewhat | Not At All | Don't Know

Face to face interactions
Telephone interactions
Networking events
Video conference interactions
Skype/web conference interactions
Email
Text messages
Instant messages
Twitter
Social/professional networks (such as LinkedIn, Facebook, etc.)
Other: _____

Your preferences for feedback and evaluation.

*** 25. I feel that people who are senior to me communicate effectively with their peers in my workplace.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know

Additional Comments

_____

*** 26. I feel that people who are senior to me communicate effectively with me in my workplace.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

27. What could your workplace do to improve its communication processes?

_____

_____

_____

_____

*** 28. The feedback and evaluation systems in my organization work well for me.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

29. What could your workplace do to improve its evaluation processes?

_____

_____

_____

_____

30. What could your workplace do to improve its feedback processes?

_____

_____

_____

_____

*** 31. I receive timely and useful feedback on my work so that I understand both my strengths and what I need to do to improve.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

A few more questions about your thoughts on your current workplace.

*** 32. I am satisfied with the level of challenging work that I receive.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

*** 33. I have had at least one formal mentor in my organization who has played an important part in supporting my career development.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

*** 34. I have had at least one informal mentor in my organization who has played an important part in supporting my career development.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

*** 35. Actively doing pro bono and other service work is important to me.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

*** 36. My organization is doing a good job of developing and preparing young lawyers for future leadership positions.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

*** 37. I aspire to advance into a senior leadership role with my current employer.**

*** 38. How long do you plan to stay with your current employer?**

- ❍ Less than 1 year
- ❍ Between 1 and 3 years
- ❍ Between 3 and 5 years
- ❍ Between 5 and 10 years
- ❍ More than 10 years
- ❍ Don't know

Additional Comments

_____

The last few questions about your thoughts on your current workplace.

*** 39. I think that my workplace has work-life flexibility/balance options that work for me.**

- ❍ Strongly Agree
- ❍ Agree
- ❍ Disagree
- ❍ Strongly Disagree
- ❍ Don't Know

Additional Comments

_____

40. What could your employer do to make it easier to achieve work-life balance in your workplace?

_____

_____

_____

_____

*** 41. I think that people in my workplace can utilize the work-life flexibility/balance options without any negative impact on their careers.**

❍ Strongly Agree
❍ Agree
❍ Disagree
❍ Strongly Disagree
❍ Don't Know
Additional Comments

_____

*** 42. Please rate the following changes in your current workplace in terms of the positive effect each would have on your career.**

No Effect
Little Effect
Positive Effect
Very Positive Effect
Don't Know/Not Applicable

The establishment and consistent implementation of formal policies for reduced/alternative work arrangements

Less pressure to engage in work related social activities
More opportunities to interact with peers and colleagues in informal social settings
A collaborative and/or creative space where colleagues can relax and/or brainstorm with each other
Better utilization of technology to create flexible work hours
More flexibility from the workplace in accommodating my personal life
Greater opportunity to shape the future direction of the workplace
More and better mentoring by senior attorneys
Training on how to better communicate across generations
More opportunities for pro bono work
Less subjectivity in the work allocation and promotion processes
Increased compensation
More diversity and inclusion

*** 43. Given what you have experienced and/or observed about current efforts to make the legal professional and workplaces more diverse, do you think that there will be a need to continue to advocate for diversity 10 years from now?**

❍ Yes ❍ No
Additional Comments

_____

*** 44. Do you feel that you communicate well across differences?**

❍ Yes ❍ No

Additional Comments

_____

_____

*** 45. Do you feel that communicating across differences is necessary to a successful legal career?**

❍ Yes ❍ No

Additional Comments

_____

_____

46. Please share any additional thoughts or comments that you have on what the legal profession in general or your workplace particular can do to be more of an ideal workplace for you?

_____

_____

_____

_____

Please tell us a little bit more about yourself.

*** 47. What is your sexual orientation?**

❍ Heterosexual
❍ Gay, Lesbian
❍ Bi-Sexual
❍ Transgendered
❍ I would prefer to not answer.

Additional Comments

_____

*** 48. Are you a person with a disability?**

❍ Yes
❍ No
❍ I would prefer to not answer.

Additional Comments

_____

*** 49. What is your current marital status?**

❍ Single, never married
❍ Married, heterosexual couple
❍ Domestic partner/Married, same-sex couple
❍ Divorced
❍ Widowed
❍ I would prefer to not answer.

Additional Comments

_____

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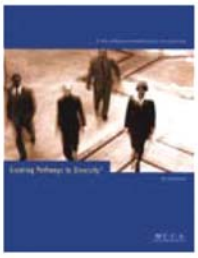
Additional Resources from MCCA Pathways Research Series

A Study of Law Department Best Practices (1st Edition)



A Set of Recommended Practices for Law Firms

Metrics for Success: Measurement in Diversity Initatives

The Myth of the Meritocracy: A Report On the Bridges and Barriers to Success in Large Law Firms

From Lawyer to Business Partner: Career Advancement in Corporate Law Departments

Perspectives From The Invisible Bar: Gay & Lesbian Attorneys in the Profession

Mentoring Across Differences: A Guide to Cross-Gender and Cross-Race Mentoring

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SUSTAINING PATHWAYS TO DIVERSITY®

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MINORITY CORPORATE COUNSEL ASSOCIATION

A Steppingstone for Law's Best and Brightest

Clockwise from top left: Michael B. Mukasey (Saul Loeb/Agence France-Presse-Getty Images), John M. Harlan (U.P.I. Telephoto), Patrick J. Fitzgerald (Carlos Javier Ortiz for The New York Times), Franklin A. Thomas, Robert M. Morgenthau (Robert Stolarik for The New York Times), Thomas F. Murphy (The New York Times), Rudolph Giuliani (Brendan Smialowski for The New York Times), Robert McGuire (Dith Pran/The New York Times), Felix Frankfurter (Associated Press), Elihu Root (Associated Press), Charles B. Rangel (Larry Downing/Reuters), Mary Jo White (Jim McKnight/Associated Press)

By BENJAMIN WEISER
Published: January 29, 2009

When a longtime federal prosecutor, Cathy Seibel, was sworn in as a federal judge last month, the onlookers included many former colleagues from the office of the United States attorney for the Southern District of New York, in Manhattan, some of whom had gone on to become law professors, defense lawyers and judges themselves.

Among those former co-workers were three men who had been mentioned as candidates to become the next United States attorney in Manhattan: Preet Bharara, now chief counsel to Senator Charles E. Schumer; Mark F. Pomerantz, a defense lawyer; and Lev L. Dassin, now filling the position temporarily.

And if President Obama chose none of the three? Chances are the job would go to someone else in the room.

For decades, presidents have picked the United States attorney in Manhattan, perhaps the most prestigious federal prosecutor's job outside Washington, from an elite pool of candidates who have worked in the office. And this agency, located next to the old federal courthouse at Foley Square, has also catapulted so many former prosecutors into other premier jobs that it has become, in a sense, one of the city's most powerful clubs.

Those who have come out of the office include former Mayor Rudolph W. Giuliani; the Manhattan district attorney, Robert M. Morgenthau; and three former New York City police commissioners. There have been a United States attorney general (Michael B.

Mukasey); a secretary of war (Henry L. Stimson); and two Supreme Court justices (Felix Frankfurter and John M. Harlan).

Others were Representative Charles B. Rangel; a former F.B.I. director, Louis J. Freeh; Franklin A. Thomas, who ran the Ford Foundation; and the boxing promoter Robert Arum. There was even a Nobel Peace Prize winner, Elihu Root, a United States attorney in the 1880s.

"Of all the clubs I've ever been in, it's the best one to be in," said Andrew C. McCarthy, a 1990s terrorism prosecutor who is now a commentator for National Review, but who leapt to the defense of his Southern District colleague Patrick J. Fitzgerald when he was attacked by conservatives for prosecuting I. Lewis Libby Jr.

The alumni of the Southern District fill the city's bar and bench, and regularly spill into Washington. President Obama has named Jeh Charles Johnson, a former Southern District prosecutor, as general counsel to the Defense Department.

In major federal cases, the alumni often surface on the other side of the courtroom, as defense lawyers. For example, Bernard L. Madoff, charged with operating a $50 billion Ponzi scheme, retained Ira Lee Sorkin, a former member of the Southern District's securities fraud unit.

And when former Gov. Eliot Spitzer was investigated as a possible client of a prostitution ring, his defense team included two with Southern District experience: Michele Hirshman, former chief of public corruption; and Mr. Pomerantz, who had run the criminal division. Mr. Spitzer was not charged.

"Every single large-scale investigation will mark the beginning of a meeting of the club," said Daniel C. Richman, a former prosecutor who is now a law professor at Columbia University.

Last November, in the trial of the Syrian arms dealer Monzer al-Kassar, the defense lawyer, Mr. Sorkin, as well as the judge, Jed S. Rakoff, were Southern District alumni. (And as a prosecutor, Brendan R. McGuire, delivered the opening statement, his father, Robert J. McGuire, a former police commissioner who himself worked in the office four decades ago, watched from the spectator rows.)

The office, which in the early 1960s had about 60 criminal and civil "assistants," as the prosecutors are called, has grown to more than 200. It is responsible for federal cases in Manhattan, the Bronx and six counties north of the city. Most prosecutors are hired in their late 20s, drawn from elite law schools, firms and clerkships. They spend at least several years in the office, gaining valuable trial experience.

Julie O'Sullivan, a Georgetown University law professor who worked in the office in the 1990s, said the assistants shared an intense experience "in a situation that really matters."

When those assistants, years later, meet over a conference table in private practice or other jobs, "all that immediately comes back to you," she said. "You know what they're like under pressure."

The assistants are also inculcated with a spirit of nonpartisanship, the alumni say, which dates back to Mr. Stimson, whom President Theodore Roosevelt named United States attorney in 1906, and promised he could run the office without political interference. (One of his hires was a young Mr. Frankfurter.)

"When assistants are hired, nobody asks their politics," said Robert B. Fiske Jr., the United States attorney from 1976 to 1980. "Because of that, there's a real bond."

James B. Comey, a former deputy attorney general of the United States, joined the Southern District office in 1987, when it was led by Mr. Giuliani and Mr. Freeh, then a prosecutor, was on the hiring committee. Years later, in 2001, Mr. Freeh, as F.B.I.

director, asked that a major terrorism investigation be transferred to Mr. Comey, then a prosecutor in Richmond, Va., because he felt another office was moving too slowly.

Mr. Comey brought a wide-ranging indictment, and his performance got the attention of President George W. Bush, who named him United States attorney in Manhattan in 2002.

Likewise, three senior prosecutors under Mary Jo White, who held the post under President Bill Clinton, later became United States attorneys — David N. Kelley and Michael J. Garcia in Manhattan, and Mr. Fitzgerald in Chicago — in the Bush administration.

After Andrew M. Cuomo (who has never worked in the Southern District office) won election as New York's attorney general in 2006, Ms. White, now a partner at Debevoise & Plimpton, was a member of his transition committee. A half dozen former Southern District assistants are among his senior aides.

"The criticism is that this is a club," said Steven M. Cohen, a former assistant and now Mr. Cuomo's chief of staff, "and that if you have the credential, the credential becomes a kind of access that you otherwise wouldn't get.

"But it's not the credential that people are interested in," he said. "It's the experience and the knowledge — I know I'm going to get a very good lawyer."

The network got a big boost in the 1960s when Mr. Morgenthau, the United States attorney under President John F. Kennedy, created the securities fraud unit. That led to a sharp increase in indictments, and over time, helped develop the city's white-collar defense bar.

Many of that group's prominent members were assistants under Mr. Morgenthau — including Robert G. Morvillo, Elkan Abramowitz, Charles A. Stillman, John R. Wing, Stephen E. Kaufman, Gary P. Naftalis, Michael F. Armstrong; Paul R. Grand, and two lawyers who have since died, Peter E. Fleming Jr. and Arthur L. Liman.

The network continues to perpetuate itself, with Southern District alumni referring cases to others around the city.

"They do it because they like each other, know each other, and know that they will do a good job," said Anthony S. Barkow, who left the office last year and who now runs a center on criminal law at New York University.

Although the office's hiring is apolitical, politics by its nature plays a role in the selection of United States attorneys, with the president traditionally consulting leading political figures in his own party. So the alumni network has been abuzz in recent weeks with speculation that Mr. Bharara, Senator Schumer's counsel and a federal prosecutor from 2000 to 2005, is the leading candidate for the position. A spokesman for Senator Schumer had no comment.

The network has also been helpful for lawyers leaving big firms to start their own practices. Alexandra Shapiro, an assistant in the 1990s, said she and two partners just opened a boutique firm in Midtown, Macht, Shapiro & Isserles.

"I'm already getting calls for potential referrals through former assistants who are passing my name along," she said.

Mr. Stillman, who founded his own firm, now called Stillman, Friedman & Shechtman, in 1977, said the best description he had heard came from his daughter, Nina, who worked for him as a teenager many summers ago.

"Daddy has the best job," she said one night at dinner. "He spends half of his day on the telephone talking to his friends, and the other half of the day meeting with them."

A version of this article appeared in print on January 30, 2009, on page A27 of the New York edition.

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A REPORTER AT LARGE
NOVEMBER 11, 2013 ISSUE

STREET COP

Since 2008, the financial industry has changed the way it does business. Can the S.E.C.'s Mary Jo White control it?

BY NICHOLAS LEMANN

White has a reputation as a tough litigator, but that doesn't necessarily mean that she is initiating wholesale change at the S.E.C.

ILLUSTRATION BY BARRY BLITT

Mary Jo White, the chair of the Securities and Exchange Commission, has a personal page on the New York Road Runners Club Web site, which records a battery of figures (Pace per Mile, Age-Graded Performance Percentage, and so on) for each of the official events she has completed. There are two hundred and seven entries since the first one, which was recorded a week before her fifty-sixth birthday, in 2003, seven of them since she began working in Washington, late last year, just as she was turning sixty-five. Friends and colleagues characterize White as the most competitive and driven person they have ever encountered.

In the nineties, when White was the United States Attorney for the Southern District of New York, she would arrive in her office, a few blocks from Wall Street, early in the morning, with a stack of newspaper clippings. They were marked with yellow Post-Its bearing a recipient's name and a nudge: Where are we on this? Are we on top of this? She had a famously expansive sense of what her office should be worrying about. She once sent Patrick Fitzgerald, who was in charge of terrorism cases, a note about some white powder that had been found at the site of a truck accident in another state, involving a driver with a Middle Eastern name. Today, she blizzards her staff and her friends with e-mails at all hours. Friends with insomnia who write to her at 2 or 3 A.M. may get an immediate reply.

White is plainspoken and doesn't seem slick or fancy. Every year, she holds a Super Bowl party. Her favorite band is Fleetwood Mac. Her favorite charity is the A.S.P.C.A. She has had the same cohort of intimate friends since the seventies—three or four women

who worked together in the U.S. Attorney's office and helped form a female basketball team there. When she returns to New York on weekends, they still try to have dinner, and they go on occasional trips together. She does not put her competitiveness aside when conducting her social life. She and her husband, John White, have a tennis court at their country house, in upstate New York, where her style of play led her friends to give her the nickname Sid Vicious. After she organized a team to run in an athletic event called the Great Race, and it finished second, she successfully petitioned the race officials to create a special certificate for her team to take home. She makes sure to win even at Boggle or crazy eights. Although she is a sports fan (baseball first, especially the Yankees, football second, horse racing third) and often invites people to join her at games, she doesn't carry on conversations while the ball is live. She doesn't read much for pleasure. She doesn't belong to a church. Her large apartment, on the Upper East Side, is said to look about as lived-in as a suite in an extended-stay motel. White's life is about working, and winning.

Mary Jo White was born in Kansas City, Missouri. Her father spent his career as a lawyer for the Social Security Administration. Her grandfather was a lawyer, too, and so was her uncle. Her only sibling, an older brother named Carl Monk, recently retired from a long term as the executive director of the Association of American Law Schools. After her father was transferred to the Social Security Appeals Council, in Washington, she went to junior high school in McLean, Virginia, where she met John White. They married in 1970. He is a senior member of the Wall Street firm of Cravath, Swaine & Moore, and sold his ownership share there so that White could take her job at the S.E.C. Her only child, a son, is a student at Columbia Law School, and so is his wife.

In a small gesture of rebellion, White decided, after graduating from college, at William and Mary, to become a psychologist, although she also applied to law school. "I was going to be a therapist," she told me, sitting in an armchair in her vast tenth-floor office at the S.E.C. "I find people fascinating—how they behave and why." She enrolled in a master's-degree program at the New School for Social Research (on a competitive scholarship that she had won), but she also sat in on one of her husband's classes at N.Y.U. Law School. She completed her degree in a year, and then enrolled in Columbia Law School.

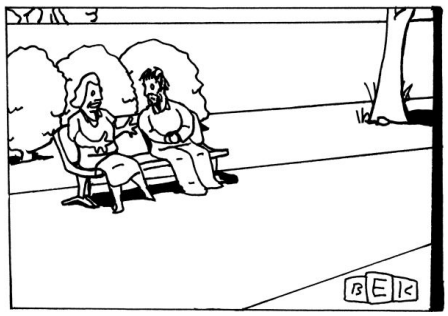
"Law is easier," she said. "Everything is a problem." She thinks lawyers "look at the world in a slightly different way. It's almost a difference in physical perception. You look at the facts, you see the parts, and you repackage them into the analysis that produces the answer. In college, I took courses in English literature. I loved it. I loved Virginia Woolf." But law school, she said, changes the way you think. "You'd read the book and ask yourself, What's the point?" After law school, White became a litigator. "Litigators get a mess," she said. "I prefer that. It's back to problem-solving."

As a litigator, White has spent her career moving back and forth between one of the big

As a litigator, White has spent her career moving back and forth between one of the big New York law firms, Debevoise & Plimpton, where she worked in three stretches over thirty-five years, and the federal government. Sometimes, the problems she has been assigned to solve have been those of Wall Street firms and corporations that are in hot water with the government, or in private disputes; other times, she has been one of those responsible for putting people like her private-practice clients in hot water.

Wall Street is the problem that White is now charged with solving. The S.E.C. is a child of the 1929 stock-market crash, the Great Depression, and the New Deal: it was created at the outset of Franklin Roosevelt's Presidency to keep Wall Street from fleecing ordinary investors. (Its first chair was Joseph P. Kennedy—the fox in the henhouse.) Back then, the S.E.C. had a strict disclosure regime for newly issued stocks and bonds. Over the years, it came to be seen as the model of an effective government regulatory agency.

"We could get married and plan together forever."



But, after waves of financial deregulation in the last quarter of the twentieth century, the S.E.C.'s job got much bigger. Ordinary investors who call their broker and place an order for a specific stock or bond are now an insignificant part of the markets. Because there is no longer a wall between banks and stockbrokers, it falls to the S.E.C. to oversee some of the activities of the largest banks—JPMorgan Chase, Bank of America, Citigroup, and the rest. And, because the major Wall Street firms are vast, high-tech, high-speed global operations that make much of their money from trading in exotic and volatile financial products, the S.E.C. has to think about protecting people from the risk that the whole system could go down and take their savings with it.

Even before the 2008 financial crisis, the S.E.C.'s reputation was getting wobbly. When Eliot Spitzer was New York's Attorney General, and known as the Sheriff of Wall Street, he discovered that research analysts for the banks were writing overly optimistic reports about the prospects of new stocks that their employers were trying to sell to the public. The S.E.C. should have got to that problem first. Between 2000 and 2008, a Boston financial gumshoe named Harry Markopolos went to the S.E.C. five times with his suspicions that the investor Bernard Madoff was operating a Ponzi scheme, and the S.E.C. did not investigate. In 2004, the commission permitted the big brokerage houses to take on a much higher level of debt. The firms quickly began borrowing at possibly ruinous levels, which made them feel the effects of the crisis even more acutely. Among

the financial firms that the S.E.C. was supposed to be regulating were the three largest that collapsed in 2008: Bear Stearns, Lehman Brothers, and Merrill Lynch. It picked up some warning signs, but failed to act.

As the country sank into a severe recession, many wondered why the major figures in the financial world, whose firms had received billions of taxpayer dollars at the height of the crisis, weren't being punished for their misdeeds. Because the S.E.C.—unlike the Treasury or the Federal Reserve—is an enforcement agency, it became the focus of the frustration. It was publicly humiliated when, in 2009, and again in 2011, a federal judge in New York, Jed Rakoff, tartly rejected its proposed settlements in fraud investigations of Bank of America and Citigroup. The Bank of America settlement, Rakoff wrote, "does not comport with the most elementary notions of justice and morality." Rakoff's Citigroup opinion concluded with a flourish: "In much of the world, propaganda reigns, and truth is confined to secretive, fearful whispers. Even in our nation, apologists for suppressing or obscuring the truth may always be found. But the S.E.C., of all agencies, has a duty, inherent in its statutory mission, to see that the truth emerges; and if it fails to do so, this Court must not, in the name of deference or convenience, grant judicial enforcement to the agency's contrivances." As one person who worked in the S.E.C.'s enforcement division put it when I spoke to him, "Judge Rakoff was wagging a finger at the S.E.C." He raised his middle finger.

Mary Jo White took over at the S.E.C. more than four years after the full-on panic of the financial crisis, and just a few months before the end of the five-year statute of limitations on the misdeeds leading up to the crisis. President Obama announced her nomination last January, at a brief public ceremony at the White House. Tall, thin, dressed in dark colors, Obama towered over White, who may or may not stand five feet tall, and who was wearing a fiery-red suit. She has short brown hair and an open, doughty face, and is built as solidly as a hydrant. "It's not enough to change the law," Obama said. "We also need cops on the beat to enforce the law." He swatted a fly away. "As a young girl, Mary Jo White was a big fan of the Hardy Boys. I was, too, by the way. As an adult, she's built a career the Hardy Boys could only dream of. Over a decade as a U.S. Attorney in New York, she helped prosecute white-collar criminals and money launderers. . . . You don't want to mess with Mary Jo."

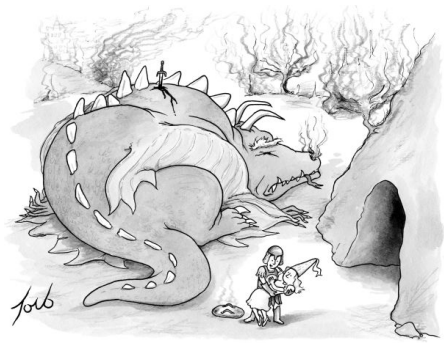
It was effective theatre, but White's situation is a lot more complicated than a Hardy Boys story. The S.E.C. doesn't just enforce rules that have been broken. It also writes rules to govern future activity, and it has enormous new assignments. The post-crisis Dodd-Frank law regulates hedge funds, over-the-counter derivatives, and ratings agencies—all deeply implicated in the financial crisis. For example, the S.E.C. is one of the agencies charged with writing and implementing the Volcker Rule, which is meant to prevent proprietary trading by banks, and which the banks will work hard to weaken. White told me, "The S.E.C.'s mission is tripartite: protect investors, facilitate capital formation, and insure the fairness and integrity of the marketplace." Protecting capital

formation means, in effect, protecting Wall Street, where White has spent much of her professional life. It is also where Obama found much of the financial support to run twice for President. Merely putting a cop on the beat at the S.E.C. will not insure that Wall Street will be tamed or that we will be safe from future crises. That depends substantially on where government sets the boundaries. And since the financial crisis the industry has added a wide range of new and potentially risky activities that it wasn't engaged in at the time.

If you're not a lawyer, and you meet a quiet, studious-seeming person and ask him what he does for a living, you may hear, "I'm an Assistant United States Attorney for the Southern District of New York." Sounds dull, like "I'm a tax preparer." But the answer is a little like the one you get when you ask someone where he went to college and he says, "Um, Yale?" What you were really meant to hear was: "I'm a member of the Killer Elite, baby! I'm special ops. I'm strike force. Be very afraid!"

U.S. Attorneys are federal prosecutors who work all over the country and report to the Justice Department in Washington. Working for a U.S. Attorney is a prestigious job for lawyers, and the U.S. Attorney for the Southern District of New York, whose jurisdiction is Manhattan, the Bronx, and the northern suburbs, has had a special, top-dog status ever since President Theodore Roosevelt appointed Henry Stimson, later Secretary of State and, three times, Secretary of War, to the post. The office's nickname is the Sovereign District of New York. People who work in the Southern District went to the best law schools, were elected to law reviews, and clerked for federal judges. (Alumni of the office include former Mayor Rudolph Giuliani, former Attorney General Michael Mukasey, and the new director of the F.B.I., James Comey.) Now, in close coöperation with cops and F.B.I. agents, they prosecute the biggest, baddest, scariest criminals: evil billionaires, the Mafia, drug gangs, terrorists. This gives them macho points in addition to their academic credentials.

"Do you know a good taxidermist?"



Lawyers who get jobs in the Southern District mostly spend their careers moving around a small circuit that encompasses the federal courthouse in lower Manhattan, the major Wall Street law firms, and a few government agencies in Washington, notably the S.E.C. (The S.E.C. is the only government agency directly connected to Union Station in Washington, so Wall Street securities lawyers can take the Acela there and argue for their clients without ever having to go outside.) Inhabitants of this closed world who work as prosecutors or enforcers have in the past and will in the future defend, for a lot more money, the sorts of people they're going after now.

Members of the Killer Elite see government as the highest calling. As White told me, "Your job as U.S. Attorney is to do the right thing. You're going after bad guys. You're doing something for society every day. You feel good about your job every day. It sounds hokey, but it's true." On the other hand, if you spend your whole career in government, or in a fancy law firm or a big bank, you're seen as ever so slightly a loser. In the Southern District, you get much more courtroom experience than you would in a firm, and in a firm you get much more training in the complexities of the financial world than you would working for the government. Robert Khuzami, who went from the Southern District to banking and then ran the enforcement division at the S.E.C., says, "When I was at Deutsche Bank, I had to spend hours in a conference room, with the whiteboard being filled and wiped clean five or six times, while the guys there explained a structured transaction to me." He recently started a five-million-dollar-a-year job at the law firm Kirkland & Ellis.

While you're busting your ass for relatively little money in the public sector, you need not worry that you're sacrificing future earning potential. You're actually doing the opposite, since law firms are increasingly seeking attorneys who can defend their clients against newly empowered financial regulators. As one former Assistant U.S. Attorney told me, the Southern District's securities-fraud division is its "departure lounge." John White was once the head of the corporate-finance division of the S.E.C. Both of Mary Jo White's co-heads of enforcement at the S.E.C., George Canellos and Andrew Ceresney, formerly worked in the Southern District and at big New York law firms—respectively, Milbank, Tweed and Debevoise & Plimpton. Richard Walker, Khuzami's boss when he was at Deutsche Bank, is a former head of enforcement at the S.E.C. The general counsel of JPMorgan Chase, Stephen Cutler, is a former head of enforcement at the S.E.C. Alan Cohen, the global head of compliance at Goldman Sachs, is a former Assistant U.S. Attorney in the Southern District. And so on.

The Killer Elite brush aside any suggestion that they might go easy on Wall Street firms because they expect to work for Wall Street later; or that, when they're practicing law, they would trade on their connections with government prosecutors to make their clients' problems go away. "Rightly or wrongly, there's a kind of arrogance that comes from being in the Southern District of New York," Steven Cohen, a former assistant there who is now a partner at Zuckerman Spaeder, says. "Most of these people do not view themselves as being subservient to their clients. The client is free to accept or reject their advice. That's all I owe them. I'm not beholden to them." Daniel Richman, a Southern District alumnus who teaches at Columbia Law School, told me, "When you hear about a former Assistant U.S. Attorney coming back to the office to talk about an investigation, one could say, 'It's the old-boy network.' But those who are closer to the situation see that it's a much more beneficent system. The company chose a former Assistant U.S. Attorney. That shows it's committed to playing by the rules. And that's rewarded." Even Judge Rakoff, when I asked him about the practice of moving from prosecution to defense and back again, stoutly defended it.

But the system makes less sense to the rest of the world, including politicians of both parties. Two weeks after Obama announced White's appointment, an organization called the Project on Government Oversight issued a report called "Dangerous Liaisons: Revolving Door at S.E.C. Creates Risk of Regulatory Capture." Senator Charles Grassley, of Iowa, a Republican, made a statement in response, saying, "It's especially important for the S.E.C. to fix this problem with the arrival of a new chairman who, if confirmed, would bring a lot of good things to the commission but also a lot of connections to the securities industry she'd be regulating. She'd need to operate under strict rules while at the commission and afterward if she returns to the private sector, and so should everyone else. Policing the revolving door is important to the integrity of rule-making and enforcement."

Even clients of the Killer Elite can be surprised by how quickly people who defended them, with evident passion, can switch to prosecuting them with equal passion. The announcement of White's appointment coincided with the World Economic Forum, in Davos, Switzerland. Jamie Dimon, the beleaguered C.E.O. of JPMorgan Chase, told a Fox Business reporter in Davos that White was "a perfect choice" for the job. In September, White, working with colleagues in other agencies, levied a $920-million penalty on Dimon's bank, accompanied by a statement enumerating the bank's misdeeds.

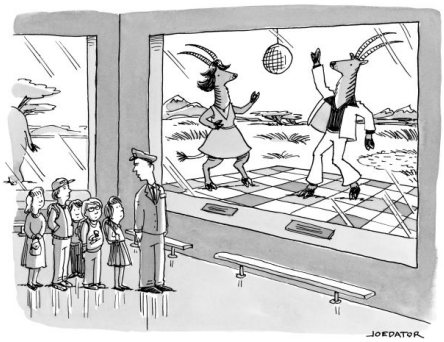
White was questioned intently at her confirmation hearing about whether she could be tough on Wall Street after so recently representing Wall Street. One of the most liberal members of the Senate Banking Committee, Sherrod Brown, a Democrat from Ohio, voted against confirming her. He explained, in an e-mail to me, "I believe there is too much bias toward Wall Street among regulators. At the time, I said I hoped she would prove me wrong. But I'm still waiting for the S.E.C. to break from the status quo and demand accountability from the financial institutions it oversees. It's time we find watchdogs outside of the very industry that they are meant to police."

In 2005, when White was at Debevoise & Plimpton, the board of Morgan Stanley hired her to investigate whether John Mack, who was about to be appointed chairman of the bank, was going to be charged in an S.E.C. insider-trading investigation. Investigations for corporate clients, meant to protect them from future prosecutions or lawsuits, were a big part of White's practice in those years. White spoke with the head of the S.E.C.'s enforcement division, Linda Thomsen, and was able to report that Mack would not be charged.

"Many of these dioramas were completely renovated in the late seventies."

In 2010, White represented Kenneth Lewis, the former chief executive of Bank of America. No charges were filed after an S.E.C. investigation, but Andrew Cuomo, then New York's Attorney General, sued Lewis on fraud charges, accusing him of misstating

the shareholders' true cost when the bank rushed to acquire Merrill Lynch. White took the unusual step of issuing a blistering statement, calling the lawsuit "a badly misguided decision without support in the facts or the law." Cuomo's deputy counsel, Ben Lawsky, another Southern District alumnus, was, in effect, being publicly reamed out by his former boss. "That wasn't a pleasant experience for me at the time," Lawsky, who is now New York State's Superintendent of Financial Services, told me. "It's never fun when somebody you revere criticizes the work you're doing. We had a fundamental disagreement. I perceive her as someone who, if the client wants *x*, and she . . . thinks it's wrong, she'll counsel the client that it's not right and they'll listen. . . . But when you decide to zealously advocate for a client, and you've been in that case for a long time, my guess is that you come to believe pretty deeply in your view of the world."



The Senate easily confirmed White's appointment, but with a sting: it approved her for a term of only a few months. People are still reeling from the effects of the financial crisis, and the senators wanted to see whether she would crack down on Wall Street. So her own reputation, too, became part of the problem she had to solve.

White went to work in the Southern District in 1978, as part of the first substantial cohort of female lawyers in its criminal division. Two years later, she was made head of the appellate division for criminal cases. In 1981, she returned to Debevoise & Plimpton, and was made a partner a year later. Not long afterward, her son was born. By the standards of the Killer Elite, her most unorthodox career move came in 1990, when she accepted the job of First Assistant U.S. Attorney for the Eastern District of New York. The Eastern District, in the outer boroughs, ranks a notch below the Southern District, and such small differences in prestige get enormous attention inside White's world. White soon succeeded the U.S. Attorney there.

On February 26, 1993, a group of radical Islamic terrorists, financed by Khalid Sheikh Muhammad, bombed the World Trade Center, and within a few weeks the Clinton Administration announced that White would be moving to the Southern District. "Janet Reno"—the Attorney General—"called me when I was nominated and said, 'Mary Jo, I want you to think about how this case is being handled,'" White told me. "A terrorist strike: it's hard to think of anything more serious than that."

White's predecessor as U.S. Attorney, Otto Obermaier, was a career defense lawyer known for his minimalist approach to the job. White is aggressive to begin with, and inclined to see her representation of her client as a moral crusade. She is known for never publicly succumbing to the doubts and uncertainties that prey on the minds of so many

of us. When she is working for the government, these qualities are enhanced. And although she thinks of herself as someone who does not overtly seek publicity, she has a sure sense of the drama of public life. Terrorism was a natural issue for her. One figure in the World Trade Center bombing case was Omar Abdel-Rahman, popularly known as "the blind sheikh," an Egyptian jihadi who was living in New Jersey—which, if one wants to be a stickler, isn't part of the Southern District. He had been involved in planning the bombing, but most of the government officials who were keeping an eye on him wanted to deport him, rather than indict him, on the pretext that there was a flaw in his visa.

White disagreed. She and two of her aides went to Washington and persuaded Janet Reno to let her indict Abdel-Rahman in the Southern District on the little-used charge of "seditious conspiracy." She delivered, as one of her assistants later wrote, "a concise, between-the-eyes account of what this man had done, who he was, and what we'd be inviting if we shirked our duty." Terrorism became a dominant theme in her long term as U.S. Attorney, and the Southern District was the only U.S. Attorney's office outside Washington to maintain an anti-terrorism division.

In 1996, White began gathering information on Osama bin Laden, who was living in Afghanistan, and who had planned terrorist acts and had declared a fatwa against the United States. American intelligence agencies were tracking bin Laden but wouldn't give information to the F.B.I.'s law-enforcement division, where White had many friends, because they weren't permitted to talk to each other. The restriction had been created during the Carter Administration to allay fears about the government's spying on American citizens. White told me that the policy, which was abolished by the 2001 Patriot Act, was one of her big frustrations. Her people, who regarded the intelligence agents as a bunch of genteel nine-to-fivers left over from the Cold War, were able to establish themselves as the prosecutors in charge of bin Laden. In June, 1998, they filed a sealed indictment against him, and, soon after the bombings of the American Embassies in Kenya and Tanzania, in August of that year, which bin Laden masterminded, the indictment became public. (It was finally dismissed, by a federal judge, in 2011, a few weeks after bin Laden's death.)

White's sweeping approach to the boundaries of the Southern District made her popular with her crusading staff and unpopular with some other U.S. Attorneys. Patrick Fitzgerald, now a partner in the Chicago office of the Wall Street law firm Skadden Arps, told me, "Her view was, Put a globe on your desk, and that's the Southern District of New York." Robert Khuzami worked for White in those days, and, while accepting the Henry Stimson Award, which goes every year to outstanding lawyers in the Southern and Eastern Districts, joked that his boss "sleeps three hours a night, lives on three ounces of tuna fish a day, and thinks she should have been consulted on where to place the space shuttle." White brought terrorism indictments against people living in Brooklyn and Queens, indictments against gang members living in Brighton Beach, and

securities-fraud indictments against people living on Long Island. As Fitzgerald put it, "The F.B.I. squad usually has a better relationship with one U.S. Attorney's office or the other. Will they bring the guy to South Street Seaport"—in the Southern District—"to sell drugs? Or to the parking lot outside Shea Stadium?"—in the Eastern District. "It's all about cultivating relationships at the Assistant U.S. Attorney-agent level."

"This can't happen ever again, Roy. Not unless my boyfriend goes to Nashville next week."

In an insider-trading case in 1997, White negotiated a plea bargain with a young woman named Marisa Baridis, who was already under indictment by the Manhattan District Attorney, Robert Morgenthau, one of White's predecessors as U.S. Attorney. Morgenthau, a man strong-willed enough to have kept running for reëlection until he was eighty-five, went to court to try to get a judge to block the plea bargain. (White chaired the campaign of Morgenthau's opponent in his 2005 reëlection campaign; Morgenthau won.) After the September 11th attacks, White issued a warrant for Ali al-Marri, a jihadi from Qatar who was living in Illinois. "Her attitude was, What have we got? Let's charge him with what we can," Mary Galligan, a retired F.B.I. special agent in charge who worked closely with White in those days, told me. The government had a charge that Marri had stolen credit cards. He was arrested in Peoria, Illinois, air-lifted to New York, charged in the Southern District, and then held for years before being indicted, tried, and convicted. White also co-signed the indictment of Zacarias Moussaoui, a jihadi who was living in Minneapolis.

White said of the terrorism cases, "You're thinking at every moment that you're going to be attacked again. Any card you can play, you use it." She had become, in effect, the Secretary of Homeland Security *avant la lettre*. But, not long after September 11th, the Bush Administration moved the decision-making for terrorism prosecution to the Attorney General's office, in Washington, so that it could be coördinated with the work of all the other government agencies involved in the war on terror. White's loyal agents from the F.B.I.'s enforcement division were transferred to headquarters. White gamely maintained, when I asked her about it, that this move "was the right thing to do," though she said that she had advised the Administration to put the New York agents in Maryland or Virginia, so that they could avoid having to spend a lot of time in meetings. In 2002, White resigned and returned to Debevoise & Plimpton. The firm had to hire someone just to field the client requests for her—not only from banks but also from corporations that were under investigation (Siemens, Hospital Corporation of America), institutions (the National Football League, the Roman Catholic Diocese of Albany), and

famous people (Rosie O'Donnell, Tommy Hilfiger). Not so long ago, few white-shoe law firms had lawyers devoted to defending clients against investigation and prosecution. Now they all do.

To members of the Killer Elite, having proved yourself as a fierce advocate for private clients means that you've got the chops, and, if you switch sides and go to work for the government, you'll be more motivated, because you'll be working for the good guys. But it was clear that White was going to have to prove this point to the outside world in her early months as chair of the S.E.C.

In June, White told the *Wall Street Journal* that the S.E.C. would begin concluding some of its investigations by trying to force the target to admit to having broken the law, and going to court if the target refused. This came as a complete surprise even to most people who work in the S.E.C.'s enforcement division. The S.E.C., like the other federal agencies with civil enforcement power, has almost always ended investigations with a settlement in which the target pays a fine but does not admit wrongdoing. This spares the S.E.C. the expense of taking cases to trial and leads to a higher total volume of enforcement actions, and it protects the targets from the shareholder lawsuits that an admission of wrongdoing would draw.

When White was nominated, Judge Rakoff told me, he e-mailed her, saying, "Does this mean I have to be nice to the S.E.C.?" "Yes, it does," she wrote back. I asked White whether she had been influenced by Rakoff's two harsh opinions, before she arrived, accusing the S.E.C. of letting off Citigroup and Bank of America far too easily. She said, "The S.E.C. has discretion. I've thought about this issue for a very long time. . . . Judge Rakoff was a voice in the discussion, but no, I don't think what he did was a trigger." She gave a measured account of how the new policy would work: "The change is that in certain kinds of cases that require greater public accountability, we may make a judgment that it's important to get an admission. Has there been obstructive behavior? Has there been high-level misconduct?"

White's announcement got great press—finally, a tough S.E.C.!—and she quickly put the new policy into effect. In July, she rejected an already negotiated S.E.C. settlement in a fraud investigation of Philip Falcone, the head of a hedge fund called Harbinger Capital Partners. One of Falcone's companies had been a Debevoise & Plimpton client, and the settlement White was rejecting had been negotiated by the S.E.C.'s enforcement division when it was headed by her longtime assistant in the Southern District, Robert Khuzami. A month later, Falcone admitted wrongdoing, and agreed to leave the investment business for five years and to pay a fine of eighteen million dollars. The S.E.C. further established its toughness in the case of Steven A. Cohen, the head of the giant hedge fund SAC Capital, whom it had been investigating on insider-trading charges. Traditionally, the heads of trading firms could say that they hadn't known personally about an insider-trading incident. (In the SAC case, a doctor is accused of

tipping off one of the traders about the not yet public failure of a drug trial.) White employed a long-dormant doctrine called "failure to supervise," which enabled the S.E.C. to charge the heads of companies in connection with misdeeds they did not personally commit and may not even have known about, as long as they had "culpable involvement." She made her enforcement action public the week before the Southern District indicted SAC on criminal charges.

Since shortly after the crash, the S.E.C. had been pursuing a case against Fabrice Tourre, a trader at Goldman Sachs, on fraud charges. Tourre was believed to have persuaded clients to buy a financial derivative based on the mortgage market, without telling them that Goldman had created it at the request of a hedge-fund manager named John Paulson, so that he could bet on the product's value declining. In August, Tourre was found liable* (#editorsnote). The next month, the S.E.C. and three other agencies announced that they had negotiated the $920-million settlement with JPMorgan Chase, on another failure-to-supervise charge. It involved the disastrous loss, totalling roughly six billion dollars, tied to Bruno Iksil, the trader whose nickname is the London Whale, and who was permitted to make multibillion-dollar bets on risky derivatives. Chase also admitted wrongdoing, though in a way meant to limit its highest officials' exposure to further legal problems. It said only that it had failed to control Iksil and had issued overoptimistic early accounts of the scale of the losses. The S.E.C.'s settlement document frequently mentioned lax "senior management."

During this run of cases, the S.E.C. was on the front pages almost every day. The news reinforced the perception that, under White, the S.E.C. had grown fangs. She was just about the only Obama Administration official who was having a good year. In August, the Senate voted to extend White's term by five years. Hostility toward Wall Street is an unusually bipartisan cause in Washington. The most critical senators include two liberal Democrats, Elizabeth Warren, of Massachusetts, and Sherrod Brown; and two conservative Republicans, David Vitter, of Louisiana, and Charles Grassley. I spoke with Grassley about White's tenure so far. He said, "She's at least promised me, when she was in here during her confirmation, that she's going to take a hard line on corporate failure. She's taken a good step forward. I'll be less skeptical if she keeps up her good work. When this guy Falcone had to admit wrongdoing, that was a good start."

White's announcement and the cases that followed from it don't necessarily mean that she is initiating wholesale change at the S.E.C. By her own account, the new policy of demanding admissions of wrongdoing will be used very occasionally. The S.E.C., as a civil agency, can't indict anybody on criminal charges, but it works closely with the Justice Department, which can. Several years ago, Arthur Andersen, the accounting firm, after being indicted in the wake of the Enron scandal, collapsed, even though the Supreme Court later overturned the conviction. "Is that in the public interest?" White said. "That should continue to be weighed. . . . Firms have to know you're willing to indict. But the evidence doesn't always take you there. If it doesn't, it's a miscarriage of justice to proceed."

In early October, White came to New York to give a lecture at Fordham Law School. She presented it as a defense of the S.E.C., and took what seemed to be a shot at Judge Rakoff. "While I will not speak of any specific cases, or ill of any of my judicial friends, I will say a word about our new protocol requiring, in certain cases, admissions from defendants," she said. She went on to argue that it was for the S.E.C. to determine when to seek these admissions, and that judges should not second-guess its decisions if it arrives at settlements that don't require an admission of wrongdoing. She made a point, too, of criticizing as excessive a minor provision—resisted by the industry—of the Dodd-Frank financial-reform legislation. She seemed to want the S.E.C. staff and Wall Street to know that she hadn't become another Elizabeth Warren.

Catching bad guys represents only a portion of the S.E.C.'s activities. The commission also regulates Wall Street, a fantastically complicated task that might as well be taking place in secret. Enforcement is onstage, regulation is backstage. But little-noticed changes in laws and regulations were far more important in causing the 2008 crash than was law-breaking by the heads of the financial industry. The closest we got to emotional satisfaction in the aftermath of the crash was watching the ruin and imprisonment of Bernard Madoff, but he was a medium-sized player in the financial system and had nothing to do with causing the crisis.

As Barney Frank, who was the leading financial-system reformer in the House of Representatives for years, and is now retired, said when I spoke to him, "A lot of that shit was legal!" Not so long ago, even the biggest American financial institutions were relatively small by the standards of the rest of the developed world, because government policy was designed to limit their size. There was no six-hundred-trillion-dollar over-the-counter derivatives market and no interstate banking; there were no money-market funds; and there was strict separation of businesses such as stockbrokers, savings-and-loan companies, and commercial banks. The S.E.C. was meant to keep a close eye on the stock and bond markets—certainly not on banks. Each of the five commissioners (there are three from the President's party and two from the other party, and they vote on major

policies) would read through every new proposed issuance of stock and then vote up or down. The S.E.C. didn't even have a formal enforcement division until the nineteen-seventies.

The financial industry, which is one of the largest lobbying presences in Washington, has for years pushed relentlessly for fewer controls. On the whole, Congress and the White House have assented, and most of the dozens of major changes to the system received no attention while they were being made. As Barney Frank put it, "On enforcement, public opinion helps. But when it comes to the weeds of regulation it's hard to muster public opinion, and the interest groups are more powerful." Two of the most significant changes were the Financial Services Modernization Act of 1999, which ended the separation between commercial and investment banking; and the Commodity Futures Modernization Act of 2000, which legally banned the S.E.C. from regulating over-the-counter derivatives. The main lobbyist for the 1999 law, Sanford Weill, then the head of Citigroup, said last year, "I don't think it's right anymore." Bill Clinton recently said that he regrets not having tried to regulate derivatives.

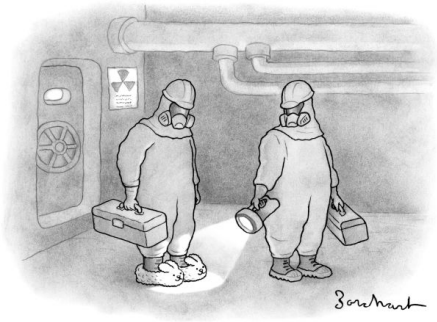
At the start of the twenty-first century, a series of market crashes (like the collapse of the tech bubble) and scandals (Enron, WorldCom, Global Crossing, Adelphia) led to new regulations, but, as soon as the markets recovered, Wall Street resumed its push for deregulation. Just eighteen months before the financial crisis, Senator Charles Schumer and Mayor Michael Bloomberg issued a report called "Sustaining New York's and the US' Global Financial Services Leadership," which warned that, if the trend toward re-regulation continued, the financial industry would move to London, which had adopted a policy (now abandoned) of "light touch" regulation.

The events of 2008 made regulation popular again. Congress passed the massive Dodd-Frank legislation. The S.E.C. today has regulatory authority over thirty-five thousand entities, and a staff of four thousand people. But it has been more than three years since President Obama signed Dodd-Frank into law, and much of it—including the Volcker Rule—has not been implemented, because the S.E.C. and other agencies have not finalized the rules. The financial industry is intensely engaged in trying to shape these rules, while the rest of the country has lost interest. The economy is in better shape. Prosecution is retrospective, and narratively riveting. Regulation is prospective, and boring and technical. It's entirely possible for the government to become a tougher prosecutor and a more lax regulator at the same time.

Obama's first chair of the S.E.C., Mary Schapiro, who took office with the Obama Administration, a few months after the onset of the financial crisis, had spent most of her career as a financial regulator. She stepped down in 2012 and went to work for a financial consulting firm called Promontory. When I visited her in her Washington office, she seemed weary. "I probably had dinner with my kids ten times in four years," she said. "I testified in Congress more than forty times. I worked seven days a week. I

know everybody says they have a twenty-four/seven job, but that one really is." Schapiro was on the receiving end of the charge that the S.E.C. was letting Wall Street's bigwigs get away with their misdeeds, and was increasingly frustrated as the next wave of deregulation took form.

"They're for emotional protection."



White's attention goes naturally to enforcement. Schapiro's went naturally to regulation, and she struggled to keep the S.E.C. on top of the new risks that the financial system was taking on. In 2009, a law professor at the University of Texas named Henry Hu published an op-ed piece in the *Wall Street Journal* speculating that Goldman Sachs likely had got billions of the government funds used to bail out A.I.G.; Schapiro hired him to start a new S.E.C. division of risk, strategy, and financial innovation. (Hu recently published an article in *Texas Law Review* saying that some Wall Street firms may have become "too complex to depict.") Schapiro hired Gregg Berman, a physicist who had been in the business of measuring financial risk, as one of the few nonlawyers in a high position at the S.E.C. She bought a computer system called MIDAS to track complex financial data.

As time went on, Schapiro began losing key regulatory battles. The Silicon Valley technology and venture-capital industries, heavy supporters of President Obama's campaigns, were pushing, along with parts of the financial industry, to be released from a series of long-standing S.E.C. regulations that applied to new companies seeking funds from investors. When the S.E.C. opposed some of these changes, the Administration proposed legislation that would make them. In 2012, Congress passed, and Obama signed, a bill called the Jumpstart Our Business Startups (JOBS) Act, which, among other things, exempts some new companies from having to file public reports with the S.E.C.—one of the few instances in which the government has reduced business disclosure requirements. "I remain skeptical that, in the absence of disclosure requirements and public reporting, the Internet will be an effective vehicle for policing the integrity of securities offerings," Schapiro said. "That's why it is so important, as the JOBS Act loosened the strictures on capital raising, for there to be at least basic investor protections built in."

Schapiro's final grand battle was over the regulation of money-market funds. In September, 2008, there was a run on the Reserve Primary Fund, one of the country's oldest and largest money-market funds. Money-market funds managed $3.5 trillion in savings of thirty million ordinary Americans, but, unlike banks, they don't have to hold capital reserves, and their deposits aren't insured by the government. "In

retrospect, I see that the industry's setup was too good to be true," Henry Paulson, President Bush's Treasury Secretary and a former head of Goldman Sachs, wrote in a memoir on the crisis. "It had worked for so long only because people didn't ask for their money."

The Reserve Primary Fund had holdings in Lehman Brothers bonds. When Lehman collapsed, the fund announced that it had to devalue its depositors' holdings. Within a week, more than three hundred billion dollars in deposits was withdrawn from money-market funds. Because money-market funds are among the main buyers of "commercial paper"—short-term debt issued by corporations to meet payroll and other immediate financial needs—as soon as the run on the money-market funds began, the commercial-paper market stopped functioning. Companies that couldn't sell commercial paper would soon be unable to pay their employees, and financial panic could ensue. An adviser to Paulson, after conducting a desperate search for remedies, discovered that there was an obscure Treasury entity called the Exchange Stabilization Fund, which held fifty billion dollars that could be drawn on to stop the run, and Paulson persuaded George W. Bush to permit it to be used to guarantee deposits in the money-market funds.

Last year, Schapiro proposed a tough new set of regulations, meant to prevent another run. Money-market funds would have to tell depositors that the value of their money was fluctuating, or they would have to keep capital reserves. The U.S. Chamber of Commerce** (#editorsnote2) waged a furious campaign against Schapiro's proposal—at one point buying all the advertising space in the Washington Metro system's Union Station stop, which S.E.C. employees pass through on the way to work. New S.E.C. regulations require a majority vote of the five commissioners. Three of the five—the two Republicans, plus one Democrat, Luis Aguilar, who had previously worked for a company that operates big money-market funds—announced that they would not support the new regulations. Schapiro retaliated by getting the Financial Stability Oversight Council, a new entity created by Dodd-Frank, to look into the issue of money-market-fund regulations. But the situation had become so toxic that Schapiro's ability to continue functioning as S.E.C. chair was imperilled. "It probably needed to be left to someone else to continue to advance the money-market-fund debate," she told me. Last November, she resigned.

When President Obama announced White's appointment, he didn't say that he wanted her to be a tough regulator—only a tough enforcer. In June, White obtained a unanimous vote of the S.E.C.'s commissioners for a set of money-market-fund regulations that were more lenient than what Schapiro had wanted, or than those Henry Paulson calls for in his book. "What you try to do with every regulation is deal with the problem as you see it, in an efficient way, and preserve the product if you can," White told me.

Gary Gensler, who began serving as chair of the S.E.C.'s smaller sister agency, the Commodity Futures Trading Commission, when Schapiro was at the S.E.C., had a similar experience. Gensler, a former partner at Goldman Sachs, turned out to be a surprisingly tough regulator. After Dodd-Frank, he proposed applying American rules to swaps—a risky financial product that became famous when some of them lost their value during the financial crisis—even if the American financial companies that sold them did so through offices in other countries. (The London Whale case involved swaps being traded abroad by an American bank.) The financial industry opposed Gensler, and both Jacob Lew, the Treasury Secretary, and White took positions that differed significantly from Gensler's; Bloomberg News reported that, at a meeting with Lew and White in July, Gensler said he felt as if he were in a meeting with financial-industry lobbyists. Gensler announced in October that he will resign before the end of the year. "We handle this somewhat differently from the C.F.T.C.," White told me. "We think our rules are quite robust in addressing the global market."

White also voted for a set of S.E.C. rules under the JOBS Act that would allow startups to advertise for investors. Traditionally, the S.E.C. has felt that venture-capital and hedge funds shouldn't be permitted to seek funds from starry-eyed amateur investors. "We're moving to a place where Grandma is more in the sights of aggressive marketers than before," Donald Langevoort, a law professor at Georgetown who used to work at the S.E.C., says. None of these changes got significant press coverage, in contrast to White's spectacular enforcement actions. If the National Security Agency wanted to protect its covert activities from being made public, all it would have to do is say they were S.E.C. rulemaking procedures.

"Before we take this up a notch, I need to know where you are with cats."

MAY 9, 2011

White is the first career prosecutor and litigator to chair the S.E.C. She filled the top jobs in the enforcement division right away, with people she knew well. But there is still no head of the division of trading and markets, the key regulatory job. Evidently, she is being careful about the search, but it's also not a job she can fill with a trusted member of her network. Even career enforcement-side S.E.C. people feel that the regulatory side is especially important now, because nobody knows just how much new risk the financial industry is taking on. Stanley Sporkin, who was one of the S.E.C.'s first enforcement chiefs, back in the seventies, and is still considered one of the toughest the agency has had, said in a speech earlier this year, "During these periods when regulation becomes out of favor, the S.E.C.

and the other regulatory agencies must stand their ground. They cannot allow the industries they regulate to do anything they want to and only stop them when they have gone so far as to bring about a financial crisis."

The question about Mary Jo White is whether she believes that the only real problem at the S.E.C. has been lax enforcement. Is Wall Street a vibrant, secure, and trustworthy industry once you get rid of the bad actors, or does it require tight systemic control by government? Andrew Ceresney, who was White's right-hand man at Debevoise & Plimpton before coming to the S.E.C., and who recently remarked to a gathering of lawyers that his goal in his new job was "to help bring the S.E.C.'s swagger back," told me, "Part of the mission is to protect investors and make sure the markets are fair and efficient. Through enforcement you do that by bringing the actions where the evidence supports it. You punish people to the extent the securities law allows. You try to deter misconduct. Take important actions in important priority areas." If it turns out to require a lot more than that to prevent another financial calamity, White has yet to prove that she's going to deliver it.

Somewhere in your consciousness, lodged there by CNBC, movies, documentary films, or Tom Wolfe's description of "young men baying for money," is a vivid picture of how trading works in the financial markets. It involves a lot of shouting and arm-waving and scraps of crumpled paper all over the floor. For people who work in the markets, this picture is a joke. The floor of the New York Stock Exchange, with the bell that rings at nine-thirty every morning and the ensuing pandemonium, is a stage set. More than eighty-five per cent of trading is generated electronically, by computer programs. The heart of "Wall Street," if that means trading stocks and bonds, is really four data centers housed in unmarked, nondescript, long, low, warehouselike modern buildings in northern New Jersey: one in Carteret, one in Weehawken, one in Secaucus, and one in Mahwah (which is where most New York Stock Exchange trading takes place). In retrospect, the chaotic market floor looks like a zone of safety, because machines can make much bigger, faster, more consequential mistakes than humans.

In the years leading up to the financial crisis, the industry developed a generation of risky new products and practices. They are gradually being regulated, but now there is yet another generation of risky practices. They aren't covered in Dodd-Frank, and pose a challenge to the S.E.C. "Dark pools," private unregulated markets, enable banks to execute undisclosed trades; "private markets," such as SecondMarket and SharesPost, allow hedge funds and venture-capital firms to offer shares in startups to online investors in ways that are only lightly regulated. Alternative stock exchanges have pioneered the high-frequency trading that now dominates the market.

Not long ago, I went out to the data center in Secaucus to meet with William O'Brien, the C.E.O. of a firm called Direct Edge. The company opened as a full electronic exchange in 2010 and now represents more than ten per cent of the trading volume on

the American equities market. It has announced plans to merge with a Kansas City-area firm called BATS, which became an electronic exchange in 2006. If the merger goes through, the combined exchange may do more trading volume than the New York Stock Exchange and more dollar volume than the Nasdaq. We met in a windowless room behind the data center's security desk. O'Brien, a neat, friendly forty-three-year-old in a white shirt and a tie, let me know that he thought the "legacy exchanges" were a little sad.

Tom Darling, a burly young man with a blond crew cut and a goatee, who was wearing a Harley-Davidson T-shirt, took us to see Direct Edge's version of a trading floor. He keyed in a code to a locked door and then put his hand on a sensor. The door opened and we walked to the next locked door, and then to the next. Finally, we reached Cage 06505—a nineteen-hundred-square-foot box filled with humming, blinking black computer servers the size of refrigerators, enclosed in chain-link fence. Cage 06505, in the second of three linked buildings, sits in a long row of cages leased by other companies, some of them banks and trading institutions that, by having their cage in the same place as Direct Edge's cage ("co-location"), can shave a few microseconds off the time it takes for an order to get to the exchange.

In 2000, the S.E.C. permitted stocks to be traded in pennies or fractions of pennies, rather than the customary eighths or thirty-seconds of a dollar. That made it easier for traders to make money by placing very large orders for very small variances in the price of a stock. During the first decade of this century, the S.E.C. issued a series of rules that allowed new exchanges to execute stock trades. That's where BATS and Direct Edge came from. Nobody outside the trading world noticed any of this until May 6, 2010, when the Dow-Jones average fell by seven hundred points in eight minutes. The "flash crash" was caused by the cascading effects of too many orders to sell an obscure financial derivative called an E-Mini S. & P. 500 contract. Suddenly, the S.E.C. realized that it had to get a handle on high-frequency trading.

This kind of trading is a coder-versus-coder game. Banks and hedge funds hire high-priced computer engineers to write algorithms that can predict minor, transitory movements in the markets—for example, by continuously comparing the prices of stocks and derivatives. Then they place orders on the electronic exchanges, hoping to make a small amount per share. They rarely hold a position for long. Because companies' algorithms are written to behave similarly, the way to make money in high-frequency trading is to get the order to the exchange ahead of the competition's, by microseconds, which are millionths of a second. An electronic signal is transmitted from Cage 06504 to Cage 06505 a few hundred microseconds faster than an electronic signal is sent from Manhattan. Recently, James Barksdale, the first C.E.O. of Netscape, started a company called Spread Networks, which built a fibre-optic cable from New York to Chicago, in order to offer its customers a three-millisecond advantage in the time it takes an order to travel from one city to the other.

Because no human is part of the decision-making process, if an algorithm gets triggered to place large orders nobody can stop and check it. An enormous sell order for a stock, with no buy orders on the other side, will cause the price to crash. Programming bugs can cause markets to freeze. Minor crashes in one or another stock, generated by trading algorithms, happen frequently, and there have been serious instances. One crippled a large trading company called Knight Capital. Another screwed up the initial public offering of Facebook. Another, ironically, interfered with the initial public offering of the BATS exchange, last year. Another caused the Nasdaq to stop operating for several hours. After this incident, in August, White summoned the heads of the exchanges to Washington, including William O'Brien, of Direct Edge, to explain what had happened, and directed them to devise a way to prevent it from happening again.

High-frequency trading also offers opportunities for consumer fraud, including "spoofing," placing and instantly withdrawing large orders so as to fool the other guy's algorithm into taking a money-losing position in a stock, and the practice of selling some customers the ability to get their orders in front of orders from other customers who don't know they're being jumped in the queue. The S.E.C. has announced that it is looking into these activities.

In a statement that White released to accompany her confirmation hearing, she mentioned three "early priorities" at the S.E.C. One was to determine the best way to regulate high-frequency trading. The second was to engage in "bold and unrelenting" enforcement. The third was to produce rules for quickly implementing the JOBS Act and Dodd-Frank. But she took pains not to come down too hard on the financial industry. She said that the S.E.C. would conduct "rigorous economic analysis" before putting the rules in place, to make sure they would not impose "unnecessary burdens or competitive harm" on the financial companies. It isn't clear yet where this mixture of concerns will lead her on her top-priority issues.

I asked Donald Langevoort, the Georgetown law professor who went to work at the S.E.C. thirty-five years ago and has been watching it closely for decades from an office a few blocks away, whether he thinks the S.E.C. can handle its new responsibilities and the rapid changes in the financial system even since 2008. He had a list of concerns. For one, he doesn't believe that the S.E.C. can control high-frequency trading and money-market funds enough to make sure that they don't cause another crash. "We have built a system,

based on technology, that no human seems to understand," he said. "Convene the smartest minds in the world, off the record, and you don't see a lot of confidence that anybody is on top of this."

Mary Jo White and her lieutenants project confidence that the S.E.C. and the financial industry can march forward together into a secure and prosperous future. I asked White if she loses sleep over the risks in the financial system. It was a question offered metaphorically, since she doesn't sleep much, anyway, but she understood what I meant, and she said that she doesn't. She smiled amiably. "I see any potential risks as a problem that needs to be solved," she said. ♦

* (#correctionasterisk)An earlier version of this article stated that Tourre was found guilty; he was found liable.

** (#correctionasterisk2)An earlier version of this article stated that the Investment Company Institute bought advertising space in Union Station; it was the U.S. Chamber of Commerce.

Nicholas Lemann joined *The New Yorker* as a staff writer in 1999, and has written the Letter from Washington and the Wayward Press columns for the magazine.

The Gang That Shot Straight Is Disbanding, For a Profit

By **Anna Schneider-Mayerson** | **01/09/06 12:00am**

The high-profile prosecutions of white-collar criminals by the U.S. Attorney's Office for the Southern District of New York have turned some of the most egregious offenders into household names: Bernie Ebbers, Frank Quattrone, John, Michael and Timothy Rigas.

But in the process, some of the Assistant U.S. Attorneys leading the cases have made names for themselves as well, and are capitalizing on the opportunity to enter the private sector.

Since August, five of the securities fraud unit's most seasoned prosecutors have left or given notice, including Michael Schachter, one of the two lead lawyers on the Martha Stewart case; David Anders, a key member of the teams that convicted WorldCom's Mr. Ebbers and Mr. Quattrone, the mustachioed investment banker; and Christopher Clark, who co-prosecuted the Rigas clan.

A high rate of turnover is a fixture of the office, as senior prosecutors with low pay (compared to the private sector, at any rate) on high-profile cases either burn out or make the money move.

And where do they end up? Usually on the other side of the aisle. Right now, many of the white-shoe law firms that defend the white-collar accused are expanding their practices and making tempting offers—in part a result of the apparently bottomless budget that corporate America seems to have to pay lawyers to rifle though e-mails and computer files for preemptive internal investigations. The office also has a new U.S. Attorney, Michael Garcia, as of September, and this changing of the guard typically presents a natural time for prosecutors to move on.

"The market is such that there's a lot of exciting things that people have been offered in the private sector," said Mr. Clark, who spent four years in the unit. "There's a time in your life where you're like, 'O.K., I got to get on with the next thing.'"

Yet this particularly concentrated group exodus—white-shoe flight?—carries some symbolic, dramatic weight. It's the end of an era in which the unit seems to have, in newspaper parlance, owned the story. Their prosecutions have defined the highly scrutinized, under-a-microscope climate that has become Wall Street's post-Enron reality. For the unit, which numbers about 20 prosecutors, this corporate-crime crackdown brought its members into the news in a way not seen since their predecessors took on the kingpins of the late 1980s, Michael Milken and the Drexel Burnham gang.

THE TITANS OF THE WHITE-COLLAR DEFENSE BAR all earned their stripes at the Southern District: Ms. Stewart's lawyer, Robert Morvillo, headed the criminal division; and both Davis, Polk & Wardwell eminence Robert Fiske Jr. and Debevoise & Plimpton's Mary Jo White ran the whole operation. Because of the complex, highly technical work involved, white-collar prosecutors are considered exceptions to the conventional wisdom that prosecutors don't make good defense lawyers.

But that doesn't mean it's always easy. There's a law-and-order mentality that's hard to shake. Prosecutors are often idealistic, coursing with the belief that they are incorruptible, that their loyalty is to the truth, to seeing justice served. They can often be righteous: Because they pick their cases instead of their cases picking them, they believe through and through that they are right. They see the defense bar—where loyalty to the client is paramount—as relativistic to the point of unprincipled. It can make the transition rocky.

"You've got to wait a little time for the 'badgectomy' to heal," joked Steven Peikin, who left his post as co-chief of the unit in 2004 to join Sullivan & Cromwell's criminal-defense and investigations group. He just made partner.

When James Comey took office as the U.S. Attorney for the Southern District of New York in 2002, he described an earlier transition, from Assistant U.S. Attorney to corporate defense lawyer, as a "major adjustment."

"You go from being paid to do the right thing every day, from having the freedom never to make an argument you don't believe in, to being a defense attorney, where you are duty-bound to make the best argument you can," he told the New York Law Journal. "I have a tremendous respect for people who do defense work, and it's not lying, but in a private moment, sometimes, you say, 'Geez, this is a bunch of baloney.'"

Mr. Peikin argued that it's easier to make the transition to defense work in the white-collar arena. "I'm not representing any terrorists, I can tell you that," he said. "It's seldom black-and-white; there are often degrees or shades of gray."

Prosecutors at the U.S. Attorney's office have different versions of the adage about selling out to a fancy law firm, but one version has it that they start looking around when they have a second child, or when their first hits school age. Prosecutors fresh off a clerkship can make about $50,000 a year, but most come in with more experience and earn starting salaries between $60,000 and $80,000. The U.S. Attorney tops out at about $140,000.

Meanwhile, the Assistant U.S. Attorneys jumping ship this fall are landing on some pretty swank dinghies. At the top-tier firms where they're headed, they'll expect to make between $700,000 and a million in the first year, experts said. As reported by The Wall Street Journal, Mr. Anders, 36, is joining Wachtell, Lipton, Rosen & Katz, where partners are by far the best-compensated in the country and lunch gets delivered on carts by uniformed "pantry ladies." Mr. Schachter, 36, is at Willkie, Farr & Gallagher; Mr. Clark, 34, started at LeBoeuf, Lamb, Greene & MacRae last month. Rounding out the group are James Cavoli, 39, who helped craft the case against the executives and vendors of U.S. Foodservice/Royal Ahold (which goes to trial this year) and who started in November at Milbank, Tweed, Hadley & McCloy; and Roberto Finzi, 37, who will shortly be returning to Paul, Weiss, Rifkind, Wharton & Garrison, where he began his career.

ONE FORMER MEMBER OF THE UNIT, Andrew Ceresney, compared the two jobs: "One of the only differences is

that you don't have subpoena power," said Mr. Ceresney, now a partner at Debevoise & Plimpton. He sighed wistfully. "It's nice to be the government."

Being a federal prosecutor, especially in the securities unit, gives young lawyers a taste of power they probably won't have until they're senior law-firm partners. Defense counsel come to see them. ("The eagle does not fly," said Mr. Peikin.) And because their targets tend to have deeper pockets than your average drug trafficker or con artist, they get to spar with the best that money can buy, attracting those who like a challenge and leaving others a little star-struck.

They lack some of the trappings of success, however. They answer their own phones, refill the copy machines on their own time, conduct all of their own legal research. Only supervisors, not "line assistants"—as the Assistant U.S. Attorneys who are "on the line" are known—get BlackBerries.

"The only people left with pagers are drug dealers and AUSA's," said one unit member. "How's that for a joke?"

One likened his time at the office to "practicing law—in a dorm." The carpets are stained, the chairs in the conference room are mismatched, and whole corridors on the unit's fifth-floor office are used to store cardboard boxes filled with financial statements. The water fountains have been covered up ever since the General Services Administration tested them and determined that the water wasn't fit for human consumption.

"It's the kind of place where, when you walk down the hall, you expect to see a football being thrown," said one former Assistant U.S. Attorney.

It's a scrappy operation. Tips can come in the form of leads from F.B.I. or S.E.C. investigators, but investigations often get sparked by articles in The Wall Street Journal or The Times' business section, which the chiefs read everyday.

The U.S. Attorney's Office for the Southern District is nicknamed the "Sovereign District"—a play on its magisterial reputation. The Securities and Commodities Fraud Task Force is an institution within this institution. But that wasn't always the case. Prosecutors pursuing white-collar criminals were basically treated with the respect (or lack thereof) given to civil, not criminal, lawyers. But in the 1980's, new federal sentencing guidelines created harsher penalties for these crimes. U.S. Attorney Rudolph Giuliani took on these offenders with zeal. Inside-traders got perp-walked and locked up along with drug dealers and mobsters.

The unit became known as a place to burnish one's résumé, earning nicknames like the "departure lounge," "waiting room" or "launching pad"—partially because it was the most senior unit and many prosecutors left after working there, but also because a stint there could improve one's chances of getting in at a corporate firm. In the mid-1990's, changes were implemented. The unit was opened to more junior prosecutors, and they had to commit to staying two years.

Then the market tanked. According to a theory subscribed to by unit members, when the market went south, people in legitimate companies started cooking the books to cover up the decline in their performance. The accounting fraud started bubbling to the surface.

The situation was dynamic; investigations were proceeding at a breakneck speed. In January 2002, prosecutors

began investigating whether Sam Waksal had traded ImClone stock based on insider information. In February, they started looking into looting by the Rigas family at Adelphia Communications Corporation, a cable company; in March, they set their sights on accounting fraud at WorldCom.

The attention had been stepped up. Bernie Ebbers, Scott Sullivan and the Rigases were handcuffed and perp-walked. The securities unit felt like the center of the office. The U.S. Attorney was consulted for strategy on the cases against Mr. Ebbers and Mr. Quattrone. The unit grew.

"It was heady," recalled Mr. Peikin, who prosecuted Mr. Quattrone along with Mr. Anders. "You were reading about the things that you were doing in the paper." Sarbanes-Oxley was signed into law that summer. The law seemed to be evolving alongside the prosecutions coming out of the unit.

Since appeals are still outstanding on all four of the unit's signature cases, it remains to be seen what long-term effect the prosecutions will have. But there's not a sense that the office was pushing the envelope in terms of new legal precedents, so much as that there were more cases that were more factually complex and higher-profile than in previous years.

This is a trend that isn't likely to end anytime soon. The office is investigating Senate Majority Leader Bill Frist for insider trading; has indicted more than a dozen New York Stock Exchange "specialists" for fraudulent trading practices; and is going to trial on a securities-fraud case against the former chief operating officer of Impath, a medical diagnostic company, in February.

But while the attrition hasn't had much of an effect on the size of the unit (some new prosecutors have been added), unit members past and present say the effect is a loss of institutional memory—but that it also expands the opportunities for new lawyers. Is it a good time to be a white-collar criminal? It's worth noting that in 2002, the unit experienced similar turnover.

"Turnover is a normal part of life in the Southern District U.S. Attorney's office. The securities unit is fully staffed with some of the most experienced prosecutors in the office," said Bridget Kelly, a spokeswoman from the office.

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1. *Asian-American Lawyers: Doing Great-and Unhappy*

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Asian-American Lawyers: Doing Great-and Unhappy

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Body

If there's one minority group that seems poised for success in Big Law, it's Asian-Pacific Americans. Though they constitute only about 5 percent of the U.S. population, APAs are arguably punching above their weight in this sector. At virtually every rung of the career ladder, their numbers are rising.

Compared to African-Americans and Latinos, APAs have been amazingly successful: According to Vault and the Minority Corporate Counsel Association, APAs now make up 6.51 percent of lawyers in firms (compared with 3.21 percent for Latinos and 3.06 percent for blacks) and 2.63 percent of equity partners (compared with 2.07 percent for Latinos and 1.73 percent for blacks). The APA pipeline in the junior ranks is also robust: Of summer associates hired in 2013, 14.11 percent were of Asian descent, a stark contrast to the percentage of black summer associates hired (6.43 percent).

APAs are also catching up to and sometimes exceeding their Caucasian counterparts on several measures: According to Major Lindsey & Africa's 2014 partner compensation survey, APAs' average billing rate of $612 edged out the $611 for whites, although Caucasians still made more money. (APAs' average compensation was $645,000 versus $734,000 for whites.) APAs also win the award for being arguably the hardest-working, billing an average of 1,702 hours. (Whites billed 1,688 hours.)

APAs are clearly on the ascent. Yet in several studies, APA lawyers say they're frustrated with their careers.

For instance, though 24 percent of APA partners describe themselves as "very satisfied" in MLA's survey, a larger share, 32 percent, call themselves "not very satisfied" or "not at all satisfied." Among minorities, APAs report the lowest level of job satisfaction according to a study by the American Bar Association and the National Association for Law Placement. And in a study by The Asia Society, highly educated APAs, including lawyers, M.D.s and Ph.D.s, are particularly unhappy. What's going on? Why would a group that's achieved so much be so disenchanted?

"It's a conundrum," says Northwestern University professor Robert Nelson, one of the authors of the ABA/NALP study. "Asian-Americans feel there's still unfairness. Until they reach the top and are clearly rewarded, they might feel underappreciated."

But getting to the top seems an uncertain road for many APAs. For starters, there's the stereotype that Asians lack spunk and spark. "While they're recognized to be diligent, they are often overlooked for leadership roles because they're not perceived as outgoing or being good at sales," says Helen Wan, the author of "The Partner Track," a novel about an Asian-American female associate in a big law firm. (Wan is a former associate at Paul Weiss Rifkind & Garrison.)

Some of that stereotype can be painfully true, says Cindy Yang, an intellectual property partner at Schiff Hardin. Yang adds that she works hard to correct preconceptions about Asians. "I know that people think that because I'm

an Asian female that I'm more acquiescing," says Yang. "But I wanted to prove them wrong." The only APA equity partner at the firm, Yang says she made up her mind early in her career to be assertive and successful.

Increasingly, despite the dissatisfaction reflected in the surveys, APAs say that the negative typecasting can be overcome. "To me, if you need to go get clients, you should do it," says Joseph Kye, a partner at Vedder Price in Chicago. Sang Kim, a member of DLA Piper's executive committee, is even blunter on this point: "If you want to be successful, you have to suck it up and own it. Some of this unhappiness is self-inflicted."

Some APA lawyers now think that being the "other" is an advantage. "The initial reaction to an Asian lawyer or any minority lawyer is that this guy is different," says Tai Park, a former Shearman & Sterling partner, who is a founder of Park Jensen Bennett, a white-collar defense firm. "But now, I think that's an opportunity. I'm somebody who stands out. And good or bad, I see it as an opportunity to be remembered."

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SEC Diversity Crisis Looms For Incoming Chairwoman

By **Max Stendahl**

Law360, New York (March 22, 2013, 7:42 PM ET) -- A top U.S. Securities and Exchange Commission official on Thursday criticized the agency for lacking racial and gender diversity in its workforce, putting the onus on new Chairwoman Mary Jo White to address what former SEC attorneys call a long-standing stain on the agency.

SEC Commissioner Luis Aguilar said in a statement that the agency may be unfairly excluding qualified minorities and women from staff positions. In 2012, 32 percent of the agency's workforce and just 13 percent of senior employees were composed of people of color, Aguilar said. In addition, among senior employees, only 31 percent were female, he said.

The SEC, which has sought in recent years to increase the diversity of public company executive boards, has not been able to address its own diversity problem through hiring, Aguilar said. Among the 567 employees hired by the SEC in 2012, 39 percent were women and 17 percent were people of color.

"We can, and must, do better," he said.

Diversity has been a chronic issue at the SEC, according to Arnold & Porter LLP partner Claudius Sokenu, a former agency attorney. During his time there from 1998 to 2001, "there were diverse support staff, but not many diverse professionals and certainly not many diverse leaders," he said.

Aside from simply hiring a greater number of minority applicants to staff positions, the SEC could address the problem by promoting diversity among attorneys within the commission, Sokenu said.

"The more that people outside the commission see diverse lawyers in positions of authority," he said, "the more likely it is that diverse lawyers and other professionals will want to be part of that success."

White, who is expected to soon win U.S. Senate confirmation as chairman and commissioner, should play a key role in enacting such policies, according to O'Melveny & Myers LLP counsel Vasu Muthyala, who served as an SEC enforcement attorney for more than three years.

"It's important for the new commissioner that this continue to be a top priority," he said.

The SEC is in the process of establishing a Diversity Council that will oversee the agency's diversity efforts in hiring, retaining and promoting employees. And like all other federal agencies, the SEC is also required under the 2010 Dodd-Frank Act to establish an Office of Minority and Women Inclusion, or OMWI.

But the SEC only hired a director to lead the office in January 2012, making it one of the last to do so. That has put the agency in a "catching-up" mode, Aguilar said Thursday.

"The SEC senior staff making the hiring decisions must understand the continuing lack of diversity, and they must undertake to break down the barriers to finding the best and the brightest by conducting a comprehensive search," he said. "In my mind, no search can be comprehensive if the talent pool is homogenous and artificially limited."

The SEC said in April that OMWI officials had begun meeting with the hiring managers of each agency division to review employee demographic data and discuss ways to recruit a more diverse pool of applicants. At the time, the SEC also said it was hosting meetings in Washington with minority groups like the Hispanic National Bar Association and developing an internal system to track candidates who submit resumes to the agency.

Still, Aguilar's grim statistics appear to back up outside studies that describe the senior staff of federal regulatory agencies as overwhelmingly white and male. A February 2012 report by The Greenlining Institute, a policy group that advocates racial and economic justice, concluded that "the ethnic and racial makeup of financial regulators does not reflect that of the American workforce."

The Greenlining study was based on hiring and diversity data from 19 federal agencies. The SEC was the only agency that did not respond to the group's requests, Greenlining said.

On Friday, the group lauded Aguilar's statement and called on White to get more involved during her tenure.

"We need to put their feet to the fire at the SEC and make sure Commissioner Aguilar is not the only person who's focusing on this," said Sasha Werblin, a senior program manager in Greenlining's economic equity group. "He needs more support."

Aguilar's statement, drawn from his earlier speeches on the subject, comes as the SEC is pushing public companies to disclose more information to shareholders about the diversity of their boards of directors.

In 2009, the agency adopted a rule that requires firms to disclose in their annual proxy statements whether their boards consider diversity in choosing members, as well as how such policies are implemented and assessed. However, the agency never defined the word diversity, sparking criticism that the rule is not stringent enough.

As Aguilar's statement shows, however, the SEC has its own diversity problems, according to Muthyala.

"If the SEC is setting rules about inclusion for the entities they regulate," he said, "they should take a look at themselves."

--Editing by Lindsay Naylor and Richard McVay.