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Why the Legal Profession Is the Nation's Least Diverse (and How to Fix It)

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I. INTRODUCTION

A Black female attorney recalls being told as an associate that she was being put on a case because they "need a Black face."

A White[1] male partner told a Latina associate, "you might not be the right person to argue before the Minnesota Supreme Court."

A Black female associate recalls being the only woman and person of color in a trial and the only person whose objections were consistently overruled. Her colleagues noticed she was being treated differently—but did nothing.

A White female attorney recalls that a Ramsey County judge referred to women attorneys as "lawyerettes."

After interviewing a White woman job applicant, a White male partner said to a White female colleague, referring to the interviewee's masculine-cut suit, "what was with the lesbian costume?"

A senior White male partner assigned the depositions for a case to the brand-new junior male instead of the Asian female associate who had worked on the case for years. When she asked the senior partner to explain the decision, she was given no explanation, but was permitted to second chair the depositions.

A Black male partner recalls a colleague insulting his outfits for other attorneys to hear at every firm event. No one stood up for him or stopped the partner's colleague.

A Black female attorney recalls being told as a first-year summer associate at a large firm that the partners believed the only other Black female at the firm (a mid-level associate) wrote her final memo for her because her writing had improved considerably over the summer.

Just last year, this article's two authors, both of whom are White female attorneys, were told to wear skirt suits during a trial because the judge "preferred it that way."

And so on.

* * * *

Our profession is the least diverse in the nation.[2] "Eighty-eight percent of lawyers are White,"[3] and sixty-two percent are male.[4] But law firms' numbers are even more troubling than our profession's generally. The 2019 figures from the National Association for Law Placement show that—at law firms—under one in five equity partners are women (or 19.6 percent), and only 6.6 percent are racial or ethnic minorities.[5] The most depressing news is that we are not making meaningful progress. Currently, Black representation among firm associates is 4.48 percent.[6] This number is less than in 2009 when Black associates constituted 4.66 percent of law firm associates.[7]

While law firms' lack of diversity remains persistent, the narrative explaining the lack of diversity continues to evolve.[8] For years, commentators and scholars assumed that the issue was one of pipeline.[9] With respect to gender equity, people expected that once law school graduation rates equalized between men and women, the "pipeline would fuel firm diversity and cause partnerships to equalize as well."[10] Yet, women and men have graduated from law schools in nearly equal numbers since the 1980s, and the disparity remains.[11] With respect to racial and ethnic diversity, although Blacks, Latinos, Asian Americans, and Native Americans constitute one-fifth of law school graduates, these numbers are not reflected in law firms—especially not among the senior levels.[12]

Fourteen years ago, the *New York Times* suggested that so few women reach the top of big law firms due to a lack of mentorship, lack of networking opportunities, and the demands of motherhood, in which firm structures did not

support working parents.[13] More recent research highlights the role of bias in law firms as impacting both women and people of color.[14] For example, one study showed that law firm partners rated the same legal memo higher when they believed a White associate drafted it than when they believed a Black associate drafted it.[15] But there are downsides with an implicit bias narrative. It is both overbroad and inappropriate to view all discrimination as unconscious or implicit (and courts, of course, struggle to accept claims based on allegedly unconscious actions).[16] Moreover, lawyers at firms continue to experience explicit racism and sexism, including micro-aggressions, racist staffing decisions, and even sexual assault that is anything but unconscious or implicit.[17]

This article begins from the premise that there is no single reason for our profession's stubborn lack of diversity. Instead, a multitude of factors, including systemic racism and sexism, unconscious bias, and law firm structures, contribute to this problem. This article aims to help solve the problem by offering a toolkit of practical actions that law firms can implement. We crafted this toolkit by analyzing the research, identifying the problems, reviewing recommended best practices, and listening to successful diverse attorneys who identified what worked and what did not in their offices and on their own paths to success.

As a first step, Section II of this article provides the authors' positions as to why improving our profession's diversity is of crucial importance.[18]

Section III sets forth our research methods and provides an overview of our interviews with more than twenty diverse attorneys.[19]

Section IV catalogs why the legal profession (and law firms more specifically) struggle to hire, promote, and retain diverse talent.[20]

Section V details the ways in which this struggle plays out in the hiring, promotion, and retention of diverse talent and offers a toolkit for change.[21]

Section VI offers diverse attorneys' strategies for addressing some of these obstacles individually.[22]

And Section VII concludes by returning to the voices of the successful, diverse attorneys that we interviewed.[23] We asked our interviewees how they stay motivated in the face of these issues. Their responses were inspiring and haunting.

II. WHY DOES IT MATTER?

This article focuses on improving diversity at law firms for several reasons. First, law firms remain the least diverse institutions among legal employers.[24] Second, while there is overlap in terms of best practices, law firms' hierarchical and

precedential structure renders them particularly slow to change and susceptible to implicit bias.[25] And third, there is a dearth of practical advice for law firms interested in improving their diversity, whereas more work has been done to improve legal diversity in the public sector[26] and on the judicial bench.[27] But why does the diversity of a law firm—a private institution—even matter?

A. The Legitimacy of Our Judicial System Depends on Diversity

"Legitimacy is long-term, deep-seated support for an institution rather than short-term snapshots of an institution's popularity."[28] Because an institution's long-term survival depends on its reservoir of goodwill, our democracy is jeopardized if a key political institution (like the judicial branch) loses its legitimacy.[29] And the judiciary is already at a disadvantage—it lacks the legislature's power of the purse or the executive branch's military might.[30] In other words, the rule of law turns on the judiciary's perceived legitimacy.

Studies show that a lack of diversity on the bench results in a loss of confidence that the courts can fairly serve all people.[31] And, of course, judges are drawn from law firms and public sector entities.[32] To the extent that these places lack diversity, our judicial benches are destined to struggle similarly.[33]

However, it goes even deeper than this. It is not just that diverse judges inspire confidence that everyone will have a fair shot at justice, but the diversity of individuals working within the judicial system also matters. A few years ago, I represented a pro bono client seeking an expungement in state court. Before our hearing, I watched a team of White prosecutors negotiate deals with White public defenders on behalf of clients who were all people of color. The color divide struck me as notable, and I was uncomfortable. I can only imagine that it must have struck the defendants even more profoundly. In other words, it is not just the diversity of the bench that inspires confidence in the system, it is the diversity of the actors in the system.[34]

B. Diverse Teams Generate Better Outcomes

Law firms are profit-driven organizations, so they should be focused on the research suggesting that diverse institutions generate better financial returns.[35] For example, a recent McKinsey study concluded that diverse boards perform better than their less diverse counterparts.[36] The study found that companies with top quartile diversity[37] on their executive boards generated returns on equity that were fifty-three percent higher on average than companies in the bottom diversity quartile.[38] The more diverse businesses also generated fourteen percent higher earnings before interest and tax on average.[39] Another study, conducted by Credit Suisse, mirrors these results, finding that businesses with

women on the board outperformed male-only boards on multiple fronts.[40] The boards with women had higher returns on equity, lower debt-to-equity ratio, higher book values, and higher average net income growth.[41]

Diverse groups may be getting better outcomes because they consider more angles. One study conducted by Tufts University,[42] for example, showed that White people behave differently in diverse groups.[43] When mock juries include both Whites and Blacks, individuals deliberated longer, raised more facts about the case, and conducted broader deliberations than panels that included only Whites.[44] The research also showed that Whites were much more willing to talk about race in a diverse setting.[45] In all-White panels, when one juror brought up race, another member would try to change the subject, minimize discussion, or suggest that race was irrelevant.[46] The study's authors hypothesized that their study had implications in a variety of contexts "wherever a premium is placed on fact-finding and reaching a good decision."[47]

Notably, homogeneous groups tend to feel more confident in their decisions.[48] This makes sense. If there is a lack of thought diversity, a group can leave a discussion convinced that there are a limited set of right answers and that their group picked the right one.[49] But they would be wrong. One research study, for example, demonstrated that adding a diverse voice doubles a group's chance of arriving at a correct solution, but the group feels less secure in the outcome because diverse voices challenged their decision process.[50]

In other words, the very product that law firms deliver will be improved by the inclusion of diverse voices.

C. *Non-Diverse Organizations Increasingly Face Censure*

The world is also changing, and non-diverse firms are increasingly facing censure. In 2019, for example, the law firm of Paul, Weiss received criticism for announcing the election of new partners.[51] In a photo featuring the firm's new partners, twelve of the twelve people in the picture appeared to be White, and only one was a woman.[52] The *Above the Law* blog called out the firm's "commitment to putting the White in White shoe."[53] A group of general counsels published an open letter calling on firms to "reflect the diversity of the legal community," or they would send their business elsewhere.[54] Paul, Weiss attempted to justify its approach, saying it regretted the "gender and racial imbalance" of the 2019 partner class but explained that the class was an outlier.[55] The firm's chairman explained, "We have a very good track record in terms of diversity," and "We've always been ranked at the very, very top of every [racial demographic] survey."[56] Unfortunately, that is true. In 2019, the firm had six Black equity partners out of 144.[57]

Today, we are witnessing clients demanding increasingly diverse teams but also monitoring team performance to ensure that diverse talent undertakes meaningful work on the team.[58] Some clients require a female or diverse successor

partner, and others measure the hours worked by diverse team members to ensure equal opportunities. Finally, we have heard complaints from in-house counsel when presented with non-diverse teams on pitches.

It is clear that there are ample incentives for law firms to improve their diversity, such as better outcomes and better financial returns, and disincentives if they do not, including censure from clients and, eventually, the assignment of work to other firms.

III. METHODS

As part of our research, we interviewed twenty-four diverse attorneys from across the country. We interviewed eight women who self-identified as White, ten women who self-identified as women of color, two attorneys who self-identified as White and LGBTQ, and four attorneys who identified as men of color.[59]

We targeted interviewees with track records of success at a range of levels, from junior associates to retired partners. Every interviewee, however, had been a practicing attorney for at least two years to ensure a substantive range of experiences to draw from in our conversation.

Each interview lasted approximately thirty minutes, and we asked each interviewee the same set of questions:

- Tell us about your career to date.
- Do you feel like, in general, your race, gender, and/or LGBTQ identification has impacted the arc of your career? How so?
- Have you ever witnessed racist, sexist, and/or homophobic moments or trends at your office?
    - With a client?
    - With a judge?
    - With opposing counsel?
- How do you respond in these moments?
- How is your firm working to improve diversity? What's working? What's not?
- Today, what advice would you give to your younger self as you graduated from law school about navigating issues of race and gender?
- How do you stay motivated?
- Is there anything that you want to share that we didn't ask?

We did not always complete the questions in the allotted thirty minutes, and, of course, the interviewees would sometimes stray down different paths. Interestingly, every single one of our interviewees said that their race, gender,

and/or LGBTQ identification impacted the arc of their career. Notably, however, many interviewees emphasized that it was not always in negative ways. Thus, while this article focuses on barriers to improving law firm diversity, it should not be lost that many individuals are also grateful for connections made and doors opened because of their diversity.

IV. WHY IS THE LEGAL PROFESSION STRUGGLING?

It is not just that law firms struggle with diversity. Law firms are actually doing worse than other professional organizations.[60] This section explores the reasons why, examining the explicit and implicit biases affecting diverse attorneys. But law firms' unique structures are likely also contributing to the problem. Law firms are hierarchical. A senior partner receives work from a client with whom he (it is usually a he) has a business relationship and hands it out to people that he feels comfortable working with (also usually a he). There are few objective standards of review for associates' work, which includes conducting depositions, writing briefs, and arguing motions. Each of these activities are assessed subjectively. Long-term success requires businesses selecting a lawyer to manage their legal matters. Yet most corporate leaders are White men who generally select other White men to lead their cases. As one White female attorney explained, "[I]t is very difficult for women to be real rainmakers. The numbers are bad in business and industry. Women tend to bring in women clients. And there are fewer of those."

Federal Judge Shira Scheindlin expressed her concern about these issues in a 2017 *New York Times* op-ed titled, "Female Lawyers Can Talk, Too."[61] Judge Scheindlin noted that a New York State Bar Association report determined that "women were the lead lawyers for private parties barely twenty percent of the time in New York State's federal and state courts at the trial and appellate levels" and, tellingly, "[w]omen were twice as likely to appear on behalf of public sector clients."[62]

These conclusions mirror the experiences of the people we interviewed. When one senior partner wanted to assign a woman associate to a case, the client turned to the senior partner and asked, "But does she have a killer instinct?" Remembering this incident years later, the woman attorney mused, "And this was in front of me! And I'm six feet tall! I looked formidable!" A White female attorney remembers a construction client coming to her for help with an employment discrimination claim. The construction client emphasized that he was not discriminating against female employees, it was simply that women could not "pee standing up" on a job site. When the female lawyer told her client that this would not work as a defense, which she knew because she could go to the bathroom standing up while on camping trips, the client fired her, announcing "she must be a lesbian" if she could pee standing up. The senior partner at the firm then blamed the female associate for getting fired "for poor client management skills." An in-house attorney

shared that firms will frequently pitch her a diverse attorney and ask her to "take a risk" on them. But, she mused, no one ever asks her to take a risk on a young, White male associate. The expectation is that—because he is a White male—he will succeed.

V. EXPLICIT RACISM & SEXISM

In part, law firms are struggling because explicit sexism and racism remain ingrained in our society.[63] Whenever people ask me about my own law firm (which has achieved great diversity among its junior ranks but continues to struggle with retention and promotion), I respond by noting that law firms reside in our larger societies. Until we can fix the systemic racism in our society, we cannot expect law firms to be outside the problems of our culture.

That said, law firms are frequently worse than our society at large. Many of our interviewees reported witnessing or experiencing explicit moments of racism and sexism. One White woman recalls, "I was required to let one of the firm's good clients grope me. I couldn't slap him." Another White woman recalls, at her first firm, having an attorney announce, "ohhh, I'm going to sit on this side of the table, so I have a good view." Lots of women know women lawyers who have been propositioned.[64] Another White woman attorney recalls a vendor telling her, after a trial, that he wanted to "suck face" with her.

Many of these explicit instances of racism or sexism are illegal.[65] Yet few people are bringing charges.[66] And rarely is anyone firing the offending parties.[67] Many interviewees acknowledged that they tended to ignore explicit racism and sexism when it occurred. One woman of color, who just made partner, noted that "[m]y strategy is just to ignore it. I have seen other women of diverse backgrounds say, 'you can't talk to me that way.' But those women have always been senior to me. I just don't do that." Another White female partner said, "I wish I had been braver in moments of calling people out on their bullshit. I was scared. I was the breadwinner. I was worried about consequences."

Many interviewees noted that law firms were willing to tolerate very bad behavior from White male partners who were generating business. As one White female summed it up, "I think that historically, if you are a man who is a rainmaker, the firm will turn a blind eye to abusive behavior towards associates, hitting on associates, questionable billing practices, etc."

VI. IMPLICIT BIAS

A. What is Implicit Bias?

In addition to explicit biases, research clearly suggests that implicit biases are also affecting diverse talent in law firms. Implicit bias is an unconscious association, belief, or attitude toward any social group.[68] As a result of implicit biases, we

as a society are more likely to associate weapons with Black faces than we do with White faces.[69] We find it easier to pair women with family words than career words.[70] Due to our implicit biases, we can experience surprise when our Delta pilot is a young Black woman because we were not expecting that. Our expectations are, of course, informed by the messages we have received our whole life about what a Delta pilot looks like.[71] In my mind, it looks like Captain Sully.

When we make decisions too quickly, we rely on implicit biases, not objective information. For example, when we decide we want to hire someone based on "a gut feeling" that they will be a good employee, we might not realize that we feel that way simply because they already look like everyone else that we work with. Nobel laureate and psychologist, Daniel Kahneman, is a leading researcher in this field.[72] In his book, *Thinking Fast and Slow*, he explains that we make decisions in one of two ways, through System 1 and System 2 thinking. When we use "System 1," we go with our gut and make decisions quickly.[73] But our "gut" is generally just a reliance on implicit biases.[74] When we go with our gut, we are more likely to hire the pilot who looks like Tom Hanks than the one who looks like Halle Berry without digging into the pilot's resume.

When we use "System 2," we engage with a decision and think through problems more carefully.[75] We would examine Halle Berry and Tom Hanks' resumes to see who has the most experience. The problem, however, is that it takes real energy and concentration to engage in System 2 thinking. So, as we get tired, toward the end of most days, we end up relying on System 1.

Researchers have been working to measure the impact of this quick response, System 1-type thinking, which relies on implicit bias, since the 1990s. To this end, three scientists—Tony Greenwald (University of Washington), Mahzarin Banaji (Harvard University), and Brian Nosek (University of Virginia)—started Project Implicit in 1998.[76] Their online test offers everyone the opportunity to see how quickly we associate good words with, say, a White face and bad words with a Black face.[77] Usually, individuals speed through this test and move a bit slower when asked to do the reverse, that being to associate good words with Black faces and bad words with White faces.[78] In general, sixty-eight percent of test-takers associate Black faces with bad words faster than good words.[79] But implicit bias is not just about race. We do the same thing with weight, disability, and age.[80] On average, we more easily associate women with words describing families than words describing careers.[81] I am not immune. I took the test and was disappointed to learn that my results demonstrate many of these biases.

B. Is There a Difference Between Implicit and Explicit Bias?

Legal scholars have fallen hard for implicit bias, and—for the past five years—it has been increasingly trendy to focus on the role implicit bias plays in perpetuating inequality.[82] What has been overlooked, however, is that labeling our profession's discrimination as implicit and unconscious is likely to place that behavior beyond legal reach. It is also likely, perhaps, to leave law firm partners shrugging and thinking, "well I can't do anything if it's unconscious."

It turns out that most of what is defined as implicit bias could just as easily be defined as explicit or conscious bias.[83] Is a law firm declining to interview an associate named Lakisha because the decider is explicitly biased or implicitly biased? There is no way to know.

Implicit bias is really only "a thing" when we engage in System 1 thinking—when we go with our gut.[84] We can train ourselves to avoid System 1 thinking when making decisions that may impact our profession's diversity. For example, we should not make hiring decisions when our cognitive resources are strained. We should offer feedback when we are well-rested. We should not make case staffing decisions at the end of the day. When we have time to engage in System 2 thinking, we should be able to better control against implicit bias.

VII. HOW ARE LAW FIRMS STRUGGLING?

Law firms struggle with diversity at every level of a career: hiring, promotion, and retention.[85] While some firms are making headway with hiring more diverse attorneys, promotion and retention of diverse talent remain elusive. Gottleib, for example, actively recruited and hired more than thirty Black associates between 1989 and 1996 but was unable to retain any of them.[86] In an effort to understand why, the firm conducted interviews with the former associates who mentioned a "subtle yet pervasive tendency by almost exclusively [W]hite partners to favor those who looked similar to themselves."[87]

This section explores the research demonstrating the hurdles diverse attorneys face at each phase of their law firm career and offers advice for law firms on how to mitigate these issues. But before we dive in, a word about what does not work.

If law firms continue to do what they are doing, the world will not change. The number of diverse firm attorneys will remain minuscule. We know this because very little has changed over the past decade.

Law firms will also not change if they simply redouble efforts to make "objective" decisions. Indeed, research suggests that if we think of ourselves as "objective," we will make less objective decisions.[88] Specifically, researchers Uhlmann and Cohen demonstrated that being primed with a sense of one's own objectivity leads to greater reliance on bias in hiring scenarios.[89] To reach this conclusion, they conducted a series of experiments by first dividing their subjects

into two groups.[90] Group 1 subjects were primed to think of themselves as "objective" by answering a questionnaire that asked them to rank how strongly they agreed with statements such as, "When forming an opinion, I try to objectively consider all facts I have access to;"[91] "My judgments are based on a logical analysis of the facts;"[92] and "My decision making is rational and objective."[93] Group 2 subjects were not primed at all.[94] All the participants were then asked to evaluate a job candidate for a factory manager position.[95] Each participant received the description of a job candidate.[96] All resumes were identical except for the candidate's name, which was either "Lisa" or "Gary."[97] The candidate was described as technically proficient and organized but interpersonally unskilled.[98] Participants were then asked to rate the strength of the applicant with respect to a series of traits.[99] Group 1 participants (who were primed to think of themselves as objective) rated the female candidate less favorably than the male candidate.[100] Group 2, the unprimed group, gave approximately equal ratings to the male and female candidates.[101] In other words, when people were primed to think of themselves as objective, there was a sizeable gender-discrimination effect.[102]

Why does this happen? When you think of yourself as objective you can give yourself permission to engage in System 1 thinking. You can "go with your gut" because you are naturally an objective person. You do not need to think hard about things. When you are not primed to think of yourself as objective, you are more likely to engage in System 2 thinking and thoughtfully explore the information provided.

In other words, we want to encourage decision-makers to be thoughtful about the facts when considering hiring, feedback, and promotion decisions.

A. Hiring

Multiple resume studies suggest that employers are more likely to call back applicants with White-sounding names than those with Black-sounding names.[103] Moreover, companies are more than twice as likely to call diverse applicants for interviews if they submit "Whitened" resumes than candidates who reveal their race.[104] Notably, this "practice is just as strong for businesses that claim to value diversity as those that don't."[105]

Even when diverse attorneys receive an interview, microaggressions during the hiring process may subtly discourage them from accepting employment with law firms.

One White female LGBTQ attorney (now a partner at her firm) recalls interviewing with a big law firm as a law student. Her resume reflected that she was a member of the Criminal Law Society as well as Out!Law, an LGBTQ affinity group. "Out!Law," scoffed the interviewer, "what is that? Do you represent outlaws? Does it have something to do with the criminal law society?" The woman decided to seek work elsewhere, realizing that employment with this firm would

require her to "do a lot of educating." In another instance, a White female LGBTQ attorney recalls discussing a woman LGBTQ applicant with a partner of hers after the applicant's interview. "She was great," said the male lawyer, "but what was up with her lesbian costume?"

Armed with the knowledge that law firms may not want to actually hire diverse applicants, some diverse law students and attorneys find themselves "Whitening" themselves for interviews and even in practice.[106] A Black managing partner at a satellite office of a big firm recalls being asked what he was doing over the weekend when he was a young lawyer. Not wanting to share that he was going to a 90s R&B concert, he named something that he had heard on National Public Radio. Now, he tries to let young, diverse attorneys know that "whatever you're into is okay."

Mothers also face severe penalties in hiring, starting salaries, and perceived competence.[107] When interviewing, childless women receive 2.1 times as many callbacks as equally-qualified mothers.[108] And mothers were 6 times less likely than childless women and 3.35 times less likely than childless men to be recommended for hire.[109] Even when a mother does get hired, mothers were recommended a 7.9 percent lower starting salary than non-mothers.[110]

B. Strategies to Improve Mindfulness in Hiring Practices.

1. Think about your recruiting pools.

If your firm only hires associates out of federal judicial clerkships, you will have difficulty recruiting diverse talent.[111] Similarly, you may need to look beyond local law student graduates. For instance, Minnesota law schools are not the most diverse recruiting pools.[112] For example, the University of Minnesota Law School student body is only 0.8 percent Black.[113] The University of St. Thomas Law School is a bit better, with 5.5 percent of its law school student body identifying as Black.[114] Best practices include recruiting from truly diverse pools, including law schools with large numbers of diverse graduates, such as Howard, the University of San Francisco, Western Michigan University, Thomas M. Cooley Law School, Yale, and South Texas College of Law.[115]

2. Consider your recruiting strategies.

One woman describes that her firm finally realized that getting a table at a diversity event is not high-quality recruiting. Hosting a meet and greet with 1Ls and 2Ls and sending affinity bars direct invitations is better. We tell them we want to meet them, and then we need to listen to those people at recruiting events.

We recommend that firms spend time cultivating relationships with the affinity bars at the schools where they recruit and hosting recruiting events that are specifically aimed at diverse talent.

3. Create your own pipeline.

Many firms are using their summer programs as a way to identify and promote diverse talent. Some are even partnering with a client to give diverse summer associates a split summer in-house and at the firm.[116] Latham & Watkins, for example, has started a 1L Fellowship Program that recruits diverse associates as 1L Fellows.[117]

4. Reduce bias in resume review.

We recommend that firms review resumes twice. In the first round, we recommend having someone (a legal assistant, for example) remove all indicators of gender, motherhood, or race. In the second round, we recommend someone review the same resumes but specifically looking for and identifying diverse talent. After both rounds of review are completed, we recommend comparing the results of the two review rounds to self-assess.

5. Ask all candidates the same questions.

In interviews, we recommend asking each candidate the same set of questions. This method will avoid interviewees succeeding simply because they connect with the interviewer over past travel experiences or hobbies.[118]

6. Write down interview impressions.

After an interview, best practices involve writing down reactions to candidates instead of discussing the candidates off-the-cuff. An even better practice is to provide interviewers with a checklist of objective criteria for ideal candidates that they can use as a tool to help them assess the candidate's qualifications for the position.

C. Strategies to Improve Feedback.

Research suggests that we are not providing fair or helpful feedback to women and people of color. In one powerful study, scientists examined the impact of implicit bias on our perceptions of associates' writing skills. Researchers provided law firm partners a memo from a hypothetical third-year associate who attended New York University (NYU) Law School.[119] The memos were exactly the same and contained twenty-two errors, including spelling and grammar errors as well as analytical errors.[120] The partners were told the memo was written by Thomas Meyer; half were told he was Black while the other half were told he was White.[121] The exact same memo averaged a 3.2 (out of 5.0) rating when the partners thought the author was Black and a 4.1 rating when they thought the author was White.[122] Even worse were the comments. The Black author was told "needs lots of work" and "can't believe he went to NYU," while comments for the White author read that the writer "has potential" and "good analytical skills."[123] Notably, the comments for the "White author" were encouraging, while the comments for the "Black author" did not even offer suggestions for improvement.[124] Instead, the "Black author" received insults.

Research also suggests that women, especially women of color, receive more subjective, critical feedback and less constructive, critical feedback than their male counterparts.[125] Women are also more likely to receive feedback that is based on personality traits, which are often themselves grounded in bias.[126] For example, we are more likely to tell a woman associate that she "lacks confidence," instead of telling her to "share her ideas in meetings."

Research also shows that women are more likely to receive feedback that is vague or generic, while men are more likely to receive feedback that is specific and targeted.[127] This is true whether the feedback is positive or negative. For example, we are more likely to tell a woman associate that her brief is "great" but not provide specific guidance about what exactly makes it so great.[128] We are also more likely to tell a woman that her oral argument "wasn't persuasive," without explaining *why* we reached that conclusion.[129] With men, however, we are more likely to give specific feedback that explains why we reached our particular conclusion about their performance.[130] His brief was "great" because his introduction caught the reader's attention, and each argument was framed with a persuasive opening statement. His oral argument was not persuasive because he side-stepped the judge's questions and did not go back to his themes when a question forced him away from his outline. The result is that women are less likely than men to receive feedback that helps them grow professionally. For the next brief or oral argument, the male associate learned what skills to build on and what to avoid. But the female associate is left to guess. In the context of negative feedback, the gender difference is also problematic because specific feedback reduces the chances that negative feedback will be misperceived or even rejected.[131]

Several interviewees confirmed these research findings. One woman of color expressed concerns that her firm does not communicate issues to diverse associates. "If they were a White male, a partner would take the person out for a beer and say, 'you're spending too long on this,'" she said. "But with minority lawyers, people don't raise the issue or want to create conflicts." Another woman remembers partners at her firm complaining about a Black associate coming in at 9:15 AM every day. When asked whether the partner told the Black associate that he needed more face time, the partner replied, "If they don't know that, I can't explain it to them." This was a problem, mused the attorney, because "hiring people into an environment with fake flexibility isn't apparent to people who don't have family members that are lawyers." One White female summarized the problem, "I've seen this overtly for people of color—they are received in the way that they are perceived. Then they are sidelined. And they have things in their reviews that were never discussed with them."

Another woman reports that a partner referenced her high-blood pressure (a medical issue) in her reviews, citing the fact as evidence that she "needed to calm down."

And, behind closed doors, there is bias in the review of candidates for partnership. One woman reports being in a partnership vote with a man who advocated against promoting a woman to partnership. When the woman partner asked why, he said, "because she's little. She's petite." The woman partner followed this man to his office after the meeting and told the partner that he was a walking time bomb and a liability to the firm. He changed his vote. But that would not have happened without the woman partner in the room who called him on the sexism.

D. Strategies for Collecting and Utilizing Feedback.

By using more objective criteria, requiring specific and non-trait-based feedback, involving a larger group of reviewers, and adjusting the frequency of reviews, it is possible to remove subjective biases from review systems.

1. Feedback training.

Many managers, particularly in the legal profession, have never been trained to give effective feedback.[132] Training them on how to give effective feedback will give them the skills to provide non-biased feedback that is more likely to aid in the advancement of women and attorneys of color.

2. Revised Review Forms.

Revising review forms to encourage managers to provide non-biased feedback can help remind reviewers to focus on what is important. For example, review forms that require narrative *and* examples are more likely to elicit specific feedback rather than generic positives ("Great!") or negatives ("Not persuasive").

3. Bias Training.

There is mixed research on the effectiveness of bias training.[133] But research suggests that bias training can be effective when it is designed "intentionally to achieve discrete, and often narrow, outcomes."[134] In this vein, bias training that focuses on improving feedback for diverse attorneys has the potential to improve outcomes.[135] Moreover, the training can convince the audience of the need to support institutional changes, like changes in the frequency of the reviews, to address bias.[136]

4. More reviewers.

As discussed above, research demonstrates that lawyers can perceive the quality of legal writing differently when they know the race of the writer.[137] Meaning that to fairly evaluate legal writing, we should think about ways to screen the reader from knowing the writer's race. Firms should consider hiring a "legal writing coach" who can read associates' work (race- and gender-blind), provide a qualitative assessment, and provide constructive feedback to help all associates improve.

5. More feedback.

Annual feedback can result in the reviewers falling back on implicit and confirmation bias. In thinking a woman associate is too focused on being a mother to be a good attorney, the reviewer may remember the times that a woman left work early to pick up her children, but forget the times that she pulled all-nighters to get the job done. In contrast, reviewing an individual at the conclusion of every project encourages ongoing conversations, improves the likelihood that associates will be judged based on their work and not the reviewer's perception, and provides associates with more opportunities to improve. Encouraging reviewers to give specific examples about what worked well and what could be improved will help them guide associates' development.

6. Transparency in feedback.

Many diverse attorneys expressed concern that criticism could be delivered (and included on their reviews) without them knowing who complained about them. This means that firms may not be able to track partners with a history of providing biased feedback. It also means that associates cannot talk with the partners who expressed criticism, which would enable them to improve or challenge the feedback as unfair. No one should be permitted to provide negative feedback without identifying themselves and making themselves available to discuss the feedback with the associate.

7. Diversity Advocate.

Larger firms should consider having a diversity advocate participate in the review process. One Latina associate (who has worked at two firms) spoke highly of her first firm's process: "The diversity chair was in the room in the reviews. They were also part of the reviewing and putting everything together. You felt like you had an advocate and an ally as well as someone who would tell you what the unwritten expectations were." Even smaller firms should consider having someone read all written reviews with an eye toward bias.

E. Retention

In light of all of the obstacles, including explicit and implicit biases that women, LGBTQ, and attorneys of color experience on an almost daily basis, we need to do a better job of ensuring that everyone feels included in our law firms.

Our interviewees underscored how alienating law firm life can be for diverse attorneys. One Latina associate recalls that a male partner invited all the White male associates to a party at his house. The women and attorneys of color were simply not invited. An Asian attorney reported that she used to feel confident until she joined her big firm. Now she feels "very insecure," but she thinks that "young White men feel confident because when they are questioned, they don't interpret it as a slight on their intelligence or abilities." One woman of color noted that she sometimes even feels alienated

when she performs well and she sees that the judge, opposing counsel, or the client is surprised. "They weren't even expecting a good performance."

In addition, there is research suggesting that diverse attorneys do not get to work on the most interesting projects or cases, leading attorneys to feel discouraged and leave. "Associates of color who responded to a Twin Cities Diversity in Practice study identified the lack of opportunity to work on important matters and a 'lack of relationships' as reasons for leaving previous firms."[138] And a study by Deloitte & Touche found that "fewer women were assigned high-profile, high-revenue assignments because male partners made certain negative assumptions about the type of work they wanted."[139]

Even at my own firm, I have heard people say, "Well of course that [diverse] attorney left, they had an amazing opportunity." Our firm should have ensured they had opportunities to work on important matters because the opportunity they left for was not beyond what our firm was able to offer. If we want diverse talent to stay, we need to find ways to cultivate inclusivity to engage attorneys of color.

F. Strategies to Retaining Diverse Employees

1. Ensure that diverse attorneys are afforded good experiences.

One Asian woman recalls being an associate in her third year of practice. She had been on a team for a while when a new associate—a White man—joined the case, just as depositions were starting. The new associate was assigned the depositions, not the woman. The woman approached the senior partner with an air of curiosity, asking, "I'm just curious how you decided to assign the depositions." She did not get an answer but was told she could second chair the deposition. Looking back, years later, she said, "I think the partner was completely clueless and felt bad."

That said, even when diverse attorneys are given experience, it can be alienating when the giver of the opportunity acts like the diverse attorney owes them something. One Black associate said, "I've almost felt like I have to work harder to show appreciation" and "I've felt like I have to do amazing."

Firms should track the opportunities being distributed and ensure that diverse attorneys are receiving plumb assignments and work at every stage in their careers.

2. Create opportunities for belonging.

Most of the diverse attorneys that we spoke with appreciated affinity bar groups and internal firm committees where they could experience belonging. One woman described how nice it was to have an email string with members of her affinity bar as "a place where people are talking about Black artists and Black TV shows." Several attorneys of color praised

their firms' diversity retreats and lunches. Years later, now in a different career, one woman stays in touch with the friends made at those lunches. One Latina partner describes finding the Hispanic Bar Association and realizing, "I didn't have to pretend to be anything other than what I was. Being with my [bar association] family lets me breathe—something special happens when you get to be yourself."

But diverse attorneys also want to belong in the firm more generally. Interviewees suggested both requiring senior partners to write an article with a junior person who is different from them or assigning senior partners lunch dates with diverse associates.

3. Eliminate alienating experiences.

One female partner recalls her firm hosting Black summer associates at a club with a history of discriminating against Black people. While she was a summer associate at a large firm, a senior partner offered to take the associates to a shooting range. She states, "I had never been shooting and was uncomfortable doing it, but I dutifully attended the event because I didn't want to miss out on an opportunity to connect with firm leadership." Events like going to a shooting range may unintentionally alienate some individuals because men are more likely to be exposed to guns.[140] Gun ownership and recreation is also most common among White men.[141] This also ignores the fact that shooting ranges may be triggering or uncomfortable, but shooting ranges are not the only space or experience that may be alienating.

If we want diverse talent to feel comfortable, group activities should be inclusive and not take place in locations known for their past discriminatory practices or focus on activities that may make people feel uncomfortable.

4. Stand up to racism and sexism.

Frequently, when racist or sexist incidents occurred, the diverse or woman attorney was the one that individuals looked towards to solve the problem. Yet sometimes, this person was still reeling from experiencing the issue. A Black associate recalls that a client used the "n-word" in front of her. The senior White partner did not say anything, leaving the young Black associate to tell the client, "You can't say that!" Another Black female attorney recalls being the only woman and only person of color in the courtroom. The judge repeatedly told the woman to stop making objections. While this woman's colleagues noted that she was being treated differently, they said nothing to the judge. Finally, the Black woman confronted the judge and said, "I don't know why you're treating me this way, but I hope no one treats your daughter this way." While the judge's behavior improved after this conversation, one wonders why this woman's senior colleagues did not raise the issue with the judge earlier. If we want diverse attorneys to remain at law firms, we need to let them know

that they are not alone. We see the obstacles facing them with clients and in the courtroom, and we must address these issues.

5. Create meaningful mentoring programs.

Most successful diverse attorneys credited their success, at least in part, to having strong mentors.[142] Very rarely were these people the same race and gender as them.[143] They were usually White men (which makes sense considering White men are the most successful demographic in law firms). One woman of color emphasized that the mentoring program cannot simply be "a lunch a month." Instead, "it needs to be that you are responsible for getting this person into the partner ranks." One attorney noted that, at her big firm, it was "years before a White male partner took me out to lunch" even though "they would take largely male associate groups out to lunch." Change happened when the female head of her practice group started saying, "This week Bill is going to take Sarah out to lunch."[144]

6. Invest in a Chief Diversity Officer.

Attorneys in firms with chief diversity officers praised the benefits of having someone in this position. One woman said, "I worried that hiring a chief diversity officer would marginalize our efforts, but it didn't. She is C suite. And through her leadership, we've done a lot of great things."

The other benefit to hiring a professional chief diversity officer is that all too frequently, a disproportionate amount of the work on these issues is done by people in the impacted communities. At any law firm, diversity committees are generally populated by attorneys from diverse backgrounds and women.[145] This extra work, of course, takes attorneys away from their billable work.[146] And, while firms tout diversity initiatives to clients, the billable hour remains the gold standard for promotion and pay decisions.

7. Address Childcare and Children.

Many interviewees noted that children created massive differences in their careers vis-à-vis their male colleagues. Women said:

- "The amount of time I used to devote to my career is being challenged by the amount of time my children need me. And I'm married to a man who is not contributing to child rearing the way I am."

- "I feel like the obstacles came more as I became a parent. You have less availability. You're not able to work the hours you could work before. You're leaving the office by five for daycare pickup. Two ways that I've looked at that. Some people have said, 'I'm not going to tell people where I am or why I'm leaving.' You're

constantly having to strategize. Do I tell them I'm leaving for daycare pickup or do I just pick up and go? What's the perception of what I'm doing? How does my leaving right now impact their perception of my availability?"

- "I stopped practicing as a result of my kids going to middle school. And I thought I can't do this. It was interesting because all the women understood it. Curiously, the men didn't get it."

- "Having kids impacted the arc of my career. I was on a big case and the trial date was on my due date. I told everyone that I was pregnant sooner than I wanted because I wanted to be fair to the trial team."

- "Disparities get bigger as you advance. With women, a lot of it is babies. Law firm life isn't always something you can do."

- "When I told a partner that I was pregnant he said, 'Women have it so hard because being a mother is the most important job.' It was presupposed that I would struggle."

- "Being married and a parent and a woman has meant that I have carried the disproportionate load in my life as a human."

To make our law firms inclusive, we need to eliminate assumptions about parenthood and support women attorneys who are parents.

VIII. WHAT CAN DIVERSE ASSOCIATES DO?

We had concerns about even including this section because we in no way mean to imply that the issues facing diverse attorneys are their fault or that they should assume the responsibility for changing a racist and sexist system. That said, our interviewees offered their own strategies for success at their law firms, and their advice was too good not to share. Here are their top tips:

- "One thing that I consciously did in the beginning was building relationships. I would invite partners and their spouses over to dinner. I felt like I needed to find ways to hang out with them. It wasn't natural, so I needed to pry those doors open in a way that maybe other people might not have had to."

- When a diverse associate was not given an opportunity, she approached the partner with an "air of curiosity" asking him "I'm just curious how you decided to assign those [opportunities]."

- "One strategy has been having a trusted sounding board of people to process with. Particularly in moments or situations when I felt really powerless to change things, having a sounding board who told me, 'It's not you, it's them.'"

- "I find it hard to get traction with opposing counsel. Especially older White men who regard me as a much junior or inferior attorney. It's subtle, but they talk to me differently. As time has gone on, I've been willing to say, 'Why do you feel comfortable addressing me this way?' I used to do stiff upper lip. Not anymore."

But most notably, interviewees discussed the importance of having friends. Being a diverse attorney can be isolating. Having friends, people with whom you can be your full and complete self and who will hear you and help you process professional obstacles is a balm to some of the difficulties described in this article.

VIII. HOW TO STAY MOTIVATED

We concluded every one of our interviews by asking our successful interviewees how they stayed motivated in their work. We share a sampling of their answers here because we found them inspiring and also haunting, and we hope other attorneys working to change the face of the legal profession will too.

- "I don't have the luxury of being depressed or exhausted. Last night, I was working until 1 a.m. I was thinking, I don't have the brain power, but then I thought of my mom. I come from [a] blended family. I have an adopted brother. I had to move out of the house when I was 17. I don't have the luxury of being sad. I owe my children financial stability."

- "I used to get motivated by the advocacy piece—trying to figure out how I could lift women up. After years of doing that and seeing nothing change, that lost its ability to energize me."

- "How do I stay motivated? Stubbornness! They can't make me quit."

- "I try to find pro bono work that motivates me."

- "I get depressed about this often. I do feel somewhat alienated in my environment. I question often whether I want to continue living a life where I go to work and don't have a sense of belonging."

- "My soul always wants to grow. What are the lessons it would like to learn? I don't learn through ponies and rainbows. I learn through really painful experiences. Being a woman and being a person of color, there were some hard experiences but also great opportunities that came because I look the way I do. I remind myself of this."

- "White Americans have a distinctly 'me, myself, and I' mentality with a goal to be as self-sufficient. The self is so important. I have always grown up knowing that I had an obligation to my family, and I was okay with that. I often push myself to keep trying or keep achieving because I have a strong desire to make my family proud and ancestors proud. I know that my grandparents did the same for me. They wanted their kids to get an education."

What does this all mean? It means that if we do not affirmatively do more and do better, the needle will not move on this issue. If we keep doing what we are doing right now, law firms will continue to be a place where success is mostly enjoyed by white men. Change requires each of us, and our law firms, to take action, and it is important that we do so. The legitimacy of our legal profession depends on it.

1. This article capitalizes "White" and "Black" pursuant to the National Association of Black Journalists' recommendation that "whenever a color is used to appropriately describe race then it should be capitalized, including White and Brown." *See generally* Neil Irvin Painter, *Why 'White' Should be Capitalized, Too*, WASH. POST (July 22, 2020), https://www.washingtonpost.com/opinions/2020/07/22/why-white-should-be-capitalized/ [https://perma.cc/MR77-VAGK]. ↑
2. Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change that.*, WASH. POST (May 27, 2015), https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/ [https://perma.cc/ GG2S-N45R]. ↑
3. *Id.* ↑
4. *A Current Glance at Women in the* law, A.B.A.–COMM'N ON WOMEN IN THE PRO. at 2 (2019), https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf

[https://perma.cc/W6YH-EAFP]. ↑

5. *Representation of Women and Minority Equity Partners Among Partners Little Changed in Recent Years*, NAT'L ASS'N FOR L. PLACEMENT (Apr. 2019), https://www.nalp.org/0419research [https://perma.cc/C7QQ-UZ6W]. ↑

6. Debra Cassens Weiss, *Law Firm Diversity is 'Good News/Bad News Story,' Says NALP Executive Director*, A.B.A. J. (Jan. 9, 2019), https://www.abajournal.com/news/article/law-firm-diversity-is-bad-news-good-news-story-nalp-executive-director-says [https://perma.cc/XY2T-A9WX]. ↑

7. *Id.* ↑

8. *See generally* Timothy L. O'Brien, *Why Do So Few Women Reach the Top of Big Law Firms?*, N.Y. TIMES (Mar. 19, 2006), https://www.nytimes.com/2006/03/19/business/yourmoney/why-do-so-few-women-reach-the-top-of-big-law-firms.html [https://perma.cc/2QG6-NXQY] (incorporating gender to expand the argument for the lack of diversity in law firms). ↑

9. *See id.* ↑

10. *Id.* ↑

11. *See, e.g.,* MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE 46 (2013) (exploring and explaining implicit bias); Jerry Kang, Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson & Jennifer Mnookin, *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1135–37 (2012); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1499–1504 (2005). ↑

12. Rhode, *supra* note 2. ↑

13. O'Brien, *supra* note 8. ↑

14. *See* Rhode, *supra* note 2. ↑

15. *See* ARIN N. REEVES, WRITTEN IN BLACK & WHITE: EXPLORING CONFIRMATION BIAS IN RACIALIZED PERCEPTIONS OF WRITING SKILLS 4 (2014), http://nextions.com/wp-content/uploads/ 2017/05/written-in-black-and-white-yellow-paper-series.pdf [https://perma.cc/CX32-NFTT]. ↑

16. Michael Selmi, *The Paradox of Implicit Bias and a Plea for a New Narrative*, 50 ARIZ. ST. L.J. 173, 175 (2018). ↑

17. *See generally* Artika R. Tyner, *Unconscious Bias, Implicit Bias, and Microaggressions: What Can We Do About Them?*, A.B.A. J. (Aug. 26, 2019), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2019/july-august/unconscious-bias-implicit-bias-microaggressions-what-can-we-do-about-them/ [https://perma.cc/MZP6-8FST] (explaining that microaggressions can have a detrimental impact by being manifested through remarks perceived to be sexist or racist). ↑

18. *See infra* Section II. ↑

19. *See infra* Section III. ↑

20. *See infra* Section IV. ↑

21. *See infra* Section V. ↑

22. *See infra* Section VI. ↑

23. *See infra* Section VII. ↑

24. Rhode, *supra* note 2. ↑

25. *See* Kang et al., *supra* note 11, at 1167. ↑

26. *See*, *e.g.*, L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035, 2096 (2011) [hereinafter Richardson, *Arrest Efficiency*]; L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE L.J. 2626, 2628 (2013); L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 IND. L.J. 1143, 1144–46, 78 (2012) [hereinafter Richardson, *Police Efficiency*]. ↑

27. Mary Vasaly, *Men in Black: Gender Diversity and the Eighth Circuit Bench*, 36 WM. MITCHELL L. REV. 1703, 1706–12 (2010). ↑

28. Nancy Scherer, *Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. Justice System Possible?*, 105 NW. U. L. REV. 587, 625 (2011). ↑

29. *Id.* ↑

30. *Id.* at 630. ↑

31. Sherrilyn A. Ifill, *Judicial Diversity*, 13 GREEN BAG 2D 45, 48, 56 (2009), http://www.greenbag.org/v13n1/v13n1_ifill.pdf [https://perma.cc/P7F6-XTKS] ("I firmly believe that we will not make significant strides on promoting diversity on the bench until we confront openly the potential of diversity to enrich judicial decision[sic]-making."). ↑

32. *See id.* at 49–50. ↑

33. *Id.* at 46 ("The most recent figures for the federal bench shows that of the active federal judges on the courts (including bankruptcy and magistrate judges), 6.8% are African American, 5.3% are Hispanic, and 1.1% are Asian American. Only 26% of the active appellate judges are women; and only 25% of district court judges are women."). ↑

34. *See id.* at 48–49. ↑

35. That said, there is also research suggesting that racism actually contributes to profit-making, as it has become ingrained into our capitalist system. *See* Lynn Parramore, *How America's Economy Runs on Racism*, INST. FOR NEW ECON. THINKING (June 5, 2020), https://www.ineteconomics.org/perspectives/blog/how-americas-economy-runs-on-racism [https://perma.cc/WNZ5-JL9Z]. The work of economist Darrick Hamilton highlights this fact, noting that racism is an efficient strategy for people seeking to acquire and maintain advantages in our capitalist system. *Id.* ("[I]f you hate a group of people, you don't take ships all the way to Africa to enslave them and bring them to another land! The motive is not hate. It's profit. The brutal, inhumane system is justified by making the enslaved people subhuman. The system of profit-making and the system of discrimination end up reinforcing each other."). ↑

36. Thomas Barta, Markus Kleiner, & Tilo Neumann, *Is There a Payoff From Top-Team Diversity?*, MCKINSEY & CO. (Apr. 1, 2012), https://www.mckinsey.com/business-functions/organization/our-insights/is-there-a-payoff-from-top-team-diversity [https://perma.cc/HD43-AJ83] (examining the earnings of 180 publicly-traded companies across France, Germany, the United Kingdom, and the United States over the period from 2008 to 2010). ↑

37. *Id.* (focusing on women and foreign nationals in order to score a company's diversity). ↑

38. *Id.* ↑

39. *Id.* ↑

40. Imran Javaid, *CS Gender 3000 Report Shows One Fifth of Board Positions Globally Now Held By Women*, CREDIT SUISSE (Oct. 10, 2019), https://www.credit-suisse.com/about-us-news/en/articles/media-releases/cs-gender-3000-report-shows-one-fifth-of-board-positions-globall-201910.html [https://perma.cc/MMG6-7L4Y]. ↑

41. *Id.* ↑

42. Tufts University, *Racial Diversity Improves Group Decision Making in Unexpected Ways, According to Tufts University Research*, SCIENCEDAILY (Apr. 10, 2006), https://www.sciencedaily.com/releases/2006/04/060410162259.htm [https://perma.cc/R857-8L2D]. ↑

43. *Id.* ↑

44. *Id.* ↑

45. *Id.* ↑

46. *Id.* ↑

47. *Id.* ↑

48. David Rock, Heidi Grant, & Jacqui Grey, *Diverse Teams Feel Less Comfortable—And That's Why They Perform Better*, HARV. BUS. REV. (Sept. 22, 2016), https://hbr.org/2016/09/diverse-teams-feel-less-comfortable-and-thats-why-they-perform-better [https://perma.cc/SS7M-9ERR]. ↑

49. *Id.* ↑

50. *Id.* ↑

51. Joe Patrice, *Paul Weiss Press Release Captures Everything Broken About Biglaw in One Image*, ABOVE THE LAW (Dec. 11, 2018), https://abovethelaw.com/2018/12/paul-weiss-press-release-captures-everything-broken-about-biglaw-in-one-image/?rf=1 [https://perma.cc/8N73-RVPQ]. ↑

52. *Id.* ↑

53. *Id.* ↑

54. Christine Simmons, *170 GCs Pen Open Letter to Law Firms: Improve on Diversity or Lose Our Business*, AM. LAW. (Jan. 27, 2019), https://www.law.com/americanlawyer/2019/01/27/170-gcs-pen-open-letter-to-

law-firms-improve-on-diversity-or-lose-our-business/?slreturn=20200810185732 [https://perma.cc/NA54-7HU8]. ↑

55. Noam Scheiber & John Eligon, *Elite Law Firm's All-White Partner Class Stirs Debate on Diversity*, N.Y. TIMES (Jan. 27, 2019), https://www.nytimes.com/2019/01/27/us/paul-weiss-partner-diversity-law-firm.html [https://perma.cc/XT88-RYDM]. ↑

56. *Id.* ↑

57. *Id.* ↑

58. *Id.* ↑

59. When we refer to these attorneys' interviews, we refer to each person by their race and gender. Due to our small sample size of LGBTQ interviewees, we broadly use the LBGTQ identifier with those who identified as LGBTQ. As later mentioned in this article, one of our LBGTQ interviewees identified as female. ↑

60. Patrice, *supra* note 51. ↑

61. Shira A. Scheindlin, *Female Lawyers Can Talk, Too,* N.Y. TIMES (Aug. 8, 2017), https://www.nytimes.com/2017/08/08/opinion/female-lawyers-women-judges.html?mcubz=3 [https://perma.cc/YSV6-MC8U]. ↑

62. *Id.* ↑

63. Patrice, *supra* note 51. ↑

64. *See* Robert J. Derocher, *As Women Lawyers Across the Country Say #Me Too, Bar Associations Plan an Important Role*, 43 A.B.A. J. (2018), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2018_19/september-october/as-women-lawyers-across-the-country-say-metoo-bar-associations-play-an-important-role/ [https://perma.cc/JAF7-6ZRL] (describing that women lawyers have experienced unwelcome physical contact or unwelcome emails, texts and instant messages). ↑

65. *See* MINN. STAT. § 363A.08 (2020) (detailing employment discrimination in Minnesota). ↑

66. *See* Derocher, *supra* note 64 (stating that "[k]eeping silent has only continued the problem"). ↑

67.

↑

68. Sybil Dunlop, *Sybil Procedure: Trusting Your Objectivity*, MINN. LAW. (Oct. 24, 2019), https://minnlawyer.com/2019/10/24/sybil-procedure-trusting-your-objectivity/ [https://perma.cc/9RRT-6LYZ]. ↑

69. *Id.* ↑

70. *Id.* ↑

71. *Id.* ↑

72. DANIEL KAHNEMAN, THINKING FAST AND SLOW (Farrar, Straus, and Giroux, 1st ed. 2013). ↑

73. *Id.* ↑

74. *Id.* ↑

75. *See id.* at 21. ↑

76. *About Us*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/aboutus.html [https:// perma.cc/849M-UPJH]. ↑

77. *See Race Implicit Bias Test*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/selectatest.html [https://perma.cc/ZV7B-5U74]. ↑

78. Brian A. Nosek, Frederick L. Smyth, Jeffrey J. Hansen, Thierry Devos, Nicole M. Lindner, Kate A. Ranganath, Colin Tucker Smith, Kristina R. Olson, Dolly Chugh, Anthony G. Greeenwald & Mahzarin R. Banaji, *Pervasiveness and Correlates of Implicit Attitudes and Stereotypes*, 18 EUR. REV. OF SOC. PSYCHOL. 1, 17 (2007), http://faculty.washington.edu/agg/pdf/Nosek%20&%20al.PCIAS.ERSP.2007.pdf [https://perma.cc/CX6D-BN6V]. ↑

79. *Id.* ↑

80. *See* Scott Sleek, *The Bias Beneath: Two Decades of Measuring Implicit Associations*, ASS'N FOR PSYCHOL. SCI. (Jan. 31, 2018), https://www.psychologicalscience.org/observer/the-bias-beneath-two-decades-of-measuring-implicit-associations [https://perma.cc/K32V-EGMA]. ↑

81. *See id.* ↑

82. Nicole E. Negowetti, *Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection*, 15 NEV. L.J. 930, 933 (2015). ↑

83. *Id.* at 940. ↑

84. *Id.* at 936. ↑

85. Rhode, *supra* note 2. ↑

86. Luis J. Diaz & Patrick C. Dunican, Jr., *Ending the Revolving Door Syndrome in Law*, 41 SETON HALL L. REV. 947, 977 (2011). ↑

87. *Id.* ↑

88. Dunlop, *supra* note 68. ↑

89. *Id.*; *see generally* Eric Luis Uhlmann & Geoffrey L. Cohen, *"I Think It, Therefore It's True": Effects of Self-Perceived Objectivity on Hiring Discrimination*, 104 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 207 (2007) (noting that a sense of personal objectivity prompts gender discrimination, particularly among decision-makers who endorsed stereotypic beliefs). ↑

90. *See* Uhlmann & Cohen, *supra* note 89, at 209. ↑

91. *Id.* ↑

92. *Id.* ↑

93. *Id.* ↑

94. *Id.* ↑

95. *Id.* at 210. ↑

96. *Id.* ↑

97. *Id.* ↑

98. *Id.* ↑

99. *Id.* ↑

100. *Id.* at 211. ↑

101. *Id.* ↑

102. *Id.* ↑

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